

## Whither criminal justice policy for women?

**Loraine Gelsthorpe: Professor of Criminology and Criminal Justice & Deputy Director, Institute of Criminology, University of Cambridge**

---

In this edition of the Newsletter we are enjoined in the task of reflecting on what criminal justice policy might look like in the next five or so years, and in thinking about the broader trends in policy-making that might influence the direction of travel. A good deal has been written about women law breakers, women's pathways into crime, women's particular responsibilities regarding children, and the challenge of women's imprisonment for everyone concerned. So what can we expect in the next few years?

The context surrounding offending by women is widely known, not least from Baroness Corston's wide-ranging review of vulnerable women in the Criminal Justice System (Corston, 2007). Most crime is property-related; at least a third of women are thought to commit crime because of poverty. Moreover, a recent study which compares recidivism in women with comparable social circumstances who were sent to prison or given a community sentence, the former group tends to go on to commit more serious offences upon release, leading to further increased costs of imprisonment - conservatively estimated at £3.6 million (Hedderman & Joliffe, 2015). Whoever first said that prison is a way of making people worse probably got it right.

### *Three steps forwards:*

There have definitely been some positive steps forwards in recent years. There is increasing awareness of the need for gender-informed and gender-specific initiatives and programmes. Specifically, gendered pathways are beginning to be recognised: the use of relational theory, strengths-based approaches, and positive psychology, are all critical frameworks for intervention with women (although there is further to go in utilising these approaches in prisons and in the community/probation domain). We might add to this the need for such interventions to be sensitive to 'trauma', the centrality of which has emerged from a number of initiatives. We have seen some promising initiatives to this end in the development of women-only offender community centres across many parts of England and Wales, building on the earlier Together Women programme (Hedderman et al., 2008) and as a response to recommendations in the 2007 Corston report. There is every indication of their merit (see: Women's

Breakout (<http://www.womensbreakout.org.uk>).<sup>1</sup>

#### *Four steps backwards?*

With the move towards budget austerity under the Coalition Government, funding for such centres has become significantly less secure. 89% of women-only centres in England and Wales that were reviewed by the global charity *Soroptimist International* reported that funding became less secure over the course of 2014. What is perhaps at issue now is how the centres can be sustained in a market economy of justice and how they can provide hard evidence of positive impact beyond consumer views (Gelsthorpe and Hedderman, 2012), which relates to increasing involvement of the private and commercial sector in running the criminal justice system in England and Wales. There are also concerns about the geographical distribution of women's centres and there are serious questions about sentencers' awareness of such centres, since there has been no discernible impact on the use of custody attributable to the work of these centres with women offenders (or at least, no hard evidence to support a causal link).

#### *Future challenges:*

The challenges for the next few years include the need for funding for the centres, as well as for the infrastructure to support them. Parental responsibility and the impact of imprisonment on children aside, there are strong arguments regarding the need to reduce the rate of imprisonment for women on grounds of their vulnerability. Indeed, since many women lawbreakers have suffered violent and/or sexual victimisation we can suggest that victimisation and offending are so frequently intertwined that victimisation might be considered an indirect pathway into crime. The fact that women defendants' past experiences of victimisation have frequently been ignored or minimized by the police, and rarely brought to the attention of the courts, raises important questions about the legitimacy of punishing their own, usually much less serious, crimes, and indeed about the state's *right* to punish those women who, as victims, it has denied or ignored. But years of campaigns to reduce women's imprisonment have seemingly borne little fruit. Such campaigns have focused overwhelmingly on women's 'neediness' and 'vulnerability' as well as on the merits of community 'alternatives' to custody. An unintended consequence may have been to raise awareness of women's neediness. Moreover, cuts to mainstream health and welfare services in a context of recession (MacLeavy, 2011) may mean that the relatively swift availability of help via criminal justice avenues is particularly attractive to

---

<sup>1</sup> Women's Breakout is recognised as the representative body for a national network of women-centred services offering gender specific community alternatives to custody as well as a range of other services and possibilities for women, including the 'specified activity' requirement of a Community Order (Criminal Justice Act 2003). Women's Breakout also provides a point of contact for consultation for a wide range of statutory and voluntary sector organisations interested in researching and evaluating the integrated, women's community solutions.

sentencers. Whether sentencers really view prisons as modern social services remains an empirical question of course, although women defendants tend to be considered more troubled than troublesome (Gelsthorpe and Loucks, 1997). The evidence of short sentences being given to women seriously undermines the popular claim that nothing short of imprisonment is necessary for public protection.

### *Ways forward?*

One step to produce better sentencing for women would be to distinguish between the *form* of penalty rather than the *level* of penalty; this might be perfectly justifiable in light of research evidence concerning women's distinctive needs. In practical terms, this means sentencing both a man and a woman on the basis of the seriousness of their offence (and other sentencing aims) and acknowledging mitigating factors (the potential impact of imprisonment on dependent children) for both. But in a context of promoting the use of alternatives to custody wherever possible - and with recognition that women commit less serious offences than men, and serve shorter sentences - it is clear that proportionately more women offenders would stand to benefit from this, without having to subvert the principle of desert. Differential sentencing is not the answer. What is required is an educational programme for sentencers to enhance the capacity of sentencing courts to generate outcomes that engage meaningfully with the social reality of women's lives.

Another possibility relates to the possibility of limiting magistrates' sentencing powers, so as to avoid the use of short sentences for less serious and particularly non-violent offences. This too would benefit women in particular, but not exclusively, given that their offences mainly relate to theft and handling. We might also suggest that there is scope to challenge the criminalisation, as well the imprisonment of women. The announcement, in January 2014, of £25 million of government funding for a national roll-out of liaison and diversion schemes - targeting arrestees with mental illness, learning disabilities and substance misuse problem (Department of Health, 2014) - is a welcome development and may impact on some vulnerable women. However, we might suggest that there is need to directly attend to gender in the delivery of services.

Additionally, we could think about the Structured Deferred Sentence: a low tariff intervention - already available in Scotland - and providing structured social work intervention for offenders post conviction, but prior to sentencing. It is intended for offenders with underlying problems such as drug or alcohol dependency, mental health or learning difficulties or unemployment that might be addressed through social work intervention. In England and Wales, we might anticipate referrals to community centres for women for suitable interventions or utilisation of the range of services provided by

the newly established Community Rehabilitation Companies following a restructuring and privatisation of the Probation Service (Ministry of Justice, 2013).

One potential way of improving sentencing practice towards women might be the introduction of specialist women's courts, along similar lines to drug courts. Such a model would facilitate the provision of specialist training for sentencers (and indeed for authors of pre-sentence reports on women) on issues such as avoiding 'sentencing women to welfare', and tailoring the content of sentences to women's needs without making them more difficult to comply with and thus more punitive. When dealing with breach, courts might consider the appropriateness – taking into account whether any childcare responsibilities have been accommodated, whether women-only provision has been made available, and so on – of orders with which women have not complied. (Responding to women solely on the grounds of gender has several risks, however, perhaps most notably leading to gender essentialism, or ignoring differences *between* women according to age, ethnicity and class. This needs further thought).

Increasingly, criminal justice developments are driven by economic factors (the need to make financial savings for example) and political factors (an ideological commitment to market competition to deliver services following sentencing for example). Political swings and fiscal controls exacerbate the challenges in addressing women offenders' needs in appropriate and proportionate fashion. Perhaps we could de-politicise criminal justice policy – especially since criminal justice ideas did not feature very largely in the recent election – see the article by my colleague Allan Brimicombe later in this newsletter.

Across different jurisdictions and amongst academics, policy makers, practitioners and campaigners there has been growing recognition that prison is not an appropriate place for women in conflict with the law. Would that the Government follow the Scottish Office in organising a review of women's imprisonment rather than simply proceeding with the creation of a new prison. In January 2015 the £75m plans for a new prison for women in Inverclyde to replace Scotland's women-only prison, Cornton Vale in Stirling were abandoned (BBC news, 26.1.2015). Holyrood's Justice Secretary indicated that Scotland must take a more radical and ambitious approach to female offending. Dare we hope for such a turn in England and Wales?

In sum, we know what some of the problems are and we know what we need to do, all we need now is a Secretary of Justice who is prepared to listen and learn. 'Dear Michael Gove – I'm happy to send you a reading list, guide you through it, and engage in meaningful discussion about the best ways forward...'

BBC news, 26.1.2015. <http://www.bbc.co.uk/news/uk-scotland-scotland-politics-30958609>

Corston, Baroness (2007) *The Corston Report: A Review of Women with Particular Vulnerabilities in the Criminal Justice System*, London: Home Office.

Department of Health (2014) Press Release: Extra funding for mental health nurses to be based at police stations and courts across the country. <https://www.gov.uk/government/news/extra-funding-for-mental-health-nurses-to-be-based-at-police-stations-and-courts-across-the-country>.

Gelsthorpe, L. and Loucks, N. (1997) 'Magistrates' explanations of sentencing decisions', in C. Hedderman and L. Gelsthorpe (1997) (eds.) *Understanding the Sentencing of Women*. London: Home Office.

Gelsthorpe, L. and Hedderman, C. 'Providing for women offenders the risks of adopting a payment by results approach', *Probation Journal*, 59(4): 374-390.

Hedderman, C., Palmer, E. and Hollin, C. with the assistance of Gunby, D. (2008) *Implementing services for women offenders and those 'at risk' of offending: Action research with Together Women*, Ministry of Justice Research Series 12/08. London: Ministry of Justice.

Hedderman, C. and Jolliffe, D. (2015) 'The impact of prison for women on the edge: Paying the price for wrong decisions', *Victims & Offenders: An International Journal of Evidence-based Research, Policy, and Practice*. Online: <http://www.tandfonline.com/doi/abs/10.1080/15564886.2014.953235#.VMzZcC50bWE>

MacLeavy, J. (2011) 'A 'new politics' of austerity, workfare and gender? The UK coalition government's welfare reform proposals', *Cambridge Journal of Regions, Economy and Society*.

Ministry of Justice (2013) *Transforming Rehabilitation: A Strategy for Reform*, London: Ministry of Justice.

Ministry of Justice (2014), Statistics on Women and Criminal Justice.

Soroptimist International (2014), *Transforming Lives – Reducing Women's Imprisonment*, published by the Prison Reform Trust, see <http://www.prisonreformtrust.org.uk/Portals/0/Documents/transforming%20lives.pdf>

---