

## WELFARE NOT WARFARE. THE CONTINUING STRUGGLE FOR A GENDER-RESPONSIVE CRIMINAL JUSTICE

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### Introduction

While the numbers of women and girls coming under the remit of criminal justice agencies may have been increasing over the last few decades<sup>1</sup> across the world females still remain a minority population within the workings of every criminal justice system in existence and as a result their voices remain largely silenced, their experiences largely untold, and their needs rarely met. In addition, legal systems which have developed to protect the rights of the innocent and laws which have been enacted to protect the general population have more often than not misunderstand or misread the particular circumstances in which the female sex is globally mired and which surround both the offending and the victimisation of women and girls.<sup>2</sup>

These systems, it has been argued, are not so much 'gender-neutral', providing protection to all without regard to the gender of those who they are set up to serve and protect as 'gender-blind', that is, unable or unwilling to see the gendered relations which contribute to patterns of offending and victimisation.<sup>3</sup> Within the development of systems and processes to both define and contain crime, this blindness to the salience of gender in shaping the social relations in which crime and victimisation take place is manifested in many ways which disadvantage the female sex.<sup>4</sup> This can be seen, for example, in the continuing low rates of conviction in rape cases, the increasing use of incarceration for troubled women and girls and in the failure to provide appropriate rehabilitative and penal environments for females who are

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<sup>1</sup> M. Chesney-Lind 'Rethinking Women's Imprisonment', in: B. Price and N. Skoloff (eds) *The Criminal Justice System and Women*, New York: McGraw Hill 1995.

<sup>2</sup> M. Eaton, *Women After Prison*, Buckingham: Open University Press 1993; P. Carlen and A. Worrall (eds) *Analyzing Women's Imprisonment*, Cullumpton: Willan Publishing 2004; J. Corston, *Women with Particular Vulnerabilities in the Criminal Justice System*, London: Home Office 2007; A. Worrall and M. Gough, *Giving them back their dignity: a review of the Adelaide House Outreach Project for Women Offenders*, London: Butler Trust 2008.

<sup>3</sup> S. Belenko, 'Assessing released inmates for substance-abuse related service needs', *Crime & Delinquency* 2006-52, pp. 94-113; B. Bloom, B. Owen and S. Covington, *Gender-responsive strategies: Research, practice, and guiding principles for women offenders*, NIC Publication No. 018017 Washington D.C.: National Institute of Corrections 2003; B. Bloom, and S. Covington, *Gender-Specific Programming for Female Offenders: What is it and Why is it Important?* Paper presented at the 50th Annual Meeting of the American Society of Criminology, 11-14 November 1998, Washington D.C.; K. Holtfreter and M. Morash, 'The needs of women offenders: Implications for correctional programming.' *Women & Criminal Justice*, 2003-14, pp. 137-160.

<sup>4</sup> Fawcett Society, *Engendering Justice: From Policy to Practice. Final Report for the Commission on Women and the Criminal Justice System*, London: Fawcett Society 2009.

convicted of an offence.<sup>5</sup> Each of these examples demonstrates the existence of criminal justice and legislative environments which appear unfit to protect and service the needs of female offenders and victims.

This continuing disregard for matters of gender in the delivery of criminal justice persists despite decades of feminist-inspired research, theory and practice which have highlighted significant differences in the circumstances in which women experience crime as offenders or victims and argued that these differences cannot be ignored. As Shaw and Hannah-Moffat have clearly stated:

(...) Current evidence shows that the nature of women's offending is qualitatively different from men's even if the charges are similar. The criminal activities in which women are involved, their pathways to crime, their institutional adjustment patterns and their escape risks are different. In short, recent research on female offending suggests that crime is a highly gendered activity and that the motivation for crime, the context of offending and access to criminal opportunities, as well as imprison responses, are shaped by differences in men's and women's lives.<sup>6</sup>

In the absence of any large-scale and sustained enquiry interrogating the salience of gender to crime and its consequences, the picture of women's offending, desistance from crime and their victimisation has been assembled piece by piece, and the jigsaw is still far from complete. Nevertheless, at the end of the twentieth century a step-change in thinking about the offending behaviour of women seemingly began to have an impact on some policies concerning the treatment of female offenders. A growing number of nations, states and organisations, both national and supra-national in nature, began to acknowledge that existing criminal justice and especially penal practices have not been sufficiently attentive to women's needs, and have, perhaps unintentionally it was suggested, discriminated against women as a result.<sup>7</sup> A commitment "to develop action-oriented policy recommendations based on the special needs of women as prisoners and offenders" has even been enshrined by United Nations resolution 55/59 in December 2000 later strengthened by draft rules, formulated in Bangkok in 2009 calling for gender-

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<sup>5</sup> S. Caringella, *Addressing Rape Reform in Law and Practice*, New York: Columbia University Press 2009.

<sup>6</sup> M. Shaw and K. Hannah-Moffat, *How Cognitive Skills Forgot About Gender and Diversity* in G. Mair (ed) *What Matters in Probation?*, Cullompton, Devon, U.K.: Willan Publishing 2004, pp. 90-122.

<sup>7</sup> See for example in Canada: Correctional Service of Canada (2007) *Creating Choices: The Report Of The Task Force On Federally Sentenced Women*, Ottawa: Correctional Service of Canada; in Australia and New Zealand: L. Bartels, *Diversion programs for Indigenous women*, Australian Institute of Criminology: Criminology Research Council Report 2010-13; in the United States: R. Immarigeon, 'Worth Reading', *Women Girls and Criminal Justice* 2008-9 (3), pp. 33-48; and across the United Nations: Enhancing Lives of Female Inmates (ELFI), *United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders – Draft*, ELFI Secretariat: Bangkok 2009.

specific health-care, mental health and rehabilitation programmes to be provided in custodial and community settings.<sup>8</sup>

In this paper, these developments will be traced, along with the apparent turning point towards gender-responsive policy making, exploring the true nature of its impact and its possible sustainability into the future of policy-making in this area. The British context to gender-responsive policies will be looked into in some detail and the strength and power of the critique or backlash to gender-responsivity will also be assessed.

### **I. A Turn to Gender-Responsivity?**

According to the report published by the Correctional Service of Canada *Creating Choices* (more of which below) a change in focus on the offending of females seems to have been formulated during the third *National Conference on Adult and Juvenile Female Offenders* hosted in Pittsburgh, Pennsylvania, in May, 1989. The authors explain that “the theme of the conference ‘The Changing Needs of the Female Offender— A Challenge for the Future’ was interpreted as a call for a fundamental restructuring of corrections for women.”<sup>9</sup> This call for a new turn in the practice of working with females who had been brought into the remit of criminal justice systems was, the report argued, indirectly influenced by feminist thinking which promoted in particular a women-centred perspective, taking the view that women constitute a group facing problems and experiences which were not shared by the male population. In the situation of imprisonment, for example, it has been argued that:

(...) Women in prison have more in common with other women than they do with male inmates, and that programs and services should be designed to meet local needs and circumstances, or planned individually, not on the basis of some 'centralized blueprint'.<sup>10</sup>

Following on from this understanding there has developed a powerful critique of generic, off-the-shelf, programmes for all offenders which purported to address the needs of males and females alike. Research such as that carried out by Jean Corston and for the Fawcett Society in the UK, suggests that there are significant differences between the offending of men and women, and that a different response to each sex is necessary which is cognisant of gender differences. It is further argued that equality in the criminal justice system is not achieved by treating men and women in the same way, and that such a misunderstanding of equality has led to male-defined practices and programmes being applied to women and “has resulted in women offenders

<sup>8</sup> ELFI 2009, *supra* note 7 p.15.

<sup>9</sup> Correctional Service of Canada, *Creating Choices: The Report Of The Task Force On Federally Sentenced Women*, Ottawa: Correctional Service of Canada 2007, chapter 7.

<sup>10</sup> M. Shaw, *The Federal Female Offender: Report on a Preliminary Study*, User Report 1991-3: Ministry of the Solicitor General

being shoehorned into a system designed for men.”<sup>11</sup> Instead, it has been argued, programmes for those women who offend must be designed to target women’s particular needs and to recognise the wider social forces which impinge on women’s freedoms and choices, placing them in particularly gendered and vulnerable social and economic circumstances.

While feminist thinking undoubtedly informed the recommendation to move towards woman-centred provision specific to the needs and experiences of girls and women, this was reinforced by a similar perspective forged in the practice of working with increasing numbers of women labelled as offenders.<sup>12</sup> As more women came into the contact with the criminal justice system across much of the English-speaking world in the last decades of the twentieth century, various institutions, programmes and individuals found themselves working more often with female clients.<sup>13</sup> Many came to a realisation through their practice that existing programmes had proved singularly inappropriate in addressing the needs of female offenders.<sup>14</sup> In the United States, for example, it was increasingly recognised that women prisoners manifest greater substance abuse problems, have ‘more complicated’ social, economic and psychological profiles, and were more greatly damaged by past traumas, all of which hindered their ability to participate in mental health and substance treatment services.<sup>15</sup>

Practice in delivering programmes demonstrated that women responded to more informal and personal interventions and relationships with service deliverers, that ‘holistic’ treatment programmes which recognise multiple needs achieve more effective outcomes, and that female offenders very often present as traumatised and with significant mental health concerns.<sup>16</sup> Furthermore it was concluded that adapting “the program’s services to the client’s needs rather than expecting the clients to adapt to the program’s needs” greatly enhanced the programme outcomes for women.<sup>17</sup> The conclusion that women’s needs should be at the centre of treatment plans has been duplicated by many other providers and researchers involved in evaluating the effectiveness of services to female offenders around the Anglicised world.<sup>18</sup>

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<sup>11</sup> H. Easton, *et al.*, *Evaluation of the Conditional Cautioning Scheme with Referral to Together Women Project women’s centres*, London: Ministry of Justice 2010, p.1.

<sup>12</sup> C. Hedderman, ‘Government policy on women offenders: Labour’s legacy and the Coalition’s Challenge’, *Punishment & Society* 2010-12, pp. 485-500.

<sup>13</sup> K. Carrington and M. Pereira, *Offending Youth. Sex, crime and justice*, The Federation Press: Leichhardt, NSW 2009, p.56; Hannah-Moffat & Shaw 2004, *supra* note 6, p.11.

<sup>14</sup> Immarigeon 2009 *supra* note 7 pp.41-44.

<sup>15</sup> R. Chang, L. Meckel, and J. LaRosa, ‘The Development and Implementation of Two Women’s Jail Diversion Programs in Connecticut: Part I’, *American Jails* 2007-21 (4), pp.17-23.

<sup>16</sup> D. Salina, *et al.*, ‘Co-occurring Mental Disorders Among Incarcerated Women: Preliminary Findings From an Integrated Health Treatment Study’, *Journal of Offender Rehabilitation* 2007-45 (1/2) pp. 207-226.

<sup>17</sup> Chang, Meckel and LaRosa 2007, *supra* note 15, p. 41.

<sup>18</sup> Corston 2007, *supra* note 2.

While increasing numbers of women were incarcerated for first-time and less serious offences than their male counterparts it was acknowledged that female offenders present, generally, little risk to society and could benefit from community disposals. In addition was a concern regarding the tragic consequences of imprisonment, an expensive option for women which not only damages the individual prisoner's health and well-being but also tears families apart, impacting particularly negatively on any children involved and which also leads to significant numbers of women self-harming in custody and even committing suicide.<sup>19</sup> Indeed periods of high rates of suicides of incarcerated women in particular in the UK and Canada served as an impetus for change leading to a more thorough investigation of the circumstances which had surrounded significant increases in the numbers of females in custody in both countries.<sup>20</sup>

## II. Canada leads the way?

Canada was the first country to adopt a national policy which reflected the concerns of the 1989 Pittsburgh conference. In 1990 the Correctional Service of Canada published the report *Creating Choices: The Report of the Task Force on Federally Sentenced Women* which "proposed the development of a culturally appropriate, woman-centred model of corrections."<sup>21</sup> The report claimed that its findings were representative of "a strong societal will for equality, fairness and wider social justice" which was dominant in the Canadian attitude to female offenders.<sup>22</sup> This support for a socially just response to female offending, the report argued, was forged throughout a decade long-process in which the Canadian system of justice was placed under intense scrutiny. This scrutiny included:

(...) A massive review of our Criminal Code, through the Marshall Inquiry, the Manitoba Native Justice Inquiry, through recent efforts by women to access their right to equality through the Charter and the Human Rights Commission, and through demands by Aboriginal people for self-determination.<sup>23</sup>

While the Marshall and Manitoba Native Justice Inquiries exposed the wholesale failure of the Canadian system to provide justice to the country's Aboriginal peoples, further research into women's experiences within the justice system uncovered a systematic failure of that system to acknowledge the different experiences of other minority and marginalised groups.<sup>24</sup> The authors of *Creating Choices*, however, did not separate the marginalisation of aboriginal peoples from the marginalisation of women and treat these as

<sup>19</sup> Corston 2007, *supra* note 2

<sup>20</sup> Corston 2007, *supra* note 2; CSC 2007, *supra* note 9.

<sup>21</sup> K. Hannah-Moffat, 'Creating choices: reflecting on choices', in: P. Carlen (ed) *Women and Punishment. The Struggle for Justice*, Cullompton, Devon: Willan 2002, p. 199.

<sup>22</sup> CSC 2007, *supra* note 9, chapter 7.

<sup>23</sup> CSC 2007, *supra* note 9, chapter 7.

<sup>24</sup> In 1990 and 1999 respectively.

distinct sites of discrimination. Indeed it was their concern, not just for the experiences of women in the justice system in Canada but also an acknowledgement of the ways in which discrimination on the grounds of both race and gender intersect in the lives of Aboriginal women in Canada that guided the Task Force on Federally Sentenced Women (henceforth referred to as the Task Force) towards their new position.

The contribution of Aboriginal women's experiences to the report is made explicit in many sections and the complete second chapter is dedicated to a consideration of the voices of incarcerated Aboriginal women. It is acknowledged in this chapter that Aboriginal women have led lives informed by shared and individual memories of racism, violence, victimization, and abuse both in their past history and in their present. This realisation allowed the Task Force members to see the offending of Aboriginal women as historically and currently contextualised within lives marred by systemic and individualised abuse. The offender was recognised as a victim of processes over which they had little or no control and through which they had been harmed both collectively as a group and personally as individual Aboriginal women.

Their subsequent experiences inside prison, where racist practices are also systemic, the report argued, perpetuated the cycle of abuse and harm. As light was thus shed on the wider context of their offending, behaviour members of the Task Force felt compelled to offer a different understanding and solution to the treatment of Aboriginal females in and by the criminal justice system. This departure was celebrated as a "new vision for all women in corrections" informed, guided and led by the experiences of Aboriginal women who are doubly punished by the justice system.<sup>25</sup> It is only through the hearing of these doubly marginalised voices, the authors of the report suggested, that new ways of thinking were made possible and could guide policy towards women in general.

While the slow pace of reform and misunderstanding of its recommendations have also been noted, in 2008, nearly twenty years after *Creating Choices* was published, Hannah-Moffat could argue that, after thirty years of research, policy development and programmes designed to reflect the female experience the model of gender-responsive correctional, rehabilitative and treatment services were "rising to the ascendancy" and taking their rightful place alongside more traditional, masculinist and risk-based discourses.<sup>26</sup>

### III. Responding to gender in the UK

In the same year that Hannah-Moffat assessed the influence of gender-responsive criminal justice responses in Canada, across the Atlantic Beckett wrote that "Gender is at the forefront of current government policy in the UK."

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<sup>25</sup> CSC 2007, *supra* note 9, chapter 2.

<sup>26</sup> K. Hannah-Moffat, 'Re-imaging gendered penalties: the myth of gender-responsivity', in: P. Carlen, *Imaginary Penalties*, Cullompton, Devon: Willan 2008, p. 194.

Her evidence was a series of new initiatives piloted in both Scotland and England which emphasised the importance of recognising the:

Social circumstances that lead some women to offend, intervening early to ensure that women's needs can be met without recourse to imprisonment, promoting the use of the full range of community disposals ... and shifting the penal culture away from punishment and towards rehabilitation and 'treatment'.<sup>27</sup>

It was claimed that these interventions were grounded in the knowledge that women's experiences differ profoundly from men's and focused programmes of rehabilitation and punishment around this difference in order to ensure equality of outcome in the criminal justice process for both sexes.

In truth, the UK government was somewhat slower in responding to calls for gender-specific and woman-centred justice than Beckett's quote suggests. Hedderman reports that, while promising a radical new approach to offenders in 1997, the then recently victorious Labour government delayed any consideration of responding to female offenders until the establishment of the Women's Offending Reduction Programme (WORP) which was actually delayed until 2004.<sup>28</sup> WORP was scheduled to run for an initial three year period and was tasked to develop a "multi-agency strategic plan of action to deliver a distinct and joined-up response to the needs and characteristics of women offenders."<sup>29</sup> WORP's stated purpose was to reduce the extent of women's offending and to achieve equality of treatment and access to provision for women which placed it firmly within normative frameworks and reaching for modest gains. Indeed, Hedderman argues, any radical impetus which might have initially lain behind the establishment of WORP had long been abandoned by the time it eventually started work.<sup>30</sup> While WORP set out to provide "a better tailored and more appropriate response to the particular factors which have an impact on why women offend."<sup>31</sup> The programme was careful to make clear that it was "about mainstreaming gender consideration rather than developing entirely separate systems and approaches for women offenders" and it was not, it clearly stated, about giving or to give women offenders preferential treatment.<sup>32</sup>

In Scotland, on the other hand, two reports *Women Offenders: A Safer Way* and *A Better Way: The Report of the Ministerial Group on Women's Offending* paved the way for services tailored specifically to the needs of women offenders and resulted, amongst other outcomes, in the establishment of the 218 Centre in Glasgow, opened in 2003 and a year before WORP came into being for England

<sup>27</sup> G. Mclvor (ed) *Women who Offend*. London: Jessica Kingsley Publishers 2004, p. 318.

<sup>28</sup> Hedderman 2010, *supra* note 12, p. 489.

<sup>29</sup> Home Office, *Women's Offending Reduction Programme: Action Plan*, London: Home Office 2004, p.5

<sup>30</sup> Hedderman 2010, *supra* note 12, p.489.

<sup>31</sup> Home Office 2004, *supra* note 29, p.5.

<sup>32</sup> Home Office 2004, *supra* note 29, p.14.

and Wales. Emphasis was placed on alleviating the detrimental social circumstances that led some women to offend, on early intervention, and on promoting punishment and treatment services which could be accessed within the community. The Scottish Executive championed an approach where specialist treatments could be accessed in non-custodial centres such as 218 in Glasgow, which aimed to “reduce stigma and isolation and increase confidence and self esteem, improve social skills, alter criminal attitudes and behaviour and so engage with these women [who offend].”<sup>33</sup> The 218 Centre was established in Glasgow in 2003 to provide residential and community based resources to women assessed as particularly vulnerable to custody or re-offending and who might have a substance misuse problem. It was run by the voluntary sector organisation, Turning Point known for its expertise in working with people with drug and alcohol problems.

It was not until 2006, however, that the Home Office for England and Wales engaged Baroness Jean Corston to “conduct an independent review of ‘vulnerable’ women offenders and other vulnerable women who come into contact with the police or courts, identifying gaps in provision for their needs within the criminal justice system and related health services.”<sup>34</sup> In the final analysis Corston declined to use the term ‘vulnerable women’ in her review but instead signalled her intention to refer instead to ‘women with vulnerabilities’.<sup>35</sup> This was more than semantics. Corston saw imprisoned women in the same way as Shaw outlines above, as having more in common with their counterparts (what the feminist movement used to refer to as ‘sisters’?) outside prison walls. Their vulnerabilities, she argued, were not intrinsic to the imprisoned individual but forced upon them in their everyday lives outside the prison walls. They were located in the domestic, personal, social and economic circumstances in which women’s lives are led; in circumstances where domestic violence prevails, where women are still expected to be the main providers of child-care and in single-parenthood; in the fact that women suffer greater rates of mental illness, low self-esteem, eating disorders and substance misuse and in living under structural constraints of poverty, unemployment and therefore of isolation and marginality. Rather than seeing the imprisoned woman as distinct and different from the norm, Corston suggested that a combination of these factors in the lives of individual women would be likely to result in points of crises that might ultimately lead any woman to a prison sentence; as Gelsthorpe articulates these could be seen as ‘indirect pathways’ to crime.<sup>36</sup> Furthermore, Gelsthorpe suggests “the group of women in prison and those most in need of welfare are arguably one and the same group.”<sup>37</sup>

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<sup>33</sup> Scottish Executive, *A Better Way*, 2002, at: <http://www.scotland.gov.uk/Publications/2006/04/24161157/2> (12 March 2011).

<sup>34</sup> Corston 2007, *supra* note 2, p. 90.

<sup>35</sup> Corston 2007, *supra* note 2, p. 15.

<sup>36</sup> L. Gelsthorpe, ‘Women, Crime and Control’, *Criminology and Criminal Justice* 2010-10 (4), p. 379.

<sup>37</sup> *Ibid.*

As a result of her review Corston recommended a radical new approach to offending “treating women both holistically and individually—a woman-centred approach” and in a “fundamental rethinking” of the way services for women are provided in the community.<sup>38</sup> Furthermore, Corston suggested moving planning and delivery of services for women who offend or are at risk of offending away from the Home Office (now Ministry of Justice) and into the Department of Communities and Local Government suggesting the focus should be “more closely aligned to the community agenda” and should be delivered outside of what is a highly gendered criminal justice system.<sup>39</sup> The government claimed to accept much of what Corston recommended. In 2008 a National Service Framework for working with women offenders was drawn up and a guide to working with women offenders was published. In addition the Criminal Justice Women’s Unit was set-up to manage and co-ordinate the response to Corston and further funding was found in 2009 to extend the model of women’s centres which Corston had recommended as an exemplar of good practice.<sup>40</sup>

#### **IV. A gender-responsive programme in action – The Women Specific Caution**

In 2008, and as a response to Corston’s call for radical action to address the failure to respond to women’s needs, the then Solicitor General for the UK, Vera Baird announced the launch of “a new disposal which will give women offenders a chance to change their lives.”<sup>41</sup> This pilot disposal took advantage of an existing arrangement, the conditional caution, which was brought in under the Criminal Justice Act 2003, and introduced a gender-specific dimension to its implementation. The conditional caution is an out-of-court disposal which comes into operation immediately after arrest, at the police station (following approval of the decision by the Crown Prosecution Service) and so diverts offenders away from court. It can be administered as an alternative to a court appearance to anyone over 18, who is arrested for committing a low-level offence such as being drunk and disorderly or committing a minor assault or a minor shoplifting or fraud.

The person arrested has first to admit the offence and agree to the caution and the conditions imposed as a result. The conditions would typically involve making reparations (a restorative element) and perhaps a fine, but is mainly expected to be rehabilitative. Baird’s radical new twist was to introduce a condition, specifically for women which required them to attend a Together Women’s centre for an assessment of their individual needs at which point a support plan would be drawn up addressing the individual woman’s current

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<sup>38</sup> Corston 2007, *supra* note 2, p.2-3

<sup>39</sup> Corston 2007, *supra* note 2, p. 7.

<sup>40</sup> See Ministry of Justice, *National Service Framework. Improving Services to Women Offenders*, London: Ministry of Justice 2008; and Ministry of Justice, *Delivering the Government Response to the Corston Report: A Progress Report on Meeting the Needs of Women with Particular Vulnerabilities in the Criminal Justice System*, London: Ministry of Justice 2009.

<sup>41</sup> V. Baird, ‘Launch of Conditional Cautions for Women Pilot Scheme’, Press release from Attorney General’s Office, London, 22 August 2008.

needs. All that was required for the condition to be met was attendance and engagement with the assessment; the woman referred was invited, but not required, to attend for any further sessions which had been identified as part of her plan for support.<sup>42</sup>

Five Together Women (TW) Centres were funded by the UK government to the tune of £9.15m over four years from 2005 (the first coming into operation in 2006) in order to realise WORP's vision of a multi-agency response to women's offending.<sup>43</sup> The centres were set up and run by voluntary organisations as demonstration projects for the National Offender Management Service (NOMS) in order to act as a referral point for Probation Officers in the regions where they operated. TW provided a women-only environment in which women who had offended could address that behaviour and where women at risk of offending might also be referred, or self-refer, in order to gain help, advice and support before a point of crisis. As a result, many of the women with whom TW work have never previously come into contact with the criminal justice system.

The support programmes offered could be very practical in orientation, such as welfare rights or housing advice; more therapeutic, for example, massage or counselling; educational in tone, for example, improving maths and IT skills or designed to empower and strengthen women's confidence and self-esteem, however each programme was distinct to the individual and tailored to their specific needs. The presentation, ethos and approach of TW could not be further removed from the punishment-based focus of much of the criminal justice system. The centres were warm, welcoming, comforting spaces where informal attitudes and a non-judgemental approach were encouraged. The centres were places where women could come and go freely and make use of the facilities outside of the more formal programme of support sessions merely to sit, chat, share or find a tranquillity missing in the rest of their lives. The TW centres adopted, therefore, what has been termed a 'therapeutic approach', stressing positive outcomes for individuals and moving forward into the future rather than concentrating on past misdemeanours. TW centres were also based on the principle that women need to be given back control and agency and that this, rather than punishment, will allow them to make the changes that they recognise are necessary in their lives.

The Women Specific Caution (WSC) was welcomed by all those involved in its administration (the police, the CPS and TW) and with the users of the service, as a useful service and as an opportunity to contribute something positive to the lives of women. It is perhaps unsurprising that the users of the service found it to be particularly beneficial, providing, as it did, a range of services that could be tapped into and ongoing support which could be accessed to help women take the steps they felt necessary. It is perhaps more interesting to

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<sup>42</sup> A full evaluation of the WSC can be found in Easton, *et al.* 2010, *supra* note 11.

<sup>43</sup> C. Hedderman, *et al.*, *Implementing services for women offenders and those 'at risk' of offending: action research with Together Women*, Ministry of Justice Research Series 2008-12/08.

note, however, that the 'point of change' identified by many women administered the caution, the moment at which they felt that they could regain control of their lives and get them back on track, appeared to them to have occurred not at the TW centres themselves but before they set foot in the door and at the police station when they were offered a new kind of disposal. For these women the realisation that they were being offered an opportunity to 'make good' rather than be punished set in motion a different way of thinking about themselves and about their lives.<sup>44</sup> That these women truly felt that they could make good out of a bad situation and turn their lives around within a supportive environment made all the difference to their motivation to change.

This echoes the work of Eaton who argued back in 1993 that re-direction, recognition and reciprocal relationships were key to the successful re-integration of women prisoners into the community.<sup>45</sup> For those who expressed this point in the process as their point of change two factors came into consideration. One was that they had not been labelled as 'bad people' or as 'offenders' so they could, as a result, self-identify as 'good' people who had perhaps made a bad decision. The second factor revolved around the fact that their 'treatment' or 'support', however they saw it at the time, would be administered to them outside of the formal criminal justice process. For those who had prior experience of the criminal justice system, there was recognition that they had previously suffered harm in some way inflicted by the formal court and penal process and there was therefore a palpable relief that this new disposal set out to heal rather than further harm. For those without similar former experience of the justice system, the administering of a WSC allowed them to feel as though they had been offered something different to the norm and an opportunity that they should grasp with both hands.

Those women whose 'point of change' occurred at TW itself most often articulated that it was the non-judgemental space which was available and in which they could find time to catch breath and reflect on their past decisions which greatly contributed to their motivation to change. The attitude with which they were met by staff also helped considerably. These all-female staff members offered a listening ear, an empathy which was refreshing and previously missing from their lives and a non-controlling encounter in which the power to choose or not to choose what was on offer was given over to the service-user and not forced upon them. The women-only environment, so essential to the perspective and ethos of TW, was perceived as offering a safe and non-competitive environment where, importantly, women could reflect and engage with support, free from the cycle of abuse and control by men, which many could see had broken down their self esteem and contributed to their offending. Altogether the woman-centred and holistic approach of TW allowed women to reassess who they were, where they were heading and to reawaken forgotten skills and build personal mental strength. Those who

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<sup>44</sup> S. Maruna, *Making Good: How Ex-Convicts Reform and Rebuild Their Lives*, Washington D.C.: American Psychological Association Books 2001, p.1

<sup>45</sup> M. Eaton, *Women after Prison* Buckingham: Open University Press 1993.

engaged with the service were able to reconstruct themselves as women with needs which could be addressed rather than as life-long offenders who were beyond redemption.

While all stakeholders eventually reached positive conclusions regarding the vision of the WSC and identified positive benefits to women who had offended, support for the WSC was not forthcoming from all stakeholders from the project's outset.<sup>46</sup> While TW embraced the opportunity to deliver services to women administered a WSC from the very beginning, police officers and CPS lawyers were used to making decisions within a very different framework. The WSC could be seen by some as too soft an option and one that would not be supported by a general public more intent on the punishment than rehabilitation model of work with offenders. Unsurprisingly, there was also some resistance to the idea that women should be treated in any way differently to men and the idea was expressed that to do so would be perceived as discriminatory and an example of preferential treatment for females.

However, towards the end of the six-month pilot of the project, representatives from even these organisations, steeped as they are in masculinist discourses, began to reflect on the advantages of using this very different approach. The benefits of the TW approach to the women themselves were not the only positive outcomes outlined by those who had administered the WSC. A change in their own attitudes towards and perceptions of offenders had also been noticed. There was some evidence that the requirement to consider a therapeutic rather than a punishing approach to working with those who had been arrested, admitted guilt and were awaiting decisions on the charge they should face, forced a consideration of the detainee as a whole person rather than defining them only in terms of the offence which had been committed. The individual's actions instead were contextualised within their present and past experiences and the police officer or CPS lawyer also had to consider the possible positive and pro-social future that the individual might go on to lead. When the pilot ended after six months' trial, its loss was keenly felt, particularly by those police officers in the custody suites who had become accustomed to using the WSC, so much so that in at least one police station officers continued to refer women in their custody suites to TW but on an informal basis.

Some aspects of the WSC were more troubling and the condition as a whole was certainly not without its drawbacks. There was evidence, for example, that its very popularity in the police custody suites might have encouraged some inappropriate use and led to instances of up-tariffing where the more serious WSC was given where a simple caution might have been more appropriate. Furthermore, one pilot project run for a short period of time could not possibly change deeply ingrained institutional behaviours or paternalistic attitudes towards the female sex which have led to detrimental outcomes in the past. Any breach of the WSC also led the individual quickly back to the court process

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<sup>46</sup> The following paragraph is informed by the author's own observations whilst undertaking part of the evaluation of the WSC pilot project in 2009. See Easton, *et al.*, 2010, *supra* note 11.

from which it had initially diverted them. However, it has been useful to explore this gender-specific disposal in some detail in order to contrast the approach taken by TW to that with which the criminal justice process is more familiar. It would seem that the replacement of masculinist discourses of punishment, even for the short, six month, period over which this pilot ran, can start to bring about more positive and self-affirming attitudes and, in many ways, more successful outcomes. This 'feminisation' of work with offenders began to make some inroads, for these practitioners too, into what Carlen has dubbed the 'risk-crazed' policies which currently hold sway.<sup>47</sup>

Arguably, the WSC could be said to represent an instance of gender-responsivity in practice only because the responsibility for the design, implementation and delivery of this service to women was taken out of the context of criminal justice and its discourses of risk, management and control, and was alternatively placed within a community-based service driven by a very different ethos and staffed by teams schooled in a very different approach to their work.<sup>48</sup> This approach considered the women who walked through their door to be in need of support, care, and understanding alongside a restoration of agency and control over their own destinies—a perspective far from that steeped in judgement, punishment and detention. The approach of TW could certainly be criticised for falling into a model of gender-responsivity which emphasises individual responsibility for change rather than a wholesale alteration of the structural injustices and inequalities which lie behind their offending. However, the point to be made here is that even this, somewhat limited, perspective could only be achieved outside of a criminal justice framework.

### **V. Can There be a Feminisation of Criminal Justice Policy?**

In a recent article in the *Probation Journal*, in which they review the development of thinking around working with women who offend, Worrall and Gelsthorpe divide the past 30 year period into three distinct eras in which policy on working with women offenders has been influenced by practice.<sup>49</sup> They argue that the ten years leading up to the late 1980s (the time of the Philadelphia conference) represented a point of almost 'lost innocence' during which criminal justice professionals and academics appeared united in a critique of the ways in which social and criminal justice policy discriminated against women. At this time national discourses on women offenders appeared to reflect the concern to make women visible and to listen to ways in which services could be improved for this group. In the middle period (roughly spanning the decade of the 1990s), they continue, the new-found 'risk' agenda

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<sup>47</sup> P. Carlen (ed) *Imaginary Penalties and Risk-Crazed Governance* Cullompton, Devon: Willan 2008,

<sup>48</sup> See the argument of K. Hannah-Moffat, 'Sacrosanct or Flawed? Risk, Accountability and Gender-Responsive Penal Policy', *Current Issues in Criminal Justice* 2010-22 (2), pp. 193-216.

<sup>49</sup> A. Worrall and L. Gelsthorpe, 'What works' with women offenders', *Probation Journal* 2009-56 (4), p. 332.

dominated discussions concerning work with offenders and, as a result, while isolated projects were still conscious to gender in their practices and developing progressive tools to work with women, the domination of managerialism and the 'what works' agenda distorted the delivery of the majority of services to those labelled as offenders. Caulfield and others have demonstrated how women were shoe-horned into this agenda which was particularly ill-informed when it came to the assessment of women. Female offenders' needs and risks were measured using assessment methods and tools which were developed from research with men and which could not accurately reflect the different circumstances surrounding the offending of females and thereby resulted in detrimental effects for women and an over-assessment of the risks which women pose.<sup>50</sup> The third decade from 2000 onwards, they posit, has been characterised by attempts to win back some of the gains for women which were lost in the middle period. In this current period the politics of anti-feminist backlash have eroded the gains initially made in the first 'honeymoon' era and the perspective of 'gender neutrality' or 'gender symmetry' has gained an increasingly tight hold. This perspective, typified by Donald Dutton's reactionary thesis on the symmetry of violence between intimate partners *Rethinking Domestic Violence* rejects a whole body of theory and research informed by feminist insights which have uncovered the differential circumstances in which women offend and are victimised.<sup>51</sup>

While Worrall and Gelsthorpe use UK-based examples in this work, in recent decades very similar shifts in thinking resulting in equally detrimental effects for women have also taken place in Canada, the United States and Australasia and have led to the withdrawal of financial and political support to women-centred programmes.<sup>52</sup> Furthermore, Carlen's position of 'carceral clawback' has revealed the extent to which the drive to maintain a position of equivalence in the understanding and treatment of the offending of males and females has driven an increasing use of criminal justice and penal processes to deal with women's, minor transgressions with a concomitant significant increase in women inside prisons and under the control and supervision of the courts and probation services.<sup>53</sup> The chances of gender-specific approaches gaining ascendancy in the system of criminal justice in the UK currently appear to be slim especially under the current coalition Conservative/Liberal Democrat government which, as Hedderman has pointed out, seem to be arriving at a policy thrust which is particularly detrimental to women.<sup>54</sup>

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<sup>50</sup> See for example L. Caulfield, 'Rethinking the Assessment of Female Offenders', *The Howard Journal* 2010-49 (4), pp. 315-327; K. Kendall, 'Time to think again about cognitive behavioural programmes', in: P. Carlen (ed) *Women and Punishment. The Struggle for Justice*, Cullompton, Devon: Willan 2002,

<sup>51</sup> For a discussion of this perspective see W.S. DeKeseredy and M. Dragiewicz, 'Understanding the Complexities of Feminist Perspectives on Woman Abuse: A Commentary on Donald G. Dutton's *Rethinking Domestic Abuse*', *Violence Against Women* 2007-13, pp. 865-874.

<sup>52</sup> Hannah-Moffat 2008, *supra* note 25.

<sup>53</sup> P. Carlen, 'Carceral Clawback: The Case of Women's Imprisonment in Canada', *Punishment & Society* 2002-4 (1), pp. 115-121.

<sup>54</sup> Hedderman 2010, *supra* note 12.

In the United States moves to incorporate gender-specific programming have not received federal government backing and so have remained piecemeal and poorly funded. In Canada and Australia while principles of gender-responsivity might appear more rooted within national discourses and may influence policy for a longer period this is by no means certain. DeKeseredy and Dragiewicz have noted that the Canadian national statistics body *Statistics Canada* had been strongly influenced by fathers' rights groups and abandoned feminist-inspired surveys on violence against women and that, under the leadership of Bev Oda in 2006 the federal body charged with promoting women's full participation in the economic, social and democratic life of the country withdrew the goal of funding from many women's organisations and attempted to permanently remove the goal of equality from its mission statement.<sup>55</sup> In Australia criminologists have noted a dramatic rise in the numbers of incarcerated women and bemoaned the fact that much of the woman-centred reform agenda has been ignored.<sup>56</sup>

It seems then as though decades of work by academics, practitioners, the voluntary sector and campaigning organisations—which had placed women-centred issues into the public arena and pushed for change and for interventions informed by women's particular experiences—have not resulted in a particularly positive experience for women and that the criminal justice system has, once again in Hannah-Moffat's words, demonstrated its willingness and ability to absorb, integrate and silence critical discourses which have only temporarily been able to influence it in a small way and may never be able to do so permanently.<sup>57</sup>

## Conclusion

Hegemonic discourses and normative frameworks never go completely unchallenged. It would appear that for a short period in the early twenty-first century a liberal elite (Loader's 'platonic guardians?'),<sup>58</sup> guided by the voices of incarcerated women and with the background of feminist ideas to further inform and influence their recommendations were able, for a short while, to inform and shape aspects of criminal justice policy in a way which placed women at the forefront of certain policy developments. This all too temporarily ensured that considerations regarding the welfare of offenders were incorporated into treatment, supervision and prison programmes for women. This welfare-oriented approach to offending could theoretically have been extended and begun to influence thinking regarding work with other offenders made vulnerable through racism, mental health issues or structural inequalities.

<sup>55</sup> DeKeseredy & Dragiewicz 2007, *supra* note 49.

<sup>56</sup> Editorial, 'Special Issue; Beyond Prison. Women, Incarceration and Justice', *Current Issues in Criminal Justice* 2010 Vol 22 (2), pp. 189-191.

<sup>57</sup> Hannah-Moffat (2008), *supra* note 25, p. 214.

<sup>58</sup> I. Loader, 'Fall of the 'Platonic Guardians': Liberalism, Criminology and Political Responses to Crime in England and Wales', *British Journal of Criminology* 2006-46 (4), pp. 561-586.

Instead the gendered lens as well as the approaches it has found most appropriate and effective have been subject to constant challenges.

Wacquant has suggested that the predominant political discourse in the West perceives welfare-oriented and 'feminised' perspectives as in direct opposition to their project to withdraw state provision; insists that individuals are responsible for their own plight; denigrates the recipients of welfare as undeserving of support and casts the increasing numbers of the marginalised and workless as guilty of wrong-decision-making and in need of coercion and control to place them on 'the right track'.<sup>59</sup> Any opposition to their perspective is swiftly countered and its proponents demonised and/or belittled. Currently, levels of government debt are being used to justify the attack on 'welfarism', and as the reason why savage cuts to the funding of public services have to be implemented and austerity measures introduced. This argument is currently driving many policy decisions and Gelsthorpe argues 'remasculinising' the criminal justice discourse. Whether it was ever actually 'feminised' to any extent at all remains a moot point.

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<sup>59</sup> L. Wacquant, *Punishing the Poor*, Durham, N.C.: Duke University Press 2009, pp. 54