

Snakes and Ladders: Women's Imprisonment and Official Reform Discourse under New Labour

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Abstract

This article reviews the 'New' Labour government's threadbare and contradictory penal reformist legacy with regards to women. For most of its period in office, the Labour government (May 1997-May 2010) presided over a growing prison population before belatedly supporting targeted and intensive intervention for 'at risk' women. This article accounts for the short-lived reductionist turn in officially sponsored reformist discourse and its attenuation in a loose network of community-based diversionary programs for women offenders. It examines the deployment of imprisonment as a tool for poverty management throughout three terms of Labour government. It then explores the ways in which structural inequalities associated with women's criminalisation and penalty have been subsumed into categories of 'need', arguing that 'needs' talk has facilitated the reframing of social exclusion in terms of potential and actual criminogenic risk. In turn, this has legitimated the role of state and non-state actors in working to divert 'at risk' groups of women from criminal pathways. The conclusion considers the recurrent and recursive characteristics of official penal reform discourse.

It seems to me that it is essential to do more than address issues connected with women's offending before imprisonment becomes a serious option. There are signs that government would welcome a *radical* approach to these issues and I am grateful for this opportunity to contribute and make recommendations. (Baroness Corston 2007:foreword)

But in relation to (Corston's) main recommendations, there has been little concrete action; minimal funding for pilot projects, together with evaluations and yet more reviews. We have been here before – in 2001, when similar innovative proposals were swept aside by the need to focus resources and energies on housing the expanding male population. (HM Chief Inspector for Prisons, Anne Owers 2007:8)

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Introduction

In the closing months of the UK Labour Party's third term in government (2005-10), its penal record seemed to be advancing towards a feminist-inspired, penal reductionist agenda. This was seemingly apparent in government's responsiveness to a burgeoning reformist consensus which embraced political, religious, civil society and academic exponents in favour of reversing the exponential penal expansion of previous decades (Matrix 2009; Howard League 2009; Gelsthorpe et al 2007; Smee and moosa [sic] 2010). Within government, the Corston review (2007) of women in the criminal justice system injected explicitly reductionist proposals into political and public discourse. One consequence of feminist reformist activism was that it drew attention to the gendered costs of the structural crisis in the English and Welsh prison system (Cavadino and Dignan 2006). In particular, the unconscionable condition of imprisoned women presented important intellectual and political stimuli for transmitting the case for action from lobbying to governmental realms.

In office, New Labour's legislative program proved to be responsive to feminist campaigns on rape, trafficking and sexual coercion (*Sexual Offences Act 2003* (UK)) and domestic violence (*Domestic Violence Crime Victims Act 2004* (UK)). The *Equality Act 2006* (UK) generated gender duties which obliged criminal justice agencies to address discrimination and provide 'gender-specific' services. Concurrently, a number of initiatives energetically targeted areas where women were deemed not only to be vulnerable to victimisation, but were understood to be material to women's 'criminogenic' proneness to offend, such as poverty and social exclusion (Lister 2006).¹

At the beginning of this decade, the publication of two pivotal reviews, *Reducing Reoffending by Ex-prisoners* (Social Exclusion Unit 2002) and the *Strategy for Women Offenders* (Home Office 2000) reinstated to policy thinking linkages between social deprivation and crime, stressing that future governmental action needed to address both concurrently. In combination, these reports laid the basis for coupling social 'need' with criminogenic 'risk'. *Reducing Reoffending* proposed that offending could be significantly reduced by providing supportive 'pathways' to housing, health, welfare and social services, while the *Strategy for Women Offenders* additionally insisted that these must be 'gender responsive' in addressing the qualitatively distinct, multiple needs of women². This set in train the Women's Reoffending Reduction Programme (WORP 2004), a departmental unit at the Home Office which took responsibility for sponsoring initiatives for diverting women from imprisonment 'at the pre-court and pre-sentence stage', by 'identifying [their] needs' and 'providing community alternatives in which courts [could] have confidence' (Home Office 2003:vi).

¹ A literature has also emerged assessing some of the ambivalent outcomes and unintentionally retrograde effects of reforms in these areas (cf for example National Inequality Panel 2010; Lister 2006; Ballinger 2009), as well as more recent diagnoses of neo-liberal crime policy discussed in this article.

² The Home Office's (2004) *Reducing Re-offending: National Action Plan* subsequently condensed these pathways to seven targeted programs for reducing offending through supporting offenders with accommodation, education, training and employment; health; drugs and alcohol; finance, benefits and debt; children and families; and attitudes, thinking and behaviour. Following the work of WORP and of the Corston report (see below), two 'gender-specific' pathways for women were added: supporting women exposed to violence, and supporting sex workers (National Offender Management Service NOMS 2008).

These policies had to address stubborn and systemic penal problems. Throughout the decade, a growing volume of academic (Carlen, 2002b; Gelsthorpe and Morris 2002; Carlen and Worrall 2004; Carlen 2008; Hannah-Moffat and Shaw 2000; Solinger et al 2010), official (HMIP 2005), and non-governmental agency reports criticised surging levels of imprisonment for women (Prison Reform Trust 2000; Fawcett Society 2004). Attention focused on the lack of appropriate, community-based supervised programs for women (Gelsthorpe et al 2007). Where programs were made available, they were found to have perpetuated a male-centred focus in their design which lacked the flexibility necessary to accommodate the needs of women probationers (Worrall 2003; Patel and Stanley 2008:38). Annual reports from the Prisons Inspectorate regularly drew attention to the high proportion of women prisoners on remand (about one-fifth of women prisoners overall and up to fifty per cent in larger women's establishments). Additionally, successive prison inspectors condemned squalid and harmful prison conditions (Ramsbotham 2003), unprecedented levels of suicide and self-harm in custody (Inquest 2004), and inadequate resources to cope with the alarming levels of mental and physical ill-health and substance dependency which were found in the women's estate (Sainsbury Centre for Mental Health 2009).

As this article explains, policy makers *were* persuaded by the trail of research and evidence which supported the case for creating alternatives to custody for women, addressing women's distinctive and complex needs with specialist services, and tackling discrimination. What has proven to be more contentious is the apparent attrition in decarcerational goals in the process of translating advocacy into policy. Just as pertinently, the discussion focuses on some of the key representational and substantive differences that emerged between campaigners and government over the narrowing of the means and objectives of 'reductionism'. Whilst a number of projects for supporting resettlement, diversion from custody and non-custodial alternatives were in gestation throughout the decade, many of these only belatedly materialised as funded projects after 2004 (Worrall and Gelsthorpe 2009:339). The initiatives were characterised (at least on the political level) as significant reductionist measures which aimed to reduce the women's prison estate by one-tenth (or 400 places) by diverting 'at risk' women to non-custodial programs elsewhere (Ministry of Justice 2009:4). For the purposes of this discussion, Matthew's (1987:40 emphasis added) useful definition of decarceration is deployed here as it entails, *'not only the closing of institutions—what might be termed "pure" decarceration—but also the deinstitutionalisation and diversion of "offenders" who previously would have been "eligible" populations for incarceration'*. Arguably, the most obvious sign of a split occurred when the wider and potentially more substantive proposals related to prison closures were dropped from the process with only the community diversionary measures retained (Corston 2007).

This article, then, follows the journey from a high point of expectation that a far-reaching departure from the carceral excesses of previous decades was within grasp to current uncertainties and scepticism, especially in the context of an anticipated upheaval in public spending. There are three parts to the discussion: the first considers the short-lived reductionist turn in official penal discourse and the attenuation of a number of potentially more 'radical' reductionist proposals to a narrower focus on diversion. The second part reviews the statistical data on women's imprisonment in England and Wales from 2002. The intention in reviewing custodial rates, demography and penal harms associated with women's imprisonment proceeds from legitimate feminist materialist analysis of relationships between incarceration, gender and social exclusion (Cook 1997; Comfort 2008). Additionally, this type of exercise contextualises recent reform discourse as a

response to an acute crisis in women's prisons. The third part draws on past and contemporary reformist moments to examine the recurrent (tending to happen repeatedly) and recursive (prompting recourse to already-existing 'alternative' practices) features of penal reductionist discourse.

Ladders: Penal 'Reductionism'

Between 2007 and 2010, a proliferation of reports appeared in the public domain bearing damaging critiques of New Labour's penal policies (Gelsthorpe et al 2007; Howard League 2009). At this time, the belief that decades of feminist and reformist activism had begun to achieve hard-won, progressive gains was encapsulated in prominent reviews on women in the prison system. One influential official articulation of penal reductionism was embodied in the *Review of Women with Particular Vulnerabilities in the Criminal Justice System* (Corston 2007). Chaired by a senior Labour figure, Baroness Jean Corston, the review called for a self-described 'radically different approach' to women offenders and those 'at risk' of offending, centring on providing practical social help and 'caring, therapeutic environments to assist them rebuild their lives' (Corston 2007:34). Observing that few women in prison match the criteria of those who should be given custodial sentences under government policy, Corston concluded that imprisonment 'should only be reserved for serious and violent [women] offenders who posed a threat to the public' (Corston 2007:9). Otherwise, penal policy should be directed towards 'redesign[ing] ... women's custody ... in parallel with other gender specific workable disposals and sanctions' (Corston 2007:2). This entailed 'a fundamental re-thinking about the way services for this group of vulnerable women, particularly for mental health and substance misuse in the community[,] are provided and accessed' (Corston 2007:2).

Most heartening for penal reductionists was the central recommendation that government 'should announce within six months a clear strategy to replace existing women's prisons with suitable, geographically dispersed, small, multi-functional custodial centres within ten years' (Corston 2007:34). In practice, reduction and diversion were to be met by instituting a national network of residential and non-residential women's centres, developed and operated by third sector agencies. Women offenders or those at risk of being sentenced to custody could access 'women-specific supports' with debt, drugs, childcare, employment, training, health, housing and other forms of 'throughcare' (Corston 2007:79). Additionally, for those women for whom imprisonment was 'necessary', it was recommended that small custodial units gradually replace the system of women's prisons, 'which should be dismantled and incorporated into the male estate ... Over time, these new units should be removed from the prison service and run by specialists in working with women' (Corston 2007:86).

Corston, an experienced parliamentarian, also anticipated the transitory influence on government of reviews such as hers by insisting that a 'Women's Commission' on women offenders be embedded at Cabinet level.³ Furthermore, in an apparent determination to avoid the selective implementation of the report's proposals, Corston (2007:79) emphasis in the original) emphasised that the characteristics for her 'Blueprint' should consist of all elements of a, '*distinct, radically different, visibly-led, strategic, proportionate, woman-centred, integrated approach*' as 'fundamental' to its success.

³ This became the Criminal Justice Women's Unit, which coordinates work on women offenders across all relevant government departments.

The subsequent *Government's Response* to the Corston report accepted about half of its recommendations (many in qualified or partial form), rejected some and deferred the issue of the closure of women's prisons (Ministry of Justice 2007). It was accepted that 'community solutions for non-violent women offenders should be the norm' (Ministry of Justice 2007:22). Corston's call for a policy strategy to replace the women's prison estate over ten years was ambiguously answered. 'Government accepts in principle the underlying intent that custodial provision in the women's estate must be configured appropriately to meet women's needs'. In addition, 'future consideration' would be given to 'reconfiguring some of the smaller prison sites to accommodate female offenders' (Ministry of Justice 2007:11).

The administration most readily accepted those proposals that reflected policies that were already in place (such as integrating health provision for prisoners into the national public health services) and setting up machinery for commissioning (privatising and contracting out) community-based services to commercial or third sector operators. There were few substantive changes to the kinds of core penal powers, such as sentencing, invasive security procedures, judicial review on deaths in custody or restricting imprisonment to the most 'serious' offenders only, which reinforce cycles of (re)imprisonment or which reproduce the most damaging harms of daily life in prison. Government rejected recommendations for greater flexibility on breaches of community orders 'which made little distinction between serious breach ... and poor timekeeping' (Corston 2007:9) on the grounds that custodial threat was intended 'to encourage compliance with the original order, not to imprison people' (Ministry of Justice 2007:23). Proposals that carers should only be remanded after a report on possible impact on their children were rejected. Some progressive changes occurred such as the abolition of routine 'full' (strip) searching, although it remains in force in situations where there is 'intelligence or reasonable suspicion that illicit items are concealed' (Ministry of Justice 2009:16).

By the time the Labour government left office in May 2010, Corston's agenda was diluted to peripheral initiatives which form the basis of the *Strategy on Diverting Women away from Crime* ('The Diversion Strategy') (Ministry of Justice 2009). The *Strategy* provides enhanced powers to police officers to issue 'conditional cautions' (allowing them to refer women to diversionary programs while retaining the powers to prosecute women failing to comply). It also extended some key cherished policies for outsourcing treatment and supervisory services for women (Ministry of Justice 2009:16). The 'reductionist' target was interposed in the text in the form of a short, bullet-pointed statement that government would, 'commit to... reduc[ing] the women's prison estate by 300 places by March 2011 and 400 places by March 2012 and divert resources from custody to the community to sustain ... multi-agency community projects' (Ministry of Justice 2009:4).

One noteworthy legacy from Corston, however, was the allocation of funding for the *Together Women* diversionary projects which were piloted in two English regions in 2007. Designed to offer criminal justice agencies an alternative referral point for women 'offenders' and those 'at risk' of being sent to prison, these projects adopt a 'one-stop-shop' model for providing accessible services and supports for women offenders or those at risk of offending. The projects provide personal supports such as counselling, life skills, job training, therapies, personal esteem and empowerment classes, creative arts, cooking and nutrition. Additionally, they work as referral hubs for directing women to external agencies such as housing providers, welfare services, mental health and substance misuse programs, for example. A second phase of the 'one-stop-shop' projects began in early 2010. Evaluation

of the first generation of these centres shows some positive personal outcomes for participants while they attend programs, although their long-term impact on supporting women is inconclusive (Hedderman et al 2008). However, these facilities are only available in some parts of the country; many are at a developmental (pilot) stage and dependant on one-year funding cycles in a parlous public spending climate.

Uneven Progress

A second and more qualified narrative of developments in custodial care for women appeared in the final report of the outgoing Chief Inspector of Prisons, Anne Owers (HMCIP 2010). After a decade in the inspectorate, Owers noted that she was handing over a system which had achieved an 'impressive record' of improvement, despite the fact that it continued to struggle 'with the twin pressures of increased population and decreasing resources' (HMCIP 2010:5-6). Inroads had been made into the service's authoritarian ethos, in which a focus on treating prisoners with 'decency' had 'changed the culture of prisons and expectations of staff' although 'pockets of disrespect and even abuse remain' (HMCIP 2010:6).

Nevertheless, these advancements were relative rather than unqualified. Owers (HMCIP 2010:6) reiterated her scepticism with programs for seamlessly managing prisoners through their sentence and into resettlement by noting that 'only a minority of prisoners' benefited. Indeed, access to these schemes for short term and remanded prisoners (which make up the substantial majority of imprisoned women), had 'declined' over the decade. Furthermore, the 'considerable and welcome drive' at Ministerial level, following the Corston report, to significantly reduce the women's prison population and invest resources outside prison had yet to make a discernible impact (HMCIP 2010:7).

Owers had not always been so understated. Three years previously (2007), she had trenchantly challenged the overtly expansionist thrust of the Carter report, *Securing the Future: a Review of Prisons* (Carter 2007). That report appeared the year in which the operational capacity of the prison system reached crisis levels, leading to the conversion of police and court cells into temporary custodial centres; the transportation of some prisoners hundreds of miles from courts, with others being turned away from already overcrowded prisons; and an unofficial strike by prison officers. 'That crisis was predicted and predictable: fuelled by legislation and policies which ignored consequences, cost or effectiveness, together with an absence of coherent strategic direction' (Owers, in HMCIP 2007:7).

In hindsight, Carter provided a pivotal insight into the sense of emergency provoked by internal contradictions in New Labour's penal policy in that he laid out the logistical and economic consequences of previous criminal legislation and sentencing policy. Without sentencing reform, Carter argued, the prisoner population was likely to rise by one-fifth by 2012. Given these projected increases, he proposed the construction of three large-scale 'Titan' prison complexes, each holding up to 2,500 people and comprising different regimes and buildings for separate groups of prisoners. The proposals drew negative comparisons with large-scale complexes abroad as well as concerns about the submergence of vulnerable prisoner groups (especially women) in multi-purpose prisons holding several categories of prisoner. Nevertheless, Carter rationalised that Titans had the advantages of achieving

economies of scale in the provision of health, drugs and education programs, especially if these services were contracted out to commercial and charitable concerns.⁴

The Carter (2007) and Corston (2007) reports, published in the same year, stand as divergent poles in the already-contradictory directions of penal policy during the Labour administration. (These conflicting reflexes are discussed in the final section of this article). At the very least, Carter's acceptance of inevitable growth in imprisonment challenged and potentially undermined policies which acknowledged the exclusionary factors inherent in imprisonment and which advocated diversionary and non-custodial alternatives.

They might have emanated from two different universes. In the Corston world, the focus is on the need to reduce the use of prison and support alternative interventions for mentally-ill, substance-misusing women who are neither dangerous nor violent ... there is now a real risk that we will get worse, as well as more, prisons. (Owers, in HMCIP 2007:7-8)

In fairness, Carter's report was not unremittingly expansionist, as it also bore important and progressive recommendations on sentencing reform, including the constitution of a non-partisan Sentencing Commission. But as Lacey (2007:193-94) observed 'these recommendations were nested within a report whose main substantive proposal is to expand prison capacity ... Carter's *Review of Prisons* underlines the ambivalence of the messages emerging from the policy process'.

Snakes: Women and Prison Crisis

Any sense that a turning point might have arrived could only be considered in relation to the chronic level of crisis that women's imprisonment had reached by the mid-decade. The female prisoner population had been rising dramatically from the early 1990s.⁵ Between 1993 and 2006, the number of women sent to custody more than doubled from 1,560 in 1993 to 4,463 in June 2006 (HM Prison Service online, *Female Prisoners*). A quarter of imprisoned women were unconvicted, either on remand or awaiting sentence (HMIP 2005:4). The annual number of women and girls in prison only began to decline after 2004 (when it peaked at 4,664) to its current standing at 4,319 (HM Prison Service *Population Bulletin*).

This trend has been explained in generic and gender-specific terms. Prisoner numbers had begun to expand before Labour first took office (1997-2001), following the enactment of the *Criminal Justice Act 1991* (UK). Although the 1991 Act was meant to reserve imprisonment for the most serious or violent offences, its subsequent application saw a significant increase in the use of imprisonment for men and women. Nevertheless, during its second (2001-5) and third (2005-10) terms in office, Labour governments presided over inflating prison populations. This was attributed to greater numbers of women appearing before the courts, a rising proportion of women receiving custodial sentences and longer sentences being passed by the courts (HMIP 2005:4). Additionally, the use of imprisonment reflected sentencers' failure to impose community-supervision sentences because the latter

⁴ The eventual withdrawal of the 'Titan' prison building programme in April 2009, worth £350 million, occurred as a budgetary measure in response to the global financial crisis, rather than as a result of reductionist considerations.

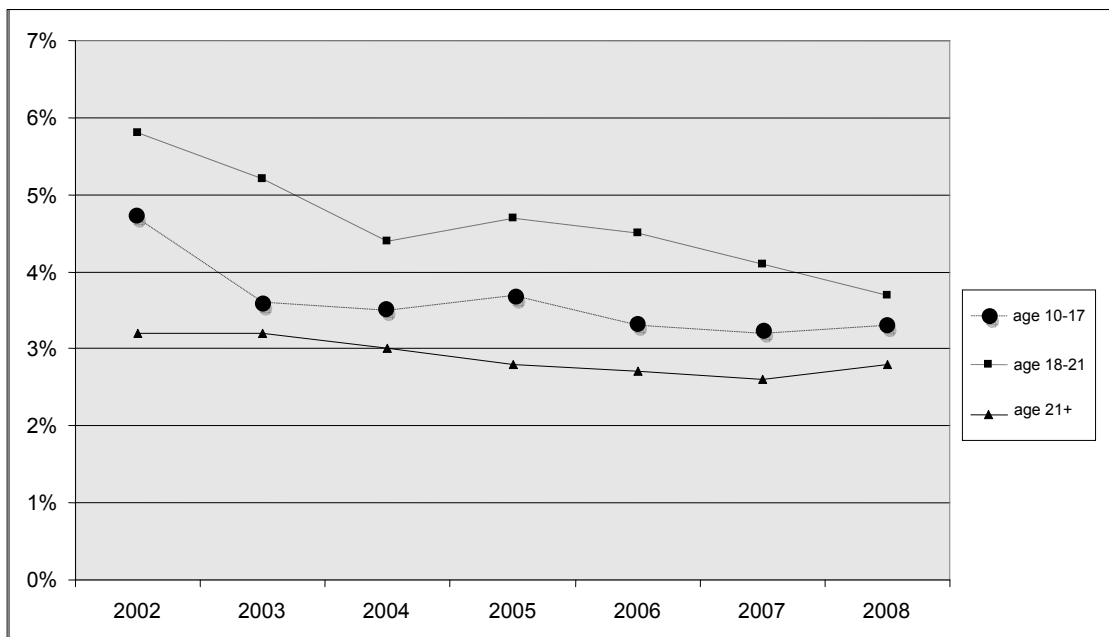
⁵ Whilst figures for trends in women's custody are available from 1992-2001 (Home Office, 2003, 33-35), the calculation and presentation of those data are not consistent with calculations from 2002. Hence, the data that are presented here reflect imprisonment trends from 2002-2009.

were alternately, and contradictorily, regarded as either insufficiently punitive (Carlen and Tombs 2006:349-52) or because the lack of women-specific programs meant that they were ineffective for women (Worrall 2003).

Social Composition

Apart from its size, if one looks at the age and ethnicity of the female custodial population in England and Wales since 1997, what is notable is its changing composition. The female prisoner population became increasingly young and black. Minority ethnic women currently comprise 28 per cent of the female prison population (while minority ethnic communities comprise less than one-tenth of the overall UK population) and one fifth of the whole women's population are overseas nationals (HM Prison Service *Female Prisoners*). These trends reflect a complex combination of longer sentences for offences related to drugs and violence (Worrall and Gelsthorpe 2009:334-36), arising in part from efforts on the part of states to criminalise and contain 'illicit' traffic in people and goods in the wider context of globalisation. Figure 1 shows the youthfulness of the prison population, with the highest proportion of imprisoned females comprising young adults (18-21 years old) and girls (10-17 years old). This can be partially accounted for by the punitive focus on violent crime by young women, underpinned by an ideological shift from welfare-oriented approaches to young women's lawbreaking to the greater criminalisation of their behaviour (Worrall 2010).

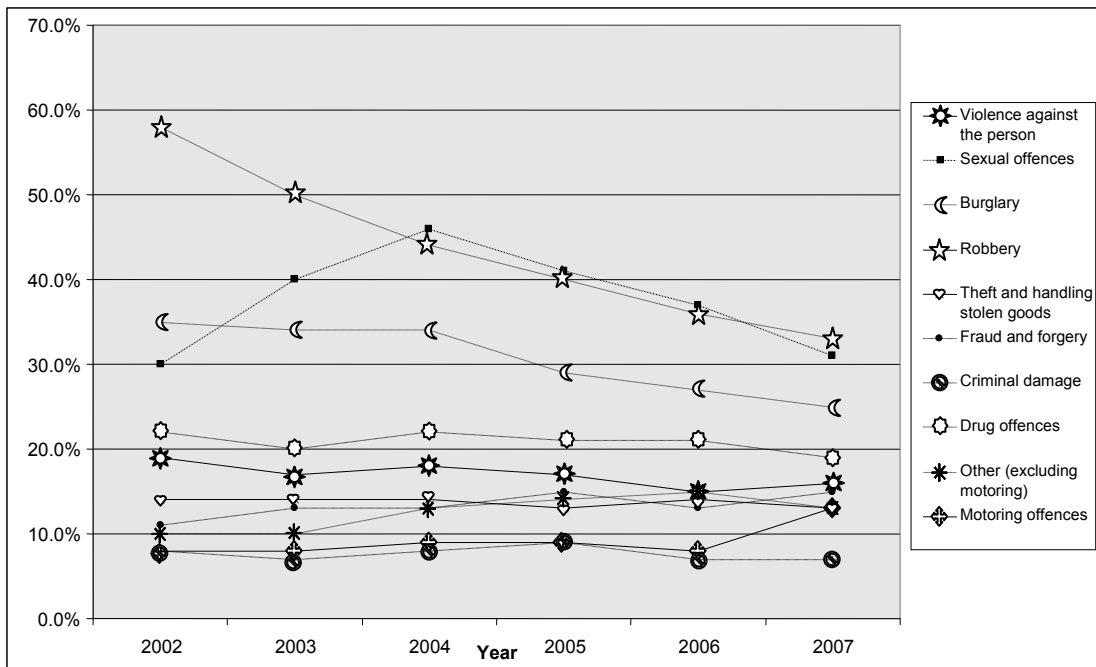
Figure 1: Percentages of Females Given a Custodial Sentence by Age, England and Wales



(Source: Ministry of Justice 2010)

If, however, we look at the class composition of the female prisoner population, what is notable is that little has changed in terms of the signatures of poverty, social exclusion and discrimination, which are borne out in the weight of feminist academic research of the past two decades (Carlen 1988, 1998; Cook 1997; cf Davies 1997). As ‘class’ (or at least socioeconomic indices such as employment, previous income etc.) is not represented in prison statistics, it is inferred here from: (a) the types of offences which attract prison sentences; and (b) the official categorisation of women prisoners’ ‘needs’. Property-related crime (theft and handling; burglary and robbery) and drugs offences consistently account for two-thirds of custodial sentences, with a decline in the proportions of females given custodial sentences for robbery and burglary after 2002 (Figure 2). This ‘decline’ in robbery and burglary reflects a levelling off from a ‘peak’ in the number of convictions from the 1990s, but the main significance of the figures for violence, burglary and theft are that they contributed to the increase in the number of women entering the prison system (Deakin and Spencer 2003). ‘Sexual offences’ (mainly prostitution) account for the second most frequent reason for imprisonment. Whilst there are periodic fluctuations in the types of acquisitive crimes for which women have been imprisoned, little has changed in the underlying reasons for imprisonment from previous decades.

Figure 2: Proportion of Females Given a Custodial Sentence by Offence 2002-2007, England and Wales



(Source: Ministry of Justice 2009a)

The ‘Needs/Risk’ Paradigm

One of the consequences of managing women in the criminal justice system is the importance of official databases and assessment tools for mapping their needs. Systems such as the Offender Assessment System (OASys) have been vital for providing data on women

in prison and under probationary supervision which corroborate the underlying thrust of feminist penal reformism (i.e. the need for gender-sensitive and women-specific conceptual tools, programs and practices). In 2007 an audit of women prisoners (Gelsthorpe et al 2007:17) showed that:

- Over a third (34 per cent) were homeless.
- Over a third (32 per cent) had misused drugs.
- Nearly a quarter (24 per cent) had misused alcohol.
- Less than a third (29 per cent) had education and training needs.
- Less than a third (28 per cent) were in debt.
- Almost two-fifths (39 per cent) had been victims of domestic violence.

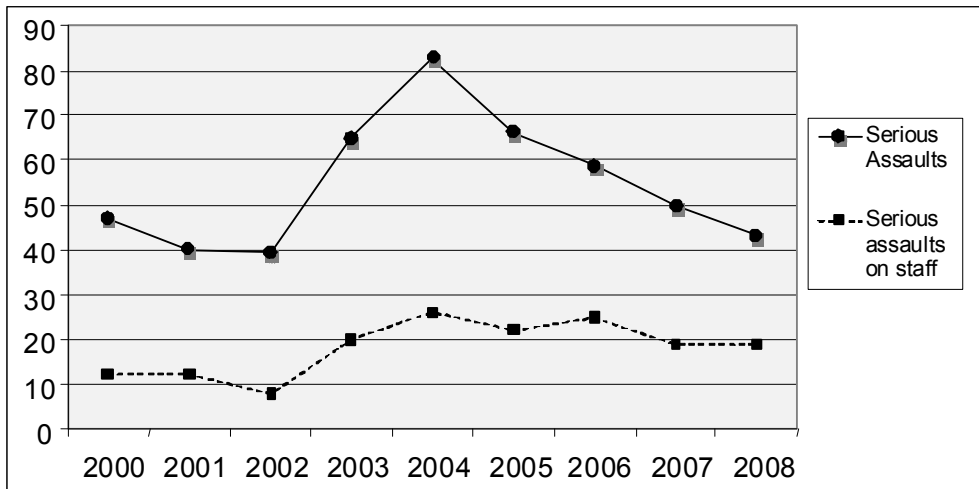
Yet, one focus of academic disquiet with the 'risk/need' assessment paradigm is its reliance on overlapping scripts relating to both *social* lack (such as lack of access to income, education, employment, substance misuse services) and *individual* deficits (trauma, addiction, dysfunctional relationships, mental illness). As a consequence, social 'need' is translated into actual or potential lifestyle risks in which women's behaviour, associates, partners or places of abode come to be 'normatively fram[ed] ... as inherently criminogenic' (Turnbull and Hannah Moffat 2009:547). This slippage between 'personal' deficits and 'societal' failings has the effect of draining the social meaning from women's needs, paradoxically making the structural nature of crime-related deprivation less visible. Worrall and Gelsthorpe (2009:339) have substituted the descriptor 'criminogenic needs' with the alternative 'crime-related needs' in order to highlight and problematise the tensions between a 'narrow/broad distinction' denoted in official needs talk.

Institutional Victimisation

Whilst attention has focused on women prisoners' prior experience of abuse, violence continues to be a feature of prison life; '[t]here is a risk of bullying or sexual assault from other prisoners and/or staff revictimisation in prison, for example by other prisoners and/or staff' (sic) (HMIP 2005:11). The *Thematic Review of Women in Prison* (2005) additionally reported that in the year in which reported incidents of assaults reached a peak (2003-4), a quarter of women prisoners reported being victimised by other prisoners and a fifth reported victimisation by staff (Figure 3). The decline in reported assaults by prisoners after 2004 may be attributable to the institution of anti-bullying strategies at the behest of the prison inspectorate. Beyond the work conducted by external scrutineers on prison violence, the prison service implicitly characterises prisoners as aggressors (and staff as victims), by failing to disclose information about assaults *by* staff.

⁶ Correspondence with the authors.

Figure 3: Number of Serious Assaults among Women Prisoners and on Staff 2000-2008, England and Wales

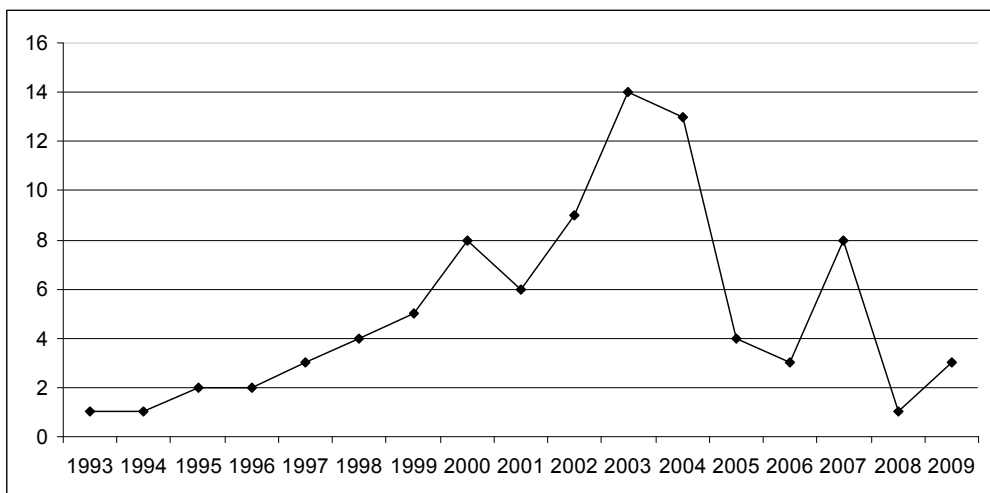


(Source: Ministry of Justice 2010a)

Death in Custody

In a sobering reminder of the prolongation of the violence of women’s incarceration, the incidence of ‘self-inflicted’ deaths among women prisoners rose steadily from 1993 until 2003, followed by a general, if unpredictable, decline thereafter (Figure 4).

Figure 4: ‘Self-Inflicted’ Deaths among the Female Prison Population 1993-2009, England and Wales



(Sources: Ministry of Justice 2010; Wilson 2005)

Death in custody is a contested locus of humanitarian, managerial and critical analysis (Wilson 2005). Much official commentary is devoted to damage limitation and accounting for procedural steps taken to 'manage' the problem. The Corston review, for example, was commissioned in the wake of six deaths at Styal women's prison between August 2002 and August 2003. One example of official anxiety to manage the 'problem' of custodial deaths is the frequency with which it is pointed out that fatalities are clustered in certain establishments, and that suicides in prison are in decline. This decrease, however,

...should not disguise the inherent vulnerability of many of those who are in prison ...[I]n spite of better procedures for managing those at risk, and investigating why deaths occur, prisons still struggle to deal with the underlying causes of suicide and self-harm. This is most evident in women's prisons, where, though suicide rates have dropped significantly, self-harm remains both prevalent and shocking, and is in many cases *contained rather than addressed* (HMCIP 2010:6 emphasis added).

These accounts of imprisonment in England and Wales in the 2000s, deriving from official, campaigning and academic research, chronicle bleakly familiar themes; institutional failures in duties of care; the exacerbation of women's vulnerabilities in custody; social exclusion as both a catalyst and effect of criminalisation; and the reinscription of state and patriarchal power in penal settings. Moreover, the hazards to which prisoners, especially foreign national women and asylum seekers, are exposed are generally overlooked or reliant on the contingent reach of external scrutineers. Undoubtedly, the political struggle to implement programs relating to health provision or preventing suicide and self harm has contributed to improving prison conditions. Nonetheless, as the most recent *Thematic Review* of women's prisons (2010) concludes, prison regimes continue to reflect and reproduce numerous social harms (HMIP 2010:5-6). Important as measures are for rendering prisons safer (or less hazardous) or more 'purposeful', they have done 'nothing to allay the *underlying concerns about the use of imprisonment*, particularly in closed environments, for women (HMIP 2010:5-6 emphasis added).

In spite of a state commitment to reduce the women's prison population, it remains obstinately static...Work is certainly needed to improve the prisons we inspect; but even more work is needed to create and properly use viable and more appropriate alternatives to prison (HMIP 2010:6).

The Recurrent and Recursive Elements of Reformist Discourse

Surveying the fallout from previous feminist penal reform campaigns in England and Canada in the 1980s and 1990s, Pat Carlen (2002:164) identified how reform policy was constituted from contending punitive and humanitarian strands. In that period, she argues, official discourse attempted to head off a potential legitimacy crisis by seeking to reconcile diametrically opposing demands. The first was a growing public awareness of the multiple jeopardies of deprivation and the lesser degree of 'risk' which women's crimes posed to the public, and the second, a concomitant 'growth in punitiveness' towards socially marginal women (Carlen 2002:161-63). Carlen's (2002) argument might be summarised accordingly: because the prison system was undergoing a minor crisis of legitimacy, the case for reducing women's imprisonment was being made, and to some degree heard by government, as early as the mid-1990s. In order to redress those aspects of state punishment which were seen to contradict their rehabilitative functions, or which aggravated social injustice, the prison service reached out to sources of progressive reform in its search for alternatives.

Nevertheless, despite integrating reformist programs into prison regimes and innovating non-custodial alternatives, these efforts were suborned by, 'a carceral clawback ... made

necessary by the prison's continued need for legitimacy, and in part, made possible by some of the constitutive common-sense elements of recent anti-prison discourses about women's imprisonment' (2002:56). Far from dislodging the 'state's right to punish', the selective incorporation of reformist critiques and the invitation to outside groups to run empowering and therapeutic programs served to renew functional rationales which underline the necessity of retaining imprisonment as an essential social institution. By incorporating reformist outsiders, 'the punitive function of the prison has been occluded by governmental, professional or reformist claims that prisons – especially women's prisons – are, or could be for something other than punishment' (Carlen 2002:159), such as psychological adjustment, training, rehabilitation or empowerment and the like.

Fundamentally, Carlen concludes, the relationships between imprisonment and its alternatives are coessential; 'predicated on the continued existence of the other' (Carlen 2002:159). Because the state cannot relinquish the power to punish without imperilling its legitimacy, 'carceral clawback' is both a logical and political necessity; 'for the state's right to continue to punish by imprisonment ... is, in the neo-liberal state, politically dependent on the maintenance of the popular legitimacy of the prison as an institution which should and can keep people in custody' (Carlen 2002:156). In the context under discussion here, for example, the stripping out of so much of the framework for reform as articulated by Corston (2007), amongst others, may be understood as more than the kinds of naturalised political losses which invariably occur as a consequence of policy transfer. Rather, the attenuation of radical challenges to the penal status quo is a normative outcome of partnerships between campaigners and government.

Whilst there is insufficient space to draw out the full nuances of Carlen's wide-ranging and prescient analysis, the discussion will briefly take up two problems posed by her critique which have become meaningful in the light of recent scholarly analyses of neo-liberal crime control in the 2000s (Lacey 2007; Wacquant 2009). The first problematises the illiberal aspects of welfare and crime reforms under a Labour government, in particular reforms which were intended to address the economic exclusion of women, and by extension (indirectly) contribute to reducing lawbreaking. The second illustrates a burgeoning debate on the contemporary incorporation of non-state actors in a widening penal field.

Gendered Poverty as Penal Risk

In the wake of neo-liberalism's ideological hubris (and subsequent crisis), there has been a renewal of scholarly interest in the political economy of punishment, centring on the governance of a crime/poverty nexus as targeted at socially and economically marginalised groups (Simon 2007; Lacey 2007; Wacquant 2009; Sim 2009; Haney 2010). In what follows, this article will briefly trace some gendered implications of the crime-welfare nexus as elements in contemporary women's criminalisation. In doing so, the discussion tentatively links the preoccupation with diverting 'at risk' women from crime, which informs the latest generation of state-funded programs, to the broader political project of diverting poor women from 'criminogenic' pathways (worklessness, debt, addiction). As a consequence, it is argued, the 'criminogenic' factors associated with offending have been decoupled from structural relationships (with poverty, social exclusion) and recoupled with individually-borne ontological risks.

Sim (2009:93) comments that the period of New Labour rule witnessed the rise of a distinctive penalty, characterised by hybrid neo-liberal and social democratic strands which

combined to create a contradictory political rationality. The first focused on social participation and economic self-sufficiency, and the second on an authoritarian intolerance for the putative 'causes' of social exclusion such as worklessness, poverty, debt and crime. 'Thus, New Labour's vision of order, and the ideological and material resources mobilised by, and through, state institutions was directed relentlessly towards social problems generated by the powerless and their perceived pathologies' (Sim 2009:94).

One of the paradoxes of reinstating the linkages between crime and social exclusion is that deprivation was cast as a criminogenic factor which required staunching at early formative stages. This rationale was overtly classed, racialised and gendered, involving the explicit targeting of crime-bearing factors such as bad parenting, poor families, anti-social behaviour and out of reach communities. A feature of anti-poverty drives under New Labour was the degree of criminal responsibility which was conferred on poor women both in terms of the liabilities that are imposed on long-term welfare recipients to demonstrably cooperate with workfare-type schemes for 'earning' benefits, and in relation to the increased resourcing of campaigns to apprehend and prosecute 'benefit thieves' [sic] (Department of Work and Pensions 2010). The moral intuition of New Labour thus 'privileged the work ethic as the only basis of claims to a share in social wealth and the "immorality", indeed criminality, of 'free-riding' on the welfare system' (Jordan 1998:32).

The link between criminalising and economically empowering the poor was thus embedded in reforms that aimed to stem intergenerational poverty by requiring welfare recipients to (re)enter the labour market, and by using sanctions against the recalcitrant 'workless' who did not comply with 'work search' requirements. A determination to mobilise public confidence that the social security system was being vigilantly cleared of 'criminal' and 'bogus' recipients was underlined in invitations to the public to anonymously report 'benefit cheats' via well-publicised website and telephone hotlines. The *Welfare Reform Act 2006* (UK) gave sentencers a wider range of sanctions including fines, custody and the confiscation of property of those convicted of benefit fraud. According to the Department of Work and Pensions, its investigators 'caught 56,493 benefit thieves' (sic) in 2009 (Department of Work and Pensions 2010). Additionally, legislation such as the *Police and Crime Act 2009* (UK), which was intended to prosecute punters and protect sex workers, is feared to provoke greater exposure of street sex workers to intimidation. Selling sex has not been decriminalised although police have acquired further powers to prosecute sex workers (BBC Radio 4 27 March 2010). Moreover, that law coincided with a second *Welfare Reform Act 2009* (UK), which is predicted to adversely and disproportionately affect households headed by women (House of Commons 2009).

Policies for ostensibly empowering workless women reinforced the criminalisation and feminisation of poverty. Feminist analysis has long understood that women's economic crime is intricately related to their efforts to 'compose a livelihood' (Lister 2005, 24; also cf Davies 1997; Fawcett Society 2007; Barker et al 2008) out of several income-generating activities, some of which are outwith legal boundaries.

Analysis of how women in poverty draw on different kinds of resources including personal and social resources to "get by" on an inadequate income and also how they draw on such resources to attempt to "get out" of poverty or to help their children get out of poverty helps to challenge the construction of them as passive victims without agency. (Lister 2005:24)

Lister's comments underline the complex patterns of economic participation by poor women which are often overlooked in official anti-poverty discourse. More perniciously,

welfare reformative regimes reframe their economic agency as criminally risky or illegitimately dependent on the state. In particular, 'anti-poverty/anti-cheating' drives compound feminised poverty by imposing 'choices' between self-exclusion from welfare or the punitive withdrawal of benefits, which precipitate welfare fraud 'regardless of increased risk of detection or additional penalties' (McKeever 2003:332).

Conclusion

Academic commentary on previous and more recent reform campaigns in England and Wales have identified the recurrent (tending to arise periodically) and recursive (prompting recourse to already-existing 'alternative' practices) features of official responses. That literature documents numerous examples of the fading away of progressive, politically-supported plans for specialist units, 'half-way' houses and community-based services because of funding, political or operational obstacles (cf Woolf and Tumim 1990; Prison Reform Trust 2000). Crime and anti-poverty initiatives in the UK since 1997, although clothed in discourses which claim to ameliorate social injustice, continued to disproportionately target and criminalise socially excluded women. Thus, reformative initiatives aimed at decentring imprisonment or addressing chronic indecencies in the treatment of women in custodial 'care' have been undermined by countervailing carceral logics promoting their legitimacy, indeed necessity, as tools for addressing socioeconomic exclusion. The experience in other jurisdictions also reveals the systematic nature of 'clawback', taking the problem beyond being merely one of selective, or non-implementation, of reforms. Notable examples include the implementation of Canada's *Creating Choices* program (Hannah-Moffat 2001). Whilst this successfully led to closure of the sole women's federal prison, campaigners were unable to prevent the five new community-based facilities from acquiring prison-like features. Similarly, underfunding and governmental insistence that the regime acquire more 'robust' (i.e. punitive) features contributed to chronic overcrowding, self-mutilation and bullying at the Dóchas centre in Dublin and the eventual resignation of its governor in April 2010 (Irish Independent 27 April 2010).

The lessons from other jurisdictions are especially pertinent to an ongoing controversy about non-state actors' roles in the penal sphere in the context of a wider transition towards community justice in 'post-welfarist' societies (Corcoran 2011). There are unbroken links between the current coalition government's vision of the 'Big Society' and its Blairite predecessor in their determination to remedy structural and moral decay by repairing community association, paring back the state (while enlarging market and civic activity in the public sphere) and substituting what is pejoratively characterised as inefficient public services with diversified welfare markets. This is particularly relevant to the current crop of diversionary and non-custodial alternative programs in England and Wales, which must 'led' by a voluntary sector organisation for funding purposes. The political rhetoric pertaining to collaborations and 'partnerships' in criminal justice has been complicated by the former government's instrumentalist vision of them as conduits for privatisation and operationalising competitive efficiencies among state and non-state organisations. Moreover, official discourse has conspicuously excluded concerns about netwidening or the structural and ideological cooption of non-state partners into a shadow penal state (although cf Matthews 1987 for the argument that not all netwidening creates punitive or coercive outcomes).

Given that the first round of diversionary schemes (the *Together Women Program*) has just completed its pilot stage, there has been little opportunity to establish whether new

forms of worker-client dependency and asymmetrical power relationships might arise in 'multi-agency, multi-sector' partnerships providing programs for women offenders (although this concern is privately articulated by third sector personnel). The lessons from Canada (Shaw and Hannah-Moffat 2003), and the United States (Haney 2010:98) show that 'many "alternative" facilities end up operating like their coercive counterparts'. Additionally, 'diverting' women on arrest from the courts to welfare projects necessarily subjects them to proliferating forms of 'targeted governance' as they are tracked through their journey by a range of statutory agencies augmented by new 'partnerships' with voluntary sector agencies (Turnbull and Hannah-Moffat 2009).

Invariably too, the success of the projects (and their continued funding) involves convincing sentencers, police and probation services that referring offenders to projects constitutes a sufficiently rigorous alternative 'sentence'. It is difficult to predict how far voluntary sector projects might be able to operate autonomously from official narratives of corrections and control, or work beyond an outcome-oriented functionalism preoccupied with crude indices of 'reducing' offending and 'risk' (Corcoran 2011). Already, there is evidence that harnessing campaigners' own language about the need for professional accreditation and transparency leads to a preference by those purchasing penal 'services' for programs with functionally measurable outcomes of success. The reformist projection that *more* participation by organisations with a *greater* variety of approaches to women's needs equals *less* imprisonment has yet to transpire.

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