

## Chapter 16: Concluding reflections

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### Introduction

This book set out to examine the inter-relationship between imprisonment and the expansion of community punishments internationally. In particular, our concern was to highlight the human rights implications of responses to women within the criminal justice system and the extent to which they relate to social justice imperatives. The preceding chapters provide international case studies of policy in action, underpinned by theoretical and analytical engagement with notions of human rights and social justice as they are manifested in practice. It would seem that penal policy does not reflect social justice.

The strength of this book lies in its collaboration between academics, practitioners and penal reformers who have examined the reality of punishment as experienced by women in prison and the community. There is evidence of positive developments and initiatives being introduced internationally in prisons and communities, however, as the contributions to this book illustrate, the emphasis on punishment has continued to dominate, underpinning attempts at therapeutic interventions. ‘Gender-responsive’ approaches continue to raise questions in their ability to ‘empower’ while remaining part of criminal justice systems aimed at punishment and social control; this is an international phenomenon. While the ‘gender-responsive’ discourse is intended to address the significant difficulties and disadvantages that many imprisoned women have encountered prior to incarceration, the extent to which it significantly alters the experiences of women is debatable. Recent innovations within and outwith the prison system raise questions about the extent to which these developments ‘fit’ within criminal justice systems, and raise questions about their potential for promoting change, or instead, their usefulness in the legitimisation of existing situations which have been continually called into question.

The examples set out in this book highlight the ways in which well-intentioned correctional policies can easily become subverted by criminal justice agendas. While there have been some successes in the development and implementation of gender-appropriate resources, a significant and sustained reduction in female imprisonment is likely to be inaccessible without wider political and public commitment and socio-economic change.

The contributions in this book highlight a shared recognition that prison is an inappropriate response to women and reflect a common concern to reduce the use of women’s imprisonment. Internationally, policy initiatives have been developed, aimed at increasing the use of community-based responses to criminalised women. However these initiatives have tended to sit alongside reforms to the prison estate that are aimed at improving conditions in women’s prisons but that may ironically serve to enhance rather than challenge the legitimacy of imprisonment. For this reason, this book has highlighted the inter-relationship between community punishments and the prison system. Prison has been increasingly relied upon to hold women who have been ‘failed’ by the erosion of welfare services in the community. This implies that a reduction in the use of imprisonment may not be achievable without political commitment to socio-economic change that enables women’s needs to be met through mainstream, community-based provision. This raises very real

questions of legitimacy, the need to consider what becomes defined as a 'crime' and who becomes criminalised.

It is crucial to consider why existing provisions continually fail to meet the gender-specific needs of criminalised women. To understand this requires addressing the symbolic power of prison and questioning its purpose. The notion of prison as a 'safe place' for women is an intrinsically problematic concept. Locking a woman up 'for her own safety' is unlawful. Baroness Corston (2007) contested the appropriateness of sending women to prison for spurious reasons including to teach them a lesson, for their own safety or in order to access services such as detoxification from drugs and/or alcohol. Similarly, the notion of 'rehabilitation' is also highly problematic when processes of criminalisation are not addressed. Increasingly however, illness and social needs are viewed as 'crime-events' rather than 'problem events' (Hudson, 1993:5); with crime prioritised over other social problems. It is important to consider why the poor and the marginalised become the focus of processes of criminalisation (the definition and enforcement of particular acts as crimes) rather than what leads them to break the law.

A crucial factor in the experiences of women who come to the attention of criminal justice systems internationally is the social, political and economic factors which determine processes of criminalisation and mechanisms of social control. The relationship between criminal and social justice is key, with increasing evidence of the criminalisation of the 'poor' and the marginalised. The current economic climate is impacting on experiences of communities, and also on the development of community initiatives and resources (in particular, access to community-based health and mental health services) which are already limited in many areas. Processes of criminalisation internationally, have extended the reach of social control. There is clearly a need to move beyond punitiveness and a punishment agenda to recognise the wider social and economic context. As the contributions here illustrate, it is possible and pertinent to make strong economic arguments against punishment; although these arguments have been made forcibly before with limited effect in practice.

Our contributors have all noted the very dire circumstances of many women who come into contact with the criminal justice system and the inextricable links between poverty, addiction, abuse, marginalisation and the subsequent criminalisation of women who have often been failed by society in a variety of ways; exacerbated by experiences of colonisation and ethnic discrimination. Women's offending tends to reflect ongoing social and emotional disadvantage and marginalisation; the increasing criminalisation of drug users and people with mental health problems clearly illustrates the growing complexity of the problems that the criminal justice system is required to respond to, with particular effects on women. Processes which involve the identification and alleviation of 'criminogenic factors' tend to locate the problem of 'crime' within the individual, taking little or no account of the structural context, either within the criminal justice system and how that operates, or within broader social structures. The experiences of Indigenous women and women of colour highlight the intersection of gender inequality with experiences of colonisation and racism.

For some of our contributors, the problems associated with recent innovations can be ameliorated or resolved by social and penal reforms aimed at making the criminal justice system more responsive to the needs of women and more effective in addressing these needs. Calls for reform include: acknowledging that the criminal justice system is not a rehabilitative institution and that 'treatment' in prisons should be comparable with that available in the community; challenging the over assessment of risk and over-classification of

women in criminal justice systems; and the conflation of 'risk' and 'need'; and improving the circumstances of diverse groups of women and ensuring their needs are recognised and responded to (e.g. women of colour, older women, young women).

It is crucial to recognise that policies and practices may have unintended consequences and to ensure that institutional and community-based practices are underpinned by a human-rights agenda that is reflected in all areas of policy and practice. Crucially, human rights need to be understood as rights rather than privileges. There also needs to be an awareness of the limitations of 'evidence-based research' and innovative ways of ensuring women's voices are presented in order to better understand and anticipate the gendered impact of provisions: although there is a growing body of research on women and criminal justice sanctions, the typically small numbers of women involved mean that studies are unlikely to meet the 'gold standard' of empirical research. We therefore echo the suggestion that greater status be accorded to qualitative studies which prioritise women's voices (e.g. Hedderman, Gunby and Shelton 2011) and argue that capturing women's experiences and emphasising participation is a key element of a human-rights based approach. Much more use could be made of evidence generated in this way to assess the likely impact of criminal justice and wider social policies on women.

However, there is a degree of weariness among our contributors that many of these proposed reforms have been features in previous calls for reform, to little lasting effect. Innovative interventions are generally provided on short-term funding and often struggle to secure resources; attention to obtaining funding sometimes predominates at the expense of service provision. Our contributors have highlighted the limitations of 'tinkering' with the system. In the UK, the impact of the Corston Report (2007) has been limited by a failure to adopt the most radical proposals; an experience that has been noted wider afield, for example in Canada (Correctional Service Canada 1990) and to similar effect in Northern Ireland and Scotland. This has led many contributors to conclude that reformist approaches are limited in their effect and indeed the partial implementation of reforms can actually result in the legitimisation of existing practices. Conceptually, many contributors argue that a reform agenda must be underpinned by the wider goal of the abolition of imprisonment for women; it cannot operate without this.

Our contributors have highlighted the ongoing paradox for reformers, where short-term initiatives suggest some opportunity for improvements while at the same time holding the potential for an expansion of governance and disciplinary control. While recent initiatives hold some potential for optimism in the provision of 'safe' environments for women where relationships are important and space is available for women to address trauma and distress, unless power relations are taken into account, these resources can reinforce, if not enhance, modes of governance.

Since Pat Carlen's (1990) call to find alternatives to women's imprisonment, academics, researchers, practitioners and policy-makers have not been remiss in calling for 'something to be done'. Calls for change generally take two main forms, although these often overlap and intermingle. They include calls for the development and utilisation of more effective custodial alternatives and community penalties that are more suitable for women and abolition of the current system of imprisonment (and punishment) for women. Underpinning these calls lies a theoretical analysis of society: either a liberal view which encapsulates the belief that incremental changes to the criminal justice system can lead to improved conditions

and experiences; or a critical understanding of structural imperatives of power which require fundamental social changes in order to substantially alter the status quo.

While a plethora of publications have highlighted the need to make fundamental changes in the way the criminal justice system responds to women in practice the focus of intervention has been to amend the system rather than to proactively seek to transform it. Attempts to make the system of criminal justice, as it applies to women, 'better' appears to have been an on-going objective of policy-makers, but the limitations of addressing this in isolation has led to continual increases in the number of women imprisoned internationally (albeit with some fluctuations, for example in England and Wales). Alongside this, the expanding discourse on 'therapeutic' gender-responsive approaches to women in prison and the community has, itself, been incorporated into attempts to streamline existing penal provisions or to enhance the effectiveness of new responses.

Challenges to the use of imprisonment need to be accompanied by wider moves to achieve social justice. For example, gender intersects with other structured experiences such as ethnicity and class and it is often these intersections that render women vulnerable to state intervention. The relationship between punishment and social inequality/justice needs to be continually highlighted. This includes acknowledging the importance of the state and experiences of punishment; gendered experiences of colonisation and war (for example, in Northern Ireland, Australia and Canada) and the impact of punishment and social control as this operates on particular groups (i.e. women of colour, Indigenous women, gypsy women) which highlight the systemic discrimination which permeates the criminal justice system and society. Failure to acknowledge social structures as they impact on systems of punishment will leave community disposals as punitive in their own right, extending women's involvement in the penal system, and continuing to render 'gender-responsive programming' as deeply problematic.

We have argued that a paradigm shift is required, from thinking that is entrenched within the limitations of orthodox penal responses towards the potential for wide, far-reaching change, drawing upon areas beyond the sphere of criminal justice. 'Alternative' projects should not have to rely on their relationship with (or comparison to) the prison for their justification. Otherwise they are increasingly expected to provide a punitive and controlling alternative, dependant on the binary nature of being 'other' or 'alternative' to the prison as Cohen (1985) has long argued. Similarly, individual pockets of innovation such as the 218 Centre are not in themselves enough to reverse the unprecedented increase in women's imprisonment that has been witnessed in Scotland and other western jurisdictions. Some of the difficulties that individuals encounter are clearly rooted in the structural organisation and determining contexts of society and oscillating around the prison for a solution to these social problems will always be limited and limiting in scope.

In our own jurisdiction (Scotland), the issue of women's imprisonment has received regular, if not consistent, policy attention over the last 15 years (Scottish Executive 1998, 2002). An important consequence was the establishment of the 218 Centre but the creation of other innovative community-based responses has been sporadic and constrained by short-term funding and the female prison population has continued to rise steadily (McIvor and Burman 2011). In 2011 the Scottish Government, persuaded that imprisonment was an unnecessarily punitive response to much offending by women, established a Commission on Women Offenders whose remit was '[t]o consider the evidence on how to improve outcomes for women in the criminal justice system; to make recommendations for practical measures in

this Parliament to reduce their reoffending and reverse the recent increase in the female prisoner population' (Commission on Women Offenders 2012: 14). Reporting in April 2012, the Commission produced a total of 37 recommendations, including the closure of Cornton Vale (Scotland's only dedicated prison for women) which was considered not to be 'fit for purpose' and the development of community justice centres ('one stop shops'), intensive mentoring and support, more widely available supported accommodation and improved access to mental health services. However, as in other jurisdictions that have attempted to bring about reform, the role of the prison and its legitimacy remains largely unchallenged: thus while the Commission's report acknowledges the damaging effects of prison on women and their families, it is still envisaged that women will be imprisoned in Cornton Vales's replacement or, of greater concern, in local male prisons.

While many of the recommendations outlined by the Commission are to be welcomed, its failure to directly address sentencing practice and its focus on the criminal justice system as opposed to engaging more widely with the issue of social justice suggests that the impact of any resulting changes in policy and practice will be limited. Addressing these broader issues is crucial in supporting women to move out of the system rather than moving around within it. Limited conceptualisations of re-integration are based on an assumption of social inclusion in the first place, which is not always the case for women who are often marginalised from, and within, local communities; an exclusion which is exacerbated by the experience of imprisonment. This requires more than 'special measures' to rehabilitate and reintegrate people, it involves a process of transformation and it is in this area that strong community supports are required (see also Gelsthorpe, Sharpe and Roberts 2007). This suggests the need for more resources within the community, not only in supporting women in transition through or out of the criminal justice system, but also in addressing the problems which are such a feature of processes of criminalisation such as poverty, homelessness, and social injustice.

## References

- Carlen, P. (1990) *Alternatives to Women's Imprisonment*, Milton Keynes: Open University Press.
- Cohen, S. (1985) (1985) *Visions of Social Control: Crime, Punishment and Classification*, Cambridge: Polity.
- Commission on Women Offenders (2012) Report of the Commission on Women Offenders, Available at: <http://www.scotland.gov.uk/Resource/0039/00391588.pdf> (accessed 19.4.2012)
- Correctional Service Canada (1990) *Creating Choices*, Ottawa: Task Force on Federally Sentenced Women.
- Corston, J. (2007) *A Review of Women with Particular Vulnerabilities in the Criminal Justice System*, London: Home Office.
- Gelsthorpe, L., Sharpe, G. and Roberts, J. (2007) *Provision for Women Offenders in the Community*, London: Fawcett Society.

Hedderman, C., Gunby, C. and Shelton, N. (2011) 'What women want: The importance of qualitative approaches in evaluating work with women offenders', *Criminology and Criminal Justice*, 11 (1): 3-20.

Hudson, B. (1993) *Penal Policy and Social Justice*, Basingstoke: Macmillan

McIvor, G. and Burman, M. (2011) *Understanding the Drivers of Female Imprisonment in Scotland*, Stirling and Glasgow: Scottish Centre for Crime and Justice Research.

Scottish Executive (1998) *Women Offenders: A Safer Way*, Edinburgh: Scottish Executive.

Scottish Executive (2002) *A Better Way: The Report of the Ministerial Group on Women's Offending*, Edinburgh: Scottish Executive.