WOMEN AND CRIMINAL JUSTICE: WHERE ARE WE NOW?
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Abstract
This paper recognises that interest and concerns about the plight of women involved in offending and the criminal justice system are not new but attention to this issue has increased internationally in recent years. This article offers a brief review of this international work historically and recently before focussing on the current position in England and Wales. The latest statistics are presented to show how the position of women and prison has changed little since the seminal Corston report of 2007 and then offers a critique of the 2018 Female Offender Strategy for England and Wales. It acknowledges that while the strategy picks up many of the themes and recommendations of Corston, the report itself is barely mentioned in the strategy and although the strategy offers much in ambition there is little in terms of immediate practical impact on the ground. While England and Wales can learn from some of the work in the rest of the UK and other countries, many of the limitations of the England and Wales strategy are also applicable to other jurisdictions.

Keywords
Women offenders; criminal justice system; Corston report
Introduction

Interest in women who come into conflict with the law is not new, starting arguably with the work of Cesare Lombroso, whose work was published in English at the end of the 19th century (Lombroso and Ferrero, 1895). The introduction to a recent translation of the original Italian manuscript (Lombroso et al., 2004) highlights the impact of Lombroso’s work and how it incorporated and reinforced sexist views about women for almost a century, views that are apparent in much subsequent empirical work about female offenders.

The interest of female sociologists in the latter part of the 20th century (such as Heidensohn, 1968; Klein, 1973; Smart, 1977a, 1977b) began a re-evaluation of such views. Despite a general rejection of the perspectives in earlier works, a ghost of these views still appears in writings about women in general and in relation to female transgressions in particular. They are apparent in the notion of female offenders being doubly deviant, whereby such women are not only contravening the law of the land but also violating accepted mores of what it is to be a woman, and has led to what Chesney-Lind (1973) described as creating a situation where:

the ‘saving’ or ‘helping’ of a girl often justifies more radical and severe ‘treatment’ than does the punishment of a male law violator (Chesney-Lind, 1973 quoted in Smart, 1977b:98).

Lombroso’s interest was in being able to identify the key characteristics of women who offend, developing a typology of ‘criminal women’, ‘prostitutes’ and ‘normal’ women. This work took a biological approach, focussing on physical differences between these three groups. The sociological movement that emerged was concerned to critique this approach, promoting the importance of the context of women’s lives as an explanation for their offending and highlighting how women involved with the criminal justice system were not a homogeneous group as well as key general differences between men and women. One key aspect of this context has been a focus on the power differentials between men and women in most societies, and the essentially patriarchal structures of society and criminal justice systems.

Since Lombroso was writing the position of women in society has changed dramatically in many countries, from acquiring voting rights (1918 in the UK) to legislation about equal rights (most recently in the UK, the Equality Act 2010). All of this has been about ensuring that women and men are treated equally. These improvements have affected the social context of women’s lives and thus their involvement with the criminal justice system, but as Gelsthorpe (2004) argues, this has not been well theorised in relation to criminal justice, and:

... our knowledge of female offenders has been beset with myths, muddles and misconceptions which often reflect ideological concerns ... (Gelsthorpe, 2004:23)

It is outside the remit of this piece to offer a comprehensive review of developments in criminological thinking about women and crime, much of which is available elsewhere
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(e.g. Naffine, 1997; Smart, 1977b; Gelsthorpe, 2004; Heidensohn and Silvestri, 2012), but the key message here is the importance of considering the legacy of previous theorising and its continuing impact today. Despite profound criticisms of previous long-held views about women generally and female offenders specifically, traces of these ideas can still be found in much of today’s policy and practice. Evans (2018) takes this issue further, reminding us that the notion of retributive punishment essentially emerges from and is embedded within the teachings of most of the world’s religions. These religions, the key texts of which were written and translated by powerful men, are also essentially paternalistic, often presenting woman as a dangerous and powerful temptress and giving women a subordinate role in society. Such ideas have been transferred across the globe by various waves of colonisation over centuries, highlighting the difficulties of changing intrinsic, some might say fundamentalist ideas about responding to women who come into contact with criminal justice systems and procedures.

Widening understandings of women and criminal justice

Although key thinkers about female offenders in the early 20th century were European, the cause was mostly taken forward in England and the USA. Developing a feminist critique of this early work in the latter part of the 20th century was also primarily conducted in the UK and USA, but the 21st century has witnessed a burgeoning of research about female offending and offenders worldwide. However, the full extent of this is unclear, as much is written in languages other than English and thus not available for inclusion in this limited review.

Google Scholar reveals that many relatively recent papers are available about female offenders, highlighting both the range of countries and the range of topics being addressed. Some studies are about female offending generally, but others group around the topics of female crime rates; the features or factors related to female offending; women given sentences of imprisonment; and community sentencing and women.

Examples of more general studies and reviews include Rodermond et al. (2015) from the Netherlands, who have reviewed the extent to which male-based theories of crime apply to females. Contrary to many authors, they argue that male theories are applicable to females, but they do say that it is important to consider the interaction of individual and social factors. The experience of females in the Portuguese criminal justice system is explored by Gomes and Duarte (2018), who highlight the heterogeneity of the experiences of women and girls. This is a message which emanates from many pieces of work, whether general or specifically related to one aspect of criminal justice. Desistance is a growing topic of interest, and Österman (2017) compares the experiences of female desistees in the English and Swedish criminal justice systems. A key finding from this work is how the culture of the system produces different experiences for women. Desistance is also considered by Brown and Bloom (2018) with a focus on the value of higher education in desistance processes for women. Unusually, Freiburger and Marcum (2015) examine the experiences of women as employees in the criminal justice system as well as offenders, and examine the similarities and differences of their experiences in an essentially male-centric system. Whilst these works usually contain recommendations for policy and/or practice, Bloom (2015) presents a specific toolkit for making justice systems more gender responsive.
Crime rates
The apparent increase in female crime identified in many Western countries has been explored elsewhere, not always with similar results. No real changes have been found in Taiwan (Hsieh and Schwartz, 2016), whereas a narrowing of the differences between men’s and women’s involvement in crime has been found in Australia and attributed to a fall in male crime rather than an increase in female crime (Beatton et al., 2018). Wang and Stamatel (2018) were interested in broader economic and social impacts on female offending rates and undertook a wide-ranging cross-national comparison of female offending rates in more than 70 countries. They identified that empowerment and emancipation theories for increasing female crime were more relevant to what they classed as developed countries than to less developed countries.

Features of women offenders
The features or factors related to female offending have long been of interest, particularly for their potential efficacy in predicting the likelihood of offending or reoffending. International comparisons are important in being able to assess the influence of cultural factors on female offending, and whilst such comparison is limited there is a growing body of knowledge about the position in individual countries. Examples of such research include South Africa, where Botha et al. (2018) looked at mental health issues amongst female offenders with results that supported other international findings; although a review of the profiles of female offenders (Jules-Macquet, undated) concluded that there was a need for female-oriented and culturally relevant interventions. The ‘what works’ learning from other countries has been assessed as relevant to female offenders in New Zealand (Polaschek, 2018), but following consideration of the characteristics of young female offenders (Lim et al., 2018) a need for multi-systemic interventions was identified. Similar work has been undertaken in India (Lodha et al., 2018), in Brazil (Mauà and Baltiere, 2012) and in Korea (Sea et al., 2017).

Imprisonment
Much research has been undertaken in relation to women in prison, partly because of the potential ease of access to this population. From South Africa a study looked at the features of women in South African prisons (Steyn and Booyens, 2017) arguing that their complex circumstances and lived experiences needed to be better understood. The conditions in women’s prisons in South Africa and their impact on prisoners has been examined (Agboola, 2016), as has the education offered to women in prison (Dastile, 2017). This latter work found that education provision primarily focussed on preparing women for domesticity, illustrating how criminal justice systems can reinforce gender stereotypes to the disadvantage of women when their individual circumstances are not taken into account. An alternative approach has been taken in Australia (Cale et al., 2018), where vocational education training in custody has been found to support desistance for both male and female prisoners.

A growing body of work is emerging from China, where Messner et al. (2016) assessed the relevance of Western predictive theories of reconviction to female prisoners. Cheng and Nesossi (2018) researched the implementation of the 2010 Bangkok Rules (United Nations, 2010) in Chinese prisons and found that they can create tensions for the management of prisons. An unusual and interesting study has explored the ways in which
female prisoners in Chinese prisons managed their relationships with their guards (Liu and Chui, 2016).

In the United States, Greene (2017) recently undertook research into female jails in Santa Cruz and, among the findings, considered the importance of their institutional culture. In another study, however, it was concluded that women are managed by medication in US prisons (Courtney et al., 2015) with the authors warning that gender-responsive programmes could reinforce stereotypical gender roles. Closer to home, in the UK, qualitative work with women serving life sentences (Crewe et al., 2017) reveals how issues of power, control and trust have particular meanings for women in the custodial setting. Women released from prison in Northern Ireland require support and consideration of the needs of families to adapt into their families and communities (O’Neill, 2017). The issues that women face when returning to society after prison are also addressed in a book by Carter and Marcum (2017).

A particular issue for women given sentences of imprisonment, which has received increasing attention in recent years, is motherhood in prison. Women in prison who are mothers can be seen as triply deviant in that not only have they contravened the law and expected behaviours of women, but they are also failing to be good mothers (Booth, 2017). Being a mother separated from children creates particular stresses and problems for women in prison and, after their release, on their desistance journey (Michalsen, 2018).

Community sentences
Community sentencing has been addressed less often than prison sentencing, but there are a few examples. Women’s experience of restorative conferencing in England and Wales has been studied by Österman and Masson (2017), who argue that the needs and circumstances of female offenders need to be better acknowledged in these processes. A study on the role of mentoring in promoting desistance for Australian female offenders (Singh et al., 2018) found that mentoring positively helped many women to overcome their difficulties. In China, Lu et al. (2018) looked at sentencing decisions and identified that the defence attorney is important in making decisions about probation and restorative justice.

It can be seen from this brief review that the position of women in the criminal justice system varies considerably between and even within different countries. It is not possible to consider all of these here, but the current position of women in the criminal justice system in England and Wales is perhaps illustrative more broadly of the position of women in other criminal justice jurisdictions in the rest of the United Kingdom, Europe, the Americas, Africa, Australia, New Zealand and Asia.

The current position of women in the criminal justice system in England and Wales
A lack of significant change in England and Wales since 2007 is highlighted by the latest statistics published by the Ministry of Justice, which report that the female prison population in England and Wales decreased from 4,505 in June 2008 to 3,800 in March
2018 (Ministry of Justice, 2018b). Although this movement is in the right direction, it is not as substantial as anticipated in the Corston report. The high proportion of short custodial sentences for low tariff offences remains: 57% of female offenders received sentence lengths of up to and including three months compared with 35% of male offenders; 34% of female offenders were first time offenders compared with 21% of males; and 38% of all female indictable prosecutions were for shoplifting (Ministry of Justice, 2018c).

At the same time women’s experience of custody shows little sign of improvement. Women are less likely to have enhanced status in prison than men (34% for females and 40% for males at March 2018). This may be a feature of women generally receiving short sentences and thus having limited time to achieve that status, but it may also be linked to female prisoners having a higher rate of adjudications and a higher rate of adjudications being proven and resulting in forfeiture of privileges. The incidence of self-harm has been increasing and is much higher for females (2,093 incidents per 1,000 prisoners in 2017) than for males (445 incidents per 1,000 prisoners), and the number of women identified as assailants in prison increased by 16% in 2017 (Ministry of Justice, 2018b).

Although women are more likely to be released on temporary licence (ROTL) than men, the proportion of women receiving ROTL fell from 25% in 2007 to 16% in 2017, even though the female failure rate is very low and much lower than for males (Ministry of Justice, 2018b). Reoffending rates for all sentences continue to be much lower for females than for males. Another recent and worrying trend is the increasing number of women recalled to custody as a result of breaches of the licence introduced for all short-term prisoners in 2015. Although women account for only 5% of the prison population, they accounted for over 8% of recalls in 2017, with 60% of them being in connection with sentences of less than six months. This compares with 38% of male recalls being for this length of sentence (Ministry of Justice, 2018d).

**Progress in England and Wales after the Corston report**

The lack of progress on implementation of the recommendations of the Corston report has been the subject of many reviews since its publication. The first, undertaken by the Social Exclusion Task Force of the Cabinet Office (Social Exclusion Task Force, 2009), noted significant progress, but pointed to the continuing high numbers of female prisoners and the cost relative to community sentences:

> On average, it costs 12 times more to send a woman to prison than to put her on a probation or community service order (Social Exclusion Task Force, 2009:20)

In 2011 the Howard League published the results of a review of developments, again led by Baroness Corston (APPG, 2011). This review welcomed the progress which initially followed the government’s acceptance of the majority of recommendations in her 2007 report, acknowledging that ‘a great deal had been achieved’ (APPG, 2011:2), especially ending the routine full searching of women on reception to prison. At the same time, it identified that much remained to be done.
Evidence presented to the Justice Committee in 2012 (House of Commons Justice Committee 2013a, 2013b) generally bemoaned stalled progress on implementing the recommendations of the Corston report and identified a lack of a government/National Offender Management Service (NOMS) strategy for women offenders. This was despite the Ministry of Justice having published a guide on working with women offenders in March that year (Ministry of Justice, 2013a). The Justice Committee follow-up report (House of Commons Justice Committee, 2015) again acknowledged some further progress in policy but suggested that this had not yet translated to significant change on the ground. In particular, the report notes:

We are concerned that funding appears to be a recurring problem for women’s centres and that future funding arrangements have not been put on a sound basis as we recommended. (House of Commons Justice Committee, 2015:11)

This concern for the future of women’s centres was also highlighted in the report of a further inquiry published by the Howard League in 2015 (APPG, 2015). Such centres were seen to be important because ‘problems with public service provision contributed to women coming into contact with the justice system’ (APPG, 2015:3). The Howard League returned to this question the following year (APPG, 2016) arguing that the establishment of community rehabilitation companies (CRCs), which became responsible for the supervision of most female offenders following the part privatisation of probation services in England and Wales in 2015 (Ministry of Justice, 2013b), had led to a dilution of service provision for women, and in particular that the funding for women’s centres was fragmentary, noting the ‘attitude and restrictive nature of CRCs’ (Ministry of Justice, 2013b:4). This report argues that the provision of services for women should be removed from CRCs. Research by Birkett (2017) had similar findings.

A probation inspection of women’s services (HMIP, 2016:4) also identified an issue with funding, stating that ‘dedicated funding for women’s community services has virtually disappeared, and provision is mixed and uncertain’. The inspectors found a lack of strategic focus on women at local and national level, which was ‘in contrast’ to the position at their previous inspection in 2011.

The year 2017 marked the tenth anniversary of the publication of the Corston report and saw several reviews of progress since its publication, all of which were disappointed with the lack of progress. The organisation Women in Prison conducted a detailed review of each recommendation in the Corston report (Women in Prison, 2017). The review identified that just two of the recommendations had been fully implemented, twelve were assessed as having made no progress, and the remainder had made some progress but there was still some way to go.

**The UK 2018 Female Offender Strategy: rhetoric and reality**

The 2018 Female Offender Strategy for England and Wales (Ministry of Justice, 2018e) thus comes at a point where there is substantial agreement of limited progress since Corston, and although the new strategy picks up many of the themes and recommendations of the Corston report this report is referred to directly just once in its
55 pages, perhaps reflecting the reluctance of governments to use material generated by previous incumbents. The focus of the strategy is on addressing the ‘vulnerabilities’ of women, but there is no attempt to consider these in the way in which they were addressed by Corston:

First, domestic circumstances and problems such as domestic violence, child-care issues, being a single-parent; second, personal circumstances such as mental illness, low self-esteem, eating disorders, substance misuse; and third, socio-economic factors such as poverty, isolation and unemployment. (Corston 2007:2)

The new strategy has three priorities: earlier intervention, community-based solutions, and making custody effective and decent. The strategy is wide ranging and comprehensive, promising much. However, it is not without its limitations, as identified below.

- The strategy homogenises women, giving little acknowledgement to different needs within the group and the numerous research studies which identify a need to address a range of different and complex needs. There is some consideration of potentially different needs of women who are sex workers or foreign nationals, but nothing, for instance, about age or ethnicity.

- The notion of ‘vulnerabilities’ mutates into ‘risk’ within the proposals in the document, in much the same way in which ‘criminogenic need’ evolved into ‘risk’ within policies for the supervision of offenders more generally. The strategy does not acknowledge that many women with ‘vulnerabilities’ do not come into contact with the criminal justice system, though it does address women ‘at risk’ of becoming involved. Many women with vulnerabilities are, however, in contact with mainstream services (Social Exclusion Task Force, 2009; HMIP, 2016). If these services functioned more effectively and in a co-ordinated way, there would be less need for specific services for female offenders, and probably fewer women in the criminal justice system. The last ten years have seen reduced funding and increasing challenges for all these mainstream services; thus, the need for alternatives has become greater.

- This need for coordination is addressed in the strategy. The complex needs of women offenders are acknowledged and the need for holistic approaches established (Annison et al., 2018). Overall, the strategy has a focus on partnership working across government departments and voluntary sector organisations, but the strategy offers no detail of how successful coordination and cooperation will be achieved. The experience of previous initiatives demonstrates the difficulties of achieving this. The Advisory Board on Female Offenders is seen to be the lynchpin of this coordination, yet the House of Commons Justice Committee (2015) noted with concern that a high turnover of ministers who chair the Board had impeded progress on implementing priorities. The Prison Reform Trust (2018) suggests that local authorities could play an important role here.
• The strategy proposes greater use of conditional cautions linked to the provision of women’s centres. Whilst theoretically a useful proposal, it does not acknowledge the difficulties of such a coercive offer of help or that this is antithetical to the voluntary ethos of most women’s centres.

• The five previously planned new community prisons for women will not be built (Brown, 2018) and the focus instead will be on reducing the number of women given custodial sentences and increasing the use of community sentences. This has been a policy aim for many years, and as the figures above demonstrate, it has achieved little success.

• Much is made of the need to encourage courts to make community sentences instead of short custodial sentences, but with no detailed discussion of direct involvement with judges and magistrates. The focus is on the improvement of pre-sentence reports written by the probation service, requiring them to ‘capture the complexity of an offender’s circumstances’ (Ministry of Justice, 2018e:19). The strategy does not acknowledge the ways in which policy requirements have led to a more standardised production of reports or the pressures that such additional work would place on probation officers. Paradoxically, the mention of an interview checklist for officers and the use of an ‘effective proposal tool’ suggests that there will still be much standardisation rather than the individualised approach which Corston promoted.

• The proposal for residential women’s centres is welcome, but there is little tangible detail with this proposal. The intention to work closely with partners in developing such provision could suggest limited funding being available for this and more demands being made on the voluntary sector.

• The strategy aims to promote a more ‘gender informed probation service’ through the provision of training, guidance and leadership, and through the professionalisation of the service. Because of their relatively low risk of offending, most female offenders are supervised by community rehabilitation companies and thus will not be affected by such developments. Mention is made of offering training to CRCs and having discussions about their strategy for women offenders, but they cannot be required to implement similar procedures.

• The strategy proposes a range of changes to be implemented within the female prison estate, including individualised support plans, improved mental health and drug resources and video contact with families. The strategy does not address the structural difficulties that will impact success here: the short time that many women spend in custody and the well-documented staff shortages in prison.

• The provision of advice and support is fundamental to much of the strategy though with no detail of what this is or how it will be achieved, as with many aspects of the strategy (Booth et al., 2018). All the evidence drawn upon in the various reviews over the years demonstrates that for this to be successful, time
and continuity are needed to establish a relationship within which support will be embedded.

- The latter paragraphs of the strategy warn of the financial constraints within which the strategy is to be implemented. The document does not address how this will affect the implementation of the strategy, but most of the proposals require extra resource in some way and thus developments will inevitably be hampered. On a more positive note, the government has announced the award of £3.3 million to 12 organisations as part of the female offender strategy (Ministry of Justice, 2018f).

- Finally, and importantly, although the aim is to produce a whole system and holistic approach to working with female offenders, at no point is consideration given to the role of the women themselves in the identification of their needs and how to address them. The system remains paternalistic at heart.

**Conclusion**

Females involved with criminal justice are no longer invisible in most jurisdictions, and there is now a wealth of research and information about their position and specific needs, much of which has been generated in an Anglo-American context. A key learning point from this work is the need for criminal justice to assess and respond to these often complex needs in considered and holistic ways. A woman’s social, political, cultural and economic context is a key component of this assessment, and for this reason it is important that more international comparative work is undertaken and that we learn from other cultures. There are dangers in the body of work becoming too narrow, as suggested by Whalley and Hackett (2017):

> when white liberal feminists seek to intervene in the criminal legal system, we often see reform efforts that directly strengthen institutions that perpetuate economic exploitation, colonialist notions of progress, and white supremacy.

There is also a danger that research evidence could be used to re-introduce and support previous stereotypical views of women as poor and unfortunate, and in need of help and assistance. Support is most effective when it is flexible and responsive to women’s individual concerns, long term, and taken up voluntarily by women.

Many authors in the UK have bemoaned the lack of progress in achieving the aims of the Corston report (2007), especially in relation to the continuing short-term imprisonment of women for generally low-level offences. There is some hope that the new Female Offender Strategy (Ministry of Justice, 2018e) will achieve greater progress, but as identified above there is a range of issues which will need to be addressed. If the government should implement the recently mooted idea of ending prison sentences of less than six months (BBC News, 2019) this would affect a greater proportion of women and reduce their numbers in prison dramatically. However, this brings with it the danger that the lengths of sentences for women would increase to compensate.
References


