

# Women and criminal justice under Labour

**Loraine Gelsthorpe** describes the areas of the criminal justice system that could be developed to reduce the relatively high rate of women's imprisonment for relatively low-level offending.

The present Labour government has seen a significant increase in the number of women in prison – a rise of 126% between June 1995 and June 2005. Home Office statistics further show that there have been increases in lower-level violence committed by women (around pubs and clubs) in the last few years, and there have been increases in drug-related offences (as for men) but neither of these things suggest seismic changes in patterns of crime which would justify this high rate of imprisonment. Women continue to commit property related crimes in the main, they commit crimes less often than men, and they generally commit less serious crimes than men. There have been small changes in the length of sentences and in previous suspended sentences becoming immediate custody because of legislative changes, but neither of these changes accounts for the increase (Gelsthorpe and Morris, 2002; Hedderman, 2004a). Indeed, most women serve under a year in custody, and combined with the relatively low seriousness of their crimes, and the low risks they pose in terms of reoffending, there are real questions as to how many of them need to be there.

To add to this dismal scenario, a high proportion of women prisoners receive help for mental health/emotional problems in the year prior to custody, and a significant proportion of women in prison self-harm; two-thirds of women in prison have drug problems and a further two-thirds have dependent children (the living arrangements of at least 8,000 children a year are affected owing to their mothers' imprisonment). In sum, Labour has not yet done enough to stop the upward trend in the number of women in prison.

## Women's needs

Secondly, despite positive moves to promote 'evidence-based practice' and the 'What Works' agenda so as to achieve greater impact on offenders' behaviour through intervention programmes, these practices are not necessarily responsive to women and their needs. Women's offending tends to be under-explored and less well understood than offending by men, but it is now recognised that they are likely to have different 'criminogenic needs' because their routes into offending and reasons for offending are often different from those of men (Hedderman, 2004b). Certainly there have been challenges to mainstream criminological theory, since existing theories have largely been unable to account for differences in men and women's involvement in

crime. Instead of attempting to accommodate female offending within existing theoretical frameworks, alternative theoretical perspectives have been developed which locate women's offending within power relations, poverty and personal distress.

Research evidence indicates that some needs of men and women may be similar (for example, criminal history, unemployment, substance misuse), though how they have come about and how they contribute to offending may be different for men and women and there are others which appear to be more specific to women, such as physical and sexual abuse (Hollin and Palmer, 2006). This clearly has implications for the focus and content of work with women.

There are also indications that women's learning differs from men's learning both in terms of its developmental sequence and in terms of its underlying theory for instance. Set alongside evidence which suggests that women-only environments facilitate growth and development, these theoretical insights point to a need for work with women in non-authoritarian cooperative settings, where women are empowered to engage in social and personal change (Zaplin, 1998; Roberts, 2002).

## Recent developments

Successive governments have been impervious to critical claims in regard to women's distinctive pathways into crime, criminogenic needs, and particular difficulties when imprisoned. But more recently, critical reports from the Fawcett Society, the Prison Reform Trust and the Howard League for Penal Reform, combined with damning Prison and Probation Inspectorate reports, have served to promote a response. The Labour government's 'Women's Offending Reduction Programme' (WORP) was launched in 2004 to help coordinate departments and sensitise them to women's needs. It also aims to improve community-based provision for women offenders so that prison might be used as a last resort. The approach has led to the setting up of multi-agency 'Women's Offending Action Teams' (WOATS), to enhance sensitivity to women's needs in criminal justice system provision. In March 2005, the Home Secretary announced the setting-up of two pilot centres in England and Wales designed to address women's needs in sentencing. The government's willingness to pilot the centres is a positive sign and one which reflects various local initiatives led by

probation officers and other practitioners concerned to address women offenders' needs. There has been a similar awakening to women's needs in Scotland.

## Looking to the future

Given what we know about the sentencing of women in the past when sentencing has been over-shadowed by faulty perceptions of 'women's needs' (reflecting stereotypical concerns and a familial ideology) there have been some anxieties as to how women might fare under Labour's *Criminal Justice Act 2003*. It was thought that Intermittent Custody (involving a part custodial and part community-based sentence) for instance, would be particularly suitable for women offenders – so as to not completely disrupt women's child-care arrangements. In practice, the sentence has not proved popular with sentencers. This is fortunate because the architects of the sentence were seemingly being unrealistic in assuming that such a sentence would not create enormous difficulties for women. There were also worries that Custody Plus (imprisonment plus a follow-up licence period involving supervision and support conditions) would also create difficulties for women (especially since the menu of conditions omitted mental health treatment, drug rehabilitation and alcohol treatment, all of which women are shown to need). The government's recent abandonment of this provision owes less to recognition of its potential impact on women, however, than to a change in Home Secretary combined with a financial crisis in regard to the criminal justice system.

Alongside legislative reforms, a National Offender Management System (NOMS) has been set up as a response to a government-led review of the structures relating to probation and prisons. This over-arching body is designed to promote streamlined offender management throughout the system. However, despite innovative developments in *practitioner-led* gender appropriate programming in England, Wales and Scotland, provision for women under NOMS is uncertain. As indicated, as well as presenting different needs compared to male offenders, women generally present lower risk of harm and reconviction than men (Fawcett Society, 2004). The NOMS model of provision, however, allocates resources according to risk of harm or reconviction based on four tiers of service delivery. There is concern that women will fall disproportionately into the first two tiers (made up of lower risk offenders, with fewer criminogenic needs) with the implication that women offenders may be more likely to be the subject of orders attracting fewer resources, supervised by less qualified and or experienced offender managers, whilst men (particularly high risk sexual and violent offenders) will receive much greater attention. Moreover, provision for women who fall into tier three of the new NOMS four-tier model (where interventions mostly consist of accredited programmes or drug rehabilitation requirements) is likely to be problematic, given that there is currently only one accredited programme for them at present. The imminent introduction of 'contestability', designed to open up service provision to the private and voluntary sector beyond the probation service, is no guarantee that appropriate expertise of working with women will be purchased.

The 'gender duty' element of the *Equality Act 2006* brings equality issues concerning women in line with other public sector equality duties. In particular, the legislation promotes the introduction of Gender Impact Assessments (GIAs). This will highlight the need to give further attention to what works for women in sentencing. Of course, equality of treatment

need not be equated with the same treatment. In other words, whilst it is important that negative discrimination is avoided, it is equally important that dimensions of gender diversity are appropriately accommodated as a means of promoting both procedural justice and social justice (Gelsthorpe and McIvor, 2007). Attention to these differences is arguably an important prerequisite to promoting social justice, social inclusion and citizenship and the responsibilities and relationships which flow from these things which may enhance offenders' reintegration and help promote their desistance from crime. But we do not yet know how the legislation will unfurl in practice.

Labour's ten year record in relation to women offenders is mixed. There have been some steps to acknowledge women's distinctive needs, but strides are needed if Labour wishes to complete its promised overhaul of criminal justice in a way that does women offenders, and ultimately their victims, justice. There are champions for women and criminal justice within government, Baroness Scotland included, but there is no cause to reduce the external pressure and vigilance from without.

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