



Geraldine Gallagher

Gender, social enquiry reports and social work disposals

An analysis, by gender, of the appropriateness of policy
and practice for offenders within
Scotland's justice system.



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Summary

Throughout the nineties a range of factors, not least the series of suicides at Cornton Vale women's prison, highlighted concerns about how the criminal justice system deals with female offenders in Scotland. There has been a review of community-based disposals and the use of custody for women (Scottish Office, 1998a), an inspection of Cornton Vale was conducted (HMI, 2001), and a Ministerial Group on Women's Offending was set up (Scottish Executive, 2002a). Despite this concern the numbers of female offenders being sentenced to custody has continued to rise.

This study sought to examine the nature of criminal justice social work services delivered to female offenders and the impact of ideological and policy shifts on this service provision. Differences relating to gender, with regard to both practitioners and clients, within the context of criminal justice social work in Scotland, were considered. This included a consideration of the impact of the policy shift from the "welfare" to the "justice" model. Thirty-five interviews were conducted with criminal justice social work staff and material was drawn from 420 Social Enquiry Reports. The study examined practices and policies which relate to how women are supervised, how these relate to the presentation of information in social enquiry reports, and in turn how this may relate to the final court disposal imposed.

A discrepancy between policy and practice was identified in that the latter draws on the "welfare" model more than is endorsed by formal policy. This greater emphasis on the "welfare" model applies to work with female offenders in particular. There were concerns amongst criminal justice social work staff that such a difference in approach

might be discriminatory. A new “welfare” model of supervision appears to have been adopted in the supervision of female offenders. This model emphasised the importance of the working relationship, between supervisor and client, within which women offenders should be allowed scope for negotiation.

Information on female offenders derived from both interviews with criminal justice staff and the data obtained from SERs is used to review social control theory (Hirschi, 1969), as it exists, as an explanation of female offending. Carlen’s study (1988) of female offenders suggested that integral to their involvement in offending was a rejection of the controls to which they are subjected and of their gender roles. By contrast the profile of women offenders as identified in this study suggests that women are offending partly in an endeavour to conform to, or at least cope with, their gender roles.

Female offenders were reported as having experienced greater adversity and this appears to have elicited a protective response from social workers. This protection began in women’s childhoods and is evident in their treatment as adults. The organisation of community service is considered by female social workers to have an inherent gender bias which renders it less suitable for female offenders. These concerns appear to have foundation in terms of an apparent gender bias in the operation of community service schemes.

Female offenders sentenced to community service were more likely to have had their SERs compiled by male SER writers, while female offenders sentenced to probation were more likely to have their SERs compiled by female SER writers. Female social

workers specifically appear to adopt a stronger welfare orientation when compiling reports on female offenders apparently motivated by an inclination to protect. This has implications for gender specific allocation of work. The effect is not protection if reports are undermining community service as a possible alternative to custody for women, as appears to be the case when the SER writer is female.

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Chapter 1

Introduction

This research considers the impact of the recent policy shifts within criminal justice social work on services to female offenders. Taking into account characteristics and experiences of male and female offenders, the way in which criminal justice social work practice in relation to both supervision (of community service and probation) and report writing, is responding to female offenders in particular, is explored. Aspects of report writing associated with the different outcomes of community service, probation and custody are examined and this will take into account the gender of the report writer. The data in this study have been gathered from Local Authority Social Work Departments in Scotland so there is an emphasis on the Scottish context in relation to criminal justice social work practice.

A series of suicides at Cornton Vale women's prison in Scotland, beginning in 1995, sparked discussion on and interest in female offenders within the sphere of criminal justice. This contributed to a major review, conducted by the Prisons and Social Work Inspectorates for Scotland, of community disposals in Scotland and the use of custody for female offenders.

The resulting report, "A Safer Way", noted that "the backgrounds of women in prison are characterised by experiences of abuse, drug misuse, poor educational attainment, poverty, psychological distress and self harm" (Scottish Office, 1998a: 13). The review recommended that the imprisonment of women should be kept to a minimum.

A subsequent Inspectorate of Prisons Report on Cornton Vale (HMI, 2001) reached similar conclusions judging that incarceration was unlikely to resolve the difficulties experienced by

women. It supported the development of credible alternatives to custody for female offenders across Scotland. Likewise, The Report of the Ministerial Group on Women's Offending, "A Better Way" (2002a), concluded that "the present system for dealing with women offenders is not working effectively ... It returns women to the community, after release, to face the same or worse problems than those, which led them to offend" (Scottish Executive, 2002a: 41).

This apparent growing awareness of the problems experienced by female offenders has not deterred sentencers from imprisoning them. Although from the mid-nineties the percentage use of custody (as a percentage of custody, community service orders and probation orders) has gone down for female adults (i.e. age 21 and over), for female offenders under 21 the percentage use of custody almost doubled between 1997 and 2001 (from 22 % to 40 %, although it fell again to 30% in 2002) (Scottish Executive, 2004a: 12). Despite the percentage use of custody for adult female offenders going down, in absolute terms there was an increase in the female prison population in the nineties in that the average daily female prison population has steadily increased (Scottish Executive, 2002b: 3). The increase in the female prison population observed in the nineties has continued (Scottish Executive, 2004b: 3). Between 2001 and 2003 the average daily female prison population increased from 203 to 297 (Scottish Executive 2002a, Scottish Executive 2004b). Such increases in the average female daily prison population correspond to increases in the number of directly sentenced receptions therefore reflect a continued increase in sentencing of female offenders to custody (Scottish Executive, 2002b: 4). The female prison population is increasing at a faster rate than the male prison population (Scottish Executive, 2002a).

The overall average daily Scottish prison population for the year 2003 was higher than ever previously recorded (Scottish Executive, 2004b: 3), yet disposals of probation and community service, which are at least potentially alternatives to custody, are increasing (Scottish Executive, 2004a: 1). This increase appears to be at the expense of fines rather than custody (Scottish Executive, 2004a: 1). Those directly sentenced, rather than those fined or remanded, comprise the vast majority of the Scottish prison population (Scottish Executive, 2004b: 5).

The “What Works” debate and the shift from the “Welfare” to the “Justice” model

Prior to the aforementioned inspections and reviews there had been developments in criminal justice social work practice which had fundamental implications for service provision. The Social Work (Scotland) Act 1968, influenced by the Kilbrandon report (Kilbrandon Committee, 1964), had placed an onus on Social Work Departments to promote the social welfare of individuals.

Section 27 of this Act laid down provision for the supervision of offenders. The model of social work practice with offenders which evolved from the 1968 Act became known as the “Welfare” model. Paterson and Tombs describe this model of practice as one which “involved a focus on individual welfare as the primary concern and offending behaviour as a secondary issue” (Paterson and Tombs, 1998: xii).

Not long after the implementation of the Social Work (Scotland) Act 1968 there emerged a growing despondency about the effectiveness of work with offenders in terms of reducing offending (McGuire and Priestley, 1995). Emerging from such pessimism was Martinson’s

article “What Works”? Questions and Answers About Prison Reform” (Martinson, 1974). In this article, Martinson discussed a review of 231 studies evaluating the effectiveness of rehabilitation programmes, conducted between 1945/1967. Despite the studies being dated and focussing primarily on prison-based interventions Martinson’s overall findings have informed and influenced debates on community supervision since his article was published. Martinson asserted “*With few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism*” (Martinson, 1974: 25, emphasis in original).

Critics of the welfare approach, which encompassed the concept of rehabilitation, then drew on Martinson’s work in order to justify abandoning it. However Martinson later criticised the methodology employed in his original study. He rejected his original conclusion and made a more tentative claim on the viability of attempts at rehabilitation:

And, contrary to my previous position, some treatment programs *do* have an appreciable effect on recidivism. Some programs are indeed beneficial ... some programs are harmful. (Martinson, 1979: 244, emphasis in original)

More attention was given to Martinson’s original claim than to his subsequent retractions. His original claim had a profound influence on the debates at the time. Following on from this a “what works”¹ debate emerged which Mair (2004) described as a reaction to Martinson’s supposed claim that nothing works. During the late eighties and early nineties Martinson’s ‘claims’ were challenged by a number of critics (McGuire and Priestley 1985, Thornton 1987, Walker 1983). In the intervening period the statistical tool of meta-analysis

¹ “What works” is the term used to refer to the question of effectiveness of intervention with offenders.

became available. This allows for findings from a variety of different studies to be aggregated, permitting analysis on a markedly larger scale than had previously been feasible. However, meta-analysis has been criticised for its exclusion of small scale and qualitative studies and for its overreliance on recidivism rates as a measure of success (Kendall 2002, Mair 2004).

Throughout the eighties there was a revival of interest in rehabilitation. Andrews, Zinger, Hoge, Bonta, Gendreau and Cullen (1990) were amongst those who endorsed rehabilitation. Drawing on their research they endorsed three psychological principles to be applied to offender rehabilitation:

- *delivery of service to higher risk cases,*
- *targeting of criminogenic needs²*
- *and use of styles and modes of treatment (e.g. cognitive and behavioural) that are matched with client need and learning styles.*

(Andrews *et al*, 1990: 369, emphasis in original)

The wider “what works” discussion produced a further 3 principles which have been outlined by McGuire and Priestley (1995) and are summarised as follows:

- responsivity - learning styles of clients are matched to workers and programmes; intervention utilises participatory methods.
- community-based - services are delivered locally to offenders.

² The “what works” literature differentiates criminogenic needs, as ones which directly support offending behaviour, from non-criminogenic needs which may not necessarily support or contribute to offending behaviour.

- programme integrity - clear aims and objectives, services delivered as planned by trained staff, systematic monitoring and evaluation of delivery and outcomes.

These 6 principles were widely assimilated into criminal justice practice and became known as “principles for effective practice”. They clearly focus on the content of intervention but a number of researchers (Dominelli 1996, Douglas 1997, Trotter 1999) have given greater emphasis to the relationship between the worker and the client on the basis that it is the medium in which change will take place. As will be discussed in Chapter 8 this appears to be particularly significant for female offenders. The “Justice model” grew out of this “what works” discussion. Chapters 7 and 8 will consider, using data from this study, the nature and impact of this ‘shift’ from the welfare to the justice models. The justice model, sometimes referred to as the responsibility model, places greater emphasis than did the welfare model, on addressing offending behaviour.

However, the “what works” agenda is open to the criticism that it is biased with regard to gender as the underlying research tends to be based on male offenders. A clear example of gender bias being able to dictate the nature of intervention is illustrated in a study by Dowden and Andrews (1999). The authors used meta-analysis to gauge the significance of the principles of effective correctional treatment for female offenders. Their paper begins by asking: “What Works for Female Offenders?” The researchers then conclude: *“results indicated that the clinically relevant and psychologically informed principles of human service, risk, need, and responsivity identified in past meta-analytic reviews were associated with enhanced reductions in reoffending”* (Dowden and Andrews, 1999: 438, emphasis in original). This conclusion could safely be interpreted as answering the opening question with “The same as what works for men”. Although these principles were validated as effective in

this meta-analysis, there may be principles which were not investigated which would be more effective for women offenders. Dowden and Andrews (1999) were willing only to concede that: "[they] did not examine whether making the treatment program more responsive to the specific learning styles of women offenders (i.e. relationship- oriented treatment) had any impact on recidivism" (Dowden and Andrews, 1999: 450). This thesis will argue that such failure to recognise gender differences has profound implications for the relevance of services to female offenders. As discussed further in Chapter 7, the direction of policy shifts had particular implications in Scotland where there is a strong socialist tradition (McAra, 1999).

The justice model embraced the concept of rational choice as an explanation for offending behaviour. Clarke (1980) advocated the idea of offending being attributable to rational choices and decisions on the part of the offender. He offered this position in support of measures of 'situational' crime prevention (such as the use of CCTV cameras), arguing that a theoretical emphasis on offenders' choices and decisions presented a realistic approach to crime prevention. Rational choice theory, originally borrowed from economics, has its roots in the nineteenth century when explanations of crime became bound up with a new economy, as explained by Garland:

The twin doctrines of individual responsibility and presumed rationality formed the basis for the judicial findings of guilt - since in free-market society the criminal actor, like his economic counterpart, was deemed to be in absolute control of his destiny ... Illegality, like poverty, was an effect of individual choice. (Garland, 1985: 17)

Sciulli explains one of the assumptions of rational choice theory:

The ... assumption is that individual actors typically are dedicated to maximising their own private “wealth”, or whatever happens to interest them subjectively. Rarely if ever can they be relied on to contribute to any purported group good. (Sciulli, 1992: 162)

Also writing on this area in the nineteenth century was Nietzsche, who argued against the concept of “free will”. He held that:

Wherever responsibilities are sought, it is usually the instinct for *wanting to punish and judge* that is doing the searching ... the doctrine of the will was fabricated essentially for the purpose of punishment, i.e. of *wanting to find guilty* ... People were thought of as ‘free’ so that they could be judged and punished - so that they could become *guilty*. (Nietzsche, 1998: 31, emphasis in original)

By contrast the feminist psychologist Gilligan (1982) identified that the female moral code is contextual and dependent on women’s relations with others. Gilligan argued that while men tended to be guided by an ethic of justice women’s moral reasoning was more complex:

The sequence of women’s moral judgement proceeds from an initial concern with survival to a focus on goodness and finally to a reflective understanding of care”. (Gilligan, 1982: 105)