

Creating justice for women: needs and deeds



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The sentencing of women

1. Understanding the sentencing of women
2. Where do children fit in? : discoveries about the children of women in prison
3. Should there be a difference in the sentencing of women with children compared with other offenders?



1. Understanding Sentencing: Claims and complaints from the past (1970s - mid 1990s)

- Discriminatory sentencing
- Gendered assumptions getting in the way of justice



Research findings re women in the court room

- 'Incongruity' (Worrall, 1990)
- The discourse of the irrational and pathological (see the critiques within Pearson, 1976; Smart, 1976; Morris, 1987, for example) v. normal, natural trouble created by boys and men.
- The influence of social factors and social problems (e.g. Farrington and Morris, 1983; Eaton, 1986; Allen, 1987)



Table: Farrington and Morris Study of Sentencing in Cambridge Magistrates' Court for Theft Act offences, 1979, Crim Law Review 1983

Sex-separate multivariate analysis: factors associated with severity of sentencing

Male defendants

Type of offence***
Current problems***
No. of previous convictions***

Legal representation***
No. of Theft Act offences in current appearance**
Age**
Plea*

Female defendants

Current problems***
Convicted in previous two years***
No. of Theft Act offences in current appearance***
Convicted with other offender(s)**
Marital status**

Family background**

[Asterisks indicate level of statistical significance: three asterisks = $P < .001$; two asterisks = $P < .01$; one asterisk = $P < .05$]

If the law is an ass, is it one that kicks women harder?

Natasha Narayan investigates the gender divide in sentencing

Jail birds

IN THE normal course of things, the jury decries the defendant's guilt, then leaves the judge to get on with the sentencing. This case was different. The jury convicted the defendant, but something moved them to write to the judge, petitioning for her freedom. Judges, lawyers and courtroom officials could recall nothing quite like it.

Last week, Lorraine Mangat, aged 31, a mother and housewife from a West London suburb, was convicted of causing grievous bodily harm during a domestic brawl. The jury at Kingston Crown Court wrote that her actions "were not such as are likely to be repeated and a custodial sentence would be just inappropriate". All 12 signed the letter.

Though he reluctantly accepted their advice, Judge Dennis Palma ignored it. Instead he sent Lorraine Mangat down for three and a half years. Perhaps she was lucky — in 1984, the same judge jailed a pickpocket for eight years. He later imprisoned two men for five years for the crime of stealing £20.

Mangat's solicitor, Robert Williams, maintains that the judge's summary was biased against her, so the jury went for conviction. "I think they regretted it almost at once," he says. "The foreman of the jury was nearly in tears when she heard the result." Williams lodged an immediate appeal.

"Lorraine Mangat comes from a large, close family. They were absolutely devastated when they heard she was going to jail. She had made no preparations for the care of her three children."

The prosecution claims that Mangat was unprovoked when she cracked Peter Devaney, her sister's boyfriend, over the head with a bottle. She claims that Devaney, a man with a history of mental illness, tried to throttle her when she confronted him with a divan that he had hit her pregnant sister Mangat says the bottle was the first thing that came to her, and her actions were instinctive self defence.

"The thing that makes the verdict a little surprising is that she had marks on her neck which indicate she was telling the truth about being attacked," says Mangat's barrister, Robert Barrett. "In many ways it seems a perverse verdict. Her family all believe that she was telling the truth and would be acquitted."

Judge Palma's sentence in the

Mangat case is the latest in a tradition of bizarre judgments. Some attain brief notoriety. One of the most celebrated was Judge Pickles' decision in 1990 to jail a teenage girl with a 10-week-old baby for her first offence — a case of petty shoplifting. The judge caused an outcry by warning the girl that women should not hope to escape custodial sentences by becoming pregnant.

Earlier this year, Patricia Whitehead, a 38-year-old mother and mother of three, was jailed for two months for lying about a minor motoring offence committed by her husband. Mr Justice Kennedy jailed Whitehead — who was not even in the car at the time of the offence — yet four days earlier he had merely disqualified a coach company owner who was convicted of careless driving after killing a cyclist.

Some observers see these cases as evidence of the criminal justice system's inbuilt misogyny. The obvious, they say, is worth restating: judges tend to be elderly, white, public school-educated men, and at times remote from modern life.

Current British policy, following the American lead, emphasises stiff prison sentences as a deterrent. Two years ago, Home Secretary Michael Howard reversed liberal trends by declaring "Prison works." Though no new statutes were put on the books, magistrates responded by sending thousands more people to jail. The judiciary, it seems, is adept at responding to political signals.

"Women have been treated far more punitively by the criminal justice system over the past year," says Frances Crook, director of the Howard League for Penal Reform. "The attitudes put forward by politicians like John Redwood and Peter Lilley have filtered through to the people who do the sentencing. Women are stigmatised as single mothers and blamed for everything from family break up to sexual deviance."

"The prison population is rising for both men and women, but women are suffering excessively. This is particularly the case as the vast majority of women on remand or in prison are there for minor offences. When there is violence, it is relatively rare for family female. Women are not usually in prison for mugging or pillaging."

Since 1993, the number of women in jail has risen by 40 per cent,



which has caused an overcrowding crisis. Though women make up less than 4 per cent of the total prison population, the number receiving immediate custodial sentences — rather than probation or suspended sentences — rose last year by 24 per cent to 2,852. Many of the young women, jailed for petty, non-violent offences — last year, more than 300 women were jailed for non-payment of television licence fees.

CRIMINOLOGISTS ARE sceptical of the value of custodial sentences in such cases. "Lorraine Mangat appears to be yet another example of somebody receiving a prison sentence when all the evidence points to the fact that they should receive some sort of community based punishment," says Nick Flynn, deputy director of the Prison Reform Trust. Prison reformers are adamant that "prime carers", usually women, should be jailed only as a last resort. The cost to the system of looking after the children and the possibility of family breakdown should be avoided.

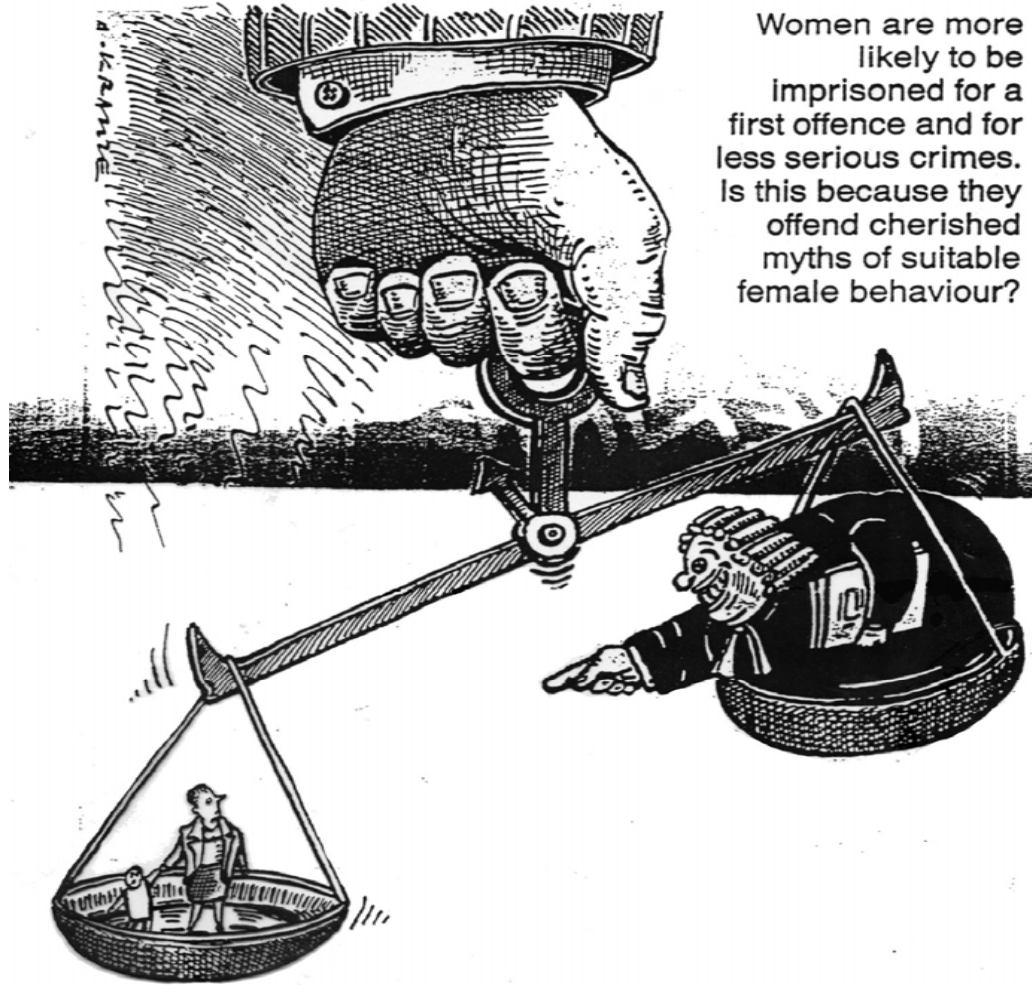
Women who have been jailed often appear to have been treated more harshly than men who committed

similar offences. For example, 53 per cent of women prisoners have been convicted of two or fewer previous offences compared with 23 per cent of men. In per cent of women prisoners, 13 per cent of women prisoners committed offences involving sex, violence, robbery or drug offences, compared with 21 per cent of men.

Baroness Helena Kennedy argued in her book, *Eve Was Framed*, that women charged with crimes are often treated as just society's but a single ideal of femininity behind four judges' title-cuff come in rape trials, for example, so times expose Victorian levels of punitiveness, so defendants fight their case on two fronts — as well as winning arguments, they must fit general stereotypes. "The Madonna is not acceptable in court than the woman in her cell inside. In the prison, Lorraine Mangat can to some comfort from the media. In the past few years has aroused. Former Chancellor Norman Lamont, who her local MP, has made an appointment to see her family tomorrow with a view to taking up the case with the Home Secretary. But her children will still have to wait months before they learn if the mother will be cleared by the appeals courts and returned to them."

Guilty of being a woman

Women are more likely to be imprisoned for a first offence and for less serious crimes. Is this because they offend cherished myths of suitable female behaviour?



That courts discriminate against women seems set to become a gender myth of the 1990s

With a bound she was free

If the law is an ass, is it one that kicks women harder?
Natasha Narayan investigates the gender divide in sentencing

Jail bird

THE SUNDAY TIMES · 9 APRIL 1995

Courts condemn women to tougher sentences than men

Many women would not be in prison if they were men. Stewart Tender reports on a penal imbalance

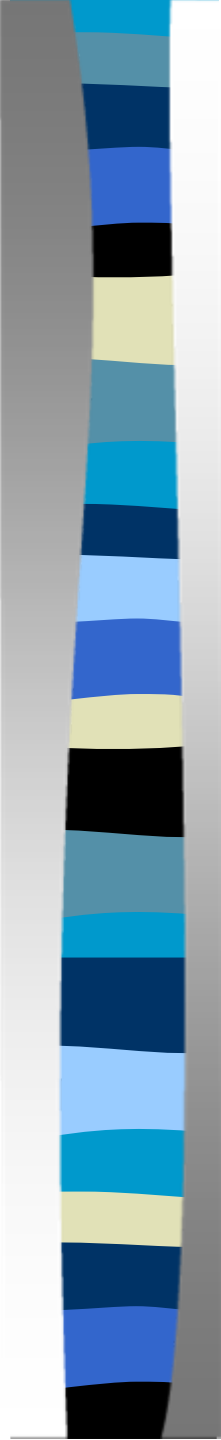


Rough justice: women who should not be in jail



Discriminatory sentencing?

- *Understanding the Sentencing of Women* (Hedderman and Gelsthorpe, 1997); comparison of 13000 m/f (pair-wise matching) in three offence groups: offences against the person, drug offences, theft from shops
- Female shoplifters less likely to receive custody than comparative males
- More likely to be given a community sentence or discharged; equal sentencing for violence, though custody less likely for females with previous conviction
- For drugs offences, female first offenders less likely to be given a custodial sentence than comparable males, but difference disappears for repeat offenders
- Reluctance to fine women...and evidence of at least some some up-tariffing as a result



Gelsthorpe and Loucks (in Hedderman & Gelsthorpe, *Understanding the Sentencing of Women* 1997). Key findings:

- Nearly 200 interviews with magistrates in 5 different courts (harsh/lenient towards women/men; no difference in treatment)
- Troubled or troublesome?
- Body language and appearance
- Family responsibilities
- Family structure and control
- Employment and income
- Stereotyping still...after years of 'human awareness' training for the judiciary and magistracy...



Findings

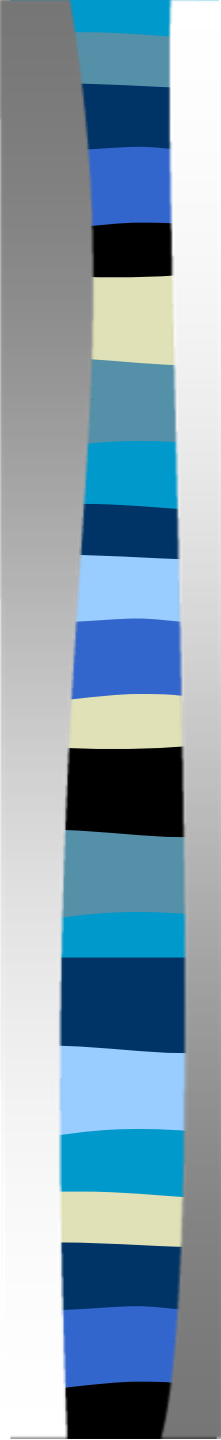
“There’s still something of the defence for sex, I’m afraid. And you really wonder how the innocent-looking young lady in front of you, who’s obviously been told by her solicitor to look as helpless as possible, could possibly have undertaken the violent elements that are there.” (Mag. 3, Hallam court (M))

“Think of them as greedy; needy or dotty.” (Group 3, Shelley court (F))

“...the women feed the family whereas the men, although they have to support their family, don’t.” (Mag. 13, Byron court (F))

“...a shoplifting woman would probably be a single mother without enough money. A shoplifting man would very rarely be a single father without enough money and kids yapping around – they would be lads out on the town wanting to get a snappy pair of jeans...” (Mag. 12, Shelley court (F))

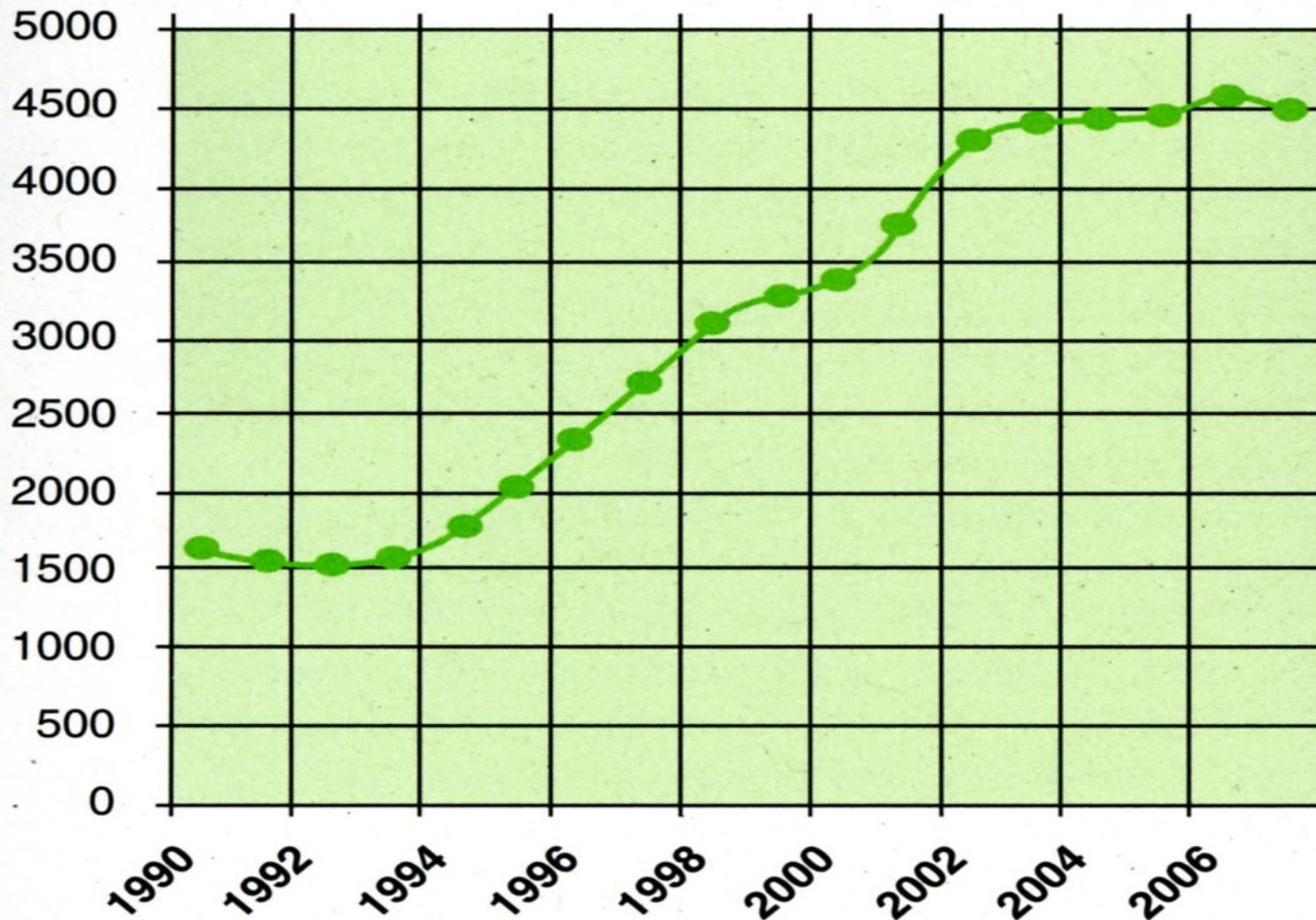
“ Probation is the best thing, because they’re not really naughty, they just need help and support...Whereas perhaps with men, people see it more as a straightforward choice, and so hurting them financially with a fine is what’s required.” (Mag. 23, Byron Court, (F))



Gendered assumptions getting in the way of justice

- Gendered perceptions of women's needs and the way that this can work *against* some women as well as in their favour (observational evidence)
- The need to focus on 'deeds' and not 'needs' in order to resolve the confusion?
- Is the increase in the number of women in prison the result of this?

Female custodial population – 1990-2007





Prison Statistics: Scotland

- Over a ten year period there has been a 90% increase in the daily custodial rate and an 83% increase in the custodial remand rate for women in Scotland
- Particular concerns about the use of short term imprisonment

(G.McIvor, 2008 *Women and Community Sanctions in Scotland*.
Paper presented at the European Society of Criminology, Edinburgh)



Positive encouragement to use imprisonment?

- Prisons as 'social services'?
- Lack of faith in community provision? Too few alternatives? (This is certainly the case in E and W)
- In Scotland the use of community sanctions has increased for women, but at the higher end of the tariff and at the expense of the use of fines (which has decreased)



A general increase in crime? ...No

- BCS (household survey) 44% fall since 1996
- Recorded crime – dropped 1992-1998. Increase from 1998 to present
 - only rose after recording rules changed in 1998/9
 - added 800,000 offences immediately
 - even so, less than 1992 levels until 2002/3



More serious offending?

Convictions for indictable offences = crude indicator...

No. guilty of indictable offences	1991	2004
Males	295,700	268,400
Females	41,900	48,400

Female increase - concentrated mainly in theft and handling (+drugs + minor violence +burglary); c70% of women receive prison sentences of less than 1 year



Other relevant questions regarding the huge increase in the use of imprisonment for women

- Preferential treatment previously? (mixed evidence)
- Longer sentences? (an increase of 3 months in the Crown court between 1995- 2005; no change in the Magistrates' Courts)



Risk/need confusions

- Critiques of risk assessment tools - designed for men, based on men, and applied to all.
- Huge welfare concerns. Women have complex welfare needs which lead them to crime: social exclusion, unmet educational, health, housing and economic needs + child care responsibilities, drug misuse + sexual and physical abuse which lowers self-esteem and confidence
- Up-tariffing concerns.



Scotland: *Chaotic Lives Report* by M. Barry and G. McIvor

- Lothian and Borders focus.
- Women offenders are by and large receiving harsher sentences than hitherto
- The use of short term custody for women has increased in particular
- No major changes in crime patterns or rates (yet perceptions of increases in violent crime)
- Community Service, seen as less appropriate for women (because of offences of dishonesty and child care needs)
- Risk tools - limited availability and appropriateness
- *Chaotic lives...*

2. Where do children fit in? : discoveries about the children of women in prison





Where do children fit in? : discoveries about the children of women in prison

- A Min of J study found that 55% of women in prison have children under 18 (no definitive statistics)
- Average of 1.7 children born to women in custody each week
- HMIP - 12% of children of mothers in prison were in care, with foster parents or had been adopted compared with 2% of male prisoners. (The Revolving Doors Agency at HMP Holloway reported that 42 women held there had no idea who was looking after the children and that 19 children under 16 were looking after themselves)



Where do children fit in? : discoveries about the children of women in prison

- Just 5% of women prisoners' children remain in their own home once their mother has been sentenced
- ALSPAC data shows that children with mothers who have been in trouble with the law are at greater risk of poorer outcomes (anti-social behaviour and emotional problems) + social disadvantage + bullying
- 65% of boys with a convicted parent go on to offend
- Stories from the ReUnite project
- High need...high cost



3. Should there be a difference in the sentencing of women with children compared with other offenders?

The arguments for...

- not just women with children...but all women. Women have distinctive welfare needs - leaving aside the issue of children
- the impact on children's lives is all too evident
- criminal justice should be linked to social justice



3. Should there be a difference in the sentencing of women with children compared with other offenders?

The arguments against:

- what about men with children?
- what about women without children but who nevertheless have complex welfare needs
- What about the old confusion of 'needs' and 'deeds'...how can we guard against this confusion?



Recent developments

- a) Reports and campaigns re the pains of imprisonment...and the impact on children
- b) The Women's Offending Reduction Programme (WORP) + national plans and frameworks
- c) The Equality Act 2006
- d) What works with women
- e) The Corston Report on vulnerable women in the criminal justice system (2007)
- f) 218 - Time Out



What Works with Women?

- Evidence based practice and the 'what works' agenda
- What works for men doesn't necessarily work for women
- Meta-analysis of interventions with women show that they are more effective if they address women's needs
- *The research evidence suggests that provision for women offenders should:*
- Be women only
- Be 'mixed' in terms of integrating offenders with non offenders
- Foster women's empowerment
- Utilise way of working with women which draw on what is known about their effective learning styles
- Take a holistic and practical stance
- Facilitate links with mainstream agencies
- Allow 'top-up' support
- Ensure a supportive milieu or mentor
- Provide women with practical help and transport

(From: L. Gelsthorpe, G. Sharpe and J. Roberts (2007) *Provision for Women Offenders in the Community* (Fawcett Society, 2007 - see the Fawcett Society website)



The Corston Report

- The Corston Report (2007) – *A Report of a Review on Women with Particular Vulnerabilities in the Criminal Justice System*: custodial sentences for women must be reserved for serious and violent offenders who pose a threat to the public
- Women's needs must be acknowledged at all levels of sentencing and the penal system



The promise of the Corston Report

- 43 recommendations in total
- Mainly called for high level governance and better cross-departmental mechanisms
 - an inter-Ministerial Group to provide governance
 - a cross-departmental Women's Commission (or Unit)
 - a champion for women in CJS
- Give priority to implementing the Gender Equality Duty
- Replace women's prisons with small, local multi-functional custodial centres



Corston recommendations (contd.)

- Community sentences to be the norm and custody to be used sparingly (violent/serious offenders)
- Extension of the TWP and development of a wider network of women's centres (like the Asha centre and Calderdale centre and 218)
- Diversion of women with mental health problems to community health services and other support
- Provision of early psychiatric assessments and health provision in police stations and courts



Reflections:

- The research focus on women rather than men
- The focus on *differences* rather than similarities
- Does Corston go too far? Are all women ‘vulnerable’?
- What about men who are vulnerable? Is the case for women’s distinctive needs unequivocal? Do we acknowledge men’s needs enough? Have we abandoned men to their fate in the cjs?
- Is there a way of recognising women’s distinctive needs without differential sentencing?
- Surely the ‘what works’ with women findings can be used without talking about differential sentencing?



Pause for thought...

- Unintended consequences of the 'equal but different' movement ?
- Is there a danger of confusing needs and deeds - with all the discriminatory practices of old?



Resolving difficulties...

- Do we need to emphasise women *needs* quite so much?
- We could make the same points *about using imprisonment less* by emphasising that women commit less crime, less serious crime, they are less persistent and they are less likely to reoffend (low level, less often)...
- Acknowledging difference and diversity in the **form** (but not the amount/level of punishment...the importance of proportionality/desert). The rationale for acknowledging diversity and difference: towards citizenship (see Tyler *Why People Obey the Law*, 1991; Paternoster et al., 'Factors which facilitate legitimacy', *Law and Society Review* 1997, 31, pp163-204
- Concerns to maintain the legitimacy of the criminal justice system, reduce imprisonment for both women *and* men, respond to women's distinctive needs + support children of imprisoned parents at the same time

