

## The Impact of Gender on Criminal Justice Policies and Legislation throughout the United Kingdom

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### Abstract

This article discusses the role of gender in the commission of crime, criminality, and harm prevention by critically examining the notion of crime within theories about women's and men's criminality, as well as the gendered nature of crime control policies throughout the United Kingdom (UK), England, Wales, and Scotland. Gender affects women and men and their criminality within criminal justice discourse and crime control policies. Throughout the literature, there has been a continued focus on women needing to be 'repaired' when they commit crime because women are seen as having gone outside the traditional role of what it means to be female. On the other hand, the link between hegemonic masculinity and criminal behaviour among men is often ignored within criminal justice policies, highlighting the fact that men, in comparison to women, are viewed differently within criminal justice discourse, policies, and legislation. The concept of hegemonic masculinity and toxic forms of masculinity have not been prominent features in crime reduction or prevention policies. It will be argued that both women and men are failed by a system that does not engage with gendered power and harms within society, whether they be interpersonal or institutional. This creates a breakdown in the idea that women's or men's criminality can be understood and treated as such. Evidence suggests that focusing on the social factors that lead to crime, including the intersection of race with the above-mentioned paradigm, as well as the stereotypes that are associated with criminality, would improve outcomes for groups of women and men. This should be reflected within the criminal justice policy discourse, which is both gendered and racialized, to see a significant decrease in crime. The criminal justice system, on its own, is ill-equipped to reform and reduce criminal activity. A combination of targeted approaches that focus on the factors that lead to offending by women and men, respectively, is required to reduce the harm caused by criminals in the UK.

**Key Words:** Hegemonic Masculinity, Emphasized Femininity, Gender, Race and Criminal Justice, Sentencing and Prison Population, Rape and Sexual Assault

### 1. Introduction

This analysis will focus on crime prevention and reduction strategies and legislative provisions with a view to ascertaining whether and to what extent they are gendered. The primary focus will be exploring the culture of masculinity (hegemonic masculinity) (Messerschmidt, 1997) and the link between hegemonic masculinity and the commission of crimes in the male population. Hegemonic masculinity, in this context, is defined to mean a practice of gender that secures the dominant social position for men in relation to the socially subordinated position of women and provides a culturally normative ideal of what it means to be male (Connell, 1995). The culture of femininity will also be explored to understand the gender gap in terms of crime (Steffensmeier & Allan, 1996), that is, why men are disproportionately overrepresented in the offending population (Carlen, 1990). It will be argued that there are differences in the language used and perceptions conveyed in government crime prevention policies concerning the criminality of women and men. The implications of hegemonic masculinity and emphasised femininity will be explored in the context of gendered criminal justice policies, legislation regarding rape/sexual assault, and the reduction of the prison population and sentencing throughout the UK. There is an acute emphasis on reducing the female offending population within the UK, even though women represent a small percentage of the total offending population, currently 5 percent (Sturge, 2020; Bromley, 2019). The emphasis on women's criminality arguably stems from the notion that women who commit crimes must be repaired because such actions go against the 'norm' of what it means to be female.

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Conversely, male criminality is not viewed within the same paradigm. Rather, it is taken for granted that men commit crime (Messerschmidt, 1997).

### 1.1 Earlier Theories of Gender in the Commission of Crimes

Early theories of criminality, such as sex role theory, offer explanations for the gender gap in crime. Research suggests that boys and girls are socialised differently (Sutherland, 1949:5). Girls' behaviour, from an early age, is strongly controlled through the supervision of their caregivers (Sutherland, 1949:5). Conversely, boys are encouraged to take risks, be tough, and aggressive through play (Sutherland, 1949:6). Sex role theory suggests that boys are encouraged from an early age to act out and, as they grow older, this behaviour progresses into an opportunity and inclination to commit crimes (Sutherland, 1949:6). Via acting out, rule breaking, and being 'tough' and 'macho', boys attribute these qualities to their masculine identity and, in turn, conform to these ideas about what it means to be masculine (Sutherland, 1949:6). The arguments raised in sex role theory can also be attributed to social constructionist theories, to which parallels can be drawn. In understanding the world in which society inhabits, social constructionists view knowledge as being constructed, rather than being created (Andrews, 2012:39).

Social control theory, in a similar vein, focuses on the interactions between women and men and the restraints placed on women by a patriarchal society (Dennis, 2020; Carlen, 1990; Heidensohn, 1985:121). Girls are socialised to act in ways that conform to socially acceptable behaviours of femininity, such as compassion and caregiving (Heidensohn, 1985:121). Social control theory suggests that, if a person's needs are satisfied, there is no need for criminal behaviour (Nye, et al., 1958). Carlen (1990) argues that women turn to criminal behaviour when the rewards for conforming to social norms, such as monetary rewards and improved social status, are not present. The absence of rewards for conformity to societal pressures and structural inequalities, such as low pay and unemployment, make crime an attractive lifestyle for some women because the advantages outweigh the disadvantages (Carlen, 1990:4). It has been suggested by some scholars that structural inequalities drive women into criminality (Gelsthorpe, 2004:12; Steffensmeier & Allan, 1996:465). These structural inequalities include race, poverty, lack of affordable and secure housing, drug addiction, mental illness, abuse, and childhood trauma (Dennis, 2020; Pina-Sanchez & Harris, 2020). However, the reasons men turn to crime are often not dissimilar to the reasons women commit crimes. Some men are faced with similar social disadvantages, poor employment prospects, substance misuse, and mental illness, as well as the disadvantages and biases faced by men of colour within the criminal justice system (Gelsthorpe, 2004:12; Steffensmeier & Allan, 1996:465).

## 2. Gendered Justice within Criminal Justice Legislation and Policies

Section 95 of the *Criminal Justice Act 1991* was introduced into the English parliament to 'provide and promote non-discriminatory practices among criminal justice agencies... and to enhance the reputation of the legal process generally' (Section 95: Criminal Justice Act 1991: Guidance for the Home Office). Section 95 states the following:

The Secretary of State shall in each year publish such information as he considers expedient for the purpose of facilitating the performance of those engaged in the administration of justice to avoid discriminating against any persons on the ground of race or sex or any other improper ground.

One of the main purposes of the *Criminal Justice Act 1991* was to instil a greater degree of consistency in sentencing decisions by further encouraging courts to use fines and community-based sentences for certain types of crime while also providing the power to impose longer custodial sentences for crimes involving violence (Section 95: Criminal Justice Act 1991: Guidance for the Home Office). The section was originally introduced as a mechanism via which to monitor ethnic and racial practices, achieve parity between various racial groups, and ensure that sentencing is not subject to discriminatory practices.

To fulfil the requirements under s95, the Ministry of Justice (MoJ) publishes an annual report entitled 'Women and the Criminal Justice System' (WCJS), along with other reports about women within the criminal justice system (MoJ 2018; MoJ, 2012; NOMS, 2015). These reports were introduced to combat the mistaken assumption that all women who offend are the same, with similar backgrounds leading them to offend, and that they are treated more leniently by the courts (Orme, 1992). While men are referred to in the WCJS report, there is no equivalent report about men focusing on the factors that lead men to criminality or specific measures intended to reduce male offending (Cockburn and Oakley, 2011). If, as has been suggested through research by Connell, 1995; Messerschmidt, 1997; Krienert, 2003; Seymour, 2010, Flood 2020, the culture of hegemonic masculinity is a key feature in the male commission of crimes, arguably, it makes good policy sense to specifically target the aspects of masculinity that are known, through research, to be associated with criminal offending (Cockburn and Oakley, 2011).

There is currently a debate within the literature about whether equal treatment between women and men means identical treatment or devising policies that specifically address and target individual needs (Dennis, 2020; Corston, 2007:23; Covington, 1998: 7; Carlen, 1994:133). However, it is also necessary to be wary of positive action in the treatment of women. Such action is sometimes based on attitudes and assumptions that disadvantage women, both in the criminal justice system and in society. It is well documented that the criminal justice system reflects the patriarchal attitudes of the rest of British society and that such attitudes operate at the level of defining normal female behaviour based on notions of femininity, mediated through paternalism. Such attitudes include viewing women offenders as needing, at best, care and, at worst, treatment (Dennis, 2020). The criminal justice system is influenced by notions of crime as a male activity and the idea that tough 'macho' attitudes and activities are required to deter such behaviour. Hence, statements about the 'lifestyle' of many offenders, especially young adults, being disorganised and impulsive, particularly if they drink too much or are addicted to drugs, can be read as descriptions of male behaviour. This is not to say that women and girls are not disorganised, do not drink too much, or take drugs, if they do, they are judged against a different set of criteria and are subject to a different response (Motz et al., 2020). Currently, throughout UK crime prevention policies, there is a strong focus on preventing women from being 'caught up' in the criminal justice system (NOMS, 2015; NOMS, 2012). These policies are arguably constructed from the premise that women's criminal behaviour is abnormal because they are not exhibiting 'normal' and 'natural' expressions of femininity. Moreover, these messages may also convey to society that crimes committed by men are a 'normal', 'natural' way of expressing masculinity (Connell & Messerschmidt, 2005; Kennedy, 1992:19).

If the aim of the criminal justice system is to reduce crime, specific crime prevention and reduction policies should focus on both women and men to address their respective offending. There is considerable overlap between women and men's circumstances in terms of leading to crime; structural issues, such as poverty, low levels of education, and substance misuse contribute to their offending (MoJ, 2018; Gelsthorpe, 2004). However, there are also differences. Masculinity and the expression of male traits, such as dominance and aggression, should be a significant policy focus (Cockburn and Oakley, 2011). Policies that seek to provide solutions to social problems are 'given shape through context' (Bacchi, 2000:48). Governments, therefore, do not merely respond to problems; rather, through contextualising the issues under consideration, they help elucidate the meaning and significance of those social problems (Bacchi, 1999:50). Given policies that emphasise the reduction of women's offending and the lack of focus on the issues that lead to men's offending, such as hegemonic masculinity, governments may frame the problems and normalise male offending in this process, even if on a subconscious level. Laws send powerful messages to society about behaviour that is acceptable and behaviour that is not (Kennedy, 1992:31). The language of and meaning attributed to such discourse is powerful and significant (Ellis, 2013: 8). The relationship between language and knowledge is viewed as a constructive process. That is, the way information is conveyed within society and the means used to convey this narrative provide a cognitive and cultural framework for interpreting the world (Ellis, 2013:8). Bacchi (2000:48) argues that analysing policy as discourse and focusing on the ways social problems are framed within government policy is essential in exposing that which remains silent and that which requires attention, specifically the role of toxic masculinity in the commission of male offending (Bacchi, 1999:50).

Gender plays a crucial role in the treatment of women and men within the criminal justice system (Covington & Bloom, 2003:3). Ideas about women's criminality are socially constructed; for example, the way in which women enter the criminal justice system as needing to be 'fixed' and the responses given to women within the criminal justice system are socially constructed, reflecting these criminological ideas about women (Gelsthorpe, 2004:6). This reciprocal and reflexive process feeds into the definition of gendered criminal justice (Gelsthorpe, 2004:17). For example, women who enter the criminal justice system are deemed incongruous. That is, they cannot fulfil their 'role' of being female and be considered deviant at the same time (Gelsthorpe, 2004:8). The two (femininity and deviance) are viewed as going against the 'norm' for women (Gelsthorpe, 2004:8; Kennedy, 1992:20). Heidensohn (1985:119) argues that women who commit crimes are 'doubly deviant'. Not only have women offended societal norms by committing crimes, these women have also offended societal norms that govern femininity. This may provide an explanation for government policies specifically targeting women within crime prevention policies because their behaviour is seen as so abhorrent and in need of repair that interventions must provide special treatments and strategies for women (Heidensohn, 1985:119). Similar measures are not considered necessary when males commit crimes, and an emphasis on their masculinity is not needed (Krienert, 2003:4; Stanko & Hobdell, 1993; 401). Instead, femininity is targeted within criminal justice policies. For example, the 2018 Female Offender Strategy for England and Wales outlines the Government's commitment to a new work programme for women who are in contact with the criminal justice system.

This strategy, *inter alia*, recognises the distinct needs of women and the fact that short custodial sentences do not deliver the best results. It is recognised that short sentences do not deliver the best results for men either in terms of rehabilitation and their likelihood of recidivism. One can only ask that, perhaps, the conclusion being drawn regarding gender is that women's offending, and commission of criminal behaviour are associated with acting out a 'deviant pathology' (Heidensohn, 1985:120). That is, because femininity is at odds with criminal behaviour, women become the product of their criminal offending, ceasing to be female at all (Kennedy, 1992:19).

Criminal women are perceived as 'troubled'. Their deviance must be explained away by some external force, either a type of psychopathology or structural inequalities, such as poverty or abuse (Covington, 1998:2). It is assumed, following this line of argument, that no woman faced with the choice would choose a life of crime (Kennedy, 1992:19). Criminal women are perceived as acting without agency. Studies demonstrate that, even after issues awareness and anti-discrimination training, most magistrates and judges still see women as 'troubled' rather than 'troublesome' and believe that women's offending is a product of their mental disturbance and survival in the face of impoverished economic circumstances or substance addiction (Gelsthorpe, 2004:8; Hale, 2005). In stark contrast, men are not viewed in this light. Their criminal behaviour is taken for granted, as 'normal' and 'rational', an assumption on the part of society that it is something 'men do' (Krienert, 2003:2). They are rational actors in their pursuit of criminal behaviour and factors that are indicative of male offending, such as aggression and hegemonic masculinity, are a core focus of crime prevention policies. Kennedy (1992) makes a strong argument that criminal behaviour, for both women and men, stems from social or emotional problems. Nevertheless, women are viewed as being in much greater need of care than men due to society feeling differently about their criminality. Women are viewed as being 'mad' rather than 'bad' (Kennedy, 1992:23). In contrast, male offenders "*tend to be constructed as having a sense of agency and rationality in their offending behaviour*" (Horn and Evans, 2000:185 *emphasis added*).

One could ask whether men's criminal behaviour is seen as a reflection of their rational choices. Perhaps, there is nothing 'wrong' with men who commit crime. It is disconcerting that the factors that impact upon men's offending, such as toxic masculinity, are not better reflected within criminal justice policies within the UK; there is no apparent 'excuse' for men's behaviour. Women can explain away their behaviour via pathology and emotional problems in need of 'fixing'; men, on the other hand, are perceived as rational actors (Seymour, 2010:4). The issues relating to the differences between women and men and their criminality also feed into the sentencing process. Evidence suggests that gender and the stereotypes that society attributes to gender roles mediate and affect sentencing (Gelsthorpe, 2004:10). For women, marital status, motherhood, social problems, and welfare needs are factored into sentencing more often than in the sentencing of men (Gelsthorpe, 2004:8). For example, generally, women who are mothers are punished more harshly and receive more punitive sentences than men or women without children. This is because women who are also mothers have deviated from what society considers an acceptable caregiving role upon committing crime (Hine, 2019; Booth et al., 2018). When there are similarities in offending, women and men tend to be sentenced equally (Hine, 2019; Kennedy, 1992:22). Overall, however, women commit fewer crimes than men, and their crimes are of a lesser serious nature (McIvor & Burman, 2011:14). Women also have fewer convictions when they are first incarcerated (Hine, 2019; Kennedy, 1992:22). This may also explain the reasons for women's shorter prison sentences (McIvor & Burman, 2011:14). Walker (1994) argues that, when sentencing patterns are compared between women and men, there are no differences in outcomes. However, even if there are no differences in sentencing patterns between women and men, the way women experience prison and its impact on their lives are different than the experiences of men, which may cause women in prison to be treated unfairly (Corston, 2007:17). A recent qualitative study from the UK by Crewe et al. (2017) demonstrates that women perceive power, control, and trust differently than men generally, and this is heightened in prison due to the complete loss of power and control. Further, being a mother entrusted with the primary care of children creates further stresses and problems for women while in prison. After their release, this makes it difficult for women to find suitable accommodation, and they may require additional support, considering the needs of their families and communities, upon release (Hine, 2019). These factors must be considered when devising criminal justice policies.

Covington and Bloom (2003:1) argue that there has been a substantial increase in the incarceration of women in westernised societies, particularly the United States and, more recently, Australia, especially among indigenous women (Baldry & Cunneen, 2014:277). The increase in women's imprisonment may be due, to a large extent, to governments being tougher on crime and sending a deterrent message therein to the community that criminal behaviour is not tolerated and is punishable by imprisonment (Bloom et al., 2004:38). Indeed, there has been a trend within the UK over the last decade toward increased punishment, including that meted out to women, and using prison as the vehicle for such as part of a departure from restorative measures (Pina-Sanchez & Harris, 2020).

However, some of the increase in women being sent to prison can be accounted for by breaches in alternative measures to custody, such as community sentences, which are used in the majority of first offences, as recommended under the *Criminal Justice Act 1991* (McIvor & Burman, 2011:14). Nevertheless, although women are being incarcerated at higher rates, their criminality has remained the same (Bromley, 2019; Covington & Bloom, 2003:5). Most women are serving sentences for non-violent offences (Bromley, 2019; MoJ, 2018; Maden, et al., 1994:173). It is important to note that, although women are being incarcerated at higher rates, they still only represent approximately five percent of the total prison population, which was 78,988 in the UK in 2020 (Sturge, 2020). There is compelling evidence for the comparatively more harmful impact of custody on women from a public policy perspective (Pina-Sanchez & Harris, 2020). Women are more likely to self-harm while in custody and more likely to suffer from anxiety and depression (Pina-Sanchez & Harris, 2020). Only 3 percent of the female prison population is assessed as representing a high or extremely high risk of harm to others (Pina-Sanchez & Harris, 2020).

### **3. Women and Men of Colour are Overrepresented in the Criminal Justice System**

There has been a tendency to incarcerate men and women of colour at disproportionate rates in most common law jurisdictions, such as the UK, Australia, and the United States (US). In Australia, for example, during the first quarter of 2020, the national average daily Aboriginal and Torres Strait Islander imprisonment rate was 2,325 persons per 100,000 adults (Australian Bureau of Statistics, 2020). The Aboriginal and Torres Strait Islander imprisonment rate for male prisoners was 4,252 persons per 100,000 Aboriginal and Torres Strait Islander adult males, and the female imprisonment rate was 444 persons per 100,000 Aboriginal and Torres Strait Islander adult females. Of all persons in custody, male prisoners represented 92 percent (38,534), and female prisoners represented eight percent (3,250) (Australian Bureau of Statistics, 2020). Indigenous Australians are overwhelmingly over-represented in the criminal justice system in each state and territory within Australia. While indigenous people represent only 3 percent of the total population of Australia, they make up 27 percent of the prison population and 55 percent of the youth detention population (Australian Bureau of Statistics, 2020). In 2019, the most common offence/charge for Aboriginal and Torres Strait Islander prisoners was acts intended to cause injury (34 percent or 4,009 prisoners), followed by unlawful entry with intent (14 percent or 1,655 prisoners) (Australian Bureau of Statistics, 2020).

Similarly, women from Black, Asian, and Minority Ethnic (BAME) communities are overrepresented in UK prisons. In 2017, BAME women made up 11.9 percent of the female population in England and Wales, and 18 percent of the women's prison population, which had slightly decreased by 4 per cent since 2012; however, imprisonment remains significantly disproportionate (Motz et al., 2020; Prison Reform Trust, 2017). In fact, BAME women are 25 percent more likely to receive a custodial sentence as compared to white women. For every 100 white women given a custodial sentence for drug offences, 227 BAME women are sentenced into custody for the same offence (Motz et al., 2020). When these statistics regarding women's (or men's) criminality are considered, the notion that these universal groups can be understood as homogeneous begins to break down. The focus has begun to shift toward evidence for the different outcomes experienced by women and men, and this should be reflected in the criminal justice policy discourse, which is both gendered and racialised. For example, BAME men experience similar biases and discrimination. While black people account for just 3 percent of the UK population, BAME men make up 12 percent of people in prison (Sturge, 2020). The US has a higher proportion of black prisoners (35 percent); however, at 13 percent, a much higher proportion of the overall population is black, meaning the disproportionality in the US is significantly less than in Australia and or the UK. Both BAME women and men are hyper-visible, while their stories of discrimination and biases remain invisible, with their specific needs often being overlooked (Motz et al., 2020). Instead, their realities are reflected in their overrepresentation in prison, and the factors that lead women and men into offending and the biases that keep them there are in desperate need of reform. These racial biases, as well as gender biases, require specific targeted policy prevention. Having a one-size-fits-all method of achieving justice is clearly not working, especially for women and men of colour within the criminal justice system. As Connell (2016) has argued, there must be an understanding of the interplay between and within gender and race relations within masculinities, one that critically examine show these concepts impact one another.

### **4. Hegemonic Masculinity and Criminal Behaviour**

Men and boys commit more crimes in comparison to women and girls and dominate within the criminal sphere (Messerschmidt, 1997:1). The British Crime Survey found that in 2020 men, were perpetrators in all recorded violent incidents in England and Wales (Office for National Statistics, 2020). Figures from the Office of National Statistics in 2020 indicate that men are responsible for 98 percent of recorded sexual offences.

These figures were confirmed by an earlier report by the Prison Reform Trust (Bromley, 2019), in which, in 2018, 59,000 people were sent to prison to serve a sentence in England and Wales. Of those, 31 percent had committed a violent offence. Due to the highly disproportionate numbers of men committing crimes, particularly young men, being male has become a predictor of crime (Messerschmidt, 1997:1). Messerschmidt (1997) argues that, when the intersection between gender and crime has been considered as a theory of why people commit crimes, historically, criminologists have focused on the intersection between women and crime. This has been almost in isolation from men and boys, who have received little to no attention until recently within the literature and have been slow to factor into meaningful criminal justice policies. It is assumed that masculinity and crime are a 'normal' part of being male and expressing masculinity (Messerschmidt, 1997:4).

Kennedy (1992:19) argues that men commit crimes because it enhances their sense of self; these actions express their masculinity. Criminal behaviour is viewed as a 'normal' part of the male psyche. In contemporary western societies, the hegemonic male is characterised as being white, heterosexual, in paid employment, and in positions of power in relation to women. Emphasised femininity exists to complement hegemonic masculinity (Messerschmidt, 1997). Women, within this paradigm, are subordinate to men, due in part to their fragility and weakness, and they are viewed as primarily sexual beings who exist for the pleasure of men or as caregivers in the role of motherhood (Messerschmidt, 1997: 10). Messerschmidt (1997) argues that hegemonic masculinity exists in relation to emphasised femininity and that both are dominant forms of doing gender 'in comparison to subordinate masculinities and femininities. This dynamic provides the foundation for the relationships that exist for women and men and between them (Messerschmidt,1997). Connell (1995) argues that there is no single clearly defined masculinity or femininity in Western societies. Instead, masculinity and femininity are culturally prescribed but differ at various points in time. Connell (1995) critiques hegemonic masculinity as being the dominant form of masculinity within society. For Connell (1995:188), hegemonic masculinity is tied together with other institutional ideologies, such as religion, media, welfare policies, and consumerism. Hegemony has involved the use of culture, institutions, and persuasion to substantiate dominance over women within society (Connell & Messerschmidt, 2005:840). For example, Connell (1995:120) sees this as being achieved via three core institutions that are influential in forming gender: (1) the state, (2) the labour market, (3) the family. This is because gender both shapes and is shaped by the surrounding institutions. These other institutions and the ways men interreact with them impact and shape masculinity, with there being not one masculinity but multiple masculinities (Connell, 2016). Hegemonic masculinity is, therefore, not of a fixed character; instead, it is the masculinity that occupies the hegemonic position in each pattern of gender relations and societal constructs, a position that is contestable according to Connell (2016). That is, multiple factors contribute to hegemonic masculinity, and those factors can also be extended to offending within the male population.

Ellis and colleagues (2013) argue that the male commission of crime is less theorised and discussed throughout academia and popular discourses such as the media; however, the gender of men is rarely mentioned in any discourse. An Australian study published in 2020 (Flood et al., 2020) demonstrates that toxic masculinity poses real dangers to young men and those with whom they associate. The researchers surveyed 1,000 young men on their attitudes toward seven pillars of traditional manhood: self-sufficiency, toughness, physical attractiveness, rigid gender roles, heterosexuality, and homophobia, hypersexuality, and aggression and control over women. Many men were greatly influenced by perceptions of societal messages about manhood and what it means to be a man. For example, 69 percent of men stated that they agree with the statement that society expects me to act in a way perceived as indicating strength, and 56 percent agreed that society expects me to never say no to sex. Most concerning were the attitudes of the 27 percent of young men who believed that they should always have the final say about decisions in their relationships and the 37 percent who believed they should know where their wives or girlfriends are at all times (Flood et al., 2020). Flood and colleagues deem these ideals the 'Man Box'. Conforming to rigid ideas of manhood and masculinity, these young men who identified the most strongly with these ideals were six times as likely as other men to have sexually harassed women in the last month, that is, to have made sexual comments to women or girls they did not know in a public place or online (Flood et al., 2020). These findings demonstrate that masculinity is a significant contributing factor in male-male violence and that men's violence against women and men's violence against men are interrelated; both are influenced by traditional ideals of masculinity (Flood et al., 2020).

The dominant mode of masculinity has strong implications about what is deemed legitimate within society, and it is heavily associated with the foundations and origins of gender relationships (Connell & Messerschmidt, 2005: 838). This is a reciprocal process whereby hegemonic masculinity is socially constructed and exists in relation to other gender relationships; in turn, those relationships are socially constructed and foster the existence of hegemonic masculinity (Connell & Messerschmidt, 2005; Messerschmidt,1997).

The 'doing' of gender, that is, the acting out of these identities, not just the idea of them, led to and perpetuated dominance over women and their subordinated positions (Connell & Messerschmidt, 2005:838). Crime, particularly violent crime, is commonly perpetrated by men. Information about violent crime and crime in general creates gendered discourses about the subject (Ellis et al., 2013:4). Other variables, such as poverty, youth, and race, overshadow the obvious, masculinity. On the other hand, if the perpetrator or victim involves a woman, images of femininity pervade any discussion about the occurrence of crime (Wykes & Welsh, 2009). Nevertheless, focusing on masculinity is salient to understanding men and their motivations for criminal behaviour (Ellis et al., 2013:6). Because men are overrepresented within criminal statistics, considering masculinity in the commission of crimes within criminal justice policies would be significant in reducing criminal offending.

### **5. The Implications of Hegemonic Masculinity and Emphasised Femininity for Gendered Criminal Justice Policies**

Data from a variety of sources, including crime prevention and prison statistics, claim that men are responsible for most criminal activity and dominate in the commission of criminal offences (Bromley, 2019; Connell & Messerschmidt, 2005; Krienert, 2003: 1; Messerschmidt, 1997; Seymour, 2010: 1). Hegemonic masculinity, as a concept, has assisted criminologists in understanding the extent of the relationship between criminal activity and masculinity (Connell & Messerschmidt, 2005: 844). It is, therefore, surprising that hegemonic masculinity and male traits, such as violence, that are expressed in the 'doing of masculinity' have not been a prominent focus of crime reduction and prevention policies throughout the UK and have been slow to factor into criminal justice policies (Krienert, 2003:2). For example, there are no policy papers or initiatives on crime prevention strategies that specifically target hegemonic masculinity within criminal justice reduction and prevention measures within the UK.

If the law cannot be gender neutral, should the law be gender specific? There are certain feminist schools of thought that believe that women should receive different criminal justice measures and penalties that are more in line with their needs (Snider, 1998: 6; Carlen, 1994:132). This is because women in prison are generally criminal novices, at low risk of reoffending, and serving short sentences, usually their first and usually for property offences (Bromley, 2019; Gelsthorpe, 2004:11; McIvor & Burman, 2011:8). Carlen (1990) argues that different treatment for women is justified because their offending is usually of low level of seriousness and the product of social and structural inequalities (Carlen, 1990:4). However, upon closer inspection, the differences between women and men in terms of their patterns of offending and what drives them to crime are not vast (Gelsthorpe, 2004:12). Is it appropriate for women's treatment within the criminal justice system to be in line with men's treatment? Therein lies an assumption that the treatment of men is the 'right' treatment or the standard against which others, such as women, should be measured (Daly, 1994:5). The construction of the criminal law and justice provisions are gendered, and as such, a focus on equality before the law assumes that laws are gender neutral (Gelsthorpe, 2004:17).

Government policy measures in the UK are perceived as gender neutral; however, policy initiatives such as the *WCJS* do not consider male factors, such as dominance and aggression, which arguably contribute to men's criminality through the expression of masculinity. An equivalent policy measure focusing on the factors leading to men's criminality and men's masculinity may contribute to reducing criminal activity among men, who commit most crimes (Bromley, 2019; Covington & Bloom, 2003). Carlen, in 1989, coined the term 'women-wise penology', which has two aims: firstly, ensuring that penal politics and criminal justice do not further oppress or alienate women and, secondly, ensuring that penal measures do not oppress and mistreat men in that process (Carlen, 1989:110). The perception of men being mistreated arguably arises from the tendency of policies to focus on women's offending, thus diverting the focus from men and overlooking their offending patterns of behaviour and needs (Carlen, 1989:110).

Criminologists have contributed to the literature in this area by demonstrating that a similar pattern of offending occurs between women and men; that is, men also tend to be incarcerated for minor crimes, with the majority being for property offences (Gelsthorpe, 2004:6; Steffensmeier & Allan, 1996: 465). Further, the criminal lifespan for both women and men differ. For example, in an experimental study, the proportion of property crimes increased with age for women but not for men, highlighting the fact that criminal careers tend to be diverse rather than specialised (Block et al, 2010). Therefore, it is pertinent to ask why the factors leading to female offending are a major concern within criminal justice policies and legislative measures. Why are the issues pertinent to men's offending not receiving the same level of focus throughout legislative policy initiatives, which could target them and their masculinity (Cockburn and Oakley, 2011). Carlen (1989/1990) envisions social and structural reform that targets the reasons for offending among both women and men.

If one of the primary objectives is to reduce criminal behaviour, improve the safety of society, and reduce costs for governments by eliminating crime, it would make sense for governments within the UK to consider the differences and similarities among women's and men's patterns of offending; this includes structural obstacles that lead women and men into crime (Covington & Bloom, 2003:12).

The Corston Report was commissioned in 2007 to identify the key vulnerabilities among women in the criminal justice system, both among women in prison and women at risk of offending. Following the recommendations of the Corston report (2007), tailored programs were implemented to address women's offending. These programs sought to provide effective ways of preventing women from entering the criminal justice system and reduce recidivism rates. Thus, programmes were designed to meet individual needs. Women obtained assistance with a wide range of issues specific to their situations, such as substance misuse, parenting skills, debt, housing, employment, mental health, and medical problems (Vallely & Cassidy, 2012). The core objective of these projects was to address the root causes of crime more effectively and reduce the costs associated with the crimes committed by women. The Corston Report (2007) made several recommendations about the treatment of women in the criminal justice system. The reports suggested that these circumstances fall into three categories. First, there are domestic circumstances, such as childcare, intimate partner violence, and single parenting. Second, there are personal factors, mental illness, low self-esteem, and substance misuse. Third, there are socio-economic factors, such as unemployment and limited opportunities (Corston, 2007:2). These issues are still as relevant today as they were in 2007. However, the Corston report does recognise the need to pilot these recommendations with other groups, such as young men, because the issues faced in terms of their offending are similar. Nevertheless, men are less likely to feature in the first category, having the primary care of children and intimate partner violence. Programs should be targeted to each offending population, noting their differences, such as parenting and violence against women, as compared to toxic masculinity. Arguably, violence against women and toxic masculinity could be tackled in joint program initiatives.

Women in Prison, an organisation that seeks to support women in avoiding and exiting the criminal justice system by delivering support services, argues that the number of women entering prisons is on the increase (WIP, 2019). By recognising the distinct needs of women and addressing the root causes of women's offending through programs designed to target such offending, this organisation dramatically reduces costs to governments, particularly housing people in prison. For example, imprisoning mothers for non-violent offences costs more than 17 million pounds over a ten-year period (Prison Reform Trust UK: 2015). There are compelling economic and social factors that favour alternative approaches to imprisonment. Money that is invested in support 'wrap around services' generates savings for women and their children, victims, and society for over ten years. Children whose mothers have entered the prison system are at a greater risk of becoming NEET (not in education, employment, or training) and have poorer long-term prospects (Prison Reform Trust UK: 2015). Non-custodial sentences have additional benefits and savings for the state. Implementing and tailoring similar programmes for men regarding hegemonic masculinity, aggression and dominance would arguably produce similar results to those seen with women's programmes, providing a significant reduction in the expenditure of public monies.

## 6. Prevention Strategies on Rape and Sexual Assault

Prevention campaigns and legislation from Scotland, England, and Wales on rape and sexual assault suggest that there is a strong emphasis on men being the perpetrators of rape and sexual assault. On the other hand, women are referred to as the victims of these crimes. One of the ways this is most noticeable is through the legal definition of rape. Women, under current legislation, cannot commit rape, unless they identify as a transwoman, without having undergone gender reassignment surgery. The legal definition categorises the crime as an exclusively male-perpetrated one. Legislative reform was introduced into the *Sexual Offences Act 2003* to improve the conviction rate of rape, changing the test for consent to include whether a person (man) has a reasonable belief that the victim consented considering all the circumstances, including any steps he took to ascertain whether the victim consented (Sexual Offences Act 2003: s1). It is therefore disappointing that crime prevention strategies and crime reduction policies have traditionally focused on the victims (women) as being responsible for ensuring their own safety by taking appropriate steps, not drinking to excess, being aware of their surroundings, and not walking home alone at night (Ballinger, 2011; Wykes & Welsh, 2009). There is also an emphasis, throughout social policy campaigns, on women as victims of 'stranger danger' when, statistically, men are more at risk of being the victims of violent attacks by other men in public places (Wykes & Welsh, 2009:40; Stanko & Hobdell, 1993: 401). Wykes and Welsh (2009) argue that the refusal to tackle men's violence means that, inevitably, the responsibility falls on women. Similarly, Ballinger (2011) argues that men are invisible when it comes to issues of masculinity and male dominance, which are the qualities that lead to violence.



Research has demonstrated that there is a positive correlation between dominance and traditional expressions of masculinity, patriarchal views within society, sexist attitudes, exerting dominance over women, and violence within intimate and other relationships (Flood et al., 2020; Smith et al., 2015; Lawson, 2008). There has been an enduring systemic failure on the part of government to address male violence and the associated problems due to it not providing policy initiatives that seek to adequately address these concerns.

*The Sexual Offences Act 1956* was repealed by the *Sexual Offences Act 2003*. The main reason for doing so was to repeal antiquated attitudes on sexual relations between and within the sexes. Many of the old provisions within the legislation were gendered. For example, Sections 2 and 3 sought to criminalise the ‘procurement of women’ by threats and false pretences. There was no section that dealt with the procurement of men. The old legislation had the effect of casting men as sexual aggressors and women as victims. In contrast, the current legislation made amendments to these provisions, as well as inserting a definition of sexual assault to account for both women and men as perpetrators of these crimes. It provides, under Section 78 of the *Sexual Offences Act 2003*, that:

For the purposes of this Part (except section 71), penetration, touch or any other activity is sexual if a reasonable person would consider that:

1. whatever its circumstances or any person’s purpose in relation to it, it is because of its nature sexual, or
2. because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.

Ballinger (2011:41) argues that broadening the definition of sexual assault under the *Sexual Offences Act 2003* (the Act) to capture both women and men under the definition led to the gender-neutralisation of sexual assault. This had the effect of ‘gender neutralising’ sexual assault and their victims, even though 90 percent of reported victims of sexual assault and rape are women and girls (Ballinger, 2011). The widening of the definition shifted the meaning of gendered violence and redefined what was meant by ‘gender inequality’ (Phoenix & Oerton, 2005: 36). This meant that, instead of inequality being defined as a power struggle between women and men, sexual assaults under the Act included perpetrators of both genders and, likewise, victims of both genders. While the legislature’s widening of the definition to capture more conduct that could amount to sexual assault and criminalising women who engage in sexual misconduct is a well-intentioned addition, this caused the focus within policy discourse to shift. Ballinger (2011:41) argues that the gender-neutralisation of sexual offences in this way removes the emphasis from the ‘problem of men’ and their ‘masculinities’. This is viewed as problematic because women make up such a small percentage of recorded sexual assault statistics, currently at 1 percent (Bromley, 2019); gender-neutralising the legislation in this way contributes to the de-contextualisation that allows sexual violence by men to be commonplace in society (Ballinger, 2011:41).

In September 2012, the Association of Chief Police Officers in Scotland launched the ‘We Can Stop It’ anti-rape campaign (<http://www.wecanstopit.co.uk/>), which began following consultations with academics and focus groups that found that previous campaigns did not adequately address rape prevention<sup>2</sup>. The campaign was also designed to highlight vital changes in sexual offence legislation. These changes, brought about by the *Sexual Offences (Scotland) Act 2009*, sought to combat sexual violence. In particular, the new legislation extended the definition of rape to include male rape. The campaign was comprised of a series of statements and visuals of young men, aged between 18 and 28 years, acting in positive ways. It aimed to raise awareness of sexual-violence issues and provide positive role models for men. The campaign invited men to consider and challenge their own attitudes, behaviours, and role in preventing rape. Anecdotal stories from men were featured in which they spoke out against rape. These stories provide examples of both positive sexual behaviour and situations that constitute consent or a lack of consent. However, the campaign is still ongoing and, as of 2020, does not specifically target masculinity and the behaviours typically associated with male identities, for example, dominance and aggression. Rather, the campaign’s focus has shifted toward the treatment of women, instead of highlighting how the behaviour of men can facilitate violence toward women. This does nothing to challenge the prevailing assumptions that such behaviours on the part of men are acceptable within society. While the Campaign has shifted its focus since its inception to targeting respectful behaviours toward women and calling out other men who do not treat women with respect, it would be a further welcomed addition if the traits that lead to violence and facilitate sexual violence, such as aggression and dominance, and toxic forms of masculinity were specifically addressed.

<sup>2</sup>For example, the West Mercia Police Poster Campaign “Don’t let a night full of promise, turn into a nightfullofregret”, Blamingwomenfordrinkingalcoholandallowingthemselves to becomevulnerable to rape attacks, see <http://www.bbc.co.uk/news/uk-england-hereford-worcester-19091566> viewed on 5/12/2020.

As uncovered by Flood and colleagues (2020), beliefs in stereotypical masculine norms among men are 20 times more important than demographic variables in predicting the use of physical violence and sexual harassment toward women.

## 7. Reducing the Prison Population

The Ministry of Justice publication ‘A Distinct Approach: A Guide to Working with Women Offenders’ (2012) outlines key policy initiatives in terms of the treatment of women offenders, following the recommendations of the Corston report. Interestingly, the report states that the criminal justice system has developed in order to address “the risks posed by male offenders” (NOMS2012:5). However, the risk posed by male offenders has not entirely been adequately addressed, because toxic masculinity has not been effectively addressed within the criminal justice policy discourse to date. One of the main concerns about most women in prison is the fact that they are incarcerated for minor offences (Elkin, 2018). This has also been the main justification for treating women differently within the criminal justice system (Carlen, 1990:114). In England and Wales, in 2019, 59,000 people were sent to prison to serve a sentence, and of these, 69 per cent had committed a non-violent offence. Almost half were sentenced to serve six months or less (Bromley, 2019). Like women, men also find themselves incarcerated for minor crimes (Bromley, 2019:2; NOMS, 2012: 5). This may be more apparent in the female offending population because the range of offences, due to the small number of women convicted of offences, is limited (Steffensmeier & Allan, 1996:462). Considering criminal behaviour along a continuum, men have a far greater *range* of offending; however, there are also large numbers of men in prison for minor offences (MoJ, 2018; MoJ, 2011). Upon closer examination, a specific policy initiative aimed at reducing female incarceration due to the minor nature of women’s offending becomes redundant in this regard. It is troubling to have high numbers of people in prison for minor offences, whether they are women or men.

The female offender strategy for England and Wales, published by the Home Office in June 2018, outlines a strategy similar to that in the Corston Report, which reflects the strong agreement across the sector regarding the need for a ‘distinct’ or ‘gender-specific’ approach to respond to the vulnerabilities of women in the Criminal Justice System (Booth et al., 2018: 429). However, as research demonstrates, greater focus is needed to target the offending behaviours of women and men specifically. Specific approaches for both women and men may overlap in some regards because there are many similarities in their offending behaviours; however, there are also differences, with masculinity being a germane aspect specific to men and amenable to meaningful change, one that is currently being overlooked at great cost to the community (Cockburn and Oakley, 2011).

Over the last 10 years, the female prison population in Scotland has doubled (Angiolini, 2012: 14), becoming the second highest female prison population in Northern Europe (Prison Reform Trust: 2017). Many women in the criminal justice system are frequent re-offenders with confounding and complex needs, such as drug abuse, psychotic disorders (including self-harming behaviours), and abusive childhoods (Angiolini, 2012:63; Prison Reform Trust: 2017). Policy papers such as the Angiolini report have attempted to address what is seen as an ‘urgent need for action’ (Angiolini, 2012: 3), that is, to reduce the number of women reoffending and going to prison. It could equally be argued, based on economic and social factors, that there is a far greater need to reduce the male prison and reoffending population.

The All-Party Parliamentary Group on Women in the Penal System (APPG) has compiled a report on the comparatively more harmful impact of incarceration on women, both from individual and societal perspectives (Howard League for Penal Reform, 2018). Women are more likely to suffer from depression and anxiety and are usually the primary care giver for children or dependant relatives (Minson, 2015). The Ministry of Justice has published a Female Offender Strategy that aims to reduce the female prison population, the use of prison to punish with short sentences, and the damage this does to families, social supports, and housing. Recommendations have included more detailed pre-sentence reports and the need for more adequate housing, which is a leading factor in women’s offending (Pina-Sanchez & Harris, 2020). There has also been a shift from a focus on custody to more community-based approaches to sentencing outcomes. As has been argued by Pina-Sanchez and Harris (2020), many of the concerns raised regarding women’s offending and how to combat it apply equally to male offenders. The use of more community-based sentences and adequate housing are issues that men would equally benefit from regarding the reduction of their offending (Pina-Sanchez & Harris, 2020).

The Angiolini report recognises that, although the terms of reference were restricted to the issues affecting women in the criminal justice system, many of the proposals and recommendations would be equally applicable and provide positive benefits to the male offending population. The report also highlights the fact that specific separate consideration must be given to how to reduce offending among the male population (Angiolini, 2012:15). The report suggests that there was a common overlap between the issues experienced by women and men; this was also true regarding the circumstances and conditions that led both women and men to offend.

Thus, there are pragmatic reasons to implement similar policies to tackle their criminal behaviours (Angiolini, 2012:15). If there are common themes in terms of the reasons women and men offend, it makes sense to focus on these issues and focus on differences where this is appropriate in order to reduce offending and reoffending (Booth et al., 2018: 429).

The Angolini report promoted a new way forward regarding the incarceration of women and ineffective short sentences (The Scottish Parliament, 2020). Smaller purpose-built prisons with a capacity of only 80 women are now operational, with five community custodial units being built around Scotland. Each unit will be able to house 20 women and focus on addressing the underlying concerns associated with their offending (The Scottish Parliament, 2020). It will be interesting to learn whether these purpose-built prisons will have the desired effect of reducing women's prison population, with the number of women incarcerated in Scotland's being around 400, which is approximately the same as it was when the Angolini report recommendations were first put forward (The Scottish Parliament, 2020). The evidence this strategy leads to will be vital to government's implementation of the female offender strategy, which provides for an evidence-based approach and a genuine commitment to appropriate provisions for female offenders. Subsequently, it can be used to reduce male prison populations throughout the criminal justice system by tackling the factors leading to that offending, such as hegemonic masculinity, through men's behavioural change programs.

## 8. Conclusion

This article began by discussing some of the earlier theories about the role of gender in the commission of crime and theories about women's criminality. Criminal women are viewed within society as being 'doubly deviant'; their criminality cannot coexist with their femininity. This is because women's criminal behaviour does not sit comfortably within the framework of what it means to be feminine. Women's criminality is explained as the manifestation of either psychopathology, substance misuse, or other external factors. Rarely are criminal women seen as having acted within their own agency. Perceptions of women's criminality feed into government policies aimed at reducing the female prison population and keeping women out of prison. There is a tendency, within UK policy, to view women's criminality as something that needs to be 'fixed', with a strong focus on protecting women from being caught up in the criminal justice system, even though women make up a small percentage of the overall prison population.

Men's criminality, on the other hand, is viewed within a vastly different framework. Instead of men's criminal behaviour going against what it means to be male, criminal behaviour is seen as an extension of their masculinity. It is assumed that men commit crimes as rational actors. Hegemonic masculinity and male traits are not perceived as contributing to men's offending. Men represent most of the offending population within the UK, and it is known, through evidence-based research, that there are significant links between hegemonic masculinity and criminal offending. Crime control policies in the UK, to date, have not adequately addressed the issue of masculinity in reducing criminal offending. A major policy objective for governments in the UK is reducing the financial costs associated with criminal behaviour and making communities safer. It would therefore make good policy sense for the government to target toxic masculinity as a salient factor within the male offending population.

The gendered nature of crime control policies within the UK and the link between hegemonic masculinity and criminal behaviour emphasise the implications that hegemonic masculinity and emphasised femininity have for the gendered nature of criminal justice policies. Rape and sexual assault legalisation and prevention campaigns do not focus on issues relating to toxic masculinity and violence. Instead, the focus is on women as victims of crime and ensuring that they take appropriate precautions to protect themselves, especially in public spaces. More must be done to consider male traits as precursors to violence. Policies about reducing the prison population also uncover a primary focus on protecting women from prison. To fulfil the provisions of the *Criminal Justice Act 1991*, reports such as the Corston Report, Angiolini Report, and the female offender strategy for England and Wales have focused on the factors that drive women to offending, and the issues in these reports persist today. However, the factors that lead women and men into offending are similar, poverty, low education, trauma, substance misuse, mental illness.

Another key factor is race and BAME women and men being overrepresented in prisons and the offending population with the specific issues these groups of people face. There are similarities in the patterns of offending between women and men, and this should be accounted for in policy initiatives. There are also apparent differences in the offending of women and men. Targeted, focused approaches are needed to reduce offending among both genders. Because of the policies that are targeted at women and their offending, similar benefits would be produced if the factors that lead men to offend are also a primary policy focus.

It is known that hegemonic masculinity and masculine traits contribute, to a large extent, to the offending of men. These aspects of men's offending should also be a primary focus of crime prevention policies throughout the UK. It should not be assumed that men commit crime and that women need to be 'saved' from their calamitous circumstances. These negative stereotypes, which are being reflected within policy, do nothing to aid in the prevention of criminal activity or focus on the real drivers of criminal behaviour, including factors such as racism. This contributes to biases and the large numbers of BAME women and men who find themselves in the prison population. The culture of masculinity is open to purposeful change and can be factored into criminal justice policy in a meaningful way. Future research should focus on further establishing the link between hegemonic masculinity, toxic male traits, and the commission of crime, particularly violent crime, and sexual violence. Further analysing crime prevention policies could provide the basis for an evidence-based approach to targeting areas of concern throughout legislation and policies in the UK, with a view to tackling the real drivers of men's criminal behaviour.

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