Back to Basics in Crime Control:
Weaving in Women.
A gendered reading of David Garland's analysis of <u>*The Culture of Control*</u>

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This essay identifies areas of analysis which David Garland neglects in The Culture of Control. *The essential argument being that greater attention to the influence of feminism and the treatment of female offenders and victims would have enriched his interpretation of the culture of control. The essay suggests that the treatment of women in criminal justice matters exemplifies the apparently dualistic and polarised penal policies that Garland describes so well. The recent huge increases in the number of women sentenced to imprisonment, in particular, are inexplicable, and point to a critical paradox in criminal justice system thinking. The essay also includes with some reflections on the future of crime control in relation to women. One important question is whether or not the future of crime control is inevitably or necessarily gendered. Thus the essay touches on the gender neutral versus gender specific and equality versus difference debates and their irreconcilable elements, as well as on possible ways of dealing with them, and concludes with some thoughts on the potential of renewed interest in the concept of citizenship and justice.*

Introduction

David Garland (2001) offers a detailed and insightful historical-cultural account of how the crime control developments witnessed in the late twentieth century in particular have 'adapted' and 'responded' to the late modern world, and to its political and cultural values. Garland's analysis revolves around the notion that we can understand the development of strategies of control by thinking about punishment and control as a cultural adaptation to 'late modernity' and the free market: socially conservative politics that came to dominate the USA and the UK in the 1980s.

Hannah Arendt (1978) has been one of the relatively few Western philosophers concerned to examine the process of thinking rather than of knowing. She has drawn attention to the preoccupation with visibility within Western culture – a culture that regards sight as the pre-eminent sense in the apprehension of the object and therefore has tended to elide objectivity and visibility. Yet the seduction of the visible may run counter to the activity of thought. That Garland *traces* developments and roots the developments in broad understandings of practice then, is to my mind a

positive feature of *The Culture of Control*. Some critics have suggested that the book lacks historical accuracy, but we can question whether this matters to the overall project. To paraphrase Rozenberg (1994): 'It is desirable at times for ideas to possess a certain roughness, like drawings on heavy-grained paper. Thoughts having this quality are most likely to match the texture of actual experience'. Other positive features include his recognition of the interdependence of social, economic and political influences, his recognition of the links between crime and punishment and the emphasis he gives to the public in terms of their lived adaptations to the new crime control situations that face them (rather than seeing their views as mere reflections of 'elite actors' within politics or the mass media).[1]

In this essay, however, I focus on elements of the analysis which Garland neglects: the influence of feminism and the treatment of female offenders and victims. The treatment of women within the criminal justice system has been closely tied to their social characteristics, and to what might be described as their 'social construction'. We have come to realise that notions of 'familial justice' pervade the criminal justice system. At the same time, there has been an enormous increase in the rate of imprisoning women. In this chapter I therefore explore how the familial model has both come to persist and to recede in the face of 'populist punitiveness'. The treatment of women illustrates well the apparently dualistic and polarised penal policies that Garland describes so well in *The Culture of Control*. Indeed, it is surprising how little attention women receive in the book, for the conventional treatment of women (alongside the conventional treatment of juveniles) might be said to epitomise the penal welfare ideologies that have largely been displaced by crime control strategies. Moreover, the recent huge increases in the number of women sentenced to imprisonment are simply inexplicable and point to a paradox that well exemplifies the situation that Garland is trying to explain.

I also give some brief attention to the gendered nature of one of the significant 'drivers' of the punitive turn in the chapter: the rise of the victim' movement'. My interest is in the gendered nature of the organized victims' movement that has increasingly gained voice and political purchase in the shaping of penal policy. Garland asks 'How was it that the anti-correctionalist movement paved open the way

for a set of changes that it did not envisage and could not control?' and 'How is it that the reconfigured field of crime that emerged in the 1980s and 1990s bears so little relationship to the proposals of the reform movement that initiated this reconfiguration?' (2001:72). But the anti-correctionalist and reform movements mentioned here were not homogenous movements and Garland's analysis would be well served by identifying the different voices within them. Specifically, I mean here the rise of second-wave feminism in the 1960s and the contribution that it made to developing feminist perspectives within criminology that in themselves contributed to the radical movement that Garland has outlined.

The crisis of modernism and second wave feminism

One notable feature of Garland's analysis is that the crisis of modernism occurred just at the time when second wave feminism emerged (Banks 1981). As Garland notes, penal-welfarism was well established by the beginning of the 1970s (2001:53). Garland attributes the sudden critical onslaught which ensued to American critiques of correctionalism, sentencing reform proposals informed by liberal lawyers, and the collapse of faith in correctionalism so that many concluded that 'nothing works'. As others have described, the 1960s, 1970s and early 1980s were a time of political ferment, and a questioning of accountability and democracy (Young 1988). Garland suggests that the decline of penal welfarism was fuelled by the changing character of academic criminology at this time (2001:65). He indicates that in the late 1960s 'positivist' criminology faced an 'onslaught of academic criticism drawing on sources as disparate as labelling theory and ethnomethodology, Marxism and the philosophy of science' (2001:65). This was also the time of second wave feminism, however, whose own criticisms are instructive and useful to Garland's analysis.

Second wave feminism and the feminist critique of criminology

For the moment we can leave aside the issue of different definitions of feminism and be content with the broad claim that it is a movement that involves 'any form of opposition to any form of social, political or economic discrimination which women suffer because of their sex' (Bouchier 1983:2; c.f. Evans 1995).[2] Put simply,

feminists have a normative commitment to revealing, and attempting to negate, the subordination of women. Second-wave feminism is strongly associated with calls for equality (Evans 1995), the argument is that both men and women have been adversely affected and materially damaged by capitalism and by patriarchy,[3] though patriarchy is the crucial force. One other key strand to second wave feminism concerns the attack on academic disciplines for passing off men's studies as 'general knowledge' (Spender 1981). Indeed, it was argued that women had been excluded as both producers and subjects of this knowledge. Feminists challenged this, arguing for various possibilities of integrating women into existing theoretical perspectives, developing new theories and revitalising accumulated knowledge. Feminist writers also sought to place at centre stage women's experience of the world. This is evident in the changes within sociology, a discipline with close connections to criminology (Barker & Allen 1976). As a result of a push within sociology to recognise gender issues more, the period witnessed the introduction of gendered perspectives to research on education, health, motherhood, the state, and employment. There was also new feminist work in the sociology of deviance (for example, Millman 1975; Rodmell 1981; Hutter & Williams 1981) and the sociology of law (Smart 1984; O'Donovan 1985; Cain 1986). In addition, feminists within sociology introduced a wider perspective on women and their activities and provided new insights for understanding the importance of sexual divisions in society.

There was much evidence of strong critical feminist activity within criminology in the 1960s, 1970s and 1980s also. Feminists commonly addressed gender relations and a triadic study of the relationship between traditional notions of crime, women and their place in the social and economic structure, for instance.[4] Early feminist perspectives within criminology, as part of second wave feminism, were also, in essence, anti-positivist, and the critique of stereotypical images of women in theory and practice was central to the feminist project at this time.

Feminist writings at this time focused on criminologists' 'amnesia' of women.[5] To correct this, some writers appropriated existing criminological theories and 'inserted' women. They assumed that women were hidden within the trajectory of theories developed to explain the criminality of men. Other writers focused on the

representation or, more accurately, the misrepresentation, of female offenders in conventional literature (Smart 1976; Campbell 1981; Gelsthorpe & Morris 1988; 1990).[6] They developed a critique of 'accumulated wisdom' about female offenders and attempted to determine why knowledge about them was shaped in the way that it was, just as, on a more general level, feminists attempted to answer questions about the ways in which knowledge about women was sustained and mediated. These critiques (often revolving around a 'rogues gallery' of male authors) demonstrated that theories of criminality developed from and validated on men had limited relevance for explaining women's crime. The 'accumulated wisdom' was ambiguous, often flawed and, in many cases, simply untenable. Tracing the continuance of sexist assumptions from Lombroso to Pollak and beyond, for example, Smart (1976) examined how assumptions of the abnormality of female offenders came to dominate both theory and criminal justice policy – despite evidence of more critical thinking in relation to men and men's crime. Eileen Leonard (1982) usefully summarised mainstream criminological theory by stating:

> Theories that are frequently hailed as explanations of human behaviour are, in fact, discussions of male behaviour and male criminality…We cannot simply apply these theories to women, nor can we modify them with a brief addition or subtraction here and there. (1982:181).

Thus there followed what might be described as a 'political project' (Gelsthorpe 1997; 2002) which included making visible women's victimisation (particularly in the area of sexual assault and domestic violence), exposés of discriminatory practices within the criminal justice system and demonstration that the treatment of women was complex (the rhetoric of leniency contrasted with harshness of practice). There was also recognition of the broader systems of the social control of women and correspondences between the policing of women within the criminal justice system and within social life more generally. New ways of conceptualising matters – the different ways in which conformity is produced and regulated, for instance - were also developed at this time (Heidensohn 1985). Smart & Smart (1978) and Hutter & Williams (1981) were amongst the early writers to made apparent the correspondences between different levels of control. Further, a large body of empirical work drew attention to the experiences of female victims of crime

and to female victims' experiences of the criminal justice system (Walklate 2001).
More than this there were strivings for equality of justice which traced the broad
outline of second wave feminism (see Morris 1987; Daly & Chesney-Lind 1988;
Heidensohn 2002). Central to these elements of the critique then was the notion that
criminological ideas about women were ideologically inspired, that is, socially
constructed, and that responses to women and victims reflected socially constructed
ideas about them.

Feminist epistemological and methodological contributions

In addition to the broad political project summarised above, we can also
discern a feminist epistemological and methodological project stemming from the
1960s, 1970s and 1980s (Clegg 1975; Reinharz 1979; Stanley and Wise 1983;
Roberts 1981), the core elements of which are described in a recent discussion about
the relationship between feminism and criminology (Gelsthorpe 2002). Feminists
within criminology have thus focused on the processes of knowledge production and
have reflected on research experiences and research methodologies – exploring core
principles of relating research to practice, engaging with 'the researched', recognising
their subjectivity in a non-hierarchical way, and using sensitive methods which
maximise opportunities to reflect more accurately the experiences of 'the researched'
(see Cain 1986; Gelsthorpe & Morris 1990). There is also a crucial focus on
'experience' in feminist research, but not in simplistic ways. The focus on women's
'experiences' (with democratic insistence that women should be allowed to speak for
themselves') has been used to both make women visible and to link feminist ontology
with feminist epistemology. As Maureen Cain (1990) has put it, strategies for the
transformation of criminology involve reflexivity, deconstruction and reconstruction
and a clear focus on women. Thus early feminists enjoined with others concerned
with the constitution of consciousness, meanings and understandings such as
hermeneutics, ethnomethodology, and phenomenology to attack positivism as the
dominant scientific method.[7]

In sum, the different positions within feminism collectively illustrated men's
material interest in the domination of women and the different ways in which men

were perceived to construct a variety of institutional arrangements to sustain this domination. Feminists have challenged the political, ontological, and epistemological assumptions that underlie patriarchal discourses as well as their theoretical contents.

Thus the 'critical onslaught' on positivistic criminology to which Garland refers includes feminist voices from at least two directions: substantive and political and epistemological and methodological. Why do these voices not feature in Garland's characterisation of the developing critique? Why do they not count? Why were they not heard as either part of the radical critique or independently of radical criminology? A key question, of course, is whether there is anything here that fundamentally alters Garland's account of the critique of criminology which fuelled the transition from penal-welfarism to a culture of control. It is possible that these voices had no impact on the transition, but it would be interesting for Garland to tell us why he feels this was so.

Women and the penal-welfare complex

Turning now to the treatment of women and girls in the criminal justice system, it strikes me that for all the subjects one might choose to illustrate the penal-welfare discourse, the treatment of women is perhaps second only to the treatment of children.

Garland reminds us that the basic axiom of penal-welfarism is that:

> …penal measures ought, where possible, to be rehabilitative interventions rather than negative, retributive punishments…giving rise to …sentencing laws that allowed indeterminate sentences linked to early release and parole supervision; the juvenile court with its child welfare philosophy; the use of social inquiry and psychiatric reports; the individualization of treatment based upon expert assessment and classification; criminological research focusing on etiological issues and treatment effectiveness; social work with offenders and their families; and custodial regimes that stressed the re-educative purposes of imprisonment and the importance of re-integrative support upon release. (2001:34)

There are two significant things to note here. Firstly, that the feminist critique of criminology has identified that beliefs about female offenders which locate their offending behaviour in the discourse of the pathological have long since persisted,

despite the introduction of more sociological and social constructionist ideas in relation to males' offending behaviour (see Smart 1976; Leonard 1982; Scraton 1990). The discourse of the pathological, of course, lends itself to penal-welfarism.

Calls for differentiation in the treatment of male and female offenders led to a number of significant changes in the nineteenth century - ranging from the special provisions for the women's police service to take statements from women and children, to plans for the redevelopment of the women's prison system so as to accommodate their 'special needs' (Zedner 1991). There was a notable attempt to provide a distinctive therapeutic regime for women new Holloway prison in 1968 (see Rock 1996). But the idea of a therapeutically orientated prison quickly became outmoded. Institutional arrangements for women aside, the sentencing of women and the content of institutional regimes provided for women and girls within have long since reflected elements of the 'penal welfarism' that Garland describes so well in *The Culture of Control*. Broadly speaking, a large body of research has identified three main themes that are particularly relevant to the treatment of women: pathology, domesticity and respectability. First, a woman who enters the criminal justice system has been described as 'incongruous' (Worrall 1990). Explanations for her presence are sought within the discourse of the 'pathological' and the 'irrational': menstruation, mental illness, poor socialization, and the menopause have all featured in explanations here, and all of been subject to critique (see Smart 1976, and Morris 1987, for example). Men are not viewed as so out of place in the court-room and so their offending is explained in different ways, within the discourse of 'normality' and 'rationality'. In addition, certain factors such as marital status, motherhood, social problems, and welfare needs seem to influence the sentencing of women but not that of men (Farrington & Morris 1983; Carlen 1983; Eaton 1986)[8]. Even after exposure to 'human awareness' and 'anti-discrimination' training magistrates have revealed that they tend to see women as 'troubled' rather than 'troublesome' and are more likely to see women's offending behaviour as a reflection of their caring roles and as a matter of survival, or as a result of provocation or coercion, or attributable to some mental disturbance (Gelsthorpe & Loucks 1997). Indeed, many of the magistrates, both male and female, said that they would do everything they could do to keep

women with children out of prison, but that men were sentenced primarily on the basis of the seriousness of their offence. Thus gender-related factors and particularly family-related factors have persisted.

Similar familial themes can be identified within prisons (Carlen 1983; Dobash et al. 1986). Pat Carlen captured the nature of the penal-welfare direction of the treatment of women in her memorable claim that women's prisons 'Discipline, Infantilize, Feminize, Medicalize and Domesticize' (1985:182). Writing about women's imprisonment at the Millennium Carlen wrote: '…women's family responsibilities and previous family histories interact (variously) with dominant ideologies about women's place in the family and (contradictorily) with the rigours of state punishment – to increase several-fold the pains of penal incarceration' (1998:82).[9]

In sum, the treatment of women and girls has been closely linked to their characterisation as essentially, bad, mad, sad, or caring or neglectful mothers. Notions of 'familial justice' have pervaded the criminal justice system in Britain as elsewhere (Daly 1994; Cook & Davies 1999; Hannah-Moffat 2001; Carlen 2002).

A key question here then relates to the impact of the onslaught of criticism regarding penal-welfarism which, in Garland's account, meant that rehabilitative correctional policies and practices gradually gave way to more punitive policies and practices. We must question whether or not they have given way in regard to women. How can the persistence and application of penal-welfare ideas to women be accounted for within the context of Garland's analysis? The residual nature of penal-welfarism in relation to women set out, I now turn to another area of neglect in Garland's analysis, the increasing penality towards women. But rather than this displacing the penal-welfare approaches in sentencing and in prison regimes and so on, the two strategies co-exist. There is no contradiction here, but a complex interweaving of discourses.

The punitive turn towards women
My third point concerns the increasing punitiveness of penalties as a reflection of the culture of control. Again, it is somewhat surprising that Garland does not refer

to the treatment of women in this context since the increasingly punitive sentencing towards women set against the relatively low risk of female offenders creates a forceful paradox which is useful to Garland's thesis.

Receptions into women's prisons more than doubled between 1990 and 2000. (Home Office 2001). This is a startling increase. A wide range of different explanations have been offered for this: changes in the nature and seriousness of women's crime, moves towards dealing with male and female offenders more 'equally', changes in sentencing patterns, changes in the 'type' of women sentenced to imprisonment, and increases in the length of women's prison sentences. In the main, none of these explanations is adequate on its own (Gelsthorpe & Morris 2002; Deakin & Spencer 2003).[10] There have been some changes in patterns of crime concerning drugs and violence, for example, but these changes occur at the lower end of the seriousness scale; similarly, the changes with regard to the lengths of sentences are modest (Gelsthorpe & Morris 2002), although there has been an increase in the use of immediate custody following restrictions on suspended sentences of imprisonment brought into effect by the Criminal Justice Act 1991 (Thomas 1998) and *some*, but *not all* of the increase in the female prison population may be attributed to this. When it comes to sentencing being 'more equal' with women being sentenced more like men as an explanation for the increase in the use of imprisonment for women, we would first of all have to prove that sentencing has been unequal. This is hard to do for although both the criminal statistics and research studies show differences in sentencing, these generally relate to the type and seriousness of offences. Certainly there is evidence to suggest that gender-related factors mediate sentencing, but this has much to do with stereotypes of gender appropriate behaviour than straightforward disparities in sentencing for males and females (Hedderman & Gelsthorpe 1997; Gelsthorpe 2001a & b). In the USA there is support for the idea that sentencing guidelines in some states have reduced racial, gender and other disparities, thus effectively raising severity for women, but not greatly and the situation is complicated by the fact that women more than men benefit from mitigated departures from such guidelines (Tonry 1996: 54-58).

Overall, whilst it is clear that there are some changes in sentencing patterns, no one reason for this stands out as more persuasive than any other and the type of woman imprisoned remains much the same as it did in 1990: most are criminally unsophisticated, at low risk of re-offending, most are serving their first custodial sentence (and a short sentence at that), and most have been received into prison for property offences. It is projected that the increase in the number of women being placed in custody will continue (White 1999). England and Wales now reflect the trend in women's imprisonment apparent in other jurisdictions (Chesney-Lind 1997; Cook & Davies 1999; Cameron 2001).

Increasing reliance on the use of imprisonment has been described by Smith and Stewart (1998:106) as 'the most notable penal development of the mid 1990s' and England is generally seen as following the American lead in this as Garland illustrates. Increasing levels of the fear of crime have created a climate in which 'protection', 'incapacitation' and 'risk management' are Government priorities (Home Office 1999). Crime increased markedly in England and Wales throughout the years of a Conservative government (1979 to 1997) and discourse on crime both then and since has been dominated by the need for ever tougher and punitive sanctions.[11] It is this very phenomenon that Garland seeks to explain.

As he describes, the criminal justice system of England and Wales has experienced huge changes over the past twenty to thirty years, with numerous pieces of legislation relating to sentencing. Some elements of this legislation are viewed as quite punitive (see, for example, Cavadino & Dignan's (2002) commentary on the reinvigoration of 'law and order' approaches within the 1993 Criminal Justice Act, the Criminal Justice and Public Order Act 1994, the Crime (Sentences) Act 1997, and the 1998 Crime and Disorder Act). Other elements of this legislation are viewed as 'liberal', but are frequently subverted or resisted by the judiciary and magistracy (see, for example, the discussion by Dunbar & Langdon 1998; Cavadino et al. 1999). The penal climate did change from the mid 1980s, but it seems likely that the increase in women's imprisonment is partly explained by changes in sentencing policy that affected both women and men. On the published data available, there is little evidence of an increased punitiveness *solely* towards women, although the statistics

are so striking that they can lead to a strong impression that this is the case. Indeed, Pat Carlen (1998) sees the increase in the prison population as primarily the result of an increased punitiveness towards women. The 'feminisation of poverty' which characterises the period may be relevant to an understanding of this perception (Glendinning & Millar 1992). By the late 1990s, nine out of ten lone parent families were headed by a woman and many women rely on benefits or on low pay in the part-time work sector (Office for National Statistics 1999). Indeed, Smith and Stewart (1998) suggest that the financial and other circumstances of offenders have got worse over the last 30 years or so. From a description of the broad features of women's structural positions and lifestyles in society, it is possible to see that many are vulnerable to financial difficulties and to the stresses and strains that go along with child care responsibilities, domestic violence, and high levels of childhood victimisation. Indeed, one might refer to these vulnerabilities as 'indirect' pathways towards crime. Certainly, research on female offenders indicates that a high number of them experience a wide range of social problems how different these problems are from those experienced by men remains an open question perhaps. Suffice to say here that research evidence shows that although some of the needs of male and female prisoners and offenders are similar, women are also likely to have particular needs in relation to child-care responsibilities (often they are were single parents), drug and/or alcohol abuse (often directly linked to their offending), limited qualifications, lack of work skills or experience, low income, and histories of abuse (Walmsley et al. 1992; Morris et al. 1995; Rumgay 1996; Her Majesty's Inspectorate of Prisons for England and Wales 1997; Mair & May 1997; Gelsthorpe & Morris 2002).[12] Thus there may be a two-fold effect of up-tariffing women because of reluctance to fine them and perception that a prison sentence creates a reasonable prospect of women's social needs being met; punitive and penal-welfare approaches combined.

Carlen's claim regarding *gender-specific* punitiveness reflects her findings from a cross-national study of the penal treatment of women in the USA, Canada, England and Wales and Scotland. As part of her account of the way in which women's imprisonment has mushroomed in each of the countries, she explores the cultural conditions which have led to present levels of imprisonment of women. In

turn, this has led to the suggestion that the language of reform and empowerment (promoted by liberal penal reformers, feminist reformers and criminal justice professionals alike) has been hijacked by the very people who promote the discourse of punishment – namely the state - in what she defines as 'carceral clawback'. This concept captures something of the tension inherent between the ideological position of prison as a very last resort and the position that for those in prison there must be some practical reforms. It is a case of unintended consequences. Put simply, Carlen perceives that the practical reforms to ameliorate prison conditions for women add to the attraction of imprisonment as a suitable sentence for women.[13] The evidence in England and Wales does not go as far as supporting this hypothesis, but the possibility is a useful one to explore in coming to any understanding as to whether the culture of control is gender-specific or gender neutral.

The 'victimological turn'

The subject of victimization is important in the context of Garland's analysis, for he attributes a great deal of influence to the rise of the 'victim movement' regarding the shape of new forms of control brought about by social and cultural transitions relating to late modernity. As he writes, 'since the 1970s, the criminal justice system's standard response that the victim's interests were subsumed within the public interest, and that, in the long run, the state's correctionalist policies would work to the interest of both the public and the offender…has come to seem aloof and unresponsive, as well as of doubtful credibility' (2001:121). The 1980s thus saw an ever increasing responsiveness to victims in police and prosecution practices, and in court policies to keep victims informed and treated with more respect and sensitivity. Indeed, a variety of victim support schemes have mushroomed, prompted by both the police and courts. Greater attention has also been given to restitutive and reparative forms of intervention (for example compensation orders and reparation order) and to mediation schemes and restorative interventions so as to emphasise the impact of crime upon the victim. The Government's White Paper *Justice for All* (2002) signifies a continuation of this increased attention to victims. Yet there is no attention given to feminists' contributions to developments in Garland's discussion.

Zedner (2002), amongst others, has provided an effective review of victim studies and the rise of the victim movement (see also Walklate 2001). She argues that the new attention given to victims has 'provided a new agenda focusing on the attributes of crime victims, societal attitudes to crime, and the effects of crime on the community' (2002:425). As well as outlining the history of a largely conservative, but nevertheless strongly rights-based victim movement, that emerged in the 1960s and 1970s, she also acknowledges the role of the Women's Refuge Movement and Rape Crisis centres emerging from second wave feminism. Most importantly, she notes the deep suspicion of official agencies at this time, the general radical feminist commitment of those involved in the Refuges and Centres, limiting the degree of 'inter-agency co-operation' (see Walklate 1994, on feminist challenges to the victim movement). Indeed, even the official discourse of 'victims' is resisted, there being strong commitment to the notion of 'survivors' instead on the basis that 'victim' status takes away power from women. There is much evidence of grass-roots feminist activity which sees arrest and control as counter-productive to women's interests. Thus the 'culture of control' depicted by Garland has been resisted to some extent; responses and remedies may have been forged more independently than his analysis would suggest. At the same time, one would have to acknowledge that, latterly, increased Government control of funding mechanisms has shaped Refuge and Centre policies and practices. Moreover, there is evidence of police 'co-option' of certain forms of feminist action. Alliances have been formed between some action groups and the police and other agencies concerning domestic violence, for example. Some acknowledgment of these issues would raise interesting questions about the nature and direction of resistance to the culture of control and further enrich Garland's analysis.

To press his point concerning the provenance of the victim movement, Garland juxtaposes developments regarding victims with discussion about the fear of crime (see pages 121-122) thus implying that at least something of the motivating force behind the increased attention to the victim movement revolves around the fear of crime (at least, politicians' and media representations of the fear of crime). But this leaves unexplained an apparent deafness when it comes to recognising 'private'

harms perpetrated within the home in domestic violence, and the physical and sexual abuse of children. Some feminists would argue that there has been relatively little state action in this direction; thus there is thus a gendered space in the culture of control. At the same time, we need to be conscious of some contradictions here because of police pro-arrest pro-arrest policies, specialist police units, and the introduction of video evidence for children, for example, and some feminists have worked with the police to develop such things. These contradictions are also interesting and relevant to the notion of pervasive culture of control.

Essentially, Garland's overall analysis of the culture of control includes the notion of a strategy of 'responsibilisation'. 'Partnership, public/private alliance, inter-agency co-operation, the multi-agency approach, activating communities, creating active citizens, help for self-help and the co-production of security' (2001:124) all feature in his depiction of the responsibilisation strategy – the main aim being to spread responsibility for crime control beyond the official system. But if we look at women as victims and agencies designed to address women as victims (or survivors) then we find some curious contradictions. They perhaps deserve some attention in Garland's analysis.

The culture of control: looking to the future
Towards the end of *The Culture of Control,* Garland recognises the negativity of the choices made by policy-makers. He puts this most poignantly when he states: 'A government that routinely sustains social order by means of mass exclusion [via imprisonment, for example] begins to look like an apartheid state' (2001:204). Much to the consternation of his political masters, even Phil Wheatley, the Director General of the Prison Service is reported to have recognised that the excessive use of imprisonment - as exemplified through the rising prison population and overcrowding - cannot continue unabated (Guardian 21st August, 2003). The Chief Inspector of Probation, Rod Morgan, regularly attacks what he has described as the 'carceral centrifuge' in penal policy and sentencing (Morgan 2003). What alternatives are there? What might the future of crime control look like if political choice were to be exercised differently? There are no fewer than five new pieces of legislation relating to criminal justice in the making currently before Parliament; within the *pot pourri* of

provisions are those which have the potential to shift sentencing to more positive ground and away from imprisonment. But some of the provisions are dual-edged and there are widespread concerns that some of the legislative changes will lead to the greater use of imprisonment. The implementation of the Criminal Justice Bill 2003 with its emphasis on a single community order with attachable conditions that can be stacked up, for example, may well be create a back door route to prison through the application of excessively stringent breach conditions (Prison Reform Trust 2003). Moreover, public and political references to 'closing the justice gap' do not mean recognition of the links between social and criminal justice, as they might, but to efforts to improve detection and success in bringing criminal justice proceedings (Home Office 2003).

Positive alternatives to the oppressive culture of control include the potential of Human Rights as a new criminal justice discourse, a prospect considered by Hudson (2004). Suffice to say that whether or not human rights law can help us reconstruct a normative theory of crime control and justice is an extremely difficult question. Although there are those who suggest that the adoption of a strong human rights culture could provide an important defence of liberal justice in a risk society (Hudson 2001), there are hard questions to answer as to whether Human Rights Act 1998 can serve only as a constraining influence rather than as a normative one (McColgan 2000; Cheney et al. 1999).

There are other signs of resistance to the enveloping punitive culture described by Garland to which we could refer. The Chief Inspector of Probation and various criminal justice pressure groups have called for the greater use of fines and other community penalties; in other words, 'down-tariffing'. Also, much faith has been placed in government initiatives such as the What Works strategy which, under the auspices of the Joint Prisons/Probation Accreditation Panel, involves the development of a core curriculum of demonstrably effective programmes for offenders, with a view to delivering accredited programmes (enhanced community punishment – or what used to be known as community service, resettlement, and employment programmes and so on). The jury is still out on the prospect of such measures reducing the reconviction rate. Many of the evaluation studies to date show

encouraging signs of impact, but lack reconviction data. What is important here, however, is the idea that the programmes involve not just punishment, but rehabilitation, education and reintegration too, although as previously mentioned, over-stringent breach conditions may undermine the positive intentions of sentences which include these positive elements.

One pressing question, here, of course, is whether or not the future of crime control is inevitably or necessarily gendered. I can do no more than offer a few observations in the context of this chapter (and observations limited to conceptions of justice and punishment rather than broader notions of the culture of control), but this strikes me as being a critical question. Feminists and others sympathetic to the need to address the particular plight of women in the criminal justice system have both offered critiques of existing law and criminal justice practice, and suggested strategies for dealing with matters differently. In 1980 Mark Cousins wrote a tongue in cheek and thought-provoking paper entitled 'Men's rea: a note on sexual difference, criminology and the law'. The punctuation here reflected Cousins' concern with the claim that the law reflects men's interests rather than general interests; a claim that he rejected. His note presaged questions about legal doctrine's dynamic role in constituting women and men as social and legal objects, and there has been a strong feminist critique of the conceptual framework of criminal law ever since (see, for instance, Lacey & Wells 1998 and Lacey 2000). Most recently, McColgan (2000) & Nicolson (2000) have debated whether or not those defences in criminal law which are of general application do indeed provide equal protection to men and women. The authors take opposing positions. Thus whether the law is inevitably gendered remains unresolved. But if the law and criminal justice practices cannot be gender neutral, there is the possibility that they should be gender specific.

Certainly, some of the debates about the absence of gender neutrality have prompted claims for a separate feminist jurisprudence so that women receive treatment which is more in accordance with their needs (Lacey & Wells 1998; see also the arguments in MacKinnon 1987a and b, and Smart 1989). There are some difficulties within feminist thinking in this area – especially when it revolves around the idea that a separate criminal justice system will somehow be more 'just' and more

appropriate for women (Gelsthorpe 2002). Indeed, such a strategy betrays a lack of understanding as to how interwoven the criminal justice system is with other systems of social control.

Equally problematic are the arguments that the treatment of women should be made more 'equal' with the treatment of men – as if the treatment of men is 'right' and sets the standard for the treatment of women (MacKinnon 1987 a and b). A focus on equality also sometimes assumes that the law operates in a gender or sex neutral ways; but, as indicated above, it is argued that the law, in its construction and its practices, may already be gendered (Kingdom 1981; Collier 1995; Lacey 2000). Moreover, to ask for one practice – discrimination – to cease to be gendered, may be meaningless (Smart 1990). Both feminist criminologists and feminist political philosophers have perhaps seen gender equality as an aspiration and cure for gender-based systems of domination, but this is clearly problematic because of the thorny issue of 'equal in what regard'? for formal equality can lead to substantive inequality.

One alternative proffered has long roots. Over a decade ago Pat Carlen (1990) advocated what she called a 'women-wise penology'. This has two fundamental aims: to ensure that penal policy for women does not further increase their oppression as women and that penal policy for men does not brutalize them to the extent that they become even more oppressive to women. Carlen's proposals to abandon imprisonment in favour of hostels for all women in the community bar the hundred most serious offenders, has much to do with the wish to do justice to difference. She argues that a different penal response towards women is justified on the basis of the low seriousness of their offending, the comparatively lower likelihood of reoffending, and strong evidence that the lives of female offenders are characterised by individual and social problems. The problem with this approach is that close examination of the needs of women and men suggests that there may be little to distinguish them (see Prison Reform Trust 1991; Gelsthorpe & Morris 2002), although to be fair, Carlen envisaged the proposed moratorium on women's imprisonment as a transitional one. Ultimately, Carlen's agenda is one of social and structural reform so as to address the social exclusion which marks women's (and men's) pathways to crime.

Seventeen years ago Frances Heidensohn (1986) raised the question of whether there is a 'female' or 'feminist' conception of justice that would be more appropriate for women than the modernist system of justice. In attempting to answer this, she distinguished between two models which she called Portia and Persephone. Portia, the woman in Shakespeare's *The Merchant of Venice* who tricks money-lender, Shylock, out of his pound of flesh, represents what can broadly be called the due process model and stresses rights, fairness, formality and equality (sic). Heidensohn considers this model unresponsive to the needs of women and to be a 'masculine' approach to justice. Persephone, the goddess of harvest exemplifying the cycle of fertility, represents what could loosely be termed the welfare and rehabilitation model, stressing reformation, co-operation, informality and reparation. Heidensohn argues that this second model is more appropriate for women since it represents 'feminine' values. On the one hand, however, it can be argued that Heidensohn's thinking does little more than replicate traditional welfare approaches that have been criticised for stereotyping women, but on the other, we might argue that this model could be equally applicable to men and women. Masters and Smith (1998) argue that criminal justice systems need to incorporate both elements of 'Portia' (the ethic of justice) and 'Persephone' (the ethic of care). Indeed, they suggest that there is far more scope for 'relational justice', 'reintegrative shaming', and 'restorative justice', which are conceptually closer to the Persephone 'ethic of care' model than has generally been realised.

Although this is a side issue here, interestingly, what I would call the 'enchantment of the social' (concerning the attraction of restorative justice and the like) both shores up the culture of control and runs in contrast to it. This is so especially when we consider the 'lean to' position of restorative justice principles within the present system of criminal justice (Morris and Gelsthorpe 2000). Restorative justice principles do apply, but largely in the initial stages of decision-making, and the 'criminology of the other' as Garland puts it persists; restorative justice arguably replaces the diversionary mechanisms of old within a bifurcated system of justice rather than it occupying a central position (see Garland 2001:104). Thus whilst we might claim some positive links between the feminist 'ethic of care'

and restorative justice (especially in regard to the consideration of victims and the importance of community to women)[14] and assume that it runs in contrast to the more punitive aspects of the culture of control, we do not yet know the full effect of its implementation and practice. Equally, in optimistic mode, one might take restorative justice to be a new form of penal-welfarism and a way of regaining the 'excluded middle ground' (Garland 2001:137).

Mention of 'ethic of care' ideas, of course, brings us to Carol Gilligan's (1982) research into the gendered nature of moral reasoning. Gilligan argues that an important part of a feminist ethic is that it rejects resolving moral problems through the categorical application of fixed rules and principles ('paper justice' we might say) without reference to the context, needs, and capacities of those involved ('real justice' we might say). Feminist critics of criminal justice in particular, have argued that there is a cultural dominance of justice models of ethical reasoning within the West. This is understood to derive from over-evaluation of individual autonomy which is articulated through the gendering of moral sensibilities that tend to be internalised differently by boys and girls from infancy onwards. Gilligan argued that neither care should replace justice as the foundation for moral reasoning, nor that justice and care are incompatible, although they are frequently in tension. She is concerned with the question of what it might mean to include both voices in defining the domain of morality. Her interests and questions have recapitulated long-standing debates in criminology and legal philosophy over the aims and purposes of imprisonment: deterrence and retribution versus rehabilitation, for example (Daly 1989a & b). Interestingly, when we look at criminal justice practice we can discern elements of relational, contextual *and* concrete reasoning. This is precisely what happens in England and Wales with its individualised system of sentencing and certainly accounts for the reluctance to impose fines on women who are already in debt from struggling to make ends meet on state benefits. Thus some of the calls for the reconstitution of criminal law and justice along the lines of the ethic of care are misleading, since elements of it are already in existence. Ironically, it is precisely some of these elements which attract criticism because of bias and stereotyping in pursuance of individualised justice.

The gender neutral versus gender specific and equality versus difference debates touched on here seem irreconcilable in many ways. Various attempts have been made to find solutions which circumvent difficulties focused on gender, not least through notions that criminal justice sentencing might acknowledge gender differences in the form (but not the amount) of punishment (Gelsthorpe 2001a & b). The idea of mitigation for socially deprived offenders (Hudson, 1993; 1999) – with parsimonious penalties for those whose personal-social circumstances indicate limited freedom of choice and therefore reduced culpability is another way of addressing difference – including gender difference – without compromising formal equality.

To conclude, I would like to suggest that renewed interest in both the concept of citizenship (concerning rights and legitimate expectations, duties and responsibilities) may open the door to the possibility of an educative justification for both control and limits to control. Citizenship education in England and Wales has received considerable attention since 1997, resulting in the introduction of programmes of study for citizenship in secondary schools from the year 2002 (McLaughlin 2000). Whilst there is ongoing lively debate about the specific meaning and purposes of citizenship, what is interesting here is the location of the debates within educational circles. There is some potential for educational approaches to have political purchase. Moreover, if 'citizenship' can be said to be linked to normative compliance, then this is possibly a development upon which we could build. An educative approach to offending, rather than a political and ultimately punitive one, gives grounds for optimism that a new normative theory of justice can emerge.

The concept of citizenship, of course, is closely allied to the concept of social capital. This concept has drawn wide and varied definition: citizenship, neighbourliness, trust and shared values, community involvement, volunteering, social networks, and civil and political participation have all been mentioned, for instance.[15] In a review of the literature on social capital, the Office for National Statistics (2001b) draws on the Organisation for Economic Co-operation and Development's (OECD) definition of social capital as 'networks together with shared norms, values and understandings that facilitate co-operation within or among social

groups' (2001:8). Social capital is thus generally perceived to be a private and public good (Putnam 2000) because it benefits all members of a community indiscriminately. In turn, a community is often, but not exclusively, the context in which the rights and responsibilities of citizenship are given expression. Ideas of citizenship, social capital and community are prominent within public policy discussions at present; they form a key theme for Home Secretary David Blunkett's programme of 'civic renewal' (Blunkett 2003). As stated, the ideas are evident within school curricula, within work with young people more generally, and within community development programmes, for example. The ideas have particular relevance for crime control, for measures to reduce crime and anti-social behaviour require more than a periodic shaking up and reshaping of the criminal justice process and sentencing. The involvement of agencies and communities which lie outside the criminal justice system in civic renewal is arguably critical, and is not necessary tantamount to the kind of 'responsibilisation' strategy which Garland (2001) decries (Faulkner *forthcoming*). The key thing is that such approaches can be seen as matters of social and civic responsibility, not as 'instruments of the state and backed by criminal sanctions' as Faulkner puts it (p8). This said, there is scope to promote citizenship within as well as without the criminal justice system (see Gelsthorpe 2001a & b; Rex & Gelsthorpe 2004). These developments can surely be related to a vision of criminal justice for the future. Two things strike me here. The first concerns what we know about both the gendered nature of control and conformity (Hagan et al. 1979) and women's strong role in communities (Campbell 1993; Heidensohn 1992; Pickering 2000). I think that we can learn from these latter studies in relation to inclusiveness and integration. The second concerns the need to hold tight of Carlen's notion that we need ways of promoting crime control and a system of justice that are responsive to women, but do not brutalise men further. In other words, visions for crime control in the future would have to be both sensitive to gender differences, and inclusive.

In an enlightened and thought-provoking paper entitled 'Beyond equality: gender, justice and difference' Jane Flax tries to shift the arguments on from some of the debates outlined above. She argues that we should treat justice as a process rather

than as an objective state or standard. As a process, justice incorporates four key elements: i) Reconciliation of diversities into a unity of differences. As she puts it: 'claims to justice may be made on the basis of preserving the play of difference rather than mutual obligation to a uniform standard or sameness' (1992:205), ii) reciprocity - the sharing of authority and mutuality of decision which does not require equality of power but does preclude domination, iii) recognition – acknowledging the legitimacy of others and the legitimacy of their difference from oneself, and identifying with the other, iv) lastly, there is judgement, 'a process of balancing and proportion, of evidence and reflection' (1992:206) calling upon the capacity to see things from the point of view of another, empathy and imagination, as well as connectedness and obligation to others. Justice is thus connected to an active notion of citizenship – moving people away from a highly subjective punitive culture towards a culture which is more tolerant. Such notions are of course idealistic and aspirational, but worth rehearsing in looking to a future culture of crime control.

Finally, we have to assume that Garland's analysis concerns the control of men. Gender and feminist issues have been marginalised from the analysis somewhat, and yet, if we reflect on matters, we can see their important contributions to discursive debates regarding criminology and the future of crime control. Greater acknowledgement of gender perspectives would conceivably enrich the analysis that Garland has provided.

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Notes:

[1] All these positive features and more have been identified by reviewers such as Delaney (2001/2), Young (2002), Hudson (2002), Jones (2002), Lippens (2002) and O'Malley (2002) amongst others, although they all also press the case for further analysis in one direction or another. Those who have already publicly quarrelled with Garland's account in a major way (such as Matthews, 2002) have found serious deficiencies in the empirical and theoretical content in the book because of his failure to deal with wider structural changes such as postmodernism and globalisation and to acknowledge sufficiently resistance and contradiction on the ground, for instance.

[2] As Delmar (1986) has suggested, 'All cats look grey in the dark, and the exclusivism of feminist groups can be reminiscent of what Freud called the narcissism of minor differences'. I would hold to this within the context of this discussion, although the differences in feminism are obviously important in themselves.

[3] At its simplest, 'Patriarchy' has been defined as male ideology which expresses power over women (men's power to exchange women between kinship groups, for example), a symbolic male principle, the power of the father over females, men's control over sexuality, and institutional structures of male domination.

[4] In this sense, feminist perspectives within criminology might be considered akin to the New Criminology with its emphasis on political conceptions of crime and deviance, especially since there is concern to discuss notions of power and power relationships as they affect these conceptions.

[5] Although the early work of Marie Andree Bertrand (1969) and Frances Heidensohn (1968; 1970) for example, might be described as pre-feminist, it is no less important than later work which was more self-consciously feminist in intent.

[6] There is need to acknowledge the influence of North American second wave feminism. Some of the impetus for research derived from North American work in the 1970s – see, for example, Chesney-Lind (1973; 1978), Klein (1973), Klein and Kress (1976), and Datesman and Scarpitti (1980).

[7] Other feminist methodological writings have included a focus on standpointism and postmodernism (see, for instance, Harding, 1986; Ramazanoglu and Holland, 2002), but these developments are not central to my argument here. Early dismissals of anything tainted with positivism have (rightly, in my view) given way to critical reflections on the need to use research methods appropriate to the nature of the task.

[8] See Gelsthorpe (2001) for an overview of research studies in relation to sentencing; see also the specific studies of Worrall (1990) and Daly (1994).

[9] I have made no mention of the treatment of girls here, but there is ample evidence to suggest that girls have been equally subject to such ideological control (Cain 1989; Gelsthorpe 1989; Worrall 1999). In many ways it is impossible to separate formal criminal justice for girls and young women from the social controls that routinely operate to constrain and circumscribe their behaviour. Many studies have shown that lawbreaking is often marginally problematic in the case of girls, but that their sexuality is seen as problematic to the point where they are perceived to be need protection from the 'moral danger' of their sexuality (and pregnancy and/or prostitution). The film *The Magdalene Sisters* (2002, directed by Peter Mullan) captures this well. Set in the 1960s, the film dramatizes the lives of three young women sent to a Magdalene Laundry (akin to a nineteenth century reformatory) run by Catholic nuns for fallen women as a punishment for their 'sins'. We are told that the last Magdalene laundry did not close until 1996.

[10] Another possible explanation is change in the demographic structure of the population (for example, changes in the population's age, sex and ethnicity). However, perusal of demographic statistics suggests that there is nothing remarkably different in population profiles over the last ten years (Home Office 2000; Office for National Statistics 2001a). See Gelsthorpe and Morris (2002) and Deakin and Spencer (2003) for detailed analysis of the increased use of imprisonment for women from the 1990s.

[11] Throughout the 1990s, penal policy was shaped by calls for the introduction of 'boot camps' for young offenders and for restrictions on early release from prison (parole), for minimum or mandatory prison sentences for adult offenders (James and Raine 1998), by claims that 'prison works' and by the belief that 'zero tolerance' in regard to crime is the best way to reduce it (Dunbar and Langdon 1998; Cavadino et al. 1999; Rawlings 1999). The Labour Government's Crime and Disorder Act 1998, described as 'the biggest shake-up of criminal justice for 50 years' (The *Guardian* 26 September 1997)

continues this trend, though it is seen by some as promoting a more restorative approach to crime (Dignan 1999; c.f. Morris and Gelsthorpe 2000).

[12] See also Carlen et al. (1985), Carlen and Cook (1989) and Eaton (1993). This point finds resonance in recent US based research (see, for example, Simourd and Andrews 1996; Broidy and Agnew 1997, and Steffensmeier and Haynie 2000) though other research highlights both similarities and differences in patterns of and explanations for male and female offending (Steffensmeier and Allan 1996).

[13] The translation of 'risk' as 'need' contributes to the legitimization of the use of imprisonment, whereby the prison serves to address the psychological needs of women relating to their offending behaviour (Carlen 2002).

[14] Interestingly, we know all too little about the gendered dimensions of restorative justice – either in theory or practice. Notable debates on the subject of restorative justice appear not to have considered gender dimensions. See, for example, Strang and Braithwaite (2001) and von Hirsch et al. (2003).

[15] See the varying definitions of Coleman (1988), Bourdieu (1986) and Putnam (2000), for instance.