

# An Intersectional Approach to Earlier Interventions within the Criminal Justice System in the UK

An Analysis of Two Governmental Documents

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## **Abstract**

This thesis seeks to explore how two governmental documents discuss earlier preventions of criminality. The two documents analyzed are the *Female Offender Strategy* and *The Government's Approach to Crime Prevention*. The first of these documents main aim is to provide a more gender sensitive approach to the criminal justice system within the United Kingdom and the latter document does not explicitly differ between the genders. The analysis will be carried out with the use of feminist pathways theory and through an intersectional lens, in order to demonstrate how the two documents discuss earlier prevention of criminality. By utilizing the methodology of What's the Problem Represented to be (WPR) the aim is to demonstrate who benefits from the documents and who is relegated to the sidelines. Neither of the two documents demonstrate a strategy or policy which takes into account the many varying identities which exist amongst the inmate population of the criminal justice system.

Key words: criminal justice system, gender, intersectionality, feminist pathways theory, strategy

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# 1. Introduction

The gender gap in relation to offending behavior has narrowed in the recent decades, mainly due to an increase in females' arrest in connection with economic crimes, but males still represent the majority (Wattapanorn & Holtfreter, 2014, 191). Within the United Kingdom (UK) in 2017 females made up 15 percent of the arrests and 5 percent of the prison population. While in custody we can see a difference in needs between the female and male populations, where female prisoners are more than twice as likely as the male prisoners to report that they need help for mental issues. Nearly 60 percent of the female inmate population also reported in 2017 that they were victims of domestic abuse (MoJ, 2018, 2).

The UK government have since 2007, when Baroness Corston first issued her report, been working on making the criminal justice system more gender sensitive. The Corston Report outlined 43 recommendations in which the criminal justice system could improve in order to make the policies, procedures, programs and institutions more gender sensitive (The Corston Report, 2007). In 1995 the Oregon Intermediate Sanctions for Female Offenders Policy Group defined gender-specific programming as programs which consider real differences between males and females in how they learn, as well as relationship styles and life circumstances (Bloom & Covington, 1998, 7).

The argument made by the Baroness tied into research which indicates that policies and procedures within the criminal justice system tend to be based on male inmates, and as her report noted, females and males are different, and as such the criminal justice system needs to be reformed in order to be able to have a more female-centered approach (Corston, 2007, 2). Following on from this initial report, a subsequent report outlined what progress had been achieved by the government ten years on (Women in Prison, 2017) and in the summer of 2018 the Ministry of Justice (MoJ) produced a paper named the *Female Offender Strategy* where it discussed the various changes needed to be made within the criminal justice system in order to be more female-centered (MoJ, 2018). The strategy published in 2018 is a commitment by the Government to drive home new programs of work for female offenders, noting that the three areas of priority are: early prevention, an emphasis on community-based solutions and lastly an aim to make custody as decent and effective as possible for the female inmates (MoJ, 2018, 3).

Amongst the female inmate population, Black, Asian and minority ethnic (BAME) females are over-represented as compared to the general UK population; 19 percent compared to 14 percent. Analysis of the criminal justice system within the UK has found that BAME

females are twice as likely than white females to receive a custodial sentence, and research has demonstrated that BAME females within the criminal justice system are treated differently from the point of arrest all the way through to their stay in prisons (Prison Reform Trust, 2017, 14).

The argument for a more gender-sensitive approach to policies and procedures within the criminal justice system is a welcome one. However, the risk of solely focusing on the division based on gender demarcation lines begs the question if this division is always the most salient? We know that people posit numerous identity markers, and that these influence every individual's experience of the world. As such, policies and procedures need to ensure they are inclusive of not only gender differences but also take note of differences based on other categories.

### **1.1 Aim & Research Questions**

The aim of this research paper will be to focus on earlier interventions in relation to criminality, as detailed in the governmental documents the *Female Offender Strategy*, which was published in the summer of 2018, and *The Government's Approach to Crime Prevention*, published in 2010. By applying the pathways theory and an intersectional lens on the analysis, the aim is to demonstrate if there are any differences between how the Government would approach earlier interventions when it comes to females and males. The paper will look to answer the below three research questions:

- 1) With the pathways theory in mind, how do Government programs argue for a success in earlier interventions and how do they differ depending on gender?
- 2) Do the suggestions for earlier interventions take into consideration other identity markers, such as race, ethnicity, sexuality, ableness and class?
- 3) How do the governmental documents discuss earlier interventions in relation to transgender individuals?

## **2. Previous Research**

Research covering crime is extensive, but where it pertains to the thesis at hand relates to perceived notions of criminals, who they are, what they do, and where they come from. Côté-Lussier notes that the common stereotype of the criminal is a young male, usually deemed an

outsider, from the lower rungs of society who commits acts of violence. The author notes that the literature concerning criminal stereotypes lacks in considering the underlying dimensions of the criminal stereotype, as well as the functional parts of the stereotypes (2012, 83). Côté-Lussier notes that racializing criminal stereotypes in the United States can be seen in relation to crime, poverty and social inequality (2012, 121) something which could also be applicable to a UK context.

Amongst the offending population the gender gap has narrowed in recent decades, which mainly depends on the fact that females are being arrested more often for economically motivated crimes such as fraud, forgery and embezzlement. However, at the same time, females arrested for serious crimes have declined. Wattanaporn and Holtfreter note that the mainstream criminologists, nicknamed “malestream” criminologists, argue that perspectives like social learning theory, self-control theory and differential association theory can explain offending behaviors irrespective of differences such as gender, race, ethnicity or pathways (2014, 191-192). Social learning theory makes the argument that individuals are neither controlled by their inner forces, nor helpless to environmental influences. The theory thus suggests that psychological functioning should be understood as a “continuous reciprocal interaction between behavior and its controlling conditions.” (Bandura, 1971, 2.) Self-control theory states that there are multiple opportunities in an individuals’ lifetime in which they could commit various crimes, and as such self-control and opportunity are likely to interact for many criminal acts (Hirschi & Gottfredson, 1993, 50). Lastly, differential association theory makes the argument that criminality is something which is learned in an individuals’ interactions with others in a process of communication (Cressey, 1954, 29).

As a contrast to these three theories, Daly created a pathway to crime framework where she wanted to challenge not only the gender-neutral, mainstream perspectives of offending, but also the idea of the “typical” female offender. Daly’s theoretical framework helped in providing insight into the gender gap within criminality as well as highlight the importance of studying female criminality separately from male criminality. What the framework acknowledged was how unique life circumstances lead to female crime. This is not to say that males do not experience similar life circumstances, but the framework noted that females are affected in a different way from males when exposed to the same criminogenic conditions (Wattanaporn & Holtfreter, 2014, 192-193). With regards to male criminality, Winlow notes the relations between the social, cultural and economic contexts. He states that young lower class males have often learnt the cultural importance of violence, and are supposedly responsible for disproportionate amounts of crime (2004, 18). In the same

vein, Kanazawa and Still state that evolutionary psychology can account for males criminal behaviors, where they note that males at times commit crimes because they want to, and that they want to because something compels them to. They argue for the fact that there is something within males which predisposes them to seek reproductive success, and as such they seek to better their situation (2000, 440).

Research has been carried out regarding the analysis of the Government's previous work with making policies and procedures more female orientated, as well as discussions surrounding the importance of also looking at race and ethnicity when it comes to females experiences of the criminal justice system. The Prison Reform Trust produced a paper in 2017 in response to the MoJ's report, in which they noted that the report does have good suggestions and is a way forward, but they also stress the importance of looking at the BAME population within the criminal justice system, as they are over represented as compared to the general population (Prison Reform Trust, 2017). Also in 2017, the Lammy Review was published, which looked at the treatment and outcomes for BAME individuals in the criminal justice system. Differing from the Prison Reform Trust's review, the Lammy Review doesn't solely focus on female offenders, but rather spans males and females, adults and children. More specifically when looking at previous research, feminist research has looked at the differences between male and female offending, and as such, noted that females and males differ in their pathways into criminality. Research has also shown that females and males have different needs when it comes to being incarcerated (Wattaporn & Holfreter, 2014).

Ample research has been carried out and found that race does have an impact on females and males involvement with the criminal justice system, where ethnic minorities are overrepresented amongst the inmate population. This is true also for every step of the criminal justice system, where people of color are more likely to be stopped and held for questioning, arrested, charged, convicted as well as sentenced harsher post-conviction. Walt and Jason, who have carried out research in the United States, note that these facts are even more striking when it comes to females within the criminal justice system (2017, 1). As similar arguments have been made with regards to the criminal justice system within the United Kingdom (Prison Reform Trust, 2017), this can be seen in relation to the importance of looking at the intersections of various identity markers or categories when creating policies and procedures within the criminal justice system. A solely gender segregating program thus disregards a whole host of other identity markers which influences an individual who finds themselves connected to the criminal justice system. In the same vein, Bloom and Covington note the importance of an intersectional approach when it comes to interventions, as these should take



into consideration the social realities which females come from and they will most likely return to (1998, 20).

It should be fairly clear that the intersections between race, gender and social constructs should be considered when analyzing the criminal justice system. Walt and Jason note that feminist psychologists have suggested that racial differences within the criminal justice system stem from preconceived notions regarding a females' position in the American society; as the nurturer and care-giver. A woman who thus does not conform to these ideas of the 'woman' may face a higher likelihood of being arrested, and this is particularly true for women of color. Furthermore the authors note that the higher penalties awarded to women of color may stem from paternalistic beliefs of judges or other sentencing officials. It has been suggested that many White middle-aged men who possess the power to carry out arrests tend to hand out less severe punishments to middle-class White women, as they at least from the outset seem to fit into the common notions of femininity (2017, 2). Worrall and Gelsthorpe echo this sentiment in their discussion regarding female offenders within the criminal justice system, and how they are perceived. They note that females can be seen as being 'out of place' within the criminal justice system, and that common notions of femininity could influence how they would be processed. The fixed ideas related to femininity could thus place female offenders at a disadvantage (2009, 331).

In relation to transgender individuals within the criminal justice system, Rosenblum notes that correctional institutions have created an inhumane daily environment for transgender prisoners. One of the main issues as outlined by Rosenblum is the 'category' problem, which arise when transgendered individuals enter spaces which are solely divided into 'males' and 'females'. Once in a correctional facility, transgendered individuals find themselves struggling with their identity, as they are faced with gender segregation, transphobia and limited resources for their needs. Rosenblum also makes the argument that misplacement and mistreatment of transgendered individuals based on an incorrect understanding of their sexual identity constitutes a cruel and unusual punishment (Rosenblum, 2000, 502-519).

The thesis at hand aims to fill the gap which exists in the current research field of policy analysis from an intersectional perspective. As demonstrated in the literature review, the papers which do exist and look at the implications of a new gender-specific programming within the criminal justice system do highlight the importance of looking at race and ethnicity when writing policies or strategies which will affect the female offender population in the UK. My argument is that the strategies put forth by the government need not only to raise the

issue of intersections between race, ethnicity and gender, but also of a multitude of other identity markers such as sexuality, ableness, class and so forth. In doing so, the criminal justice system would not only be more inclusive from the outset, but may also be able to make a real difference in the offending populations experiences based on their actual lived experiences.

### **3.Theoretical approaches**

As noted above, there has been a lot of research carried out in trying to discern what leads a person into criminality, be it heavy criminality or just a minor interaction with the criminal justice system. One theory which aims to explain women's pathways into criminality is called feminist pathways theory. As this paper's aim is to look into how the government places importance on earlier interventions based on gender, the feminist pathways theory is a good theoretical tool to be utilized in the analysis of the governmental strategy put forth. By looking at the suggestions put forth in the strategy with the feminist pathways theory in mind, the analysis can be seen in the light of research demonstrating the difference in pathways that females and males take into criminality.

The theory was adopted by feminists looking to explain differences in offending patterns between males and females (Wattanaporn & Holtfreter, 2014). Prior to this notion, theories regarding offending behaviors tended to be based on males and applied onto females solely as an afterthought (Ghering, 2018, 115). The feminist pathways theory argues that males and females come into contact with the criminal justice system through different pathways, and that females lives prior to this contact is important when investigating which factors have been involved in gearing them towards crime (Ghering, 2018, 116). In creating her pathways to crime framework, Daly revealed five pathways women typically take in their initial brushes with criminality. These five pathways are the *street woman*, the *battered woman*, the *harmed and harming woman*, the *drug-connected woman* and *other* (Wattanaporn & Holtfreter, 2014, 193). Daly also wanted to highlight the different ways in which women were represented within the criminal justice system, and developed five representational issues: *terminology*, *emphasis*, *typicality or generalization*, *representation* and *ethical* (Wattanaporn & Holtfreter, 2014, 193).

The *street women* as explained by the pathways theory is a female who has either been pushed out of her home or run away, become involved in drugs, petty crime or prostitution. This pathway would see the female in a revolving door through the criminal justice system,

and often be found in relationships with males who also were breaking the law. The *harmed and harming women* are women who have suffered sexual abuse, neglect or physical abuse as children. They have often been put down as violent youths, and have probably experienced a chaotic home life which may have lead them to abusing drugs and alcohol as teenagers. Daly's research showed that these women often displayed symptoms of being psychologically and emotionally damaged as adults, as well as not being able to appropriately deal with difficult situations. The *drug-connected women* are females who have sold drugs through familial relations or with male partners. These women are not found to have extensive criminal histories, or be addicted to drugs. The *battered women* are in violent relationships with a partner who physically abuses them and their criminal activity can be directly linked to the violent relationships with their male partner. The last category of *other women* are women who neither have drug or alcohol problems, or have experienced dysfunctional home situations. The pathway into criminality for this group tends to be more in connection with a desire for a secure, comfortable and conventional lifestyle (Simpson et. al., 2008, 85-86). The pathways theory importantly in relation to the research at hand, does not only focus on explaining the differences between males and females but also seeks to explain differences within the female offending population (Wattanaporn & Holtfreter, 2014, 193).

Within her initial research, Daly did find some gender overlap in some of these categories, such as harmed and harming men, drug-connected men and street men, but she also added one more category to male's pathways; the costs and excesses of masculinity. This group of males were seen as explosively violent, men with bad luck (being at the wrong place at the wrong time), and masculine gaming (using crime as a way to demonstrate masculine prowess) (Simpson et. al., 2008, 86). Feminist pathways theory does not discount that males can also experience trauma, substance abuse or other factors which could count as pathways into offending. The difference lies in the timing and context of these factors, which are highly salient when trying to understand the social context of what gender means and how it comes to shape experiences and opportunities for both sexes (Fedock & Covington, 2016, 5).

The analysis of the two governmental papers will also be carried out through an intersectional lens in order to be able to demonstrate the importance of adopting an intersectional perspective when writing policies and procedures. By adopting an intersectional perspective in official documents, governments, such as the UK Government, would be better suited to address the way socially constructed differences, and power structures, impact an individuals experiences (Davis, 2014). An important aspect of this thesis and within intersectionality, is the acknowledgement that one cannot simply speak of 'women' as one

homogenous group (Levine-Rasky, 2011). In line with this, Shields further argues for the importance of bearing in mind the historical and social contexts when looking at how various identity markers work in relation to one another (2008).

Intersectionality is concerned with the multiple and inextricable identity markers which each individuals possesses. These identity markers work simultaneously, and at times conflictingly and should not be seen as additive, but rather as identities which interact and together create unique social experiences which can vary according to time and space (Hankivsky, et. al., 2012 ,35.). In relation to criminology, which has most often been colorblind, identity-blind and power-blind, an intersectional approach would be better suited to explain how these multiple identities are intertwined. If we look at race as one of the identities, it should be viewed as a socially constructed categorization of the appearance of individuals, and ethnicity can be seen as a socially constructed categorization which encompasses culture, customs, religion, dialect, language and the national identity of individuals. In the same vein, gender is often based on societies views on what it means to be female or male. When it comes to crime, it ought also be viewed as a societal construction, detailing what should be defined as a crime and what should not. Potter has argued that in order for criminologists to be able to determine variations within crime, they need to incorporate the impact of social identities. She also notes that as criminal justice systems do not operate outside of society, but are rather a part of them, individuals experiences, and power and identities are all intertwined and affect all involved in the making of the criminal justice system; victims, offenders, policy makers, and so forth (Peace, 2016, 573-576).

As has been mentioned previously, BAME females are overrepresented within the criminal justice system in the UK. As such, it is interesting to note that despite the common notion that ethnic minorities commit more crimes than white individuals, this has never actually been proven. It has been suggested that racial prejudices can be seen amongst American citizens in general as well as in the attitudes of the law enforcement. This is seen in the fact that black, and lower class individuals, are more likely to be charged and convicted of crimes than their upper class or white counterparts (Davis, 2016, 7).

When analyzing crime through an intersectional lens it is also interesting to note what we think of when we speak of crime. Reiman has argued that affluent individuals are 'sorted' out of the criminal justice system, as well as having the capabilities to avoid criminal convictions as well as reduce their sentences. It can be argued that the criminal justice system functions in a way where the offender at the end of the process is more likely to originate from the lower social and economic groups of society than the more affluent strata. It can also

be said that the common perception amongst the public is the notion that ‘crime’ belongs to the lower classes, and this can be seen in which crimes are mostly targeted by the criminal justice system, ‘street’ crime as opposed to ‘white-collar’ crime (Davis, 2016, 11-12).

Pervasive stereotypes are not constructed out of thin air, but rather are inferred from perceived social structural factors of social status and competition. Côté-Lussier argues that the common stereotype surrounding criminals is often of a young male, from the lower social classes who has been convicted to a crime relating to violence (2012, 83). Côté-Lussier has found that the ones who are mostly affected by harsh criminal justice policies, are by those who live in the margins of society; the homeless, ethnic minorities and individuals with mental health problems (2015, 47 & 53). In the same vein Hall notes that stereotyping usually occurs when there are large inequalities of power. It creates an ‘us’ and ‘them’ which bonds together the ‘them’ into an imagined community and send into exile the ‘others’ (Hall, 1997, 258).

By looking at the differing pathways linked to males and females pathways into criminality, we could hope to gain insight into the Government’s gender specific programs with regards to early interventions. This will possibly also reveal pre-conceived notions regarding female and male criminality and behavior. The relation between gender and race with regards to criminality has been noted as an area in which research is lacking (Peace, 2016, 575). By utilizing an intersectional perspective, this thesis aims not only to highlight the importance of intersecting race and gender, but also other identity markers, such as ethnicity, race, sexuality, ableness and class, and how these are linked and may affect males and females pathways into crime.

## 4. Context

Before embarking on the analysis of the governmental policies, it may be worth giving a brief overview of the entirety of the documents, in order to place the analysis of the chosen sections in context, as well as a brief overview of female and male offending statistics in order to set the context of the analysis.

As mentioned previously the *Female Offender Strategy* was presented to Parliament in June 2018 by the Ministry of Justice with the aim to present the Government’s commitment to a new program of works for female offenders. This strategy would focus on three priorities: earlier intervention, an emphasis on community-based solutions and an aim to make custody decent and efficient for the females who have to be there. The strategy further sets out a

framework of how this can be realized, on a national as well as local level, as well as noting that collaborations with third sector partners is key in moving forward (MoJ, 2018). The other governmental document which has been analyzed is the House of Commons (HoC) report *The Government's Approach to Crime Prevention* which was ordered by the House of Commons in 2010. This document deals with crime and criminality within the United Kingdom as a whole. It does not segregate between males and females as such, but does highlight differences and issues with regards to youth and adult offenders. As with the MoJ strategy, this paper notes that emphasis should be placed on measures to prevent crime, as well as taking into account the underlying factors as to why individuals turn to criminal behaviors.

The *Female Offender Strategy* was preceded by the *Equalities Impact Assessment for the Female Offender Strategy* which was started in 2016. This paper, like the strategy, has its underpinnings in the Corston report from 2007, and is a requirement in order to demonstrate how the Ministry of Justice has demonstrated due regard to the Public Sector Equality Duty (PSED) in relation to the creation of the *Female Offender Strategy*. The PSED sets out a legal requirement in adhering to eliminating unlawful discrimination, harassment and victimization, the advancement of equal opportunities between individuals that share protected characteristics and those who don't, and to foster good relations between individuals who share protected characteristics and those who don't, in the creating of policies (MoJ, 2016, 1). This document thus outlines the aims of the upcoming strategy, and the timelines of when certain themes or issues were discussed. With each context, as they refer to each item, it notes what will be discussed as well as the action/owner, and a date. It does however not note how long the discussions pertaining to the specific issue will be attended to. One such context worth noting is a roundtable on BAME women within the criminal justice system. This took place in late January 2018, and the actions indicate that the Ministry of Justice is to incorporate "the distinct needs of BAME women into the Strategy's key themes into a revised wider publicity and communications work around it" (MoJ, 2016, 3).

In June 2018 there were 3,850 adult women in prison in the UK, which is only 4.6 percent of the total of the prison population. As noted previously, females commit less serious offences than males, and a larger portion of females are prosecuted by other bodies than the police. To exemplify the difference, in 2017 12 percent of males could be found in immediate custodial sentences for shoplifting offences, whereas 36 percent of females were found in the same situation for the same offence. In total, 43 percent of all sentences for indictable/triable were shoplifting for females, whereas they only made up 19 percent for males. Again in 2017, males served an average custodial sentence of 17.7 months, where the average for a female

offender was 10.0 months. This can be seen in line with the fact that females are more often deemed low or medium risk as compared to males (MoJ, 2016, 5-6).

The equality impact assessment paper started in 2016 makes an important admission in noting that the data sources used in order to produce that paper, as well as the strategy published in 2018, had its limitation. It states that “As with many administrative datasets, the quality of the data is affected by the extent of missing data” and goes on to say that there is a lack of data when it comes to numerous categories such as age, disability, status, gender, reassignment status, race, religion, sex and sexual orientation and partnership status (MoJ, 2016, 8).

## 5. Methodology

The primary material which will be analyzed will be Government policies and programs outlined, like the strategy by the Ministry of Justice and the paper by the House of Commons, which discuss ways in which the Government will try and work on earlier prevention. This material will be sought from the UK Government website. In order to make the amount of material feasible for this paper, the analysis will focus on the *Female Offender Strategy* with regards to how the UK Government discusses the need for earlier prevention when it comes to female criminality. In order to broaden the analysis, and hopefully capture wherein the differences lie within gender-specific programs, a similar governmental policy, *The Government's Approach to Crime Prevention*, will be analyzed. The reason for the chosen material is that the *Female Offender Strategy* is the most recent attempt by the UK Government to create a more gender-specific strategy for the criminal justice system. As such, it is interesting to note how it is written and also to carry out a comparison with a prior document discussing earlier prevention. A further reason for looking at *The Government's Approach to Crime Prevention* is to analyze if this document, which does not distinguish between the genders, factors in other identity markers when discussing offending behaviors within the UK. The reason for choosing the UK is because they have a history of recording census data which captures individuals' race, gender, ethnicity, religion and so forth. This then gives statistics which can be analyzed and compared.

In order to answer the research questions and the aim of this paper, the methodology of the analysis of the Government programs will be an in-depth text analysis based on Bacchi and Eveline's What's the Problem Represented to be (WPR) approach. The authors argue that policies give shape and meaning to the 'problem' which they are addressing. This means that

how the ‘problem’ is put forth in policies, affects how the ‘problem’ is understood and this in turn has political implications and in turn then affects people’s lived realities. Policies should therefore be seen as disabling, racializing and classing (Bacchi & Eveline, 2010, 111-112). In a sense one could thus argue that policies actually create or formulate the ‘problem’ at hand. In order to understand what the ‘problem’ is, the WPR approach emphasizes that an understanding of the context is required. From this, one can work backwards in a sense, in order to see how the ‘problem’ is being represented (Bacchi & Eveline, 2010, 114).

The WPR approach also highlights three implications or representations, which may overlap, as a means of assessing the usefulness or limitations of a policy or procedure. These are the policies, discursive effects, subjectification effects and lived effects. The representations of the ‘problem’ should not be seen as opposite to ‘reality’ but rather as practices in which things take on meaning and value. This raises questions such as: Who will benefit from this policy? Who will be harmed? What will change and/or what will stay the same? (Bacchi & Eveline, 2010, 115).

A policy should not be seen as the best way in which a government can solve a particular issue, but rather as a means to characterize a ‘problem’ in a specific way to either get something done or not, and also outlining who will benefit and who will not. The WPR approach therefore should be seen as a way to look into unexamined assumptions and logics which perhaps have not been questioned before and which are implicit within the representations of the ‘problem’. Through the WPR approach one would hope to be able to “move between the necessary ‘fixing’ of ‘knowledge’ claims and the equally necessary bracketing or querying of those claims.” (Bacchi & Eveline, 2010, 116)

Bacchi and Eveline outline six questions which should be asked of the policy, and these six questions are the basis of the WPR approach. The questions are as follows:

1. What is the problem represented to be in the policy?
2. What are the assumptions which underlie the representation of the problem?
3. How has the representation of the problem been produced?
4. What is not being said in the problem representation? What is being left unproblematic?
5. What are the effects produced by this representation of the problem?
6. How and/or where has the representation of the problem been produced? How could it be questioned/replaced?

(Bacchi & Eveline, 2010, 117)



By analyzing the chosen governmental policies with the help of the WPR approach, the hope is to be able to demonstrate what the policies not only are saying with the words plainly written, but also to uncover what is being said implicitly. What is not overtly written sometimes says more than the actual words in print.

When carrying out feminist research, it is also important to make a note of one's own positionality in relation to the subject matter at hand. The importance of this is also compounded by the fact that the analysis being carried out is a qualitative one, and as such is based on the researcher's own subjective reading of the material at hand. Although the usage of the WPR approach should mitigate the risk for overt bias, it is still worth mentioning the researcher's awareness of their own standpoint in relation to the analyzed material (Stoetzler & Yuval-Davis, 2002).

## **6. Analysis**

The analysis of the chosen governmental documents will aim to demonstrate what the papers are actually saying by analyzing the words, how they are used and how the issue is being put forward. By doing this, the hope is to be able to highlight the importance of an intersectional approach when writing and implementing policies and procedures that will have a real impact on people's lives. The analysis will be organized thematically with the research questions in mind, in order to be able to clearly outline similarities and differences between the chosen documents.

When looking at the policies by the UK Government which pertain to implementing programs in order to make the criminal justice system more gender sensitive, it could be argued that they are looking to 'mainstream' the policies in relation to gender. Bacchi and Eveline note that 'mainstreaming' policies implies that every policy should address the needs of disadvantaged or marginalized groups. The point of gender mainstreaming a policy means to promote gender equality (2010, 1-2). With this in mind, when analyzing the strategy put forth by the Government in order to carry out earlier preventions geared towards female criminality, the strategy can be seen to be gender mainstreaming as its intention is to make the programs more gender sensitive. However, it could also be argued that the programs and policies could be made even more mainstreamed in the sense that they acknowledge more identity markers which place individuals in disadvantaged positions. Markers such as ethnicity, race, sexuality, class and so forth intersect with gender to create different

experiences amongst the female population to which the programs are trying to reach. By solely, or mainly, focusing on gender as the most important marker of identity, the programs could be missing out on ways in connecting with a significant demographic of the female criminal population, as the BAME population is over represented within the criminal justice system (Prison Reform Trust, 2017).

## **6.1 The argument for earlier interventions**

The *Female Offender Strategy* lists earlier interventions as one of the three core strategies put forth in the document, and is dealt with in the first chapter of the strategy. It starts off with a chapter summary in which it notes that the majority of females who come into contact with the criminal justice system do so in connection with low-level offences. As such, it is noted that they could thus be prevented by addressing their vulnerabilities at an earlier stage. Many females who have dealings with the criminal justice system have experienced a chaotic lifestyle, which may have included mental health issues, substance abuse and homelessness. This lifestyle can in turn often be linked to a history of abuse and trauma. The paper says that there are clear benefits of being able to intervene at an earlier stage, not only for the females in question, but also for society at large (MoJ, 2018, 11). The pathways described in the strategy can be seen in relation to Daly's five pathways, and indicate that the strategy have taken consideration of the special life circumstances which may lead to female offenders pathways into criminality.

*The Government's Approach to Crime Prevention* discusses similar issues in its chapter about preventing youth criminality. As this paper is not focused on females nor males specifically, they do not use these pronouns when referring to the offending youth in general. The times when the terms males and females are used is when the paper recites existing research or statistical findings which are already segregated by sex. They start off by noting that individuals who engage in anti-social or criminal behavior when they are younger, are more likely to evolve into serious and persistent offenders. When discussing risk factors the paper makes an argument for the importance of looking at factors which may increase the likelihood of offending (HoC, 2010, 13). Noteworthy here is the fact that they are not distinguishing between the sexes, and as such it could be read that the underlying causes of offending is the same for both females and males. The document goes on to detail a number of risk factors, grouped into four categories: family risk factors, school risk factors, community risk factors and individual risk factors (HoC, 2010, 13). Bearing in mind the

factors which are seen as the most important with regards to female offending, in relation to Daly's five pathways, few of the 18 risks outlined match. Family conflict is noted as a family risk factor, but in relation to females pathways this may need to be specified to include physical abuse or sexual abuse. It could be argued that the absence of sexual abuse or physical abuse as a risk factor clearly demonstrates that these risks were not developed with both sexes in mind. This can be seen in line with Bloom and Covington who note the strong connection between childhood victimization and offending when it comes to females pathways into criminality and as such argue for a development of gender-specific programming (1998, 4-5). Bloom and Covington mention prior research which has noted that girls and boys develop their identities differently in that boys develop it in relation to the world, whereas girls develop their identity in relation to others (1998, 6). This can be contrasted against the Government's approach in the 2010 paper, which seems to indicate that male and female youths underlying issues, and as such interactions with the world, stem from the same place or experiences.

One underlying factor which is interesting to note in *The Government's Approach to Crime Prevention* is the mention of poverty, which could be seen as an indication of the importance of class. This can be seen in relation to Côté-Lussier's argument regarding common stereotypes of criminals where they are often perceived to be young males, from a lower social class (2012, 83). In contrast to this stereotype, poverty is not explicitly mentioned as a pathways into crime for female offenders by Daly. The closest is her *other* category, in which she places females who commit crimes in order to create stability and as such commit economic crimes like fraud (Simpson et. al., 2008, 86). This emphasis on poverty in the governmental document could thus be seen as further evidence that the document was created with the male offender in mind, and subsequently used for earlier prevention with female offenders as well without taking into account or reflecting on the differences in the two genders lived experiences. Interesting here is that this document was published in 2010, this is three years after the *The Corston Report* was published in which Baroness Corston outlined 43 recommendations to make government policies within the criminal justice system more gender-specific (Corston, 2007).

One intervention aspect which is mentioned in both governmental documents pertains to the availability of community services to the potential offender, such as health services or education. In the 2010 governmental document school is listed as a protective factor which could lessen the likelihood of offending, alongside school rewards for pro-social involvement and family relations (HoC, 2010, 14). In the 2018 strategy, education and health are noted as

instances which tend to interact with females prior to them entering the criminal justice system and as such are places in which earlier intervention strategies are important to address (MoJ, 2018, 13). The 2010 document goes on to discuss the pros and cons of looking at potential risk factors. They note a study carried out in New Zealand which revealed the importance of familial relations and that offenders who were ‘at-risk’ as youths were more likely to commit offences as adults. The document then goes on to say that it may not be as simple as looking at risk factors in order to predict who will and who will not commit offences later in life. They note that in 1953, 33 percent of the adult male population had a criminal conviction by the age of 46, which they argue is significantly more than the number of males who had grown up in poverty or dysfunctional families (HoC, 2010, 15). Interesting to note here is the usage of statistics which only pertain to the male population, both in general in the UK and with regards to criminal activity. This can be seen as further evidence that the document is mainly concerned with male offenders, even though it does not state so in the introduction or summary of the paper. This raises the question if female offenders were even considered during the writing of this document.

As mentioned, both documents discuss instances which could aid in intervening earlier, and the 2018 strategy notes areas in which intervention could be sought in order to address vulnerabilities which can later lead to offending behaviors amongst females. The strategy mentions local areas engaging in multi-agency approaches in order to address the barriers which prevent females with multiple and complex needs from accessing services effectively (MoJ, 2018, 12). The use of the words multiple and complex needs here is quite interesting, as it could indicate that the strategy is looking at more identity markers than just gender. However, it can also be argued that if this would be the case, then it should be stated explicitly rather than merely hinted at. Multiple and complex needs could also refer to other familial circumstances or issues relating to domestic violence (which is an issue discussed greatly in the strategy).

The strategy further notes that in the shift of focus from custody to community, they are launching a grant competition alongside the strategy to award 3.5 million pounds between 2018-2020 for community provisions for female offenders or at-risk females. This money will be provided to develop provision for females who have experienced domestic abuse, to maintain and develop services for females and to support local areas to develop and embed Whole System Approaches for female offenders. The next point made with regards to community provisions notes the overrepresentation of BAME women, where the strategy states it wants to see funding used to address the needs of this cohort, as well as cohorts of

other females with protected characteristics. The applicants for the grant competition will have to demonstrate how they will increase engagement with these cohorts of females, and how they will support them. In the next sentence, a separate bullet-point, the strategy states it will invest an additional 1.5 million pounds to support the development of community-based provisions for female offenders (MoJ, 2018, 13). Noteworthy here is the mention of specific amounts of money allocated to various initiatives, such as community-based programs, domestic abuse programs and so forth, but when it comes to the funding for BAME individuals, there is no actual sum mentioned. It could be argued that as this group is overrepresented within the criminal justice system, a significant amount of money should be allocated to tackling issues related to these females. As the strategy notes, there is a large portion of female offenders who have experienced domestic abuse, and this is something they are able to put a price-tag on, 2 million pounds. Why then is there no indication to the resources which will be directed toward BAME female offenders? The usage of the word cohort here is also thought provoking, as it could be seen as signifying that BAME females are separate from the other female offenders, they are two separate 'groups'. Not only does this place them as the 'other' but it also puts forward an image that females with other ethnic or racial backgrounds, irrespective of their varying backgrounds, should be viewed as one homogenous group, further placing them in the category of the 'other' (Hall, 1997, 258).

Remarks in the 2010 document concerning the justification for earlier interventions note that the understanding of offending behavior is based on many years of international research, and that there was a lot of cross-party consensus regarding the underlying causes of criminality, which according to the document, bodes well for policy-making. The underlying causes are explained as being related to family dysfunction, school and community under-achievement and poverty. The paper then goes on to say "The evidence suggests that these factors cluster in the lives of the most deprived children, and that these children are significantly more likely to offend than their counter-parts who are not at-risk." (HoC, 2010, 16) Here the paper points to children, not distinguishing between the genders, which is in contradiction to the previous section wherein they only spoke of male offenders, as mentioned above. The document goes on to state that although it is important to be able to identify at-risk offenders, it is also important not to place too much emphasis on the predictive paths and that these should not be the sole basis for crime prevention strategies (HoC, 2010, 16-17). It could here be agreed that their pathway findings probably would not be the best in predicting pathways into criminality, as not only does the document not seem to distinguish between different genders lived experiences, they also do not note any other factors which could be

important. The paper does not raise any questions surrounding ethnicity, race, sexuality, ableness and so forth. In line with the WPR approach, what the paper is saying by not noting any other identity markers but poverty (class), is that the profile of the criminal they are discussing is a white male. This as such does not take into account the real lived situation of the entire offending population in the UK.

The 2010 document also outlines areas in which measures could be put into place in order to combat youths getting involved in crime. One of the discussions centers around what is labelled as diversionary activities, for example leisure activities for young people in their areas. The paper notes that although leisure activities are important for youths, they will not reduce crime on their own. It is argued that young people require the continuation of exposure to positive role models and for the youths to see what their lives could look like outside a life of criminality (HoC, 2010, 31). Again the term youths is used without discussion or reflection of who is included in this group. As with the terms 'man' or 'woman', the term youths is used as an all-encompassing blanket term for all individuals under a certain age, irrespective of their sex, sexuality, gender-identity, religion, race, ethnicity, ableness and class.

## **6.2 An intersectional approach?**

Intersectionality is the way in which varying inextricable identities within an individual interact and intersect to create a unique experience of social situations for this individual. These identities can be understood as social categories to which an individual claims membership and these intersections should also be seen as creating situations of opportunity and oppression. Shields notes that the identities can be experienced as features of the individuals self, but that they also reflect the operation of power relations between groups which identify with a specific identity category (Shields, 2008, 301-302).

Walt and Jason, whose research focused on incarcerated women in the United States, argue that one way to try to understand the increased risk for incarceration amongst females of varying ethnic backgrounds can be seen in their experiences of poverty and resource loss. They note that as ethnic minority females are disproportionately affected by poverty, it is thus unsurprising that they are more likely to become involved in criminal behavior, as the link between poverty and criminality is fairly clear (2017, 3). Wattanaporn and Holtfreter also discuss this and state that it is more difficult to leave an abusive relationships when one is poor, which in turn leads to a perpetuation of violence. Research has also noted a link between poverty, being of an ethnic minority and being female, which significantly increases

the risk of victimization (2014, 200). This can be seen in relation to Daly's fifth pathway *other* which is the category for females who primarily commit crimes as a means to alleviate poverty, or out of greed (Wattanaporn & Holtfreter, 2014, 194). As such, Walt and Jason note that other sociological and psychological factors ought to play a part in females' paths towards criminal behaviors. The authors mention that according to the Differential Selection Hypothesis, people of color and white people are equally likely to be linked to criminal behaviors. The difference rather lies in the socio-economic factors on a macro level which affect them differently, as well as racism within the criminal justice system (2017, 2). Walt and Jason further argue that it is important to try and understand how society can attempt to intervene in order to reduce the risk of urban women of color becoming involved in criminal behaviors. Suggestions could include diversion programs which would address psychological and true resource needs, tackling community societal norms with regards to common notions of what it means to be a woman, or opportunities for education (2017, 8).

The *Female Offender Strategy*, while discussing how to divert offenders from the criminal justice system, argue that on the frontline of efforts to divert females from the criminal justice system are the Liaison and Diversion (L&D) services which are commissioned by the National Health Services (NHS). The strategy argues that these services will operate most effectively if they are able to respond to females in a gender-informed manner, and note that the NHS are currently enhancing 'women's pathways' across all L&D services. These pathways come in part from the lived experiences of females within the criminal justice system, and this initiative will allow female offenders the choice of the gender of their practitioner. The strategy also states that "Consideration will also be given to addressing the barriers that particular groups, such as sex workers and foreign national women, face in accessing services." (MoJ, 2018, 14). The inclusion of sex workers and foreign national females should be seen as a positive in the construction of the strategy. However, it can be questioned why all of a sudden the terminology changes, from BAME to foreign nationals, and why the specification of sex workers as a group is included. It is of course accurate that this is a group which face numerous vulnerabilities in society, the question raised here is merely that the issue of sex workers have not previously been mentioned in the strategy. Given the mention of 'pathways' one could surmise that current research pertaining to female pathways, such as Daly's, into criminality have been utilized, and as such, sex workers are brought to the forefront as a pathway into criminality especially important for females.

The 2018 strategy does state that it is important to factor in the experiences of BAME women as well as individuals with other protected characteristics, which I take to refer to sexuality, ableness, age, religion, race, ethnicity, transgender, intersex and non-binary individuals. Within the entirety of the strategy, this is mentioned only four times (MoJ, 2018, 13; 25; 28; 42) and is only noted the first time on page 13, pertaining specifically to earlier interventions. The single point while discussing earlier interventions which raises the issue of various identity markers is point 41 and is relayed in full below, in order to demonstrate the wording and message put forth by the strategy.

Given the overrepresentation of Black, Asian, and minority ethnic (BAME) women in the CJS, we want to see funding used to address the needs of this cohort, as well as those of other cohorts of women with protected characteristics who find it difficult to access services. Applications to the grant competition will be required to show how they will increase engagement with such cohorts, and support them.

(MoJ, 2018, 13)

In line with the WPR approach as well as through an intersectional lens, the above passage can be seen to be excluding and marginalizing rather than being inclusive. It could be argued that calling females who lie outside the 'norm', read white females, need to be spoken of as a separate, a cohort. It is interesting to note that BAME females are overrepresented within the criminal justice system (Prison Reform Trust, 2017, 14), yet they are treated as the 'other'. It could be argued that the importance of looking at a criminal justice system which takes into consideration the needs of BAME females, and offenders with other protected characteristics, should permeate the entirety of the strategy, rather than being inserted as separate bullet points. In line with the WPR approach, this writing of the strategy can be seen to clearly demonstrate who will come to benefit from it and who will not. My reading of the strategy, where the term 'women' can be seen to be used as a blanket term for 'all' women irrespective of other identity markers which may impact their experiences of the criminal justice system (Levine-Rasky, 2011), the beneficiaries of the strategy will not be females who are imbued with one or more of the protected characteristics. This because the strategy is looking to create a one-fit-all solution, rather than a more in-depth one which adheres to the multiple needs of the differing individuals. The view that 'women' are one homogenous group is also discussed by Mohanty, who notes that assuming that females are one coherent group, with



identical interests and desires, irrespective of class, ethnicity or race implies an idea that sexual differences or gender can be applied universally and cross-culturally. Mohanty also notes that this is true for males as well, who are also often viewed as one homogenous group (Mohanty, 1984, 336-337). This can be seen when looking at the 2010 document by the House of Commons, in which there seems to be a broad generalization of 'male' offenders, irrespective of other identity markers (2010).

As mentioned above, the 2010 document does not seem to engage with an intersectional approach when discussing the criminal population in the UK. In the section pertaining to early interventions with young children and their parents one could argue it would be pertinent to have this discussion, as the home life of at-risk youths assumedly vary greatly depending on numerous circumstances which could be related to race, ethnicity, religion, sexuality and so forth. The document makes one reference to this when noting that a voluntary sector organization called Barnardo's, argues "for a greater focus on tailored provision for hard to reach families who fail to engage with traditional parenting support, particularly parents in the secure estate, young fathers and Black and Minority Ethnic fathers." (HoC, 2010, 18) As this is the first mention of any ethnic markers in the paper it is important to look at the wording used in this statement. By saying that the hard to reach families "fail to engage with traditional parenting support" the sentence seems to suggest that the blame is on the mentioned parents, and places them outside society at large, which could be assumed is imagined as traditionally English with all of what this implies with regards to ethnicity, race, values and norms. This as such posits them as 'the other' in contrast to a traditional family. Furthermore the mention of "Black and Minority Ethnic fathers" then becomes linked to 'the other' as put forth in this sentence. In line with the WPR approach, we here see that what is being said is that the ethnic minority fathers are outside society and choose not to engage in traditional, read English, parenting. This can also be seen in relation to previous discussions concerning stereotypes, where the stereotype of a young, criminal male is seen in order to maintain the social and symbolic order of things. The representation of the ethnic minority fathers can also be viewed in relation to representations and power, where the power sits with the writers of the document and as such they have the power to represent people in the way which they see fit, and in this case this can be seen to further emphasize the difference between 'us' and 'them' (Hall, 1997, 258-259).

The 2010 document goes on to discuss the effects of early interventions and enforcement where it is noted that it may take a generation before the effects of a change in policies will be visible. The discussion centers around if Anti-Social Behavior Orders

(ASBO's) work or not. This is the first instance in which females are mentioned, as they are done so in relation to a graph showing the tail-off in offending past the ages of 15 for females and 18 for males provided by The Youth Justice Board (HoC, 2010, 19-20). Following on from this graph the paper goes on to discuss the effects of ASBO's, and concludes that tough enforcement on anti-social behaviors should elicit a positive impact on the reduction of crime. However it is also noted that the ASBO's need to be coupled with effective support interventions, one of which is combating bullying (HoC, 2010, 21-22). I find it interesting that following on from the graph, which does distinguish between the genders, there is no discussion regarding the differences between the genders. By allowing the graph to exist without question or discussion, it raises more questions than it answers. Perhaps as the female line on the graph is significantly lower than the male line, indicating less female offenders, it is seen as self-evident that the female offenders do not warrant special consideration?

Noteworthy when it comes to the analysis of the *Female Offender Strategy* is the lack of a discussion surrounding the limitations of the dataset. In the equalities assessment started in 2016 there is a note regarding this where it is stated that the dataset does have its limitation regarding the representation of females with protected characteristics. The issue raised is with the survey which was carried out, a face-to-face one, between 2005/06 with female offenders in England and Wales. The survey covered a range of questions, such as the respondents families, backgrounds, education, employment and offending history. It is noted that not all offenders received the assessment, and as such the dataset is not complete and may not be representative of the entire female offender population. As such, the paper notes that "Due to these data gaps we have not presented a comprehensive picture in relation to all the protected characteristics." (MoJ, 2016, 8) I understand that the strategy put forth two years after the equalities assessment was initiated is not able to cover all background research which was carried out, however I do feel that it is very lacking in the aspect of discussions related to markers of identity which is not gender. A mention of the limitations of the dataset would in my opinion have lent an air of transparency to the strategy, and allowed for a more honest discussion regarding how to gain a more representative dataset in the future in order to be able to make the policy/strategy more inclusive. In line with the WPR approach, what is not being said demonstrates who the strategy is actually meant for and who will benefit and who will not (Bacchi & Eveline, 2010, 115).

This can also be seen in the way the discussions surrounding the 'protected characteristics' from the impact assessment carried out in 2016 prior to the 2018 strategy has been incorporated in the 2018 strategy. The impact assessment notes the nine protected

characteristics protected under the *Equality Act 2010*, which are: age, disability, gender reassignment, pregnancy/maternity, race, religion or belief, sex, sexual orientation and marriage/civil partnership. With regards to age, the document notes that women aged 25 and older account for the largest proportion of adult women and men, prosecuted, sentenced and given a community or custodial sentence (MoJ, 2016, 15). The assessment notes that offenders with disabilities are over-represented amongst the female offender population, and it is noted that the 2018 strategy should have a positive impact on these individuals (MoJ, 2016, 15). With regards to gender reassignment, a longer analysis is carried out in section 6.3, but it can be noted that this section in the impact assessment details statistics of the number of individuals within the criminal justice system who identify as a gender other than the sex they were assigned at birth. Again the assessment states that the 2018 strategy will not have any adverse effects on these individuals (MoJ, 2016, 17). The impact assessment writes that there is no data available on the number of females who become pregnant whilst they proceed through the criminal justice system, but that there is information regarding the number of female offenders that are likely to have children. The paper goes on to discuss the various instances which could assist females who have dependents (MoJ, 2016, 17-18).

The category of race is discussed by starting off in demonstrating the make-up of the prison population in relation to BAME individuals. As noted previously, this group is over-represented within the prison population, and the assessment notes that female BAME offenders experience worse outcomes than other females, due to the ‘double disadvantage’ of being both female and of an ethnic minority. The document writes that the upcoming strategy will include specific measures to actively improve outcomes for BAME females within the criminal justice system (MoJ, 2016, 19). Discussions surrounding religion in the impact assessment is fairly brief. It notes the female population by religion as it stood in March 2018, where it is evident that the largest religious group within the criminal justice system is of the Christian faith, followed by individuals citing no religion (MoJ, 2016, 20). The category of sex is the characteristic which the impact assessment delves into the deepest, which is understandable as the strategy is concerned with females specific needs and the specific disadvantages they face within the criminal justice system. It is interesting here to note that the paper mentions that there are also investments made to transform the facilities in which male offenders reside. At the time when the paper was written, there were 19 intervention programs offered both in custody and in the community which were specifically for male offenders, whereas there was only one such program specifically for females, which was only offered in custody. The assessment goes on by noting that “The strategy and its associated

work aims to provide additional support to address the complex needs of women, divert them from custody and improve outcomes. This can be justified by the numerous disadvantages faced by women in the criminal justice system.” (MoJ, 2016, 20-23) In relation to sexual orientation and marriage/civil partnership the assessment states that the 2018 strategy will not have adverse impacts on these characteristics (MoJ, 2016, 23).

I would like to revisit a few of the above mentioned categories, and look at them with a view of how they are put forth in the 2018 strategy. The category of religion or belief is an interesting one, in as much as it is a characteristic which can be seen as very important for individuals who are very strong in their faiths. It is noted in the impact assessment that the 2018 strategy will not have an adverse impact in relation to this protected characteristic, however not having an adverse effect does not imply an ambition to better a situation. If we compare this wording to how this is expressed in relation to disability, where the assessment states “we anticipate this strategy would have a positive impact in relation to this protected characteristic” (MoJ, 2016, 15) we can clearly see that having a positive impact differs from not having an adverse impact. The first signifies an ambition to change, and a hope for betterment, whereas the latter seems to signify that things at least won’t get worse. I wonder if this could be seen in connection to the numbers of individuals pertaining to each faith, where ‘All Christians’ are the clear majority, with ‘No religion’ as a clear second place. The two categories then represent the ‘norm’ of the prison population, with the ‘other’ being Muslim, Hindu, Sikh, Buddhist and Jewish. As such, it could be argued that the new strategy will not create an adverse impact to the inmates, as the majority of them are already the categories which are the ‘norm’ and as such benefit from the already existing circumstances. However, the indication that things won’t get worse do not indicate any positive changes which could surely be made in relation to the religious minorities. The same wording can be seen in relation to sexual orientation, where the assessment does not consider the new strategy to have any adverse effects on the female offenders. Again this can be seen to be saying that no improvements or actions will specifically be taken in the strategy to improve circumstances for individuals imbued with these characteristics.

### **6.3 Gender – binary or non-binary?**

For transgendered individuals facing a prison sentence, the initial processing can be a very important moment, as this is usually at which point they will be placed in either the ‘male’ or ‘female’ box. Rosenblum argues that the treatment of transgendered individuals within the

criminal justice system ought to be standardized in order to maximize the rationality of the practices. The prisoner in question should also be allowed to present medical, psychological or even physical evidence in support of their gender identity (2000, 520).

As mentioned above in section 6.1 *The Government's Approach to Crime Prevention* does not mention any specific genders, or pronouns, when speaking of earlier interventions, except when reciting prior research or statistics. However, where this is done, there is little discussion regarding the sex divisions or any differences which have been raised in the statistical data reviewed. In the analyzed section, the 2010 document mainly refers to individuals, rather than using the pronouns female/woman and male/man as in the *Female Offender Strategy*. This is an important point when carrying out an analysis through an intersectional lens as pronouns can be seen to hold common assumptions connected to the notions of masculinity and femininity. It is also noteworthy that by using the binary terminology of male/man and female/woman the 2018 strategy which is aiming to be more inclusive is putting forth a message that the gender binaries are the norm and to whom the strategy is aimed at. This can furthermore be seen in line with WPR of who will benefit from the policy and who will be disadvantaged (Bacchi & Eveline, 2010).

As correctional facilities are separated on the basis of biological sex it is understandable that the gender binary pronouns are used. However it can be assumed that non-binary and transgender individuals also exist within the criminal justice system and as such, it would be beneficial for the 2018 strategy to reflect upon this in a more transparent way, rather than only mentioning that they also take into consideration the BAME population as well as individuals with other protected characteristics (MoJ, 2018, 13; 25; 28; 42). This can be seen in line with the 2016 Ministry of Justice paper titled *Review on the Care and Management of Transgender Offenders*, in which it is noted that being transgender within the criminal justice system should not be a reason for isolating someone without any other legitimate reason, and as the criminal justice system is divided along the binary demarcation lines of the male and female sex, extra precautions should be taken to avoid extreme isolation for transgender, intersex or non-binary offenders. The document further notes that transgender offenders should be allowed day-to-day contact with peers, while also remaining, as far as is possible, integrated with others. This is in line with circumstances surrounding other minority groups within the criminal justice system (MoJ, 2016, 7). In line with this Rosenblum notes the fact that a common solution within the criminal justice system has been to place transgendered individuals in segregation, which as noted by the review mentioned above excludes the individual from equal participation in prison life. Segregation may provide a

transgendered individual with safety, but it may cost them highly in comfort (Rosenblum, 2000, 530).

As mentioned above, neither of the documents explicitly mentions transgender, intersex or non-binary offenders in the sections analyzed. In the 2010 paper this is not striking, as the document does not overtly distinguish between the sexes at all. However, in the 2018 strategy, it can be assumed that the mention of ‘protected characteristics’ would be wherein transgender and non-binary offenders would be placed. In the 2016 review mentioned above, it is noted that the “treatment of transgender people in courts, probation and prison services has not kept pace with the development of a more general understanding of the issues surrounding gender in society.” (MoJ, 2016, 4) The document stresses the importance of allowing transgender offenders to experience the criminal justice system in the gender in which they identify. This is viewed as the most humane and safest way, as well as the way which will generate the most successful rehabilitation (MoJ, 2016, 4). This on the outset can be seen in line with Rosenblum’s arguments noted above, however, Rosenblum also notes that the placement of transgendered individuals tends to be determined by over-simplified notions of their gender identity (2000, 523). In response to this, I feel it would be pertinent for the strategy to address this matter and to explicitly state what measures they would undertake to ensure their staff have an appropriate understanding of varying gender identities. This I would argue would be in line with their aim of creating a more gender sensitive criminal justice system. Rosenblum further notes that placement of transgendered prisoners according to gender identity would be more feasible if the prisons were modified. This could include placing transgendered individuals in single bed cells, or by prison staff taking a more active role in the placements by surveying which inmates would be the most tolerant or receptive to having a transgendered cellmate. This approach could save the criminal justice system costs as it does not include any changes made to the prison organization (Rosenblum, 2000, 533). It would have been interesting to read *how* the Ministry of Justice proposed that prisons would decide on placement of transgendered individuals. As stated above the 2016 review states transgender individuals should be placed according to the gender they identify with, in line with Rosenblum’s arguments, however as pointed out by Rosenblum, this may be easier said than done.

It is mentioned that at the time of the 2016 review there was very little data available on numbers of transgender, intersex and non-binary offenders within the criminal justice system. The numbers which were presented were based on observations rather than any audit or collection of information which had been received from any record management system.

As the review was initiated, a data collection exercise across the prison estate was commissioned, as well as the introduction of an equality information form wherein the offenders could enter their gender identity. Interesting to note is the Ministry of Justice's final point in the introduction of this document, where they note that regardless of the small figures of transgender individuals in the criminal justice system, it is a subject which deserves time and attention of policy-makers and practitioners (MoJ, 2016, 4). This document is discussed here as it was published two years prior to the *Female Offender Strategy* and having been put forth by the same institution, the Ministry of Justice. As the 2018 strategy claims to be a step forward with regards to gender equality within the criminal justice system, one could make the argument for the fact that the position of non-binary, intersex and transgender individuals should be included. As noted in the 2016 review, individuals who live in a gender different to their assigned sex at birth, should in general be treated by the criminal justice system according to the gender in which they identify (MoJ, 2016, 5). As such, however small the population, a discussion regarding their particular needs, or even simply an acknowledgement of their existence would be a welcome addition in the path to equality and equity.

Relating to the sections analyzed in the 2010 and 2018 governmental documents pertaining to earlier interventions, the 2016 review also discusses earlier interventions. The document writes that "The universal principle that the best outcomes typically rely on anticipation and early intervention holds for transgender offenders." (MoJ, 2016, 6) The paper goes on to note that some transgender individuals have existing vulnerabilities, for example mental health or substance misuse, while others will become vulnerable individuals as a result of their connection to the criminal justice system (MoJ, 2016, 6). This is however as far as the discussion goes with regards to earlier interventions. One could perhaps argue that this is related to the fact that the transgender, intersex and non-binary population within the criminal justice system is small or largely unconfirmed and as such it is difficult to discuss earlier interventions or pathways into criminality. However, as mentioned previously it would have been beneficial for the 2018 strategy to incorporate this in their discussion regarding earlier interventions for female offenders, as a way of demonstrating a willingness to include all individuals in their strategy for a more equal and just criminal justice system.

The final section of the 2016 document states that the creation of an Advisory Group on transgender people in custody should be established in order to ensure that any new operational policies are fit for purpose. Discussions should include transgender individual's safety and high-level monitoring of allocation and transfer processes (MoJ, 2016, 8). As mentioned, the 2018 strategy does not explicitly discuss circumstances related to transgender,

intersex or non-binary offenders, however the *Equalities Impact Assessment for the Female Offender Strategy* does. This document was started in November 2016 by the Ministry of Justice and as mentioned previously, is a document which states how the Ministry of Justice has demonstrated ‘due regard’ to the Public Sector Equality Duty (PSED) in its design and development of the strategy published in 2018. Discussions related to transgender, intersex and non-binary offenders can be found in the section of this impact assessment titled ‘Consideration of Protected Characteristics’. The assessment notes that in line with the *Equality Act 2010* it is unlawful to discriminate or harass individuals because they are undergoing, preparing to undergo, or have undergone gender reassignment. In early 2017, 38 percent of the private prisons in England and Wales (47 of 124) stated that they had one or more transgender offenders in their institutions. 125 prisoners at this time were living in, or presenting in, a gender other than their assigned sex at birth. Of this population, 99 noted their gender as male, 23 as female and 3 did not state their gender. The assessment states that these figures are estimates, and are likely to be an underestimation of the true numbers. The document further states that they do not anticipate that the strategy will have an adverse impact on the individuals who share this protected characteristic (MoJ, 2016, 17).

It is noteworthy here that the impact assessment claims that the 2018 strategy will not have any adverse effect of transgender individuals, whereas it could be argued that the mere exclusion of explicitly mentioning transgender, intersex and non-binary individuals in itself could result in adverse effects. This should be viewed in line with the WPR approach of who the policy is designed for. The ‘protected characteristics’ category of individuals as indicated by the impact assessment also relates to age, disability, pregnancy, race, religion or belief, sex, sexual orientation and marriage/civil partnership. As such it could be argued that the 2018 strategy, by only extricating BAME offenders from this group as significant enough to be addressed separately, the strategy is saying that the other characteristics have a lesser impact on the individuals experience of the criminal justice system.

## **7. Conclusion**

In this thesis I have aimed to showcase through the analysis of two governmental documents, how the issue of earlier interventions are discussed in relation to strictly female offenders and offenders in general respectively. With the usage of the WPR approach, bearing in mind the feminist pathways theory and through an intersectional lens I would argue that the message put forward in the *Female Offender Strategy* by the Ministry of Justice notes that BAME



women face further difficulties in their interactions with the criminal justice system, however I do not feel that the importance or breadth of the issue is put forth as equally important as other issues when it comes to earlier interventions. The inequality faced by BAME women, as well as the fact that they are over-represented in the prison population as compared to the general population, is relegated to the sidelines and portrayed as a separate issue. The strategy could have incorporated some of the figures which the Prison Reform Trust quote as a way to shine a light onto the significance of this issue. I furthermore find that other identity markers should have been raised to the forefront, rather than being lumped together in a homogenous groups of ‘protected characteristics’. By naming the importance of sexuality, ableness, age, religion, transgender, intersex and non-binary, the strategy would be more inclusive and have put forward a message that the new strategy was taking into consideration the multifaceted lives and experiences of all the different women who are in one way or another linked to the criminal justice system.

Furthermore *The Government’s Approach to Crime Prevention* is also lacking when it comes to an intersectional perspective, as it does not distinguish between the sexes as such, but rather only mentions females and males separately when reciting existing research or statistical data. When it comes to other identity markers, such as race, religion, ethnicity, sexuality, ableness, religion, transgender, intersex and non-binary the 2010 document falls short of demonstrating an intersectional perspective. The only mention of individuals with other ethnic backgrounds in the analyzed section was depicted in a negative manner and put forth the image of the ethnic minority men as an ‘other’ in relation to traditional, English, families.

To answer my last research question, neither document fully addresses the situation of transgendered individuals within the criminal justice system. The only official document which does, is the review undertaken to explore this particular issue, which having been published in 2016 by the Ministry of Justice should, I would argue, have been utilized and incorporated in the *Female Offender Strategy* in order to demonstrate a true undertaking of a gender sensitive strategy.

One of the underlying themes of this thesis, which was outside the scope of this paper in terms of fully being able to be explored, are discussions surrounding what a crime actually is. Who decides what is considered a crime, and as such, who is a criminal. This has briefly been touched upon, but is something which could be explored further in future research. Criminalizing the selling of sex, but not the purchasing of it for example, could be seen as an inherently sexist practice of criminalizing females. Who sets the agenda of what a crime is,

are also in a position to set the agenda of who is a criminal. Therefore, as my brief example suggests, the decision of what a crime is could be viewed in terms of being racist, sexist or any other form of institutionalized ‘othering’ of a group based on their inextricable identities.

An unintended outcome of this analysis is the demonstration that there is a lack of intersectional thinking where male criminality is concerned. The 2010 crime prevention document didn’t distinguish between the genders, and the statistics or examples used were of males, however there was a distinct lacking in a diversity discussion in relation to these male criminals. The analysis of intersectionality relating to male criminality is outside the scope of this thesis, but could be an area of future research. A comparison of official documents pertaining to male and female criminality through an intersectional lens, would further explore the area that I have sought to research in this thesis.

## 8. References

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