AN INVISIBLE POPULATION? THE NEEDS OF YOUNG WOMEN OFFENDERS AND WHY GENDER DESERVES CONSIDERATION IN THE AOTEAROA NEW ZEALAND YOUTH JUSTICE SYSTEM

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I Introduction

Commentators frequently refer to the “gender ratio” gap: that young men commit crime more than young women.1 This paper seeks to explore the relationship between gender and patterns of offending, as well as how young women offenders have historically been treated.2 Aotearoa New Zealand’s youth justice system must recognise that young women offenders have different needs to male offenders. Further, the life experiences and needs of young Māori women offenders must be recognised. The aim of this paper is to highlight that young female offenders (both Māori and non-Māori) are currently an invisible population in the New Zealand youth justice system. Further, avenues of remedying this invisibility will be probed; hopefully leading to reforms which may help to reduce young female offending generally.

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1 Alison Cleland and Khylee Quince Youth Justice in Aotearoa New Zealand: Law, Policy and Critique (LexisNexis, Wellington, 2014) at 46.
2 The terms “young women” and “girls” will be used interchangeably throughout this paper to refer to those females under the age of 17 years that fall within the ambit of the New Zealand youth justice system.
II Young Women Offenders: A Gendered Construction

The “gender ratio” gap is the phenomenon that most reported crime is committed by men rather than women.\(^3\) In New Zealand’s youth justice system, boys are responsible for approximately 80 per cent of all youth offending.\(^4\) In 2013, young females accounted for 18 per cent of all young people charged in court, with 39 per cent of those females being Māori.\(^5\) This begs the question: what is the relationship between gender and patterns of offending? Are women and girls less likely to offend because of their biology, pathology or social experiences? This paper takes a feminist approach to draw attention to young women offending in Aotearoa New Zealand. The aim is to understand the links between gender and offending and how young women offenders have historically been treated. Does the fact that girls represent a minority of young offenders mean that their specific needs are being overlooked, consequently rendering them “invisible” in government legislation and youth justice practices?\(^6\)

Patterns of offending and the gender ratio gap have historically been explained through gendered constructions: classical studies of female criminality fixated on biology, psychology or social structures to rationalise a young woman’s lack of offending.\(^7\) In the nineteenth century, psychological studies such as that by Lombroso and Ferrero believed that the true, biological nature of women was antithetical to

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\(^3\) Cleland and Quince, above n 1, at 46; Kerry Carrington and Margaret Pereira *Offending Youth: Sex, Crime and Justice* (Federation Press, New South Wales, 2009) at 55–56.

\(^4\) Ministry of Justice *Trends in Child and Youth Prosecutions 2012/13* (June 2013).


\(^6\) Michele Burman and Susan A. Batchelor “Between Two Stools? Responding to Young Women who Offend” (2009) 9 Youth Justice 270 at 278.

\(^7\) Cleland and Quince, at 27 and 50.
crime. This biological determinism was supported by social-structural justifications of female behaviour. Such theorising saw women as subject to social and family control in the private domestic sphere, which strictly regulated their behaviour and criminal potential. This was unlike their male counterparts who operated, unregulated, in the public sphere. Otto Pollak’s study, in relation to the treatment of women by criminal justice actors, believed that the greater leniency shown to women by the police and courts “masked” the extent of crime committed by women. Pollak’s works influenced the “chivalry thesis”: that women are “filtered out” of the criminal justice system by the “chivalrous discretion” of predominantly male judges and police.

Women who offended were seen as transgressing gender expectations: the criminal woman was socially “abnormal”, or indeed, “monstrous”. As Gelsthorpe and Sharpe stated, a dual image of girls was created: simultaneously thought to be more vulnerable than boys and in need of care and protection, whilst their delinquent behaviour was seen “as worse than that of boys.” Over the last two centuries, female pathways into crime have been viewed as a result of sexualised and immoral (mis)behaviour, as a combination of waywardness and “dishonesty”, or as a consequence of the increasing liberation of

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10 Gelsthorpe and Sharpe, above n 9, at 53.
11 Cleland and Quince, above n 1, at 28.
12 Smart, above n 8, at 46–47.
13 Cleland and Quince, at 50.
14 Smart, at 29 and 35.
15 Gelsthorpe and Sharpe, at 48.
16 Carrington and Pereira, above n 3, at 62-63.
women, which had “given them the freedom to behave as nastily as boys.”¹⁸ In New Zealand, the 1950’s Parker-Hulme murder of a mother by her daughter and her daughter’s best friend sparked a media-driven moral panic about the nature of young female offending.¹⁹ Whilst many of these theories and attitudes have since been discredited as “myths, muddles and misconceptions”, the remnants of such gendered standards remain in contemporary society.²⁰ Greater attention is given today to girls’ increased participation in gangs, with their violent behaviour fuelled by alcohol and drugs.²¹

Although the evidence about whether girls are becoming increasingly violent is distorted and inconclusive, these gender expectations are crucial in understanding the unique situation of young women offenders today.²² Girls do offend less than young men and boys. However, they are still offending and in seemingly consistent numbers.²³ Despite this, young women’s offending remains under-researched and ill-responded to, and this needs to be changed. In order for young female offending to be prevented and combatted, these gendered constructions must be acknowledged and factored into the New Zealand youth justice system’s responses.

III The Needs of Young Women Offenders

Whilst many of the feminine stereotypes aforementioned have been disproved, it is recognised that young women offenders do have distinct needs that need to be addressed. Studies have identified that

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¹⁸ At 219.
²⁰ Gelsthorpe and Worrall, above n 17, at 220.
²¹ Carrington and Pereira, above n 3, at 67–68.
²² Ibid; Gelsthorpe and Sharpe, above n 9 at 55–56; Lynch, above n 19, at 523.
²³ Statistics New Zealand, above n 5.
victimisation acts as a significant precursor to female offending.\textsuperscript{24} Because of their younger age and stage of emotional development, Burman and Batchelor identified that young females are more affected by victimisation and related consequences such as parental absence, a sense of isolation and higher rates of self-harm than their male and adult counterparts.\textsuperscript{25} Sharpe has noted that many poverty-driven circumstances and generational adversities affect both girls’ and boys’ pathways into crime.\textsuperscript{26} Yet, Sharpe recognised that some causal factors tend to affect girls more, including dysfunctional family relationships, victimisation, and experiences of abuse as well as early pregnancy or motherhood.\textsuperscript{27} Taylor identified a similar correlation between high levels of victimisation and young female offending, with 88 per cent of those female offenders interviewed in her study having experienced some form of childhood abuse.\textsuperscript{28}

Whilst it is important not to essentialise the experiences of young women offenders based upon their gender alone, for many young women these risk factors do correlate with their offending. It is important that individual experiences are recognised and treated, as well as trends that exist for young women as a collective group.\textsuperscript{29} Although boys also experience abuse, the combination of victimisation and other forms of disadvantage appears to accumulate for girls.\textsuperscript{30} Hence, for this offending group in particular it is crucial that programmes are instituted which target the relationship between victimisation and its effects such

\begin{footnotesize}
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\item \textsuperscript{24} Burman and Batchelor, above n 6, at 278–279; Annabel Taylor “Women offenders in Aotearoa New Zealand: The impact of violence across the life course” (2007) 5 Te Awatea Review 18 at 18.
\item \textsuperscript{25} Burman and Batchelor, at 278–279.
\item \textsuperscript{26} Gilly Sharpe Young Women and Youth Justice (Routledge, London, 2012) at 149.
\item \textsuperscript{27} Sharpe, above n 26, at 149-150.
\item \textsuperscript{28} Taylor, above n 24, at 18.
\item \textsuperscript{29} Tracey McIntosh “Marginalisation: A Case Study: Confinement” in Tracey McIntosh and Malcolm Mulholland (eds) Māori and Social Issues (Huia Publishers, Wellington, 2011) at 269.
\item \textsuperscript{30} Taylor, at 20.
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as lower self-esteem, mental health disorders, drug and alcohol misuse, and crime.31

IV The Needs of Young Māori Women

Whilst the needs of young women generally must be assessed in our youth justice system, the specific needs of young Māori women offenders also deserve consideration. There is a significant lack of information for this group. The typical focus of research and resources for Māori offenders is adult Māori men.32 Although there is offending data based on ethnicity, age and gender separately, it is difficult to find research that combines these variables.33 As Tracey McIntosh has commented, young Māori female offenders are a “socially submerged population”, being “marginalised in the literature and public consciousness.”34 Māori women are more socio-economically disadvantaged on a number of levels than both Māori men and non-Māori women:35 they are over-represented in their exposure to poverty, poor housing, income and employment disparities, domestic violence, mental health problems and lack of community support.36 The combined variables of socio-economic oppression that Māori women face overexposes them to offending risk factors; being more easily “filtered in” to the criminal justice system than any other social group in New Zealand.37 Despite this, as this paper will demonstrate, services are failing to account for the life experiences of young Māori women,

31 Burman and Batchelor, above n 6, at 278–279; Sharpe, above n 26, at 126.
32 McIntosh, above n 29, at 265.
33 This can be seen in various reports of Statistics New Zealand, the New Zealand Police and the Ministry of Justice.
34 McIntosh, at 265.
36 Ministry of Women’s Affairs Māori Women: Mapping Inequalities and Pointing Ways Forward (September 2001) at 120 and 126–128.
37 Quince, above n 35, at 127.
only conflating their negative experiences in the youth justice system further. As Khylee Quince argues, an intersectional strategy is therefore needed in the Aotearoa youth justice system to respond to the differing needs and life experiences of young Māori women offenders alongside those of their non-Māori counterparts. As Quince recognised, “We cannot hope to address the causes of social harm if we do not contextualise the experiences of the specific people involved in offending.”

V Existing Practice in the Aotearoa New Zealand Youth Justice System: an Invisible Population?

It must be assessed whether Aotearoa New Zealand’s youth justice system is responding to the needs of young women offenders, both Māori and non-Māori. The aim being, as signalled above, to highlight that these young women currently exist as an invisible population in the New Zealand youth justice system, and to assess avenues for remedying this and for reducing young female offending generally.

A International Standards and Obligations

New Zealand has ratified several international standards and obligations that are relevant to the treatment of young female offenders, and against which current practice must be judged. The right to freedom from discrimination is affirmed in the Convention on the Elimination

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38 At 121; Ministry of Women’s Affairs, above n 36, at 121.
39 Quince discusses the treatment and status of Māori women generally, rather than young Māori women specifically, however her analysis is still highly relevant to this group; Khylee Quince “Māori and the criminal justice system in New Zealand” in Julia Tolmie and Warren Brookbanks (eds) Criminal Justice in New Zealand (LexisNexis, Wellington, 2007) at 18.
40 Quince, at 128.
of Discrimination Against Women,\textsuperscript{41} the International Covenant on Civil and Political Rights,\textsuperscript{42} the Declaration on the Rights of Indigenous Peoples (UNDRIP),\textsuperscript{43} and in the Convention on the Rights of the Child (UNCROC).\textsuperscript{44} This principle is pertinent when considering the particular needs of young women offenders and the over-representation of young Māori women offenders in the youth justice system. If gender-neutral policies result in young women offenders receiving less care and attention than males, that would be discrimination, and a claim could be brought against the New Zealand Government. The Committee on the Rights of the Child has given examples of measures needed to ensure a non-discriminatory framework. These include:\textsuperscript{45}

(1) training youth justice professionals;
(2) establishing rules, regulations or protocols which enhance equal treatment of child offenders and provide redress, remedies and compensation where needed;
(3) addressing the root causes of criminal behaviour including victimisation, psychological and socio-economic problems, pertinent to “girls and street children.”

\textsuperscript{42} International Covenant on Civil and Political Rights 999 UNTS 171 (opened for signature 19 December 1966, entered into force 23 March 1976), art 2(1).
The Beijing Rules, which are given legal status under UNCROC, go further than non-discrimination and state that:

Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.

The Committee on the Rights of the Child echoes the sentiments of the Beijing Rules in its 2007 report: that girls in juvenile justice systems “may be easily overlooked” and special attention is to be given to their particular needs, particularly “in relation to prior abuse and special health needs.” UNDRIP also recognises the need to give “particular attention” to the special needs of indigenous women and youth in policy and practices.

Although not binding, the Riyadh Guidelines emphasise that the institutionalisation of young offenders should be “a measure of last resort”, with sexual, physical or emotional abuse suffered by the young person to be given adequate consideration in this decision.

All of these international standards require that New Zealand’s youth justice system operates using a non-discriminatory framework, with particular regard to the needs of young female offenders and young Māori offenders. These international standards certainly do not render young women offenders invisible.

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46 Cleland and Quince, above n 1, at 5.
48 United Nations Committee, above n 45 at [40].
49 UNDRIP, above n 43, art 22.
B  The Legislative Framework

The Children, Young Persons, and their Families Act 1989 (the Act) forms the foundation of New Zealand’s youth justice system; however, it does not specifically address young women offenders. There is no mention of gender in the Act. Yet, there are broader principles in the Act that could be applied to take account of gender and the needs of offending girls. Sections 4 and 5 of the Act emphasise the importance of whānau participation, both in decision-making processes that affect a child or young person, and also in assisting that family where there is disruption. The Act also seeks to take account of different cultural and ethnic groups by incorporating their perspectives in services and facilities in the community. The particular needs of young Māori women could be supported under this section. Yet, such needs would be homogenised here as ‘Māori needs’ rather than being gender and culturally specific. The needs of young offenders are also seen as paramount and as warranting acknowledgement in responses to their behaviour.

The specific youth justice principles in the Act reference the whānau unit (in terms of strengthening it), the importance of alternative means to criminal proceedings, welfare needs of offenders, and the need to “address the causes underlying the child or young person’s offending.” Further, both age and the vulnerability of the offender are to be taken into account when determining sanctions. References to needs, underlying causes, welfare and vulnerability have scope for factors such as victimisation and abuse to be taken into account for young women offenders.

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51 Children, Young Persons, and their Families Act 1989, s 5(a).
52 Section 4(c).
53 Sections 4(a)(i) and (iii).
54 Section 4(f)(ii).
55 Section 208.
56 Sections 208(e) and (h).
The upshot is that, whilst this statutory framework has the potential to meet the needs of offending girls, it must be recognised that all of these provisions are broad, sweeping principles only. They do not make specific provision for the needs of young women or young Māori women or directly address the international standards New Zealand has ratified. Instead, responses targeted to this group lie in the discretion and practice of key youth justice actors: the New Zealand Police, courts, corrections facilities and community service providers.

C Specific Responses to Date

Several key institutions, mechanisms and programmes will be analysed to determine whether they are serving the needs of young female offenders (Māori and non-Māori), or whether this group remains an invisible population in Aotearoa New Zealand’s youth justice system.

1 Family Group Conference (FGC)

The FGC is the core decision-making process in New Zealand’s youth justice system.\(^{57}\) The core value driving the FGC process is achieving a proportionate response to offending, taking account of the seriousness of the behaviour as well as the causes and context of offending.\(^{58}\) The diversionary aims of the Act further support rehabilitative practices being utilised where the needs of the offender warrant this response.\(^{59}\) In theory, the individualised nature of FGCs in contrast to a formal court process means that the particular needs of young women (Māori or otherwise) should be taken into account in implementing a plan. Risk factors more prevalent amongst young females, including victimisation, abuse, and mental health, could in theory be addressed in an FGC plan.

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\(^{57}\) Cleland and Quince, above n 1, at 147.

\(^{58}\) Cleland and Quince, above n 1, at 149.

\(^{59}\) Children, Young Persons, and their Families Act 1989, ss 208(a), (b) and (fa).
Although the symbolic value of such aims must be recognised, there is evidence that FGCs are less successful for girls and young women.\textsuperscript{60} Maxwell and Kingi’s research into FGCs and the difference in gender responses highlights this. The outcomes of their research identified that:\textsuperscript{61}

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\item FGCs involving offending girls were less likely to reach agreement;
\item over half the girls felt too intimidated to share their feelings;
\item girls were less likely to feel that they had been treated fairly, considered trustworthy or that they could put the offending behind them;
\item girls were only half as likely as boys to report that the FGC helped them to stop or reduce their offending; and
\item in general, girls reported more negative experiences of FGCs than boys.
\end{enumerate}

In the study sample, significantly more girls than boys had also been notified to the Department of Child Youth and Family Services as being in need of care and protection (58 per cent of girls; 41 per cent of boys); this is comparable with the research surrounding gender-based victimisation as aforementioned.\textsuperscript{62} It is evident that girls and boys are responding differently to FGCs as they currently operate. Research by the Youth Court has also identified that girls are less responsive than boys to the restorative aspects of FGCs.\textsuperscript{63} Therefore, the core process

\textsuperscript{61} Maxwell and Kingi, above n 60, at 175 and 178–179.
\textsuperscript{62} At 174.
\textsuperscript{63} Tim Hall and Linda McIver “Girls Offending” \textit{Court in the Act} (New Zealand, February 2010) at 13.
of the youth justice system appears to be neglecting the needs and experiences of girls to some extent. As Maxwell and Kingi identified, it cannot be assumed that a FGC will provide a similar experience for everyone.\textsuperscript{64}

It does deserve noting that Ngā Kooti Rangatahi has proved initially successful for young Māori. Ngā Kooti Rangatahi take place on marae and supervise young offenders during the completion of a FGC plan to support and reintegrate offenders back into the community.\textsuperscript{65} By recognising Māori values, protocol and placing youth justice processes in a supportive community the causes of young people’s offending behaviour are more likely to be addressed in a culturally appropriate context.\textsuperscript{66} It is initiatives like this, which adapt the FGC process, that have the potential to succeed in meeting the needs of offenders, provided they are gender-specific when dealing with young Māori women.

2 \textit{Incarceration}

With three women’s prisons in New Zealand, young women offenders can receive some specialised treatment once incarcerated.\textsuperscript{67} Prison staff do receive specific training for understanding female offenders, although it is unclear whether age and ethnicity are also addressed in such training.\textsuperscript{68} It must be noted that research in this area is limited and narrow, making it difficult to accurately assess the adequacy of female prison units. Yet, a 2008 review conducted by the International Centre

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\item[64] Maxwell and Kingi, above n 60, at 181.
\item[65] Cleland and Quince, above n 1, at 251 and 253.
\item[66] At 255.
\end{enumerate}
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for Prison Studies provided some enlightenment. The Report stated that New Zealand takes a traditionally male-based approach to women’s imprisonment, reproducing the incarceration system used for men with only minor variations.69 There are some beneficial initiatives aimed at female prisoners,70 such as the Kōwhiritanga programme, which is based on Tikanga Māori values and addresses re-offending risk factors for women including victimisation and substance abuse.71 However, the review concluded that despite these minor initiatives “serious reform has yet to occur.”72

3 Rehabilitation and prevention programmes

As Lynch recently identified, there is a notable lack of female-specific preventative and rehabilitative programmes in New Zealand currently.73 There is considerable frustration amongst youth justice professionals at the lack of gender-specific programmes available.74 For example, there are rehabilitative programmes for violent men including ‘Youth to Men’ and ‘Dove’, yet, there are few examples of female equivalents.75 One intervention available in Hastings for violent female offenders is “Wahine Toa” run by senior police officers and youth advocates.76 Despite having limited resources, the programme has been successful for the bulk of the girls, building their self-esteem and targeting the causes of their offending.77 More of these programmes are needed. Judge Zohrab has noted that incarceration is often the first real

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69 McIntosh, above n 29, at 270.
70 Ibid.
71 Ministry of Justice, 6th Periodic Report, above n 68, at [170].
72 McIntosh, above n 29, at 270.
73 Lynch, above n 19, at 523.
74 Tim Hall and Linda McIver “Youth Justice Professionals Grow Frustrated at a Lack of Programmes for Violent Young Females” Court in the Act (New Zealand, May 2010) at 7.
75 Hall and McIver, “Professionals”, above n 74, at 7.
76 Ibid.
77 Ibid.
opportunity for many women to receive free ACC counselling for sexual abuse. Dr Donna Swift’s research suggests that young women have a different pathway into violence and crime “so they need a different pathway out.” The particular needs of young women, therefore, need to be addressed through different schemes from their male counterparts.

Police practice

Police practice currently appears to be failing this group of offenders also. Whilst the Youth Policing Plan from 2012–2015 references the upward trend in violence for female youth, it fails to mention any strategies that will combat this. Responding to “youth risk factors” generally is mentioned, but not gender-specific policies. There is a focus on early intervention, alternative action and joint initiatives with iwi as a means of meeting the needs of Māori youth. However, these also fail to be gender-specific. Again, these gender-neutral, or indeed gender-blind, policies are too vague to ensure young women are directly supported.

Research

Finally, the lack of gender-specific research remains a pressing issue for the New Zealand youth justice system. Whilst undertaking this study, it was clear that both the needs of young women offenders and any responses to them are not being thoroughly researched in New Zealand. The lack of research and empirical studies into young

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79 At 12.
81 New Zealand Police, above n 80, at 8.
82 At 7.
83 Lynch, above n 19, at 523.
women’s offending means that this issue appears to be ignored at the policy level. If policy makers are not tackling it, it is unlikely that gender-specific initiatives will filter down into the practice of youth justice actors.

Currently young women offenders exist as an invisible population in New Zealand. There are not enough targeted initiatives that meet their needs and respond to the causes of their offending. The policies and practices currently do not meet the international standards New Zealand has signed up to. Young women offenders are therefore left marginalised and their offending can only be expected to increase if the status quo remains.

D Ensuring Young Women are a Visible Population: Where to from here?

Young women offenders need to be made visible and responded to in order to reduce their re-offending and enhance their reintegration into society. The FGC process needs to be adapted to incorporate the views of sexual abuse and violence professionals to create plans that better target the needs of young women. Gender-specific programmes are needed, both rehabilitative and preventative. Police strategies need to recognise the needs of young women offenders (Māori and non-Māori) more explicitly and combat them. Tikanga Māori values need to be incorporated for young Māori women in a way that recognises the social roles of Māori women. Gender-blind policies and initiatives need to be exchanged for gender-specific ones. The first step is to increase the amount of research undertaken on young female offenders, and thus increase the pool of research that can inform the development of the youth justice system at a policy level. The more this issue is recognised, the easier the task of remedying it will become.

84 Ibid.
VI Conclusion

Young female offenders (both Māori and non-Māori) currently exist in the Aotearoa New Zealand youth justice system as an invisible population, whose distinctive needs remain chiefly undocumented and unaddressed. The international standards New Zealand has signed up to recognise the importance of non-discriminatory frameworks and meeting the needs of young women. However, the current legislative framework and practice of key youth justice processes and actors do not embody such aspirations. An intersectional strategy and gender-specific initiatives are needed to meet the differing needs and life experiences of young Māori women offenders alongside those of their non-Māori counterparts. In order for young female offenders to be rendered visible in Aotearoa New Zealand’s youth justice system, these issues need to be prioritised.