15 Women, punishment and social justice
Why you should care

Kim Pate

The Canadian Association of Elizabeth Fry Societies (CAEFS) has 26 members spread throughout Canada, providing services to marginalised, victimised, criminalised and institutionalised women, especially those who are imprisoned. We also undertake policy and law reform initiatives, most of which are aimed at trying to undo the outrageous injustices being perpetrated at breakneck pace in Ottawa. We make every effort to address the interconnectedness of economic, social, legal and political decisions that contribute to women being the fastest growing prison population. We have recognised this reality very concretely by changing our mission from a historic orientation towards working with women who come into conflict with the law, to working with women who are criminalised; and we do not use words such as ‘offender’, because it presumes a level of hyper responsibilisation of women and girls (CAEFS 2010a). This reflects the recognition that it is the laws and policies that are increasingly coming into conflict with peoples’ lives, resulting in the virtual inevitability of criminalisation, rather than people themselves being the full and consenting authors of their own circumstances.

As a non-Indigenous woman living in Algonquin territory, I am painfully aware of the impact of the genocidal policies of colonisation on our Indigenous brothers and sisters: we see the consequences in very stark and profound ways when we enter our prisons and see first-hand the over-representation of Aboriginal men, boys, girls and, most especially, women. In Canada, one third of the women serving sentences of imprisonment of two years or more are Indigenous. Indigenous women are more than one third (34 per cent) of women serving federal sentences and in some provinces and territories, Indigenous women constitute upwards of 95 per cent of the female population in jails and remand centres (CAEFS 2010b).

As we witness the further erosion of the substantive equality of women, especially those most vulnerable because of multiple intersections of marginalisation and discrimination, be it race, sexual orientation, ability – particularly disabling mental health issues – or those escaping violence, we are witnessing the exponential growth of women in prison. Women are the fastest growing prison population worldwide and this is not accidental. In Canada, we recognise that our links to the United States have meant that we were amongst the first countries to be affected by regressive, so-called, ‘law and order’ agendas, which are making prisons the
default option for those most significantly impacted upon by the destruction of social safety nets and the evisceration of medical, economic and education standards and services. The reason that women are increasingly criminalised has very little to do with their behaviour compared to what it has to do with the policies that are being put in place. The fact that crime and laws were developed at a time when women and children had no rights, and were the property of the men who sired them or married them, is part of the reason the system does not work for women at all.

In too many communities and contexts, prisons are the only ‘service’ that cannot turn people away because of waiting lists, a lack of beds or resources, change in mandate and so on. Imagine if, instead of continuing to cram more people into overcrowded prisons, we limited the number of bed days available for judges to impose as sentences, or if we turned women away and would not allow them access to prisons when they really need housing, a shelter to escape violence, treatment to deal with past sexual abuse and other forms of trauma, drug and/or alcohol detoxification and treatment to address mental health and/or addiction issues.

In Canada, in 1996, we decided to follow the US lead when the federal government eliminated the Canada Assistance Plan and therefore the essential nature of Canadian standards of social, medical and educational resourcing. We have now experienced the same sorts of cuts and knee-jerk band-aid responses – all of which normalise crime and criminal justice and penal responses, thereby presuming criminality and perpetuating the problems of the past, be they crime prevention, homelessness, restorative justice or other responses. As a result of mandatory charging policies (introduced to protect women), women who are trying to escape violence are increasingly being criminalised. Additionally, increasing numbers of women are being trafficked through the country and criminalised, after being forced into prostitution to survive.

Canada is rushing to follow the US race to incarcerate the most dispossessed for longer and more brutalising periods. Ironically, this is occurring at a time when many US jurisdictions are retreating from regressive ‘law and order’ agendas. Moreover, in 2008, a panel of federal judges ordered California to reduce its prison population by 40,000 over the next two years – which reflects a roughly 27 per cent cut from the current population of 150,000. Canadian politicians are ignoring their social and fiduciary responsibilities to Canadians by passing laws, seemingly without concern for the human and fiscal costs associated with them. The long list of recent criminal justice reforms will raise incarceration rates and suck resources out of the community.

By creating criminally low social assistance (formerly known as welfare) rates throughout Canada, and even bans on receipt of state resources in some jurisdictions, many poor people are immediately relegated to the criminalised underclass. Rather than accepting the criminalisation of poor women for welfare fraud, prostitution, drug trafficking or whatever other survival strategies they are forced to employ, if we were truly interested in addressing fraudulent transactions that harm others, then criminally low welfare rates might justify the criminalisation of those
who craft, who pass and who enforce contributory laws and policies, rather than those who are subjected to them.

We are also witnessing the increased feminisation and criminalisation of poverty. Welfare fraud is one example of how poor women are increasingly likely to be criminalised. Their attempts to survive poverty too often results in charges ranging from fraud (including welfare fraud), soliciting, pimping, living off the proceeds or importing and trafficking drugs. Indeed, there is evidence that African Canadian single mothers are recruited to traffic narcotics as they leave meetings with their assistance workers. Women who are trying to keep up their rent payments and/or feed their children/families are especially vulnerable. Previously, women may have resorted to such means to address extraordinary expenses such as birthdays, Christmas and/or other holidays, child care and summer camp expenses. However, it is increasingly the manner in which single mothers are attempting to cover basic living costs.

In Ontario, we have the tragic reality of the life and death of Kim Rogers. Kim was criminalised in the first place because she attended school, while she was receiving ‘Ontario works’ funding. She was charged and convicted of ‘welfare fraud’ and put on house arrest. This label and resulting punishment were applied because Kim attempted to return to school as an adult in order to obtain an education while still claiming social assistance. As part of the process, she also sought and received student loans. Although everyone knows that it is impossible to live on welfare without some supplemental income/support, to be ‘caught’ doing so means the near certainty of criminal prosecution.

Kim died while under house arrest in the middle of a massive heat wave. Her death was a result of criminal negligence and complicit political, economic, legal and social policy decisions, yet only she was held accountable (CAEFS 2010c). Moreover, after her death, we discovered that she could have been attending school and receiving additional benefits, had she or, more to the point, her worker known that she was eligible for disability benefits. Her usual work was waitressing and bartending, but knee surgery made it impossible for her to continue in that work, so she went back to school. We have to question why those responsible for the development of such harmful social policies and legislation are not held legally responsible for the human and social costs of criminalising the most marginalised, vulnerable and oppressed.

We should consider who benefits from the discrepancy in the monitoring, charging, prosecuting and sentencing of those involved in practices such as tax evasion, medical over-billing and lawyers dipping in to their trust funds, particularly when we contrast this with the demonisation of the poor that is exemplified by the criminalisation and pursuit of welfare recipients. We should also question why some behaviour is characterised as almost a benign omission as opposed to purposeful, criminally intended, fraud.

In the United Kingdom, noted academics such as Pat Carlen and campaigning organisations such as the Howard League are amongst those calling for the criminal justice system to refuse to proceed with criminalising the young, those escaping violence, those with intellectual disabilities and mental health issues;
they are also amongst those calling for more decarceration, community development, and social (re)investment. Indeed, as this book demonstrates, many academics, professionals and practitioners on the front lines have also characterised the push to criminalise the most dispossessed as the current manifestation of race, ability, class and gender bias and argue that we need to examine our fundamental beliefs and notions of whose interests and biases are privileged and at whose expense.

When we know the histories of abuse, poverty and extreme marginalisation that is the reality for most of the young women and girls with whom we work, it seems quite ludicrous that we continue to pretend that telling women and girls not to take drugs to dull the pain of abuse, hunger or other devastation, or tell them that they must stop the behaviour that allowed them to survive poverty, abuse and disabling health – especially mental health – issues in the face of no current or future prospect of any income, housing, medical, educational or other supports. Who would consider it to be of benefit to anyone to continue to imprison women and girls, and then release them to the street with little more than psycho-social, cognitive skills or drug abstinence programming, along with the implicit judgement that they are in control of and therefore responsible for their situations, including their own criminalisation? We all must rethink, resist and reject such notions.

Indigenous women continue to suffer the shameful and devastating impact of colonisation. From residential school, to child welfare seizure, to juvenile and adult detention, Aboriginal women and girls are vastly over-represented in institutions under state control. To provide a further example, the recent focus on foetal alcohol spectrum syndromes and disorders is gendered, classed and racist. Such diagnoses are most prevalent in countries that have high rates of criminalised Indigenous populations. Although the symptoms or characteristics of foetal alcohol labels overlap significantly with other conditions ranging from inadequate nutrition, oxygen deprivation, learning disabilities, attention deficit disorder and so on, the labels are persistently utilised in places such as Canada, New Zealand, Australia and the United States. In the European Union, on the other hand, this approach is not seen as particularly helpful: here the symptoms and impact of other toxins, be they pollution, bad water, insufficient nutrients, lack of prenatal and postnatal supports, accidental brain injuries or lack of oxygen, are considered equally important. While it is clearly important to limit the impact of alcohol and other toxins on foetal development, criminalising behaviour is only likely to end up with a focus on those least able to defend themselves. A focus on foetal alcohol exposure, in isolation, is likely to continue to result in the disproportionate application of the law and societal judgement against poor and racialised women. If application of such a label meant instead that someone could not be criminalised but was entitled to community supports because their disability renders them incapable of forming criminal intent, it can be predicted that the diagnoses might virtually evaporate.

It is no accident who is criminalised and who is imprisoned; and, nor is it an accident who is not. What if, instead of denying and defending abuses of power and force by police and prison personnel, as well as the neglect and abuse of institutionalised persons, we collectively condemned and stopped such practices? The
Correctional Investigator in Canada has repeatedly called on the government to address the needs of those with mental health issues in the community, rather than continuing to abandon them to prisons. I used to meet most women with significant mental health issues kneeling on a cement floor, or institutionally linoleum tiled floor, peering through a meal slot in a solid metal door. For almost three years following the publicity surrounding the death in custody of Ashley Smith (CAEFS 2010d), I was denied access to the segregation unit where she died. In order to meet with the women in the circumstances Ashley faced before she died, they and I must ‘agree’ to them being fully shackled, usually handcuffed behind the back too, and isolated behind bullet-proof glass, monitored by several correctional officers.

In our attempts to address these issues, my colleagues and I have met with judges, prosecutors, the defence bar, correctional authorities and mental health professionals. Mental health and youth workers, in particular, have lamented the reality that the evisceration of their resources, combined with the advent of zero tolerance to violence policies, have resulted in policy directives that instruct them to call the police and urge the pursuit of criminal prosecution in cases where those with mental health and/or intellectual disabilities are assaultive or abusive. We are witnessing the increased depiction of women as becoming increasingly violent and dangerous in our communities. Behaviour that might previously have been considered to be symptomatic of the psychiatric or mental health label attached to the individual is treated as criminal or ‘bad’ behaviour in the criminal justice and penal context. Reduced resources and priorities mean that they are usually without the requisite supports to handle the most challenging people. There is a long line-up of others in the community who are not criminalised and who are awaiting treatment options, so they are seen as legally and ethically justified in making such decisions.

The reflex of corrections to develop mental health services in prisons sounds positive to many, yet, in reality, it is only serving to exacerbate the trend to increasingly criminalise women with mental health issues and intellectual disabilities. Developing such services in prisons at a time when they are increasingly non-existent in the community is resulting in more women receiving federal sentences because of a presumption that there is an ability to access services in prison that are not available in community settings. It is vital that we recognise, however, that prisons are not, and cannot be, treatment or healing centres. In fact, those subject to federal terms of imprisonment are too often relegated to the most isolating conditions, almost inevitably accumulating additional charges and usually ending up serving many more years in prison, as a result of behaviour and charges arising in prison, largely in response to the conditions of confinement to which they are subjected.

Unlike the sentiment expressed by mental health workers, correctional staff necessarily categorise the mental health considerations as secondary. Because they are dealing with people who have been criminalised, the behaviour is generally labelled as bad – manipulative, attention-seeking, and within the control of the individual – and mental health issues almost always take a back seat to security and punitive responses.
We need to continually question who benefits from such approaches. The off-loading of responsibility without requisite resources, the lack of appreciation by many of the impact of resource cuts, and the apparent belief that someone else will address issues, is resulting in the reality that increasingly, we are witnessing the abandonment of social issues to the criminal courts and penal systems to rectify. The lack of community-based resources and resulting increase in homeless people, those with mental health and addiction issues, as well as those escaping violence, is directly contributing to the increased numbers remanded in custody.

The pre-existing lack of trust, connection and communication (too often further exacerbated by literacy and English as a second language issues) between ‘client’ and ‘counsel’ will only serve to further isolate the most marginalised. Similarly, limited access to justice, especially as a result of cuts to legal aid, and the concurrent vilification of those supporting and/or advocating with and on behalf of the most marginalised, means that the last ones left standing with the women and girls we know, are generally without adequate supports or resources, so they also continue to be vilified for their inadequacy to make things work.

In 2010, the Canadian Government’s Parliamentary Budget Officer revealed that the average total cost per annum to jail a woman in the federal prison system was $343,810, compared to approximately $35,000 for residency in a funded, supervised community-based setting (Office of the Parliamentary Budget Officer 2010). Even a few weeks remanded in custody – typically in a maximum security and often very isolated setting – can interfere with housing, employment, social assistance, education, child custody and so on. As such, it is not surprising that relatively few women receive conditional sentences, which require a degree of stability. As the Parliamentary Budget Officer further reported in June 2010, one new law alone – of the many already passed or being progressed through the system – would cost tax payers between $7 and $10 billion. Rather than addressing the egregious conditions in local lock-ups and remand centres, the government passed a law to eliminate judicial discretion to credit time served for those detained while they were awaiting trial.

During the mid-1990s in Canada, all of the provincial, territorial and federal heads of corrections agreed that we needed to reduce our reliance on prisons. They suggested that as many as 75 per cent of those in prison, either serving sentences or awaiting trial, could be released to the community, without any corresponding increase in risk to public safety. Women currently account for only 10–15 per cent of those charged with violent offences and 45.5 per cent of all property related charges against women are for ‘shoplifting’, while 85 per cent of women in federal custody are serving their first federal term of imprisonment and 47.9 per cent are between 21 and 34 years of age (CAEFS, 2010a). The changes brought about by the report of a taskforce on federally sentenced women (Correctional Service Canada 1990) was, and still is, regarded internationally as the best example of penal reform experimentation and initiatives.

The plan set out in Creating Choices (Correctional Service Canada 1990) was to build five new prisons to replace the single existing prison for women; but within two years of starting implementation, it was clear that the prison reform
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The experiment was off the rails. The model was predicated on women being in the prison as little as possible, unless they had to be kept in prison for very clear security reasons. It was intended that, for most women, programming would be provided in the community (with community services brought in for the very few women who could not go out to access them) yet prisons were built in locations where there was limited access to the types of community services that women required. Accordingly, programmes and space were required within the prisons. In addition, the number of spaces was being doubled and maximum security and segregation units were being established.

Over the past two decades – since the Task Force reported – the number of women in federal prisons has more than doubled and progressive reformers have recognised the futility of attempting to bring about changes from within. Even in the innovative Healing Lodge for Aboriginal women, staff began wearing uniforms and carrying pepper spray while a segregation unit (referred to as a ‘safe house’) was established and cameras and other security devices were introduced. Although the increase in the number of women imprisoned was not only due to the existence of the new prisons (being a reflection also of the increased criminalisation of women), sentencing patterns did change in places where prisons now existed where they had not previously, particularly in the Atlantic and the prairie region where there were five hundred per cent and almost four hundred per cent increases respectively in the numbers of women imprisoned.

Current and proposed legislation will promote the ongoing construction of new federal, as well as provincial and territorial prison units throughout Canada. It is estimated that the expanded capacity of 6,000 spaces will cost over $2 billion for construction and $310 million a year in operating costs. These figures are considered to be conservative estimates. Unfortunately, despite having campaigned on a platform of accountability and transparency, the government continues to refuse to disclose what its new criminal law and penal reforms will actually cost Canadians, resulting in a paucity of accurate information regarding the cost of current criminal justice reforms. In this way, they continue to breach their fiduciary obligations to Canadian taxpayers.

Where do we go from here?

Resources are always an issue when it comes to matters of equality and social justice, so we also need to ensure that adequate and flexible resources exist to assist women’s, Indigenous, anti-racism, anti-poverty, and other grassroots groups and those living the oppression, to alleviate – indeed eliminate – the structural inequity occasioned by current social, economic and legal policies and law reforms. In addition to pushing for women’s human rights – for example, challenging the designation that is the most severe, in terms of security classification because it is disproportionately applied to Indigenous women and those with mental health issues who are then kept in isolated conditions for extended periods of time – it is critical that other practices are challenged and that it is recognised that the system is working exactly the way it was designed to: it was designed to
be oppressive to the most marginalised and was designed to punish. There is no place in prisons for treatment, which should be provided only in the community.

Of equal importance is to avoid normalising crime, punishment, and imprisonment. So, instead of providing lunch programmes and recreational activities as ‘crime prevention’ initiatives, we should push for the insurance of universally accessible child care, health care, social services, education and other approaches that increase substantive equality and human rights, rather than optional, or requiring stigma as a prerequisite to access. We need to breathe life into initiatives that push for human rights that equate with freedom from want. We must push municipal, provincial and federal governments to restore or develop sorely needed housing, social assistance, supportive women-directed counselling, educational and advocacy services and facilitate access to them by women who are currently being jailed because of their attempts to survive poverty, violence, addiction, and/or homelessness.

Encouraging and facilitating the access of advocacy groups and others doing feminist, anti-racist, anti-poverty and human rights work, to provide women and girls with accurate and accessible information and tools as to how to advocate individually and collectively, is yet another strategy. Currently, our Elizabeth Fry Societies in Ontario are denied access to women in provincial jails and information booklets regarding their rights are being seized and labelled as ‘contraband’ within the prisons.

Affordable academic and vocational training opportunities for women and girls is another vital need for women in and following release from prison. In a time when governments are cutting social services in an attempt to balance their books, spending on prisons rather than on services that will enhance women’s social and human capital and promote social justice is not only fiscally disastrous, but will further erode the social fabric of Canada. It is more than disingenuous of politicians of all political stripes not to challenge this rise in penal expenditure at a time when Canada is described as having a stable ‘crime’ rate. Most of us do not want to have our tax dollars spent on building prisons instead of on social services, schools, and hospitals. It costs substantially less to host and maintain community programmes, than it does to build more prisons. Moreover, community-based prevention and sentencing options are more effective than prison in promoting public safety. We must stand up and object to the current trend to send more people to prison instead of college and university. Penal expansion has far-reaching consequences beyond prison walls; these are extremely damaging to all of us.

Much is possible, right now, if we merely have the will to stand together, to collaborate and confront the myths, misconceptions as well as the realities that are our current challenges. Crime is a theory – defined, monitored and enforced for specific identifiable purposes. Law and criminalisation are choices made by those whom we give the authority, as well as those who take power: name any behaviour and we will be able to identify times when it has been considered legal and times when it has not. Who is unwilling to acknowledge that jails are not the shelters battered women need, that they are not treatment centres or places of healing, that they are not an appropriate substitution for adequate and affordable housing,
education or skills development? We know who is and who is not in prison. With few exceptions, the wealthy and most privileged are not jailed.

Rather than personalising the various legal, human rights and social justice struggles and uprisings of prisoners, it is to be hoped that there will be growing recognition that it is always in our collective interest when the oppressed resist and challenge their oppression. Increasing prisoners’ access to the justice and equality occasioned by social inclusion will benefit all of us and all of our communities of interest. It will benefit from the efforts of the growing world-wide political, economic, and social coalition to stop the increased intrusion of the state in terms of surveillance and social control as well as the retreat of the state in terms of the provision of supportive social, health and educational services.

And, as Lilla Watson, an Aboriginal woman in Australia has stressed, we need to work together to correct current injustice. I will conclude with her words, shared with me more than 20 years ago by a woman inside.

*If you have come here to help me,*

*you are wasting our time.*

*If you have come here because your liberation is bound up with mine,*

*then let us work together.*

I dedicate these words to the memory of activist and friend Trish Monture and her daughter Kate, as well as to Kami Pznia, Adele Breeese, Ashley Smith and the far too numerous other men, women and children who have died unnatural and preventable deaths in our prisons.

**References**


