

Unintended consequences of feminism and prison reform

"We need not be trapped in inherited answers. An awareness of the causes and implications of past choices should encourage us to a greater experimentation with our own solutions."⁽²⁾

The treatment of women in the criminal justice system, particularly in prisons, has changed dramatically over the past few decades. Many of these changes can be attributed to the tireless advocacy of and challenges posed by, women concerned about incarcerated women.

Advocates of women⁽³⁾ in prison have worked with the Canadian government to guarantee the rights of women prisoners, to address the needs and experiences of women inmates, and to close the notorious Prison for Women in favour of "women-centred facilities.

In general, these changes have been portrayed as progressive developments in corrections for women, but they also present a number of challenges⁽⁵⁾ and in many ways obscure some deeper concerns.

Women's penal regimes have been influenced by three types of feminist thought: maternal or social, formal equality theory and substantive equality theory. These three types of feminist thought have led to two strategies for dealing with the female offender: 1) to treat men and women equally in corrections and policy; and 2) to treat them differently in a semi-separate system.

I will briefly describe and explore the impact these two strategies have had on policy and, to some extent, practices in Canadian prisons for women.

I will also argue that even though some changes have occurred in women's corrections, feminists have not questioned or challenged the meaning of punishment or the use of prisons as a solution. The maternal or social approach Organizations such as the University Women's Club, the Local Council of Women and later the Elizabeth Fry Society played a major role in women's prison reform.

Women's initial involvements concentrated on the deplorable conditions of women's prisons. Maternal feminists argued that women required equal but different treatment under the law and in public institutions. These women lobbied for change and succeeded in having new prisons for women built and in having them governed by matrons.

Reformers identified women's lack of skills and proper socialization as the primary problems of women prisoners, and they embarked on the task of resocializing and educating prisoners. They argued that the primary aim of corrections should be rehabilitation and not punishment. Subsequently, their focus was on improving prison conditions and developing new vocational, educational and treatment programs. Formal equality theory A few decades later, feminist reform efforts were influenced by liberal feminist ideas that advocated sexual equality within existing social, economic and political structures. In corrections, these ideas translated into attempts to attain equal rights and equal treatment for male and female offenders.

During the 1970s, feminists began to challenge the sexist assumptions that informed corrections for

women while continually highlighting the inadequate living conditions in women's prisons. The primary goal of liberal feminist reformers was to ensure that policies and practices were based on gender-neutral standards. In some instances this led to an endorsement of co-correctional facilities.

In keeping with the equality objective, the 1976 Clarke Report⁶ recommended that "the federal *Prisons and Reformatories Act* should be revised to eliminate all provisions that discriminate on the basis of sex or religion."

In addition to publicizing the conditions in women's prisons, feminists concentrated their effort on the courts. They attempted to abolish official conceptions of difference and unequal treatment through the use of litigation and equal-rights legislation. In Canada, this struggle focused on programming and services, alternative housing, parole, geographical disparity, classification and inadequate facilities.

The success of liberal feminist advocacy and subsequent policy reforms cannot be easily determined. There is little research on the relationship between reform, policy and actual institutional practices. However, several official reports⁷ adopted liberal feminist rhetoric and advocated that female and male prisoners be treated with parity. Further, a review of the history of programs in women's prisons indicates that additional programs and services were implemented. The extent to which these programs adhered to their goals is, however, another consideration.

The main complication with the feminists' advocacy of equality in women's prisons was their failure to acknowledge that even though administrators can recognize disparity and concede the need for change, they may not have the resources to make the necessary provisions and structural alterations.

Those pursuing equal rights also failed to recognise that the standard by which equality is measured is based on a male norm. Thus, women's programs are brought up to par with men's, instead of being designed at the outset to meet the needs of women.

By not challenging the standards on which programs are based, equality doctrines tend to forsake more fundamental changes and, in some cases, worsen the situations of federally sentenced women, who can no longer claim they are being treated unequally according to existing standards. Thus, some accomplishments in the name of equal rights have led to substantive inequality, wherein women are only given access to programs for men designed by men. Substantive equality theory In contrast to the liberal reformers, substantive feminists focus on situational diversity. They argue that male and female inmates are different and need to be treated differently; programs, services and facilities should be designed to meet their specific requirements.

Substantive feminists believe that recognizing the disparities between men and women is an expression of power and necessary for the empowerment of women. This belief challenges and rectifies approaches that have used women's differences to perpetuate their subordination.

Substantive feminists also oppose attempts to deny differences between men and women in the pursuit of a neutral gender equality. Instead, they declare that we need to take a more woman-centred approach to corrections. They consider previous correctional methods, which ignore women's reality, to be deficient

and unable to rehabilitate women.

Claims about women's uniqueness presented in feminist literature⁸ indicate that women respond differently (from men) to their incarceration and in situations that lead to criminal justice intervention. Correctional practices and policies must be restructured and redefined to accommodate the different experiences of men and women.

One consequence of this thinking was *Creating Choices: Report of the Task Force on Federally Sentenced Women*. This 1990 report proposed some radical changes in the treatment and management of federal female offenders.

The interest in developing new reforms was shared by the Elizabeth Fry Society and aboriginal organizations. Trends and events, such as criticism of the existing system, demands from aboriginal communities for more control over justice for their people, Charter challenges, repeated recommendations for the closure of the Prison for Women, rethinking of the Correctional Service of Canada's mission statement, and tragedies at the Prison for Women, led to an overwhelming consensus that fundamental reform was urgently needed.

Like the role they played in earlier reforms, feminists played a key role in developing proposals for change. Feminists were actively involved at all stages of *Creating Choices*, and they were publicly recognized as official representatives of the interests of women.

Creating Choices reiterated many of the problems, perplexities and recommendations arising from preceding reports and task forces. The report recommended that the Prison for Women be closed and that five smaller regional facilities be opened, one of which would be an aboriginal healing lodge. Classification systems and security measures would be revised, women-centred programs would be introduced, and staff would receive better and specialized training.

These recommendations were based on the belief that a holistic approach to the treatment of female offenders was necessary to address historical problems. The report was also based on feminist principles of empowerment, meaningful choices, respect and dignity, supportive environments and shared responsibility. *Creating Choices* emphasized the necessity of women's recovery from past traumas and the development of self-esteem and self-sufficiency through programs and services designed to respond to women's needs as they define them.

These premises are ideal articulations of a substantive feminist theory of corrections and are an excellent example of how feminist theory has influenced the policy-making process and, to some degree, correctional practice. *Creating Choices* was endorsed by the federal government, and changes are under way. The challenge for feminism It is useful to place the developments in women's imprisonment and feminist participation in a wider context. One needs to acknowledge the continual tensions between feminist, political, administrative and institutional agendas.

These tensions are reflected in the inconsistent application of feminist ideas and can be attributed to the incompatibility of the goals and responsibilities of often well-intentioned correctional administrators,

who must control and manage daily operations and prioritize concerns. More often than not, the needs of prisoners are compromised for the sake of security and managerial concerns (budget, staffing, space) inherent in prison operations. Consequently, a reform can be systematically undermined by managerial and other pragmatic goals. The result is a compromised version of the original reform.

Feminists need a critical understanding of their role in this process as agents of reform and producers of ideology. They need to appreciate the consequences of their proposals and conceptualizations, the limitations of the current system, and the ways in which feminist rhetoric is used to justify and legitimate unsatisfactory and repressive ends. Pat Carlen notes that "little has been said about alternatives to prison and why prisons continue to exist, despite the plethora of publications which in the last ten years have borne witness to the waste of women's imprisonment and the inappropriateness of penal custody for all but a tiny minority of female offenders."⁽⁹⁾

This quotation raises a compelling question about feminist participation in prison reform: Why have Canadian feminists supported the maintenance and expansion of prisons for women in the face of such intense scrutiny and disillusionment? In fact, feminist advocacy of law-and-order regimes and well-intentioned attempts to improve prison conditions have resulted in the implicit and explicit reinforcement of existing theories of punishment and the expansion of women's prisons.

Feminists' failure to challenge the meaning of punishment has amounted to a mere tinkering with a complex institutional network that does not, and cannot, adequately meet women's requirements. Feminists need to devise a concrete understanding of punishment and not simply attempt to compensate existing methods and definitions of punishment, like incarceration, that encompass a number of inherently contradictory goals.

Feminism can play a crucial role in the reform process, and we are only beginning to understand the significance, power and authority of this role. Before we continue the struggle for the reform of prisons, we need to ask ourselves what expectations a feminist theory of punishment would have and then devise methods to meet these expectations.

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(2) O. Rothman, *Conscience and Convenience* (Boston: Little Brown, 1971): 292.

(3) For a more detailed discussion, see L. Stewart, *Women Volunteer to Go to Prison: A History of the Elizabeth Fry Society of British Columbia, 1939-1989* (British Columbia: Orca Publishers, 1993). And see F. Freedman, *Their Sister's Keepers: Women's Prison Reform in America* (Ann Arbor: University of Michigan Press, 1982).

(4) *Creating Choices: Report of the Task Force on Federally Sentenced Women* (Ottawa: Correctional Service of Canada, 1990).

(5) K. Hannah-Moffat, "Creating Choices or Repeating History: Canadian Female Offenders and Correctional Reform," *Social Justice*, 18, 1(1991): 184-203.

(6) *Report of the National Advisory Committee on the Female Offender* (Clarke Report) (Ottawa: Ministry

of the Solicitor General, 1976): 43.

(7)Evidence of liberal feminist ideas appears in the following federal reports: *Needham Report: Report of the National Planning Committee on the Female Offender* (Ottawa: Ministry of the Solicitor General, 1978); and *Chinnery Report: Report of the Joint Committee to Study Alternatives for the Housing of Federal Offenders* (Ottawa: Ministry of the Solicitor General, 1978).

(8)K. Daly, "Criminal Justice Ideologies and Practices in Different voices: Some Feminist Questions about Justice," *International Journal of the Sociology of Law*, 17 (1987): 1-16. See also F. Heidensohn, "Models of Justice: Portia or Persephone? Some Thoughts on Equality, Fairness, and Gender in the Field of Criminal Justice," *International Journal of the Sociology of Law*, 14 (1986): 287-299.

(9)P. Carlen, *Alternatives to Women's Imprisonment* (Milton Keynes: Open University Press, 1990): 6.