

Reflexive engagements: unpacking the dynamics and context of penal reform

Professor Kelly Hannah Moffat
Hannah.moffat@utoronto.ca

Third sector seminar
Birmingham 2011

Limits to punishment

'The necessary step in resistance is to discover how the institutional grip is laid upon our mind' (Douglas 1986:92)

'The machinery of punishment cannot be justified as a means to social justice' (Carlen 2007:23).

Institutional strategies

- Unchallenged assumptions and unmonitored distortions
- Community inclusion
- Institutional protectionism: Access, Accreditation and Accountability

Report Of The Task Force On Federally Sentenced Women 1990


Creating Choices proposed a vision for the development of a “new” women-centred and culturally sensitive correctional model premised on five guiding principles:


- ‘Empowerment’
- ‘Meaningful’ and responsible ‘choices’
- Shared ‘responsibility’
- ‘Respect and dignity’
- ‘Supportive’ environment

A world leader and “human rights milestone”

Past 20 years of reports have consistently detailed:

- An ongoing struggle to legitimate and preserve the women-centred approach, as envisioned
- Absence of mental health services for those with acute psychological and psychiatric needs
- Emphasis on risk based classification tools alongside a incompatible emphasis on 'holistic approaches'.
- Continued over-classification of Aboriginals

- 
- The continued and escalating use of punitive techniques such as long term segregation, searches, lock downs, various types of force in response to resistant behaviour and the expansion of secure units.
 - Need for improved access to programs and services
 - Few community options for work release, parole and limited access to low security settings.

- 
- Overloaded staff concerns with policies and working conditions
 - Increased numbers of complaints and grievances
 - Concern for due process and the protection of human rights
 - Limited research advocacy access

Arbour Report 1996

- one of the most candid and pointed critiques of the Correctional Service of Canada's management of prisoners.
- Justice Louise Arbour stated that the CSC *lacked a respect for the rule of law and a culture of rights.*
- The report made multiple recommendations for change directed at ensuring CSC becomes more administratively accountable to the rule of law and institutionalizes protections of prisoners' rights
- Several steps are taken by the CSC to respond to and remedy the concerns identified by Arbour. (i.e. 1997 Working Group on Human Rights that produced the report *Human Rights And Corrections: A Strategic Model*)

Canadian Human Rights Commission (2003)

- Office of Correctional Investigator (OCI) and advocacy groups including Canadian Association for Elizabeth Fry Societies (CAEFS) continued to document a litany of systemic and individual problems in new prisons and raise concerns about CSC's failure to respond to Arbour's recommendations
- CHRC that found that the treatment of women prisoners was in contravention of the *Canadian Human Rights Act*; and that, while CSC has made some **progress in developing a system specifically for women offenders, systemic human rights problems remain**, particularly with regard to Aboriginal women, racialized women and women with disabilities.
- The report finds that in order to comply with the *CHR Act*, Corrections must **accommodate women's differences**.

The current context

- Ashley Smith's case and its aftermath resurfaces concerns about the rule of law and the ability to extend prisoners basic legal protections.
- Alongside these critical reports, CSC , for the past 20 years has undertaken to develop a gender-responsive or women-centre correctional model and to address discrimination and human rights concerns.
- This contradictory context and mounting evidence that the material conditions of confinement have deteriorated for many women leaves advocates and penal scholars grasping for explanations.

Lost in translation: Meanings of gender-responsive

The term 'gender' responsive is under theorized and operationally fraught with practical difficulties

- What working knowledges about women's differences are operating in prison?
- How is gender difference impacting penal policy?
- What dilemmas of praxis emerge when moving from theory to correctional 'best' practice for women.

Problematic Strategy of the “Community/ Stakeholder”

- Structurally, the technique of community inclusion can produce legitimacy and the pretense of inclusive participatory.
- Selection of ‘experts’ or community members are to be included on boards and consulted in the development and review of penal policies is disputed.
- The participation of the community in consultative processes limits their ability of critique those processes.
- Largely symbolic practice that does little to fundamentally alter penal processes.

Institutional protectionism

- Access to institutions
- Accreditation
- Accountability
 - Rights claims are becoming organizational risks to be strategically managed.