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A PRISON OF THEIR OWN:
THE CONTRADICTIONS BEHIND CANADA'S PRISON FOR WOMEN

by

Doreen M. Meyer,
B. Journalism, concentration Law

A thesis submitted to the Faculty of
Graduate Studies and Research in partial fulfilment
of the requirements for the degree of
Master of Arts
in Canadian Studies

Carleton University

OTTAWA, Ontario

March 1, 1992

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Thesis Supervisor

Director
Institute of Canadian Studies

Carleton University

Ottawa, Ontario

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ABSTRACT

This thesis examines the images surrounding women and crime and how they relate to the historical debate about closing Canada's only Prison for Women, P4W. Federally-sentenced women traditionally have been seen as less a "crime problem" than their male counterparts. Their few numbers make them "too few to count" in a system overwhelmingly geared to deal with its male majority. The drive to separate the women into a federal prison of their own promised programming based on their unique needs as women. But, the contradictions imposed by the penitentiary system's double-standards denied P4W women even basic parity with men prisoners in access to training and programming. Though the lone prison is scheduled to be replaced by regional facilities, this thesis argues that equality for women offenders means addressing stereotypes and taking the needs of these women as a starting point.

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CHAPTER I

INTRODUCTION: **A half-century of recommendations**

The general conclusion to be drawn from women's relative place in crime is that, as a separate problem, it is comparatively unimportant and that the custodial care and reformative treatment of women should be delegated to properly constituted and properly managed reformatories and that no women should need to be confined to penitentiaries.

--Royal Commission to Investigate the Penal System of Canada (The Archambault Report), 1938

The plan presented by this Task Force finally closes the Prison for Women and brings women closer to their families, cultures and communities. . . There will be five Regional Women's Facilities across Canada operated by the Correctional Service of Canada.

--Creating Choices, The Report of the Task Force on Federally Sentenced Women, 1990

Canada's only penitentiary for federally-sentenced women, the Prison for Women in Kingston, has been the subject of controversy since female offenders first walked through its doors on January 24, 1934.¹ A scant three years later, investigators from a Royal Commission examining the operation of Canada's penal system were astounded to find a little more than two dozen women

1. Lt.-Col. W.B. Meglouglin, Warden of Kingston Penitentiary, Annual Report of the Superintendent of Penitentiaries, Dept. of Justice, 1933-34, p. 11-12.

behind its high walls, imprisoned in a "bastille-type"² maximum security building designed to incarcerate a hundred.³

The Archambault Commission's 1938 Report declared the erection and continuance of the new women's prison in Kingston unjustified and recommended the women be sent closer to their homes in the provinces.⁴ That recommendation in the following years would be repeated in more than a dozen reports,⁵ including the most recent task

2. The description given by the Sub-Committee on the Penitentiary System in Canada for the early nineteenth century design used for all of Canada's prisons until 1952, including the Prison for Women, Report to Parliament, (hereafter The MacGuigan Report), 1977, p. 14.

3. Report of the Royal Commission to Investigate the Penal System of Canada, (hereafter The Archambault Report), April 4, 1938, p. 313.

4. Ibid., p. 316 and 358.

5. Can. Corrections Association, Brief on the Woman Offender, 1968 (hereafter C.C.A. Brief); Report of the Can. Committee on Corrections, 1969, (hereafter The Ouimet Report); Report of the Royal Commission on the Status of Women, 1970, (hereafter R.C.S.W.); Report of the National Advisory Committee on the Female Offender, 1977 (hereafter The Clark Report); The MacGuigan Report, 1977; Can. Ass'n of Elizabeth Fry Societies, Report of the Study Group (Recommendation 7, Clark Report), April 13-14, 1978; Report of the National Planning Committee on the Female Offender, 1978, (hereafter The Needham Report); Brief from the Fed. of University Women, 1978; Report of the Joint Committee to Study Alternatives for the Housing of the Federal Female Offender, 1978, (hereafter The Chinnery Report); Progress Report on the Federal Female Offender Program, 1978, (hereafter The Berzins and Dunn Report); Women for Justice, Brief Presented to the Human Rights Commission, 1980, (hereafter W. for J. Brief); Can. Advisory Council on the Status of Women, Women in Prison: Expanding Their Options, Sept. 1980; Taking Responsibility, Report of the Standing Committee on Justice and Solicitor General, 1988,

force report, Creating Choices,⁶ which the present Federal Government has announced it will act on, replacing the women's penitentiary with regional prisons.⁷

1.1 Focus of thesis

This thesis will examine that recommendation and the continuing debate it has fuelled over the years about the treatment of female offenders and the closing of Canada's only federal penitentiary for women, commonly called P4W, in Kingston. At the core of its focus is the double-sided question--why has the Prison for Women so often been recommended for closure, and why, despite years of repeated recommendations, does it still continue to operate?⁸

(hereafter The Daubney Report).

6. The Report of the Task Force on Federally Sentenced Women, (hereafter Creating Choices), co-chaired by representatives from the Correctional Service of Canada and the Canadian Association of Elizabeth Fry Societies, February 14, 1990, p. 155.

7. "Toronto, Montreal picked for prisons," Kevin Cox, The Globe and Mail, August 1, 1991, A1.

8. Though the federal government has stated it plans to replace P4W with regional prisons, critics of Canada's corrections planning for women like Lorraine Berzins, are sceptical that the women's penitentiary will ever close. Based on her experiences as a social worker and bureaucrat (one of the first women to enter the traditionally male-dominated field of corrections), Berzins has said closing P4W depends on a commitment to long-range planning while governments traditionally want results within their electoral life spans. As well, she contends economic pressures have worked against closing because the prison had to be "emptied in one fell swoop in order for it to be cost effective" to suit government officials. In-person interview with Lorraine Berzins, January 31, 1989 at

Outlined again and again in the reports throughout the years are two key problems which still plague women offenders today--inadequate programming and the hardship caused by the distance that federal imprisonment creates between these women and their families. If new prisons are to be built, at a minimum these dilemmas must be resolved and the stereotypes surrounding women offenders which inhibit real change must be revealed and addressed.

The central hypothesis of this thesis is that reform for women offenders has always been contingent on the needs of a male-oriented corrections system. Further, this thesis argues that women who commit serious criminal acts (and by virtue of the two-year sentence limit are defined as federal offenders) are viewed in a contradictory fashion by the penitentiary and corrections system, and by society as a whole, and that this has inhibited change.

Historically, the treatment of federal female prisoners has been "a fascinating mixture of neglect, outright barbarism and well-meaning paternalism."⁹ Canadian women prisoners, as a group, "have received only the crumbs from the predominantly male correctional

Carleton University, and from "The Dairies of Two Change Agents," by Lorraine Berzins and Brigid Hayes in Too Few to Count, Canadian Women in Conflict with the Law, Ellen Adelberg and Claudia Currie eds., (Vancouver, B.C.: Press Gang Publishers, 1987), p. 161-179.

⁹. Sheelagh (Dunn) Cooper, "The Evolution of the Federal Women's Prison," in Too Few to Count, p. 127.

establishment."¹⁰

Critics of the system have maintained that women receive only "left-overs," "hand-me-downs" or poor imitations because the corrections system is geared to large groups of males:

The very structure and fabric of Corrections in Canada, the basic definitions, working tools, mechanisms, philosophies, policies, methodologies and procedures that form the backbone and the flesh of our penalogical system have all without exception been born, raised, and have sometimes died, male.¹¹

While there are more than forty prisons for men serving sentences of two years or more, the Prison for Women in Kingston, Ontario, is the only institution operated by the Federal Government for women offenders.¹² About half of Canada's approximately two hundred and forty federally-sentenced women are accommodated at P4W with the rest serving their time in the provinces under federal-provincial Exchange of Service Agreements.¹³ At two per cent of Canada's federal offenders and compared to 12,500

10. Ellen Adelberg and Claudia Currie, *ibid.*, p. 17.

11. Lorraine Berzins and Sheelagh Cooper, "The Political Economy of Correctional Planning for Women: The Case of the Bankrupt Bureaucracy," Can. Journal of Criminology, Vol. 24, No. 4, Oct. 1982, p. 405.

12. Holly Johnson, "Getting the Facts Straight: A Statistical Overview," in Too Few to Count, p. 37.

13. "Backgrounder--Task Force on Federally Sentenced Women," information sheets distributed with the report Creating Choices, Correctional Service Canada.

men prisoners,¹⁴ these Canadian women offenders, like their sisters in other countries, have historically received less attention than male offenders and the literature devoted to them has been sparse according to Mary Eaton¹⁵ and Maureen Baker.¹⁶

But, while women offenders have traditionally been thought of as "too few to count," Ellen Adelberg and Claudia Currie discern that their circumstances are intimately tied to women's oppression in other facets of life.

Women who come into conflict with the law, although they constitute a small minority of all women and historically have been considered too few to count, suffer the ramifications of sexual discrimination most acutely of all. . . . When issues such as rape, or wife battering, or incest, or job discrimination are taken on by feminists, a special effort should be made to consider how they affect women in conflict with the law, and to ensure that remedies such as support services, and job training programs, are also made available to women convicted of crimes.¹⁷

British sociologist Frances Heidensohn has written extensively on the topic of women and crime. She believes that "using the insights into the role, position and social

14. Ibid.

15. Mary Eaton, "Book Review: Too Few to Count," Resources for Feminist Research, Vol. 17, No. 3, p. 155.

16. Maureen Baker, "Male-Dominated Criminology: Implications for Women in Correctional Institutions," in Taking Sex into Account: The Policy Consequences of Sexist Research, Jill McCalla Vickers ed., (Ottawa: Carleton Univ. Press, 1984), p. 245.

17. Adelberg and Currie, Too Few to Count, p. 21.

control of women which can be derived from other studies of women's oppression," is the best way to understand women and crime.¹⁸

In this view, a better understanding of the social construction of women can lead to a better understanding of women and crime, remembering that crime itself is socially constructed.

In acknowledging these viewpoints, this thesis will attempt to emphasize understanding the question of women and crime as it relates to the unique situation of P4W. It is only by placing these women offenders in the context of 'Woman' in society at large, and by showing their individuated circumstances and treatment, that one can develop a fuller picture of the differences and continuities that define what it means to be a women offender in the Prison for Women.

1.2 A feminist theoretical framework

The subject matter of this thesis will be analyzed from a feminist perspective. This theoretical framework has been chosen for several reasons. There has been a considerable growth of writings in the past few years by feminists about law. Feminists have shown that androcentric bias has obscured and distorted women's history, and feminist methodologies and research are likely

¹⁸. Frances Heidensohn, Women and Crime, (London: Macmillan, 1985), p. 197.

to provide fresh insights into understanding women and crime. As well, some of these feminist research works are Canadian.

Feminist research has proved itself valuable in exposing the value-laden bias of norms¹⁹ and the ideological underpinnings of law, and in particular, Canadian law.²⁰ In a discussion about the use of feminist methodologies, Martha Albertson Fineman says that "gender-sensitive" feminism should not be viewed as lacking legitimacy because of an inappropriate bias:

Rather, it is premised on the need to expose and correct **existing** bias. "Gender-sensitive" feminism seeks to correct the imbalance and unfairness in the legal system resulting from the implementation of perspectives excluding attention to the circumstances of women's gendered lives, even on issues that intimately affect those lives.²¹

Fineman maintains that traditional legal scholarship tends to view the status quo as unbiased or neutral. She asserts that when law is looked at in its historical context in

19. Margrit Eichler, Nonsexist Research Methods: A Practical Guide, (Boston: Allen & Unwin, 1988) and Dale Spender, Man Made Language, (London: Routledge & Kegan Paul, 1985, 2nd Ed.).

20. Susan B. Boyd, "Child Custody and Working Mothers," in Equality and Judicial Neutrality, Sheilah L. Martin and Kathleen E. Mahoney eds., (Toronto: Carswell, 1987), p. 169, and Katherine de Jong, "On Equality and Language," Can. Journal of Women and the Law, Vol. 1, No. 1, 1985, p. 119-133.

21. Martha Albertson Fineman, "Introduction," in At the Boundaries of Law: Feminism and Legal Theory, Martha Fineman and Nancy Sweet Thomadsen eds., (New York: Routledge, 1991), p. xiii.

relation to men and women, there can be no refuge in the status quo:

Law has developed over time in the context of theories and institutions which are controlled by men and reflect their concerns. Historically, law has been a "public" arena and its focus has been on public concerns. Traditionally, women belonged to the "private" recesses of society, in families, in relationships controlled and defined by men, in silence.²²

Feminist theory is important, states Fineman, because it demonstrates that "what is is not neutral."

In a discussion of feminist "methodological rebellions" (against decontextualization; reversal; objectivity; linearity, inevitability and laws; and to restore agency), Jill McCalla Vickers, a self-described feminist political theorist, says such research has a very important political value. As well, she says "its capacity to challenge, however implicitly, the ontological underpinnings of male-stream thought and of patriarchal symbol systems" helps to free us from the strictures of male hegemony.²³

As University of West Indies sociologist Maureen Cain states, "women do not need to be compared with men in order to exist." Following this line of reasoning, this

22. Ibid., p. 42.

23. Jill McCalla Vickers, "Memoirs of an Ontological Exile: the Methodological Rebellions of Feminist Research," in Feminism: From Pressure to Politics, Angela Miles and Geraldine Finn eds., (Montreal: Black Rose Books, 1989), p. 54.

thesis will give more attention to the specifics regarding women before drawing in necessary male references. Says Cain of this approach:

Studying women as women, and comparing different groups of women, rather than women and men, takes off the blinkers of the male-as-yardstick and male common sense, so that new thoughts can come into the social and criminological worlds.²⁴

But, as Shelley Gavigan notes, research must go beyond the question of gender to give equal significance to issues of race and class as well as avoiding general, ahistorical explanations.²⁵

Federal female offenders are far from a homogeneous group²⁶ though their small numbers, overshadowed in a system based on a male majority, has often meant treatment as a unity. As Zillah Eisenstein has noted "the viewing of women as a unified group, the same as each other, has most often been used to establish woman's (homogeneous) "difference" from man and thus ignore her unique identity as an individual."²⁷

Baker says because women offenders tend to be more heterogeneous compared to males, administration of

24. Maureen Cain, "Towards Transgression: New Directions in Feminist Criminology," International Journal of the Sociology of Law, 1990, Vol. 18, p. 9.

25. Shelley Gavigan, "Women's Crime: New Perspectives and Old Theories," in Too Few to Count, p. 61.

26. Creating Choices, p. 38.

27. Zillah R. Eisenstein, The Female Body and the Law, (Berkeley: Univ. of California Press, 1988), p. 38.

rehabilitation programs is more difficult.²⁸ Their fewer numbers mean women are not classified in the way that male offenders are, by age, type of offence, previous convictions, and training needs.

The invisibility of individual differences and needs has been particularly disastrous for Aboriginal women serving federal sentences.²⁹ At a third of the population of the Prison for Women,³⁰ Native women are "shockingly" over-represented (even more so than Native men) in prison.³¹ For these women and others serving time in P4W, the reality of racism often overshadows issues of sexism.

Feminist legal scholarship, much of it "white" as Marlee Kline observes, has often overlooked the importance and interaction of sexism and racism. In an analysis and assessment of some contemporary works, Kline draws our attention to three interrelated tendencies:

... the tendency to overlook racial identity when considering the impact of an issue on women, the

28. Baker, "Male-Dominated Criminology," Taking Sex into Account, p. 252.

29. Both the Task Force Report and the press conference held to publicize its release called attention to the fact that two native women had committed suicide during the life of the Task Force. Creating Choices, p. 4, and news item on The National, CBC, Friday, April 20, 1990.

30. Felicity Hawthorn, President of the Can. Ass'n. of Elizabeth Fry Societies, speaking to members of a Parliamentary committee, Minutes of the Standing Committee on Justice and Solicitor General, (The Daubney Committee), May 26/88, p. 57:16.

31. The Daubney Report, p. 236.

tendency to define issues in ways that more significantly address the experiences of white women than the experiences of women of color, and the tendency to over-simplify the sites of women's oppression.³²

In looking for answers to the problem that the women offender presents, differences must be acknowledged. As the co-chair of the Creating Choices Task Force has stated, the problems federal female offenders face have their roots in a system that is "fundamentally meant to deal with men" and difficulties will arise until the system is "customized" to meet the needs of women "from the ground up."³³ Meeting the needs of women apart from men is one level of distinction. Recognizing diversity among women is another.

1.3 Ideology and the underpinnings of law

Ideology has been proposed as a useful concept in the analysis of law to "explore the connection between ideas, attitudes and beliefs, on the one hand, and economic and political interests, on the other."³⁴ In this view ideology is not false consciousness or a systematic and

³². Marlee Kline, "Race, racism, and feminist legal theory," Harvard Women's Law Journal, Vol. 12, Spring 1989, p. 121.

³³. Quotes from Bonnie Diamond, Executive Director of the Can. Association of Elizabeth Fry Societies, in "P4W: Looking for Answers to 50-Year-Old Problems," Liaison, April 1988, p. 16.

³⁴. Alan Hunt, "The Ideology of Law: Advances and Problems in Recent Applications of the Concept of Ideology to the Analysis of Law," Law and Society Review, Vol. 19, No. 1, 1985, p. 13.

totalized world view, and it can be used to analyze the role of law as more than just automatically reflecting the interests of the economically powerful.

Allan Hunt states that by transforming human subjects into legal subjects, law influences the way participants experience their relations and that it is important to view law "not merely as an external mechanism of regulation but as a constituent of the way in which social relations are lived and experienced."³⁵ Further, the relationship between reality and its ideological representation "should be seen as "the problem," or object of analysis, without prejudgment."³⁶

In Hunt's view, legal ideology should not be seen as the "primary justification for inequality and domination" because as Sumner notes law is effective as an ideological force because it depends upon "its ideological encapsulation of a consensus constructed outside itself in other economic, political and cultural practices."³⁷ According to Colin Sumner ideologies which are "rooted in the lives of people"³⁸ may interpenetrate each other from different origins, and may include ideologies of social

35. Ibid., p. 16.

36. Ibid., p. 21.

37. Ibid., p. 30-31.

38. Colin Sumner, Reading Ideologies: an investigation into the Marxist theory of ideology and law, (London: Academic Press, 1979), p. 214.

relations of a prior epoch.³⁹

In looking at the relationship between woman and woman offender and between woman offender and law, several different ideologies at are work. Ideas about morality, sexuality and work as well as crime and violence come into play. Because all of these are an integral part of understanding the woman and crime question, the concept of ideology as outlined above, is a useful analysis tool for this thesis.

1.4 Thesis objective and methodology

It has beer noted that the literature on Canadian women in conflict with the law has been sparse and specifically that the history of Canada's Prison for Women is in need of further development.⁴⁰ The objective of this thesis is to provide a historically-based feminist analysis on why seemingly consistent recommendations for change away from one central penitentiary facility for federally-sentenced women have never been implemented and why, in spite of this, the prison remains in operation.

Throughout its nearly sixty-year history, the prison has repeatedly resisted calls for closure. Positive change, so often recommended, continues to elude these women, subjecting them to family hardships

39. Ibid., p. 135, 273.

40. Eaton, "Review of Too Few to Count," R.F.R., p. 155.

unparalleled elsewhere in the Canadian penal system, and without the needs-oriented programming the reports have targeted.

Picking up on the theme suggested by Cain, this thesis will attempt to analyze and discuss the historical treatment of federal women offenders in relation to the ideological ideal of the "feminine norm" and the broader position of women in Canadian society. Where relevant, it will in turn discuss the relationship between the women offender and the male offender, particularly with regard to treatment and policy issues relating to P4W.

The thesis will draw on material from the more than dozen reports since 1914,⁴¹ which have made recommendations regarding federal female offenders, as its substantive basis. These reports have been chosen to provide a manageable framework and yet adequately grasp the historical picture of women and crime as it relates to the Canadian situation and the Prison for Women.

This foundation will be augmented by archival documents, government and agency reports, academic and other written materials (domestic and foreign), as well as past in-person interviews with those whose experiences are relevant to the thesis. But, it is recognized that

⁴¹. Report of the Royal Commission on Penitentiaries, (hereafter The 1914 Report), Dept. of Justice, (Ottawa: King's Printer, 1914), Sessional Paper No. 242, Vol. XLVIII, No. 28, 1914.

because of the length of the time period chosen for study and the broad area to be covered, that some issues which are deserving of more in-depth study (as an example, sexism in sentencing), are to be given limited attention.

Another limitation is that few of the historical records which have been maintained make reference to women's imprisonment.⁴² As well, often penitentiary population statistics, although noting small numbers of women offenders, seldom indicate how the specific differences of offenders they document apply to women.⁴³ Details such as age, marital status, race, birthplace and religion which are provided can be inferred as applying to males more accurately because of their overwhelming numbers. In contrast, the specifics of the few women confined at the federal level are invisible.

The thesis structure will be defined and concentrated in three specific areas with chapter titles and subheadings as follows: Historical Background of P4W and the Calls for Closure; Deviance and Difference: The Female Offender and the Feminine Norm; and Stereotypes, Poverty and Prison Programming: Women Offenders and the

42. Berzins and Cooper, "Political Economy of Correctional Planning," C.J.C., p. 401.

43. Penitentiary Statistics, Canada Year Book, (Ottawa: Dominion Bureau of Statistics, 1934-35), p. 1100-1103, and Superintendent W.S. Hughes, Annual Report of the Superintendent of Penitentiaries, Dept. of Justice, 1922, p. 7, and Kingston Warden's Report, p. 21.

Breadwinner Ideology. These areas are significantly important for developing well-rounded policies based on the real needs and circumstances of women offenders.

Stereotypes obscure reality. Real differences, biological or socially constructed, cannot be ignored. Policies which do not adequately address economic realities cannot free the women offender but instead keep her locked into a system which defines her by her status behind bars in the Prison for Women.

CHAPTER II

HISTORICAL BACKGROUND OF P4W
AND THE CALLS FOR CLOSURE

In the early part of this century, ideas about penitentiary practices were undergoing change. Though the opening of the new and separate women's prison was still years away, societal opinions about crime, imprisonment and the reformability of criminals were in transition. Still, traditional stereotypes about women in general society followed women offenders into the present defining them as an unresolvable dilemma and throwing the status of federally-sentenced women into limbo.

In 1913, a Royal Commission headed by Kingston lawyer George Milnes Macdonnell was struck to investigate the management of Kingston penitentiary and its officers and employees as well as general penitentiary practice.⁴⁴ Women offenders had been incarcerated at Kingston since September 1835 when its first female prisoners, three women serving one-to-two-year sentences for larceny, arrived at the penitentiary.⁴⁵

The Commission's report released in 1914 devoted only a little more than six lines to the "department for

⁴⁴. The 1914 Report, p. 5.

⁴⁵. Dennis Curtis et al., Kingston Penitentiary, the First Hundred and Fifty Years, 1835-1985, (Ottawa: Correctional Service of Canada, 1985), p. 86.

women" in its forty-four page report.⁴⁶ It noted that a dozen women prisoners were housed in a new and suitable building, "separate and distinct" from the rest of the penitentiary's buildings. The Northwest Cell Block, built with male convict labour (after sixty-five years of calls for adequate quarters for women⁴⁷), had been occupied in February 1913,⁴⁸ and could accommodate thirty-four females.

Though the Commissioners said the department was being conducted in a "satisfactory manner," they stated that "the interests of all concerned would be best served if these few inmates were transferred to an institution for women." The report suggested that the women might be treated like "certain other classes," young and first time offenders, and arrangements made with provincial authorities for their custody.

The Commissioners decried the division of responsibility (prisoners with sentences of more than two years defined as federal, two years or less defined as provincial) as being "unscientific."⁴⁹ In their research, the commissioners had visited U.S. institutions where the

46. The 1914 Report, p. 8-9.

47. Sheelagh (Dunn) Cooper, "The Evolution of the Federal Women's Prison," Too Few to Count, p. 133.

48. Curtis et al., Kingston Penitentiary, p. 87.

49. The 1914 Report, p. 29.

penal system was divided into reformatories, reserved for men under thirty and first offenders, and prisons for older and "more hardened" offenders. Their investigations had also taken them to the Women's Reformatory in Framingham, Massachusetts.⁵⁰

The Women's Reformatory had opened in 1877 and was part of a movement in the United States that advocated separate female penal institutions in response to scandals and resulting demands from reform-minded women.⁵¹ The leaders of these movements saw the female offender "not as a deviant, but rather as the victim of male lust and power in a system which afforded women few economic opportunities."⁵²

2.1 'Fallen' women and their saviours

The women who pushed for reforms on behalf of women in American prisons were following principles laid down by Elizabeth Fry in England in the early 1800's: house women in separate institutions where they would receive the "personal hygiene, moral, education and vocational instruction necessary to reform them."⁵³ Fry began to

50. Ibid., p. 5

51. Clarice Feinman, *Imprisoned Women: A History of the Treatment of Women Incarcerated in New York City, 1932-1975: Phd Thesis*, New York Univ. Dept. of History, (Ann Arbor Michigan: Xerox Univ. Microfilms, 1976), p. 42.

52. Ibid., p. 41.

53. Ibid., p. 311.

work with women inmates after she and a group of U.S. Quakers visited Newgate prison in London in 1813. Fry was shocked by the living conditions of the women prisoners:

... the filth, the closeness of the rooms, the furious manner and expressions of the women towards each other, and the abandoned wickedness, which everything bespoke, are quite indescribable.⁵⁴

One visitor described them as:

... of the lowest and worst description, the very scum both of the city and country, filthy in their persons, disgusting in their habits, obscene in their conversations, and ignorant, to the greatest degree, not only of religious truth, but of the most familiar duty and business of common life.⁵⁵

Fry and her Society of Friends set up an inmate hierarchy. At its apex was a matron chosen from the most 'orderly and respectable' among the women prisoners.⁵⁶ Introducing them to the "habits of order, sobriety, and industry, which may render them docile and peaceable whilst in prison, and respectable when they leave it" was one of the main aims of the society. The women prisoners were to be reformed--made-over into the proper and appropriate feminine image defined according to the dictates of their day.

Fry's 'experiment' soon gained public praise as officials and 'visiting ladies' considered the

54. Russell P. Dobash et al., The Imprisonment of Women, (Oxford, UK: Basil Blackwell Ltd., 1986), p. 43.

55. Ibid.

56. Ibid., p. 45.

transformation of the women prisoners into diligent workers 'employed in patchwork, coarse needlework, spinning and knitting' quite remarkable.⁵⁷ To Fry, it was simply a matter of elevating all who were sinners into a state of grace, but to those who considered the women prisoners beyond redemption, the transformation was mysterious and beyond comprehension.

Pious middle-class women acting as saviours had entered the bowels of hell to confront the depraved unwomanly creatures and had transformed them.⁵⁸

The 'fallen woman' was no longer an immutable lifetime identity. She had only seemed unreformable because of "injudicious treatment" women prisoners had received as convicts. Mary Carpenter, the English expert on women and crime, was convinced of that after her visit to the Mount Joy Female Convict prison in Ireland in the early 1860's, and of the efficacy of separate women's reformatories in rehabilitating women criminals.⁵⁹ Carpenter's work had intrigued Americans and at the first International Penitentiary Congress in London in 1872, U.S. reformers were won over by a model whose way had already

57. Ibid., p. 45-46.

58. Estelle B. Freedman, Their Sisters' Keepers: Women's Prison Reform in America, 1830-1930, (Ann Arbor: Univ. of Michigan Press, 1978), p. 49.

59. Freedman, Their Sisters' Keepers, p. 49.

been paved by sexually-segregated juvenile reformatories established thirty years earlier.⁶⁰

In Canada, female reform groups representing a wide range of causes were thriving in urban and rural communities throughout the country.⁶¹ Alison Prentice says two perspectives dominated these women's arguments:

The first of these, and the most characteristic of Canadian feminism, was "maternal" or "social" feminism, based on woman's role as guardian of the home ... At the same time, a version of feminist beliefs often called "equal rights" or "equity" feminism focused more directly on arguments of simple justice. It was a viewpoint that stressed how much women resembled men, and how unjust it was that they should have fewer rights.⁶²

These women idealized the family and believed that a stable family life could both prevent and counteract "social degeneration."⁶³ Their movement advocated and achieved separate courts, trials, and institutions for children and adolescents described as "juvenile delinquents," and Prentice says that gradually various provinces accepted the need for separate facilities for female offenders.

The authors of the 1914 Royal Commission Report on the conditions at Kingston Penitentiary were influenced by

⁶⁰. Ibid., p. 50.

⁶¹. Alison Prentice et al., Canadian Women: A History, (Toronto: Harcourt Brace, 1988), p. 189.

⁶². Ibid., p. 169.

⁶³. Ibid., p. 209.

the movement toward reformatories as evidenced by this comment.

Undeniably, the trend of prison administration the world over is away from the purely punitive and towards the reformatory ... This policy recognizes that the prisoner has certain rights which it is the duty of society to respect. He is entitled to productive work under proper sanitary conditions, to a reasonable measure of education, if he requires it, to moral training and discipline; in fine, to every rational assistance towards his restoration to good relations with society.⁶⁴

While productive labour for male inmates was emphasized by the Commission's Report, it was unlikely the commissioners regarded the women inmates as requiring the same needs. The women who were housed in Kingston were thought of as a unity by the Commissioners, unlike the men who were to be separated by first offender or young offender status.

Separate prisons were advocated solely with the object of classifying prisoners "to allow for the "scientific treatment of moral delinquents."⁶⁵ As Carolyn Strange has pointed out in her discussion of Toronto's Mercer Reformatory, "the ideology of the separate spheres suggested that female prisoners be treated quite differently than their male counterparts."⁶⁶ So, while

⁶⁴. The 1914 Report, p. 26.

⁶⁵. Ibid., p. 29-30.

⁶⁶. Carolyn Strange, "The Criminal and Fallen of Their Sex: The Establishment of Canada's First Women's Prison, 1874-1901," Canadian Journal of Women and the Law, Vol. 1, No. 1, 1985, p. 81

productive labour was thought to be a reforming influence for male prisoners, female inmates were to be "mothered" into an image of "respectable womanhood" by following the female role-models provided for them.⁶⁷

Transferring the federal women offenders to an institution for women would give the women advantages for treatment they were denied in predominantly male prisons but, more importantly, it would eliminate the problem of keeping the sexes apart.

2.2 Sexual mischief and the drive for separate prisons

While administrators found women prisoners a nuisance because they had to be isolated to prevent "sexual mischief,"⁶⁸ reformers were worried about their sexual vulnerability.⁶⁹ Illegitimate births within charitable and penal institutions in several American states were evidence of sexual activity in mixed prisons,⁷⁰ and there had been scandals when officers were discovered fostering prostitution or fathering children.⁷¹ As well, the presence of women was thought to drive men to the "unhealthy practice of masturbation."

67. Ibid., p. 81.

68. Nicole Hahn Rafter, Partial Justice: Women in State Prisons, 1800-1935, (Boston: Northeastern Univ. Press, 1985), Intro. p.xx.

69. Freedman, Their Sisters' Keepers, p. 59.

70. Ibid., p. 60.

71. Rafter, Partial Justice, p. 12.

National authorities on U.S. prison management, Enoch Wines and Theodore Dwight, argued for separate prisons for women,

... on moral grounds, because where the two sexes are confined in the same building or the same enclosure, the very fact of this contiguity has an exciting and bad effect, and leads to endless attempts to communicate, which are not unfrequently, against all probability, successful.⁷²

Wines and Dwight also found that confining prisoners of different sexes together often made it necessary to impede light and ventilation, half-closing windows, and putting up doors which ended up "violating the laws of hygiene and obstructing an important condition of health." The barriers were usually placed on the women's quarters and so "women bore the burden for separation of the sexes, just as they often bore the blame for sexual disturbances in the first place."⁷³

At Kingston Penitentiary, there were also suspicions of "undue sexual familiarity" between male prison staff and female inmates.⁷⁴ Allegations of misconduct concerning the acting deputy warden, Robert Corby, and guard John Givens, prompted the 1921 investigation into the State and Management of the Female

⁷². Ibid., p. 12.

⁷³. Ibid., p. 12.

⁷⁴. Adelberg and Currie, Too Few to Count, p. 133.

Prison at Kingston Penitentiary by W.F. Nickle.⁷⁵

Then, as now at P4W, the needs of Francophone women were not being met.⁷⁶ Nickle found that these women were isolated and resented having no one on staff who could speak or understand their language.⁷⁷

Though Cooper says the allegations were not substantiated, Nickle's report is credited as a landmark in Canadian history.⁷⁸ It was the first commissioned to look exclusively at the female offender.

William Folger Nickle was one of Kingston's wealthiest and best-connected citizens. A lawyer and political veteran who had held seats at municipal, provincial and federal government levels, he championed the rights of penitentiary inmates and favoured rehabilitation as noted in this comment made in the House of Commons in 1914:

... at the end of his time a man leaves [prison] no better than he came, dwarfed in body and soul, and feeling at war with humanity because of the system

75. William Folger Nickle, Report on the State and Management of the Female Prison at the Kingston Penitentiary, (hereafter The 1921 Report), Dept. of Justice, August 25, 1921, p. 1. NOTE: Nickle's report also revealed a "religious cleavage" in the institution and a "well-defined line of demarcation between French and English." He said some persons considered the charges against Corby stemmed from "religious persecution."

76. Creating Choices, p. 38.

77. The 1921 Report, p. 17.

78. Adelberg and Currie, Too Few to Count, p. 133.

that has robbed him of so much life.⁷⁹

In conducting his investigation, Nickle interviewed many officials as well as listening to "what each of the female convicts had to say." He was sympathetic to many of the woman's complaints about it being "excessively hot" in summer and "bittercold" in winter and recommended several building improvements.⁸⁰

As Nickle's Report on the state and management of the female prison outlined, in 1921 the building which housed the "female convicts" was located inside Kingston's general enclosure behind two low walls which backed onto the northwest corner of the penitentiary. His report gives some insight of the extent administrators went to restrict contact between the sexes. To keep the women separated from the male prisoners during public worship services, cubicles were used to "box these female convicts up" so that they could not even see "except by occasional glimpses, the officiating clergymen."⁸¹

In addition, Nickle noted that while the cells of the men had open barriers, the women's were closed on the upper part of the cell door by glass, as well as bars, and

79. Lesley H. Morley, "A Nickle for Change, The Political Career of W.F. Nickle, 1906-1926," Historic Kingston, Vol. 32, Jan. 1984, p. 9.

80. The 1921 Report, p. 22-25.

81. Ibid., p. 16-17.

on the lower portion with wood.⁸² These barriers blocked ventilation and the result was the cells became excessively hot and close during the summer, he reported. Despite his recommendations for positive and less-confining changes, the new and separate women's prison still echoed the penitentiary practice of 'boxing-up' the women.

As the 1938 Archambault Commission later reported, the new Kingston Prison for Women was constructed with barrier cells which had no outside windows.⁸³ The "sexual mischief" which had prompted Nickle's investigation had revealed problems when male penitentiary guards had to walk along the west walls of the main penitentiary "to ring the gong" at the northwest tower where the women's prison enclosure was located. From their vantage point on the walls, the guards were able to see the women's cell windows and, in turn, the women were able to see the men. Communication was possible and "unscrupulous officers" took "unfair advantage."⁸⁴

The new women's prison removed all such potential for communication. In addition to its having no outside windows, the prison was enclosed by a formidable high wall more than twenty-two hundred feet in length.⁸⁵ The wall

82. Ibid., p. 22.

83. The Archambault Report, p. 314.

84. The 1921 Report, p. 5, 25.

85. The Archambault Report, p. 312.

was sixteen feet high with ten feet of woven wire above that and topped by an additional six lines of barbed wire. Such a wall precluded the need for towers or guards. The structure which was more than twenty-six feet in height had cost about twenty dollars per foot in materials alone to build. Its expense was severely criticized by the Archambault Commissioners as being "wholly unwarranted for an institution of this character." Then, as now, the women were not seen as a security problem.⁸⁶

There were other differences as well in the treatment the women received once they moved into the separate women's prison. Though the women were now separated from the male penitentiary physically, they were still dependent upon its administrators. Despite the promises of better treatment, as Rafter found in the U.S. system, for Canadian women prisoners along with separation came neglect.

Nickle's 1921 recommendation to build a new and separate women's prison was, like the reform movement south of the border which influenced his thinking, aimed at eliminating the possibility of sexual mischief. Moving the women away from the male prison would put an end to the "opportunities for flirtations, improprieties and indecencies that presented themselves."⁸⁷ It would also

86. Creating Choices, p. 35, 36.

87. The 1921 Report, p. 5.

allow for proper rehabilitation of the women. Like Mercer's inmates, the Prison for Women's charges would reap great moral benefits from the separate principle--separate women's prisons administered by female staffs who themselves were virtuous models of respectable womanhood.⁸⁸

2.3 Two classes of women

While Nickle maintained that the conduct of the women was not to be assumed responsible "in all or perhaps in most cases" (except that it was "a breach of the regulations"), he believed it "natural" to expect "certain classes of convicts" to carry on "active or subdued flirtations" with "responsive officials or sympathetic male convicts." Nickle's comments about the women prisoners reveal the Victorian roots of his beliefs about the danger (to man) of woman's uncontrolled sexuality and her biological predisposition to emotionality:

Without doubt some of the women, more particularly at certain periods⁸⁹, are thrown into a violent state of sexual excitement by the mere sight of the men, more often by their being or working contiguously to the female quarters and my attention was called to one instance of this group of cases where a sedative had to be given to soothe desire. Certain most objectionable notes that were found in the yard of the Female Prison indicate that to some of the men the proximity of the women is equally harmful.⁹⁰

⁸⁸. Strange, "The Criminal and Fallen of Their Sex," C.J.W.L., p. 80-81.

⁸⁹. Bold emphasis added by author of this thesis.

⁹⁰. The 1921 Report, p. 3.

Victorian ideology dictated that women gained moral stature through self-control and sexual purity.⁹¹ As well, medical experts of the day believed that a woman's reproductive system made her highly susceptible to emotional disorders, particularly hysteria.⁹²

Since the roots of female criminality were to be found in woman's biology and her sexuality, it was the women themselves that were seen to be the problem. As Nickle's quote shows, in these women he saw the image of the "fallen woman"--the temptress and whore--capable of leading men astray.

In Nickle's eyes, there were two classes of female convicts. The "second class of girls" had no sympathy with the "sensuousness" of the first and resented the "odium" they brought on them. Having "no desire to protect indecent practices," these "clean-minded" prisoners had complained without success to the Matron.

Despite the complicity of male officials, Nickle faulted Matron E. McMahon for the ensuing problems. What the position required, Nickle stated, was "a benevolent tyrant with zeal to protect the rights of the women." While he credited McMahon's "quiet, genteel, ladylike" disposition for her not wanting to acknowledge the "growing evil," it may have been likely that the "precise, maiden

91. Prentice et al., Canadian Women, p. 153

92. Ibid., p. 146.

lady" had other reasons for not wanting to bring the complaints to the attention of the new warden. Warden J.C. Ponsford had forced the resignation of Matron Rose Fahey, McMahon's predecessor, and that of her deputy⁹³ after his arrival April 27, 1920 on the grounds that 'the Female Department' had "not been at all satisfactorily managed."⁹⁴

The Matron reported to and was entirely dependent on the Warden for her job which was not well-paid. Fahey's salary in 1914, after nearly thirty years of service, was only \$700 while the lowest paid guard earned \$800.⁹⁵ Ten years later, the Matron's job was only slightly higher paid than the bottom of the guard's scale.⁹⁶ In such a position of low status and authority, McMahon may have found it impossible to control the situation and probably feared for her job.

Nickle recognized that the Matron's position as subordinate to the Warden was seen by the "convicts" as a lack of power. He recommended that Matron "should be the real executive head of the institution" and considered the position:

⁹³. Curtis et al., Kingston Penitentiary, p. 91-92.

⁹⁴. J.C. Ponsford, Kingston Warden's Report, Report of the Superintendent of Penitentiaries, Dept. of Justice, fiscal year ending March 31, 1921, p. 22.

⁹⁵. Curtis et al., Kingston Penitentiary, p. 91

⁹⁶. Ibid.

... a great opportunity for a woman to do something really worthwhile; if she succeeds she will be curing souls, bodies perhaps as well ...⁹⁷

So like the example set by Elizabeth Fry before her, Matron embodied all the qualities of virtuous womanhood as well as the desire to become a saviour and mother to these "fallen" women who had strayed from the feminine ideal. But McMahon, like most single women of her time, probably found it difficult to resolve the tension between such an ideal which was based on woman's proper place--married and in the home--and the reality of women's work.⁹⁸

As it was, she was quickly replaced by a former nurse at the penitentiary, Miss Draper. But Nickle's report was also critical of Draper's failure to maintain her "poise and equanimity under the most trying circumstances" and her inability to see the inmates as "only women she is privileged to help."⁹⁹ Nickle's qualifications paralleled those recommended by the U.S. reform movement. Matron had to be the ideal role model in order to extend the virtues of "true womanhood"--purity, piety, domesticity and submissiveness--the essence of middle-class socialization, to her imprisoned charges.¹⁰⁰

97. The 1921 Report, p. 21.

98. Prentice et al., Canadian Women, p. 113.

99. The 1921 Report, p. 20.

100. Freedman, Their Sisters' Keepers, p. 54.

2.4 A new and separate women's prison

If Nickle was specific in what was expected of the Matron, he was equally detailed about his recommendations for the new women's prison. He suggested a ten-to-twelve-acre site on the lake shore with "attractive natural advantages" where "gardening, chicken raising, bee keeping and other industrial recreations or exercises" could be instituted. Such proposals were more in keeping with the idea of reforming and retraining women offenders in pursuits befitting their gender. Nickel said the offer of the Governor of New York State, which had a reputation for excellent correctional institutions for women,¹⁰¹ to help the Canadian government with information and planning in the erection of a "modern prison building" should be accepted.

Nickle was also specific about what should not be built:

I have not in contemplation the erection of forbidding stone walls, but rather only such protection as will secure safety from intrusion and make escape by the convicts not likely possible ... at one time it was planned to build a female prison just behind the present home of the Warden and within high stone walls. It is not an attractive spot. There are no natural advantages beyond those incidental to a well-tilled field, devoid of trees and beauty.

A new women's prison based on Nickle's ideas would have been a marked departure from the male penitentiary

¹⁰¹. Ibid., p. 42.

standard, and an institution more in keeping with the ideals of the movement for reform and separate facilities for women. But, although his recommendation to build a separate prison would be taken up,¹⁰² Nickle's suggestions about its site and design would not.

The new women's prison would be located behind the Warden's home¹⁰³ within high stone walls--a reflection of the male penitentiary system whose needs even in its construction, it served. On January 24, 1934, Canada's federally-sentenced women moved from Kingston Penitentiary to a separate prison of their own a short distance north of the main penitentiary.¹⁰⁴

Three years later, representatives from a Royal Commission investigating Canada's penal system were shocked to find just twenty-seven women behind the high walls of the new women's prison--a "bastille-type" maximum security building, reflective of early nineteenth century prison designs, with cells to hold a hundred inmates. Their resulting report, chaired by Mr. Justice Joseph Archambault, stated that even the women imprisoned for serious offences like murder and manslaughter were "not a crime problem" but were

102. Adelberg and Currie, Too Few to Count, p. 135.

103. Curtis et al., Kingston Penitentiary, p. 88.

104. Lt.-Col. W.B. Megloughlin, Warden of Kingston Penitentiary, Annual Report of the Superintendent of Penitentiaries, Dept. of Justice, 1933-34, p. 11-12.

...of the occasional or accidental offender class, who have been carried away by the overmastering impulse of the moment, often the outbreak of long pent up emotion.¹⁰⁵

Since the report stated that the "task of prison should be, not merely the temporary protection of society through the incarceration of captured offenders, but the transformation of reformable criminals into law-abiding citizens," reformatories could better treat these women.

The general conclusion to be drawn from women's relative place in crime is that, as a separate problem, it is comparatively unimportant and that the custodial care and reformatory treatment of women should be delegated to properly constituted and properly managed reformatories. There is no justification for the erection and maintenance of a costly penitentiary for women alone, nor is it desirable that they should be confined, either in the same institution as men, or in one central institution far from their place of residence and their friends and relations.¹⁰⁶

Two themes are readily identifiable in the Commission's comments about the women. First, women's crime was different from men's. The reasons for even the most serious violations committed by these women could be found within the women themselves, a product of their emotional natures. As such they were not a "custodial problem" nor requiring the same kind of incarceration necessary for the 'protection of society.'

Second, so few women (the 'too few to count' problem) were expensive to keep imprisoned. The

¹⁰⁵. The Archambault Report, p. 147.

¹⁰⁶. Ibid., p. 148.

commissioners cited the enormous expense of erecting such a building--an estimated \$11,465. per prisoner based on the average occupancy during the previous 10 years.¹⁰⁷ The average cost of upkeep per inmate was about \$750 a year, not counting the costs of transporting the women to and from their home provinces.¹⁰⁸ In the minds of these Commissioners, reformatories would be more cost effective and better equipped for the task of transforming these impulsive and emotional women into law-abiding females.

By 1956, the fundamental purpose of a "well-ordered system of corrections" was "correction of the individual."¹⁰⁹ A committee headed by Gerald Fauteux and reporting to the Minister of Justice was struck to look into the department's remission service, basically the operation of parole.

Recommendation number twenty-one of the Report called for a "more intensified system of varied forms of treatment" in the Women's Prison at Kingston.¹¹⁰ Though the Fauteux committee, like the Archambault Commissioners before them, found "generally somewhat less" than the

107. Ibid., p. 313.

108. Ibid., p. 314.

109. Report of a Committee Appointed to Inquire into the Principles and Procedures Followed in the remission Service of The Department of Justice of Canada, (hereafter The Fauteux Report), (Ottawa: Queen's Printer, 1956), p. 5.

110. Ibid., p. 88.

"normal" capacity of one hundred women inmates at the prison, they thought the "relatively small and comparatively static population" was "precisely the kind of institution" where various forms of treatment could be put into place.¹¹¹

While the federal prisons which housed males had farms, industrial shops and other vocational training facilities,¹¹² the committee had been told that it was difficult, if not impossible, to provide suitable medical, education and vocational treatment for such a small group of women. Still the committee thought with "effective classification" the federal government could institute a more intensified treatment program.

In the committee's view classification and segregation formed the fundamental basis of all reformative treatment, and while for men it meant not being lumped together in a general purpose prison,¹¹³ for women it meant remaining in one central prison for treatment as "the most important consideration."¹¹⁴

2.5 Differential treatment advocated

A decade later, the operation of the Kingston Prison for Women would again come under scrutiny. The

¹¹¹. Ibid., p. 41.

¹¹². Ibid., p. 40.

¹¹³. Ibid., p. 44.

¹¹⁴. Ibid., p. 41.

Director of Correctional Research, R. E. March, conducted an inquiry that mainly focused on the concerns and dissatisfactions of the prison's Superintendent, Miss I.J. Macneill, who was resigning from her position.

March's 1966 Report revealed a rift between Macneill and the Regional Director about the philosophy of treatment of females, and in particular, the suitability of staff recruits. Macneill maintained that in the Women's Prison there was a need for much more "flexibility" than what was required for males, and that the Director seemed unwilling "to be generous in using his delegated powers" with regard to leave provisions.¹¹⁵ As well, Macneill thought the women deserving of a "certain latitude of movement" within the prison. As the Archambault Commissioners had before her, Macneill noted that the women were a different class of offenders:

If we had an institution of the "hard-core," or psychopathic people who are dangerous, I would review the situation, but I think that having too rigid directives on the subject of internal management eliminates rules in the institution. We have had periods in the Institution where we had all barriers opened, with no trouble whatsoever.¹¹⁶

While Macneill's counterpart at the provincial level--the administrator for females in the Ontario

115. Report of an Inquiry by R. E. March (Director of Correctional Research) into the Operation of the Prison for Women, Kingston, Ont., (hereafter The March Report), Dept. of Justice, 1966, (unnumbered pages) section 57.

116. Ibid., section 58.

Department of Reform Institutions--had the "final say" on all staff for Mercer, Ingleside and the small Drug Centre, Macneill no longer controlled staff hiring at the Prison for Women. March stated that Macneill had suffered a "loss of autonomy" over the staff selection process to the Regional Director a few years earlier. Macneill argued that under the revised system the selection board had only one female member--the Deputy Superintendent of the Prison for Women. This was of great concern to her because the type of staff required in a female institution was "not necessarily the type of staff required for a male institution:"

... I believe that there are certain characteristics required for female staff which male officers, no matter how competent in their own functions, do not always appreciate.

March said Macneill quoted an eminent American authority "to the effect that, increasingly, women's correctional institutions tend to be small, open or medium security, with group living, and very relaxed routines."¹¹⁷ March, himself, quoted an Ottawa Citizen news clipping citing a British authority who believed that within thirty years there would be no prisons for women, "but quite possibly other ways of dealing with them."

But, while March seemed sympathetic to Macneill's concerns about the criteria used to choose her replacement,

¹¹⁷. Ibid., section 60.

he would conclude that whether the position of Superintendent was filled by a "competent" female or not, "one able male administrator within that Institution [was a] practical necessity."¹¹⁸ Despite Macneill's calls for more women, even the position of Superintendent of the Prison for Women would be filled by a man for more than a dozen years after her resignation.¹¹⁹

Macneill's beliefs that women possessed certain characteristics which better suited them for dealing with their female charges echoed the valorization of inherent "feminine" qualities and the ideologies espoused by the women's reform movement at the turn of the century. But, as March's report made clear--differential treatment advocated for women still had to fall within the dictates of prison regulations which were based on the male majority.

Just three years later, the Report of the Canadian Committee on Corrections chaired by Roger Ouimet, would recommend that the Government of Canada purchase prison services in the provinces because of the problems of one central institution for women located in Kingston.¹²⁰ The Ouimet Report noted like other reports before it that the

¹¹⁸. Ibid., section 63.

¹¹⁹. The Berzins and Dunn Report, (unnumbered section on Historical Development).

¹²⁰. The Ouimet Report, p. 401.

small number of women "in comparison to the number of men," made it difficult to plan prison services for them.¹²¹ As well, like the Archambault Report, Ouimet found that the "social" nature of women's offences, "in contrast to the more aggressive crimes committed by some men," made them less of a custodial problem.¹²²

Some of the problems of the Kingston institution listed in the 1969 Report were:

1-hardships for women separated from their families and communities which made pre-release planning difficult,

2-no French-language program which made Quebec courts reluctant to impose longer federal sentences and the impracticality of operating both English and French programs in so small an institution, and

3-problems segregating inmates in terms of age, degree of criminal sophistication and emotional stability,

Again, women's crime was seen as a separate problem as compared to men's. But, the Committee stated that its recommendations for the women to get better treatment in the provinces was part of its overall approach, evident in other parts of its report, which stressed the advantages of relatively small institutions over large institutions.¹²³

The Ouimet Report also recommended that a "suitably qualified woman" be appointed to a senior leadership

¹²¹. Ibid., p. 399.

¹²². Ibid., p. 400.

¹²³. Ibid., p. 401.

position in relation to correctional treatment for women. As well, it was one of the earliest reports to recognize that, outside of their classification needs, the women were not a unitary group. In addition to the problems of Francophone women offenders, the Report called special attention to the high numbers of Indian and Metis women sentenced to various provincial institutions (100 percent in Kenora, Ontario; 95 percent in The Pas, Manitoba). It stressed the need to involve their own communities in programs designed to help these women offenders.¹²⁴

2.6 Societal double-standards haunt women offenders

Just a year earlier a brief on the woman offender produced by the Canadian Corrections Association noted that women who broke the law were subject to a societal double standard--they were judged according to their refusal to play the traditional female role expected of them rather than, like their male counterparts, according to their transgression of the criminal law itself.¹²⁵ The Corrections Association report quoted from a document prepared for the President's Commission on Law Enforcement and Administration of Justice in the U.S.:

... although the female offender is not significantly different from the male inherently, her violational behaviour is defined, and she is treated and/or penalized, when she belies the traditional expectations for females... this to the extent that

124. Ibid., p. 403.

125. C.C.A. Brief, p. 27.

it is recognized that she has behaved in a way that is symbolically characteristic of the traditional male role.¹²⁶

As Dorie Kline and June Kress were to note a decade later, this double standard meant that it was precisely women who were not "ladies" by ruling class standards who were likely to be sentenced to prison, and to commit offences in the first place which made them vulnerable to arrest.¹²⁷

In the late 1970's, there would be a number of reports commissioned to look at the situation of the federal female offender with a view to closing the Prison for Women. By 1988 though half of the federally-sentenced women were housed in provincial prisons under exchange-of-service agreements,¹²⁸ Taking Responsibility--The Daubney Report, would again carry a recommendation to close the Prison for Women and urgently address accommodation for federal female offenders.¹²⁹

As repeated in earlier reports, small numbers and few facilities meant that all women were kept at the same classification and resulting security level, and as the

126. Ibid., p. 27.

127. Dorie Klein and June Kress, "Any Woman's Blues: A Critical Overview of Women, Crime and the Criminal Justice System," Crime and Social Justice, Vol. 5, Spring/Summer, 1976, p. 44.

128. The Daubney Report, p. 232.

129. Ibid., p. 240.

report noted, "higher than most of them require."¹³⁰ The Canadian Association of Elizabeth Fry Societies pointed out that while a small percentage of women were determined to need a maximum security setting, security levels were used as "motivating factors" and, in some instances were:

... kept artificially high [so] the institutions in which women are incarcerated are not required to offer the quality of programming they would otherwise be required to offer ... Although women in prison may "cascade" through security levels on paper, the reality is that the few institutions that house women are run as maximum security facilities, regardless of the paper requirements.¹³¹

Prison programs were seen as lacking relevance to offenders' real-life experiences and not culturally relevant. The report noted there was a need for programs to address problems of sexual abuse, low self-esteem and substance abuse.¹³² Pre-release planning and services for female offenders were said to be inadequate.

The Daubney Report found the situation of Native women offenders especially problematic:

... imprisoned Native women are triply disadvantaged: they suffer the pains of incarceration common to all prisoners: in addition they experience both the pains Native prisoners feel as a result of their cultural dislocation and those which women prisoners experience as a result of being incarcerated far from home and family.¹³³

130. Ibid., p. 232.

131. Ibid., p. 233.

132. Ibid., p. 234.

133. Ibid., p. 237.

The Parliamentary Committee which prepared the 1988 Report would recommend that the Solicitor General convene a Task Force on Federal Female Offenders to plan and oversee the closure of the Prison for Women within five years.¹³⁴ The Task Force would be innovative in that it would be headed by a mix of representatives from both the government, and the Canadian Association of Elizabeth Fry Societies and other private sector agencies. It would also include extensive research involving the federally-sentenced women themselves.

In a little less than two years, the Task Force would release its report, Creating Choices. It would prompt the Federal Government to initiate plans to build four regional centres in locations across Canada and a special "healing lodge" for prairie Native women.¹³⁵ The situation was made more urgent by the suicides of a number of women at the Kingston Prison for Women during the previous couple of years.¹³⁶ For these women and others still waiting for change at P4W, the experience of being a woman offender was quite different from that of a man.

134. Ibid., p. 240.

135. John Spears, "Ottawa plans 4 new prisons for women," The Toronto Star, Thursday, August 1, 1991, p. A9.

136. Sherri Barron, "Life and death in The Cage," The Ottawa Citizen, Saturday, March 9, 1991, p. B3.

CHAPTER III

DEVIANCE AND DIFFERENCE:
The Female Offender and the Feminine Norm

Studies of women and crime reveal that women's deviance is seen as a problem separate from men's. Often it is the inherent and biologically-distinct traits attributed to 'Woman' that are the source of many images and myths surrounding the criminality of women. Contradictory images like the madonna/whore dichotomy create ideological double-standards that today continue to obscure the reality of the 'offending' woman.

In 1970, the Report of the Royal Commission on the Status of Women noted that Canadian criminal law "reflects a nineteenth century view of the status of women." The report said that:

Women who encounter the criminal law, the administration of criminal justice or ultimately correctional institutions, are treated in accordance with a traditional concept of a woman's role that is no longer necessarily appropriate in the 1970's.¹³⁷

It is still as true today as it was in the nineteenth century that when a woman comes in conflict with the law in Canada, she enters a system overwhelmingly geared to a white male norm. This norm is not only a reflection of the real numbers of men in comparison to women in Canada (there are a hundred men serving federal

¹³⁷. R.C.S.W., p. 365.

sentences for every two women), but it is also an attitudinal reflection of a criminal justice system which tends to only see males.

Though the overt mention of "man" and "male" so prominent in early annual penitentiary reports¹³⁸ has now disappeared, the majority of reports prepared for Parliament on the penitentiary system, like the one chaired by Mark MacGuigan in the late 70's, use generic terms--inmates and prisoners--when they are in fact referring to the male majority.¹³⁹

As is common of several reports, in the MacGuigan document discussions about federal women prisoners and their situation are dealt with in a separate section. In this instance, they are grouped under the "special problems" umbrella, special problems being females, youths, sex offenders, mentally disturbed inmates and drug addicts.¹⁴⁰

3.1 Studies of women and crime

Maureen Baker observes that traditionally the criminal usually referred to in criminological literature

¹³⁸. For example: "From sixteen to twenty-one the man is in the making," The 1914 Report, p. 31, and "properly managed penitentiaries can change a man's character," Report of the Superintendent of Corrections, Penitentiaries Report, Dept. of Justice, 1925/26, p. 13.

¹³⁹. Examples from The MacGuigan Report, p. 7, 11, 12, 36.

¹⁴⁰. The MacGuigan Report, p. 134.

is a "he" while the female offender is only given token mention and relegated to footnote status.¹⁴¹ She says this is not surprising since throughout the world, women have lower rates of arrest, conviction, and incarceration. The picture for Canadian women offenders is similar. It is generally accepted that women commit a small portion, about ten per cent, of all serious crime in Canada.¹⁴²

The lack of attention and research into crime as it relates specifically to the female offender has led researchers like Meda Chesney-Lind to comment that "too little is known and too much assumed about the nature of women's crime."¹⁴³ In Heidensohn's view, because criminology has had nothing to say of interest or importance about women, it was necessary to create a feminist criminology.¹⁴⁴ This development is generally attributed to Carol Smart's ground-breaking critique of mainstream (historically "malestream") criminology, Women,

141. Baker, "Male-Dominated Criminology," Taking Sex into Account, p. 243.

142. Alison Hatch and Karlene Faith, "The Female Offender in Canada: A Statistical Profile," Canadian Journal of Women and the Law, Women and Crime, Vol. 3, No. 2, 1989/90, p. 435.

143. Meda Chesney-Lind, "Women and Crime: The Female Offender," Signs, Vol. 12, No. 1, Autumn 1986, p. 84.

144. Heidensohn, Women and Crime, p. 111.

Crime and Criminology: A Feminist Critique.¹⁴⁵

In the introduction to her book, Smart states that she began her critique after realizing that most of what had been written about female criminality had "an entirely uncritical attitude towards sexual stereotypes of women and girls."¹⁴⁶ She found that the essence of existing studies treated women as "fundamentally and qualitatively different from men" based on ideas about the "natural" qualities of the sexes.¹⁴⁷

Paraphrasing Gouldner, David Downes and Paul Rock remark that patriarchally inclined criminologists have portrayed the female offender as "woman on her back, rather than woman fighting back."¹⁴⁸ They believe that women offenders alone are subject to a form of "intellectual atavism aping the Lombrosian theory of crime" and that policies and attitudes towards female criminality have mirrored the determinisms of this predominant paradigm.¹⁴⁹

In the mid-1800s, Italian researchers Caesar

145. Rae Matonovich, "Book Review: Women, Crime and Criminology," Resources for Feminist Research, Vol. 13, No. 4, Dec./Jan. 1985/86, p. 64, and David Downes and Paul Rock eds., Understanding Deviance, (Oxford, England: Oxford Univ. Press, 2nd Ed. 1988), p. 273.

146. Carol Smart, Women, Crime and Criminology: A Feminist Critique, (London: Routledge and Kegan Paul, 1976).

147. Ibid., p. 176-177.

148. Downes and Rock, Understanding Deviance, p. 275.

149. Ibid., p. 274.

Lombroso and William Ferrero measured the bones of human skeletons from Turin prisoners, claiming to find that criminal women had physical abnormalities.¹⁵⁰ Such abnormalities, they maintained, predestined women to be criminals from birth and led to their assertion that females had innate propensities to certain types of crimes.

According to Dorie Klein and June Kress, for years most writers on the subject have made universal, ahistorical assumptions about female nature in general, based on women's reproductive role. These assumptions have led to sexuality becoming "the key to understanding the deviance of a woman, since this is supposedly her primary social function."¹⁵¹ This view can be tied to Freud's famous "anatomy is destiny" theoretical supposition which reduces women to their sex organs and limits them to biologically-dictated roles as wives and mothers.¹⁵²

Klein and Kress are critical of researchers like Lombroso and Pollock because they view female criminality as the result of innate biological or psychological characteristics which are only marginally affected by social and economic factors:

150. Freda Adler and Rita James Simon eds., Criminology of Deviant Women, (Boston: Houghton Mifflin, 1979), p. 2, 10.

151. Klein and Kress, "Any Woman's Blues," C.S.J., p. 35.

152. Dorie Klein, "The Etiology of female Crime," in Criminology of Deviant Women, p. 6.

Specifically, women (and women offenders) have been characterized in the literature as devious, deceitful and emotional (Pollock, 1950), intellectually dull and passive (Thomas, 1907, 1923), atavistic (closer to animals in evolution) and immoral (Lombroso, 1920), lonely and dependent (Konopka, 1966), and anxious to serve and be loved (Herskovitz, in Pollak and Friedman, 1969).¹⁵³

As this general review of the historical literature on women and crime shows, theorizing by experts like Lombroso and Freud have perpetuated the view that women who commit serious crimes are "either passive victims or aberrant monsters"¹⁵⁴ who in turning to crime are rejecting or rebelling against their natural feminine roles.

3.2 New directions for understanding women and crime

Attempts by feminists to "break out" of criminology's traditional focus on crime and offenders (generalizing from research based predominantly on male subjects from a historically male viewpoint), have been labelled as "transgressive criminology" by Maureen Cain.

. . . feminists have found it necessary to step outside the criminological discourse of what makes people offend and how to prevent it, and raise questions about our constitution of gender itself, about the ideological nature of people.¹⁵⁵

Cain maintains that "[w]hat happens to girls and women in

¹⁵³. Klein and Kress, "Any Woman's Blues," Crime and Social Justice, p. 35.

¹⁵⁴. Jeri Dawn Wine, "Book Review: Flowers in Hell: An Investigation into Women and Crime and Lifers: The Stories of Eleven Women Serving Life Sentences for Murder," Resources for Feminist Research, Vol. 17, No. 2, June 1988, p. 48-49.

¹⁵⁵. Cain, "Towards Transgression," I.J.S.L., p. 6.

courts and prisons connects with what happens in the playground, in the family, and at work."¹⁵⁶

Mary Eaton, in her study of the treatment of women in British magistrates' courts, agrees. She asserts that in using this approach the boundaries between women defined as criminal or deviant, and other women become obscure:

As one recognizes that the regulation applied to deviant women is on a continuum of regulation applied to all women, so one is drawn away from discussing deviant women as a separate group and towards discussing the social controls that affect all women.¹⁵⁷

But, while drawing parallels or distinctions between women who offend and women who do not can be promising areas for research, Beverley Brown is critical of falling into a circular rut dictated by social control theories which make an "endless re-discovery of the link between 'normal' and criminal conduct."¹⁵⁸ In discovering that crime is 'normal'--that criminal and normal beings share goals and aspirations, cultural norms and identities--female conduct, overwhelmingly non-criminal, has become "the abiding mystery" for social control theorists.¹⁵⁹ And

156. Ibid., p. 33.

157. Mary Eaton, Justice for Women? Family, Court and Social Control, (Milton Keynes, England: Open University Press, 1986), p. 8.

158. Beverley Brown, "Women and crime: the dark figures of criminology," Economy and Society, Vol. 15, No. 3, August 1986, p. 401.

159. Ibid.

so, Brown contends, the focus has shifted and it is female non-criminal conduct which becomes unintelligible and must be explored to make known the phenomenon of crime:

... men are individuated where women are speciated. For male criminality there is a typology, a range of variation and differentiation and individuation. The female by contrast, is referred to her species as defined by her reproductive role. By referring female criminality back to the species-type of female non-criminality, female criminality is gendered in a way that male criminality is not.¹⁶⁰

In an assessment of works by both Heidensohn and Pat Carlen, Brown also argues that in dealing with the women and crime question, many feminist works have rested on a foundational critique--the women have been left out approach--which has been indifferent to the parameters of criminology itself. Mark Cousins has also made this point in a critique of Smart's arguments in Women, Crime and Criminology.

A radical criminologist, Cousins reasons that the simple thesis of female criminality distorted by patriarchal relations "perversely" sets up male criminality as the norm, essentializing the categories 'women' and 'men,' and in particular, the relationship between law and sexual difference "by insisting that the relation is singular and operates within a homogeneous space."¹⁶¹

160. Ibid., p. 395.

161. Mark Cousins, "Men's Rea: A Note on Sexual Difference, Criminology and the Law," in Radical Issues in Criminology, Pat Carlen and Mike Collison eds., (Oxford, London: Martin Robertson, 1980), p. 114-116.

3.3 Twofold deviants

Women who commit crimes deviate not only from the male norm but also fail to meet a standard which can be called the feminine ideal. Often this feminine ideal or 'female nature' is seen as universal, without consideration of historical data or cross-cultural studies, which "in fact reveal there are many different modes of 'female personality'".¹⁶²

Robert Ross and Elizabeth Fabiano, quoting Freda Adler, argue that because women offenders are viewed as doubly deviant, they are regarded as non-persons by the corrections system:

Female offenders "are twofold deviants: not only have they deviated from the general male standard of conduct by reasons of being female, but they have deviated from male standards of female conduct by being offenders" (Adler, 1975, p. 173). Accordingly, in the eyes of the public and the criminal justice system they have often been relegated to the status of nonpersons, undeserving of special attention.¹⁶³

This non-person status reinforces the 'too few to count syndrome' noted by Adelberg and Currie earlier.

But, even the feminine ideal for women is seen as inferior by its not being regarded as the norm which is male according to sociologist Edwin Schur. Through their

162. Lesley Schacklady Smith, "Sexist assumptions and female delinquency," in Women, Sexuality and Social Control, eds. Carol Smart and Barry Smart, (London: Routledge & Kegan Paul, 1978), p. 75.

163. Robert R. Ross and Elizabeth A. Fabiano, Female Offenders, Correctional Afterthoughts, (U.S., North Carolina: McFarland & Company, 1980), p. 8.

'less than' status, which is lacking as compared to the male (superior) norm, "women incur a certain amount of stigma merely by 'being' women."¹⁶⁴ Schur's research has led him to the conclusion that women don't have to engage in any behaviour in order to face "deviantizing"--devaluation or stigmatization. For example, he states that when women violate physical appearance norms, "no 'act' is needed for deviance-defining to occur."¹⁶⁵

Schur says that at the root of this deviance defining and devaluation, from which men "appear to benefit psychologically, as well as socially and economically," is the fact that women are perceived as a threat.¹⁶⁶ Chesney-Lind agrees--"fear of defiant women is as old as the history of male domination and has necessitated the creation of mythical figures, such as Lilith." Hebraic tradition, according to Chesney-Lind, says Lilith objected to obeying Adam and became a night demon eating children and seducing men.¹⁶⁷

Biblical references to mythical figures like Lilith

164. Edwin M. Schur, Labelling Women Deviant--Gender, Stigma and Social Control, (U.S. Philadelphia: Temple Univ. Press, 1983), p. 236.

165. Ibid., p. 237.

166. Ibid.

167. Meda Chesney-Lind, "Re-discovering Lilith: Misogyny and the "New" Female Criminal," The Female Offender, eds. Curt Taylor Griffiths and Margit Nance, (B.C.: Simon Fraser Univ., 1980), p. 1.

or Eve and the serpent are not alone in reflecting the sometimes religious overtones present in deviant designations for women offenders. Take this often quoted description of a woman offender incarcerated in the early days of Kingston Penitentiary's history. The author Charles Dickens was taken with a female convict, a girl aged twenty whom he described as beautiful. She had been in prison three years after being apprehended carrying secret dispatches as one of the "self-styled patriots of Navy Island, during the Canadian Insurrection."

Setting forth on one of her patriotic missions, she appropriated to herself the first horse she could get her hands on; and this offence brought her where I saw her. She had quite a lovely face, though, as the reader may suppose from this sketch of her history, there was a lurking devil in her bright eye, which looked pretty sharply from behind her prison bars.¹⁶⁸ [emphasis added]

As Dickens' quote shows, descriptions of women offenders tended to reflect beliefs about inherent immoral deviance--the lurking devil within. Such deviance was present inside the woman herself, who like the Puritan "helpmeet" of eighteenth century Colonial Massachusetts could be "both saintlier and more sinful than men."¹⁶⁹ These images of deviant women, archetypes of the 'wild woman' or 'she devil,' live on today. They are evidenced

¹⁶⁸. Curtis et al., Kingston Penitentiary, p. 86.

¹⁶⁹. N.E.H. Hull, Female Felons, Women and Serious Crime in Colonial Massachusetts, (Chicago: Univ. of Illinois Press, 1987), p. 4.

in news media designations like that of the Greenham Common women's peace protest in Britain which has been described as a witches' coven.¹⁷⁰

Alison Young says these female archetypes were used by the British news media to censure the Greenham peace activists. Her study of how definitions of criminality and deviance are brought into being and given meaning, which the criminal law and justice system build upon, highlights the importance of gender and what is attributed to the 'feminine.'

The 'deviance' which is seen as inherent in femininity itself should therefore become a major category for analysis in the sociology of crime, with particular importance for the study of the 'criminality' of women. I would argue that the attribution of 'wildness' has taken a strong hold within the masculine economy of the representation of sexual difference.¹⁷¹

And so, women who are convicted of criminal behaviour are often seen as wild and out of control reacting on their inherent female potential. As a threat to public order, these women are seen as needing retraining to adopt the acceptable feminine image of their respectable and law-abiding sisters.

Such stereotypical conceptions also have another side according to Allison Morris. They tend to idealize white and middle-class characteristics and ignore racial

¹⁷⁰. Alison Young, Femininity in Dissent--Sociology of Law & Crime, (London: Routledge, 1990), p. 2, 152.

¹⁷¹. Ibid., p. 152.

and class dimensions. Morris says:

'Being a woman' is not a clear, single conceptual category; prospects, situations and experiences differ.¹⁷²

In the U.S., where black women constitute well over half of all incarcerated women and are a higher proportion of all female offenders than are black men of all male offenders,¹⁷³ Sally Simpson argues that race is an even more important variable than gender. Because black female participation in violent criminality does not compare with the high rates among their male counterparts, she maintains that race as constitutive of structural and/or cultural difference demands greater conceptual and empirical attention.¹⁷⁴

When looking at the situation of women in Canada, race again forms a vital part of the picture. Like their American black counterparts, Aboriginal women, too, are over-represented in Canadian prisons. Depending on the province and the institution, these women comprise between thirteen to a hundred percent of female incarceration. At the federal level, twenty-three percent of women sentenced in 1983 were Aboriginal, compared with the national average

172. Allison Morris, Women, Crime and Criminal Justice, (U.K. Oxford: Basil Blackwell Ltd., 1987), p. 15.

173. Sally S. Simpson, "Caste, Class, and Violent Crime: Explaining Difference in Female Offending," Criminology, Vol. 29, No. 1, 1991, p. 118.

174. Ibid.

of ten percent.¹⁷⁵

Lana Fox and Fran Sugar challenged not only the stereotypical conceptions about Aboriginal women offenders but the rigid, inherently racist, correctional structures when researching and relating these women's experiences for the Creating Choices Task Force.

...the simple fact is that maximum security Aboriginal women at P4W were prejudged as violent, uncontrollable, and unmanageable because we refused to cooperate with male guards who ordered us to remove our clothes in provincial prisons or population. We told the numerous task forces that medical-psychiatric evaluations were not culturally appropriate. We knew the questions they asked us were questions made for white people, for white men.¹⁷⁶

For these Aboriginal women, and others of different cultures or races in P4W, it means difference defines them as being even further removed from established norms. They are not male, and on the other hand, they do not qualify for the feminine norm or ideal which embraces white, middle-class characteristics. As such these deviant designations underlying beliefs about women offenders are often drawn from an ideology which not only has a sexist but racist base.

In her critical analysis of 1985's A Feminist Review of Criminal Law, Marlee Kline also points out the

¹⁷⁵. Hatch and Faith, "The Female Offender in Canada," C.J.W.L., p. 454.

¹⁷⁶. Fran Sugar and Lana Fox, "Nistum Peyako Seht'wawin Iskwewak: Breaking Chains," Can. Journal of Women and the Law, Vol. 3, No. 2, 1989-90, p. 469.

importance of race in looking at the situation of women offenders. She says the distinct experiences of First Nations women within the criminal justice system in Canada are relevant when looking at such issues as judicial assessments.

Since race affects dominant perceptions of women's "badness" or "goodness," some examination should be made of how women of color are perceived by judges to determine whether there might be discrimination on the basis of societal perceptions. By failing to identify the racial identity of the women affected by the criminal justice system, we miss the important interaction that occurs between racism and sexism in this context and how this interaction affects the lives of a particular group of women.¹⁷⁷

Kline notes that Carol LePrairie's research into this interaction suggests that the disproportionate impact of the criminal justice system on Aboriginal women "is a product of socio-cultural, legal and economic forces, including the undermining of traditional Native roles and values, discriminatory provisions of the Indian Act (prior to 1985 amendments), and social class."¹⁷⁸ These real differences among women must be acknowledged and understood in order to establish effective policies and meaningful change for women in P4W.

Female stereotypes often contain a mix of sexism and racism that separate women from each other through

¹⁷⁷. Marlee Kline, "Race, Racism, and Feminist Legal Theory," Harvard Women's Law Journal, Vol. 12, Spring 1989, p. 127.

¹⁷⁸. Ibid., p. 127.

societal definitions of deviance. Carol Karlsen says these split images of women have their roots in an "ideology of domesticity" formulated in the early nineteenth century which broadly excluded women who did not meet the appropriate race and class criteria. This ideology proclaimed that "woman" embodied a moral purity that distinguished her from man and that required women to spread their moral influence as the "mothers of civilization."

[T]his ideology gained widespread acceptance in part because it explicitly asserted that all women shared the same nature, but it implicitly excluded from "womanhood" those who could not or would not aspire to the ideal. Woman-as-evil had gradually taken on not a single but a dual shape--one formed by race, the other by class. By the nineteenth century, black women and poor white women were viewed as embodying many of the characteristics of the witch: they were increasingly portrayed as seductive, sexually uncontrolled, and threatening to the social and moral order.¹⁷⁹

3.4 Contradictory images--madonna or whore

Other deviant female images are tied to women's sexuality and a belief in the dual nature of women as either madonnas or whores.¹⁸⁰ John McLaren's analysis of Canadian judicial attitudes toward prostitution-related activity under criminal law sanctions reveals patriarchal standards being applied during two different time spans.

¹⁷⁹. Carol F. Karlsen, The Devil in the Shape of a Woman--Witchcraft in Colonial New England, (Markham, Ontario: Penguin Books, 1987), p. 256-7.

¹⁸⁰. Chesney-Lind, "Women and Crime," Signs, p. 80.

He assessed judgements during the periods of 1900 to 1920 and 1964 to 1984, and found that both were marked by the judges' "contradictory impulses" in seeing women as:

...victims in sexual matters, and at the same time of distinguishing between virtuous women, who are entitled to the protection from exploiters afforded by the law, and the "fallen" who are not only not entitled to the law's protection, but who are also subject to its "sting".¹⁸¹

McLaren's analysis also revealed that the judges applied different standards to men and women in subscribing to the belief that:

...the seeking of paid sexual services by men is a natural attribute of the male body and psyche, but that the female providers of those services are morally flawed and deviant.¹⁸²

In a discussion about exclusionary laws in the U.S. in the early twentieth century, Rhode says many legislatures were unwilling to permit women's presence in locations where the "worst passions [were] aroused," for example where liquor was being served. She says this legislation reflected the dual stereotypes common in Anglo-American culture.

From one perspective, woman appeared as a pure and delicate creature who must be shielded from sordid influences; alternatively, she figured as a brazen seductress who threatened innocent males. In effect these liquor ordinances cast every female as either

¹⁸¹. John P.S. McLaren, "Twentieth Century Judicial Attitudes Toward Prostitution," Equality and Judicial Neutrality, eds. Sheilah Martin and Kathleen Mahoney, (Toronto: Carswell, 1987), p. 282.

¹⁸². Ibid., p. 295.

'Eve or Little Eva and either way she los[t].'¹⁸³

Many of these double-standard notions have their base in early Victorian ideology. Its narrow view of sexuality defined impure women as a threat to society.¹⁸⁴ Women's "natural" roles were as wives and mothers, and their place was in the home. The "fallen woman" was a lifetime identity. Her promiscuous sexuality was more depraved than that of the "fallen man" because "she had denied her own pure nature."¹⁸⁵

This idea of woman rejecting her own nature and traditional family and mothering roles as a woman is still reflected in today's attitudes about women who offend. Berzins and Cooper note that a woman offender is likely to find her "femininity" itself under attack after being imprisoned. They state that while a man does not "lose his virility because he has been in prison, [a woman's] competence in other female roles is questioned."¹⁸⁶ And so, the woman who commits a crime and spends time in prison becomes an anomaly--a woman apart from other "feminine" women and one who threatens the very order of society.

Nicole Hahn Rafter says the belief that women were

183. Deborah L. Rhode, Justice and Gender, (Massachusetts: Harvard Univ. Press, 1989), p. 44.

184. Freedman, Their Sisters' Keepers, p. 19.

185. Ibid., p. 17.

186. Berzins and Cooper, "Political Economy of Correctional Planning," C.J.C., p. 408.

the guardians of society's morals meant that from their higher elevation, "women had further to fall." These ideas are expressed by Francis Lieber in 1833:

[A] woman once renouncing honesty and virtue, passes over to the most hideous crimes which women commit, with greater ease than a man proceeds from his first offense to the blackest crimes committed by his sex ... a woman, when she commits a crime acts more in contradiction to her whole moral organization, i.e., must be more depraved, must have sunk already deeper than a man.¹⁸⁷

The English authority on women and crime, Mary Carpenter, held similar beliefs which she wrote about in her two-volume work, Our Convicts, published in 1864:

The very susceptibility and tenderness of woman's nature render her more completely diseased in her whole nature when thus perverted to evil; and when a woman has thrown aside the virtuous restraints of society, and is enlisted on the side of evil, she is far more dangerous to society than the other sex.¹⁸⁸

This conception of the criminal woman, Rafter says, was "rooted in the archetype of the Dark lady--dangerous, strong erotic, evil--a direct contrast to the obedient, domestic, chaste, and somewhat childlike Fair Lady of popular imagery."¹⁸⁹ Though Rafter does not extend the dark-fair contrast into a discussion about the role race plays in these images, the stereotypes of fair (white) being equated with good and dark (black) with evil have historically been and are still generally pervasive

187. Rafter, Partial Justice, p. 13.

188. Dobash et al., The Imprisonment of Women, p. 13.

189. Rafter, Partial Justice, p. 13.

throughout Western culture.

Today these same patriarchal beliefs about sexuality and a bias in favour of the traditional male-headed family unit, target women who are lesbians as different and therefore deviant. In Canadian courts, lesbianism has been more of an issue than the violent behaviour of ex-spouses in recent custody cases.¹⁹⁰

3.5 The bad mothers

In the spring of 1990, Creating Choices reported that two out of three of the federal women offenders studied said they were mothers who had primary responsibility for their children.¹⁹¹ Many writers say these women suffer extra pain in addition to their imprisonment because they are isolated from their children by vast geography and the existence of only one federal women's penitentiary,¹⁹²--a problem "more pronounced in Canada than in many other countries."¹⁹³

190. Sherene Razack, Canadian Feminism and the Law--The Women's Legal Education and Action Fund and the Pursuit of Equality, (Toronto: Second Story Press, 1991), p. 86.

191. Creating Choices, p. 121.

192. Robert R. Ross and Elizabeth A. Fabiano, Correctional Afterthoughts: Programs for Female Offenders, (Ottawa: Solicitor General, 1985), #1985-18, p. 88; Liz Elliot and Ruth Morris, "Behind Prison Doors," in Too Few to Count, p. 148; Linda MacLeod, Sentenced to Separation: An Exploration of the Needs and Problems of Mothers who are Offenders and their Children, (Ottawa: Solicitor General, 1986), p. 24.

193. MacLeod, *ibid.*, p. 65.

At the same time, society judges these women as being less fit or capable as women to be mothers.

Executive Director of the Elizabeth Fry Society in Kingston, Sally Willis sums up the situation:

Most of us have a knee jerk reaction to the Inmate Mother; however, just because a woman is an offender does not mean that she is a poor parent.¹⁹⁴

A woman offender's status as a mother can be a vital determinant in how the criminal justice system interprets her deviance. Liz Elliot and Ruth Morris say that a woman's success in parenting affects how she will be sentenced.

If her children are already in the care of the state, or she is otherwise evaluated as a poor mother, her sentencing prospects may be bleak, for a crucial redeeming quality of her womanhood (her ability to parent) is in question.¹⁹⁵

As these authors note, women who go to prison are often judged as "deviant both as citizens and as women."¹⁹⁶ Yet, the ability to parent is often critically important to women offenders themselves. A working paper done for the Solicitor General's office says the maternal role is often central to the self-image of many female inmates, their plans for the future, to their ability to adjust to prison life and to the potential success of training and

¹⁹⁴. Jo-Ann Mayhew, "P4W: Correcting past mistakes," Breaking the Silence, Winter 1990, p. 7.

¹⁹⁵. Elliot and Morris, "Behind Prison Doors," in Too Few to Count, p. 148.

¹⁹⁶. Ibid., p. 147.

rehabilitation programs.¹⁹⁷

As Susan Boyd has documented, in Canadian courts ideologies about motherhood historically have worked to recognize women who meet their criteria and against women who do not fit the traditional pattern.

In the late nineteenth century, "mothers were awarded custody only when they were living under the protection of some other male, usually fathers or brothers, and only if they had not disqualified themselves by an adulterous relationship or some other conduct that the Canadian courts considered unseemly." In the twentieth century, as psychological theories of bonding and the psychological parent gained in influence, stay-at-home mothers fit perfectly the description of psychological parents to whom child would bond most closely.¹⁹⁸

As well, Mary Eaton's studies have shown that women are disadvantaged in the courtroom by an ideological preference for specific gender roles generated and reinforced by the dominant white middle-class family model.

An examination of the familial ideology that underlies summary justice reveals that women are not equal to men in court, since the court is operating from a perspective which defines women as different and subordinate ... By judging both female and male defendants in the context of their families, the court displays not impartiality, or equality of treatment, but its role in preserving differences based on sexual inequality.¹⁹⁹

While the family is often privileged and an ideology surrounding 'the safe home' prevails in society as

197. MacLeod, Sentenced to Separation, p. 24.

198. Boyd, "Child Custody and Working Mothers," Equality and Judicial Neutrality, p. 172.

199. Eaton, Justice for Women?, p. 98.

well as the courts, it has been shown that "violence to women is more prevalent in the home than outside it."²⁰⁰ As the Solicitor General's literature reveals, many women offenders "have grown up in environments characterized by poverty, neglect, physical and sexual abuse, and a lack of loving discipline."²⁰¹ Such real-life contradictions can work to disadvantage women offenders with unconventional lives in the courts and in prison.

The issue of gender bias has been documented in studies by the Manitoba Association of Women and the Law.²⁰² As well, former Supreme Court Justice Bertha Wilson, the first woman to be appointed to Canada's highest court, concluded that in some areas of Canadian law

a distinctly male perspective is clearly discernable and has resulted in legal principles that are not fundamentally sound...some aspects of the criminal law, in particular, cry out for change since they are based on presuppositions about the nature of women and women's sexuality that in this day and age are little short of ludicrous.²⁰³

Whether a woman offender is a mother or not, the fact that she is biologically and culturally defined as a

200. Frances Heidensohn, Crime and Society, (London: Macmillan, 1989), p. 107.

201. "Women in Conflict with the Law," pamphlet produced by the Solicitor General of Canada.

202. Manitoba Association of Women and the Law, Gender Equality in the Courts, November, 1988 and Gender Equality in the Courts, Criminal Law, March, 1991.

203. From Supreme Court Justice B. Wilson's Feb. 8, 1990 lecture at Osgoode Hall Law School, M.A.W.L., Gender Equality in the Courts, Criminal Law, p. 1-4.

female affects both her relationship to deviance and to the criminal justice and prison system.

3.6 Law and women's bodies

Carol Smart points out that when looking at the relationship between law and women's bodies, the problem is

how to acknowledge the significance of the body without being subsumed into the traditional binary moral/legal discourse on the irrational and biologically determined nature of women and at the same time avoiding the creating of genderless bodies.²⁰⁴

Women who have transgressed legal norms have had both their biology recognized and ignored by the criminal justice system. Two important threads are at issue here. Women who commit more serious offences and receive longer, federal sentences are seen as less "feminine" and deficient as mothers. Therefore, they are seen as less deserving of treatment as women who are in reality mothers.

A second important issue is that their status as women in turn singles them out for differential treatment. Treatment which is often based on attributes assigned to women as a sex--more emotional, more dependent, less rational. The notion that existing gender divisions are "natural, that they are rooted in an eternal, unchanging biology in one way or another"²⁰⁵ has often found its way

204. Carol Smart, Feminism and the Power of Law, (London: Routledge, 1989), p. 113.

205. Lynda Birke, Women, Feminism and Biology: The Feminist Challenge, (Britain: Harvester Press, 1986), p. 2.

into judicial rulings.

For women in conflict with the criminal justice system, treatment is often based on an ideological construction of femininity which has three key elements: sexuality, domesticity and pathology.²⁰⁶ As Shelley Gavigan has noted,

women's crime has often been explained in physiological terms, as resulting from raging female hormones (as in cases of theories that are based on premenstrual syndrome, pregnancy, postpartum depression and menopause).²⁰⁷

On the other hand, a lack of "female" qualities encouraged the belief that women who were deviant were somehow physically and/or psychologically masculine.²⁰⁸

Gavigan says criminologist Anne Edwards' analysis of historical shifts in the British justice system reveals a "paradoxical image of female sexuality (i.e., both sexual passivity and sexual aggressiveness)." Gavigan maintains that the historical development of criminal law in such areas as infanticide reveals a biological bias reliant on medical and legal experts who:

regarded all aspects of reproduction as crises for women. They claimed that menstruation and menopause, in addition to pregnancy and childbirth, contributed to female instability.²⁰⁹

206. Edwards, "Sex/Gender," I.J.S.L., p. 176.

207. Shelley Gavigan, "Women's Crime: New Perspectives and Old Theories," Too Few to Count, p. 48.

208. Ibid.

209. Gavigan, "Women's Crime," Too Few to Count, p. 50.

What is regarded as the truth about women's bodies often rests on a biological foundation of gender differences according to Lynda Birke.

[W]omen have been depicted as passive victims of their biology in ways that men, in general, have not. That is, women as a group are often portrayed as having an underlying biological nature, an essence of femininity, which provides constraints on what is individually possible for them.²¹⁰

And, while sex has usually been interpreted to mean biological specificity and gender assigned to describe learned cultural traits, Eisenstein says the distinction is problematic because "sex itself, as a biological entity, is partly defined in and through culture."²¹¹ She argues that law has the power to interpret women's bodies.

The law names reality at the same time that it mystifies reality; males and females are not biologically the same, yet they are not as different as the law assumes. Men and women are not the same given nature and culture, yet they are not as different as the law makes them seem. Sex and gender are not as similar as the law assumes, yet they are connected.²¹²

Sex does have a relationship to crime. It overwhelmingly connects it to the male sex as opposed to the female sex as Judith Allen maintains:

The spectre of sex haunts criminology. The criminalities that this discipline presumes to theorise--criminalities created and revised by criminal laws---appear to be dominated by men... sex has been identified as consistently the strongest

210. Birke, Women, Feminism and Biology, p. 2.

211. Eisenstein, The Female Body and the Law, p. 2.

212. Eisenstein, The Female Body and the Law, p. 22.

predictor of criminalisation and perhaps of 'criminal' activity itself.²¹³

In a 1968 brief on the woman offender, the Canadian Corrections Association (C.C.A.) also maintained that sex was a distinguishing characteristic between criminals:

In all countries, chances of being a criminal are considerably greater if a person is male; in some countries, the ratio of male offenders to female offenders is more than 2,500 to 1. In Canada, the ratio of male to female offenders convicted of indictable offences was approximately 14 to 1 for the years 1951 to 1961 and 7 to 1 in 1966.²¹⁴

The document said it was significant that only four Criminal Code indictable offences were committed by women more often than men:

abortion or attempting abortion, neglect in child birth and concealing body of a child, infanticide, and keeping a bawdy-house.²¹⁵

These offences are particularly notable because they are more directly related to women's biological capacities. But, the links to women through their bodies may also have more to do with how definitions of crime are socially constructed. For instance, in recent years the criminalization of abortion has been hotly debated after Criminal Code provisions were struck down by the Supreme Court of Canada in the Morgentaler case and a proposed new

²¹³. Judith Allen, "'The Wild Ones': the disavowal of Men in criminology," Dissenting Opinions: Feminist Explorations in Law and Society, ed. Regina Graycar, (Sydney: Allen and Unwin, 1990), p. 21.

²¹⁴. C.C.A. Brief, p. 1-2.

²¹⁵. Ibid., p. 2.

bill failed to recriminalize it.²¹⁶ Infanticide, too, can also be understood in its historical social context.

In a study of women and serious crime in Colonial Massachusetts, N. E. H. Hull found that the criminality of women during this period revealed much about the world around them.²¹⁷ Eighty-four percent of the victims in cases of female criminal homicide²¹⁸ were children of the accused.

The high rate of infanticide suggests that women's violent crimes were directed often against the only people over whom women had control -- their children. Some women undoubtedly rid themselves of unwanted bastard newborns to avoid the shame and financial burdens of bastardy.²¹⁹

It has been noted that often the women accused of infanticide were those who worked as domestic servants, usually of different racial origin (Black and Indian in Hull's Massachusetts study) and immigrant status.²²⁰ In contemporary times, these women are often understood as victims who were the most vulnerable to sexual exploitation

216. Helena Orton, "Abortion bill draws criticism," LEAF Lines, Vol. 3, No. 2, February 1990, p. 6.

217. N.E.H. Hull, Female Felons: Women and Serious Crime in Colonial Massachusetts, (Chicago: Univ. of Illinois Press, 1987).

218. Hull also noted that more than sixty percent of the women accused of killing their children were acquitted, *ibid.*, p. 59.

219. *Ibid.*, p. 2.

220. *Ibid.*, p. 124.

by masters and other men because of their lower status and economic dependence.

The traditional female role, that of wife and mother, historically has often become intermixed with the criteria which defined the criminality of women as a separate problem from that of the criminality of men. While maternal ideology appeared to give women a pedestal status, a woman who violated its norms, whether by choice or accident of birth into a different race or class, often found herself judged more harshly than her conforming contemporaries.

3.7 The double-edged sword of maternal ideology

In her pioneering work in London's Newgate prison during the early nineteenth century, Elizabeth Fry was driven by more than concern for the women's welfare. Children were imprisoned with their mothers and her initial efforts concentrated on getting the women prisoners to establish a school to take care of their children's needs.²²¹

As Estelle Freedman in her book about early American women's prisons has documented, "feminine" methods of dealing with women stressed their nonsexual, maternal, sentimental feelings and provided an outlet for otherwise disruptive inmates. In an 1895 article in the New York Times on "The Best Women's Prison," prison physician Lucy

²²¹. Dobash et al., The Imprisonment of Women, p. 43.

Hall related a story about one "poor creature," an "old drunk" who had spent time in many prisons, and was comforted by caring for babies in the institution's nursery.

I took her to the nursery, and in twenty-four hours that insane look of misery had left her face . . . I fully believe I saved her from insanity.²²²

On the other hand, as this next quote from Canadian history shows, prison officials were often surprised when the women expressed maternal feelings because their criminality was equated with abandonment of their familial role.

I find them very sensitive to family ties and I am often touched myself to think such wicked creatures should have such tender feelings.²²³

Though the maternal ideology appeared to extend across class lines, there were those who saw these women as part of distinct criminal class and not as possessors of a purer maternal nature.

Mary Carpenter, who wrote about women's crime more than a century ago, believed women's criminality was the moral corruptness of an

outcast society . . . which exists in our state as something fearfully rotten and polluted, and which diffuses its upas poison [a poisonous tree] around,

222. Freedman, Their Sisters' Keepers, p. 96.

223. Bonnie Smith, "Women Offenders in a Provincial Penitentiary - 1835 to 1866," Master's of Social Work Thesis, Carleton University, School of Social Work, June 1987, p. 106.

undermining the very foundations of society."²²⁴

Carpenter, like Lombroso and other proponents of physiognomy, tied criminality to physical appearance--the greater the depravity, the greater the ugliness. As this next quote shows, Carpenter believed these women as mothers were the chief agents of a class that transmitted criminal traits.²²⁵

The faces of those mothers can never be forgotten, for they exhibited every species of hideous vice and degradation . . . all around there were other wicked mothers whose looks and voices would be bad and even fiendlike at times: the poor little child would catch its first notions of life from the worse specimen of humanity.²²⁶

Both Fry's views about criminal women--poor creatures deserving of help as victims--and Carpenter's--wicked fiends needing stronger measures of punishment and discipline--often existed side-by-side. More often than not they were related to the societal ideologies of the time about women as mothers and wives and their connection to the family. Women's behaviour which deviated from these natural roles, for whatever the reason, was often seen as a threat not only to the family but society at large.

Every "normal" woman was still expected to become a mother and place a high priority on her maternal responsibilities. It was argued that "as the family went,

²²⁴. Dobash et al., The Imprisonment of Women, p. 105.

²²⁵. Ibid, p. 104.

²²⁶. Ibid., p. 105.

so went the nation."²²⁷

3.8 Reality versus myth

In 1988, a Parliamentary committee, chaired by Member of Parliament David Daubney, looked at reform of Canada's criminal justice system. The committee's report, Taking Responsibility, produced a separate chapter dealing with the issues surrounding women in conflict with the law. Unlike the stereotypical images described earlier, research revealed a woman offender quite different from the myths, one not readily identified through current record-keeping methods:

In the experience of correctional workers, women who come into conflict with the criminal justice system tend to be young, poor, under-educated and unskilled. A disproportionate number are Native. Many are addicted to alcohol, drugs, or both. Large numbers have been victims of sexual abuse and many are emotionally or financially dependent on abusive male partners. This type of information about the lives of women offenders is essential for a better understanding of their needs for services, but is generally lacking in available statistical data.²²⁸

This portrait of woman offenders is not new. At the turn of the century when women offenders were usually sentenced to reformatories rather than prison, the inmates of Toronto's Mercer reformatory were also poor and barely educated.²²⁹ Opened in 1874, The Andrew Mercer Ontario

²²⁷. Prentice et al., Canadian Women, p. 150.

²²⁸. The Daubney Report, p. 219.

²²⁹. Carolyn Strange, "Unlocking the doors on woman's prison history," Resources for Feminist Research, Vol. 13, No. 4, Dec/Jan. '85/'86, p. 15.

Reformatory for Females was Canada's first adult reformatory for women.²³⁰ Mercer's register listed a quarter of its female inmates as having no occupation and the majority of those with jobs worked as domestics. More than 60 percent of the women were unmarried while others had likely been deserted by their husbands.

Today, the federal women offender is most often described as a single parent, poor and a victim of abuse. In their research into the life of Marlene Moore, a female offender who committed suicide at the Prison for Women in December 1988, Anne Kershaw and Mary Lasovich outlined the following statistics in describing these 'criminal' women.²³¹ Two-thirds of the women are mothers, many lone parents. Eighty-two percent report being physically or sexually abused. When Native women alone are considered, the percentage is higher--ninety percent have been physically or sexually abused. For many of the women, the abuse was inflicted on them when they were children.

Other researchers point out that women offenders generally have more in common with other Canadian women than conforming to the "criminal stereotype, which is based

²³⁰. Strange, "The Criminal and Fallen of Their Sex," C.J.W.L., p. 81.

²³¹. Anne Kershaw and Mary Lasovich, Rock-A-Bye Baby, (Toronto: McClelland & Stewart, 1991), p. 227-8.

on the crimes normally committed by male offenders."²³² As well, these women have specific needs and problems which need to be addressed.

Increasingly it is recognized, however, that whereas women are under-represented in the criminal justice system, they are over-represented in the social services such as welfare, mental health, and programs for victims of violence. The women who do commit and are convicted of serious criminal offences commonly have a history of dependency--on men, drugs, and alcohol, and, finally, various community agencies.²³³

Despite the growing acknowledgement of the realities and the importance of context in the lives of women offenders, a mix of ideologies concerning the differences between men and women and stereotypical assumptions about reasons for offending come into play in the courtroom.

3.9 Ideological double standards

As Margaret Benston²³⁴ states it is generally "assumed that men are or should be aggressive, strong, independent, logical, dominant, in control of their physical environment, handy with tools and mechanical systems, in control of their emotions, and capable of abstract, objective thought." In contrast, women, says

232. Hatch and Faith, "The Female Offender in Canada," C.J.W.L., p. 454-5.

233. Ibid., p. 456.

234. Margaret Benston, "Feminism and the Critique of Scientific Method," Feminism: From Pressure to Politics, eds. Angela Miles and Geraldine Finn, (Montreal: Black Rose Books, 1989), p. 61.

Benston, are "assumed to be intuitive, nurturant, emotional, dependent on and with strong connections to those around them, loving and caring, passive, and with limited capability for rationality and objectivity." Such dichotomous characteristics often are the content of ideological norms attributed to being male or female.

Hilary Allan says lawyers defending women often repeat particular ideologies about women in the hope of presenting a positive representation in the eyes of the judge or jury, one that is most likely to gain a not guilty plea. The result, she says, is a different picture of male and female cases:

Reports on female offenders almost invariably address themselves to the issue of the mental state of their subjects, and throughout these reports the discussion of both the offence and the appropriate judicial response to it is interwoven with complex observations about the female offender's mentality and inner experiences ... This is in sharp contrast to reports on male offenders, which instead tend to focus on the more external and material aspects of the offender's behaviour, biography and life-style.²³⁵

Often this duality is reflected in an application of a double standard. In an analysis of Ann Jones' book Women Who Kill, Catharine MacKinnon discusses a Washington Supreme Court decision which judged a woman's conduct of self-defence in light of "individual physical handicaps

²³⁵. Hilary Allen, "Rendering Them Harmless: The Professional Portrayal of Women Charged with Serious Violent Crimes," Gender, Crime and Justice, eds. Pat Carlen and Anne Worrall, (Milton Keynes, England: Open Univ. Press, 1987), p. 83.

which are the product of sex discrimination":

Equality apparently means that men are judged against a reasonable man standard, women against a reasonable woman standard. But is this two rules or one? This is more than a superficially semantic or inconsequentially symbolic concern. Double standards have often been a legal means for disadvantaging women, as well as for rationalizing women's social exclusion and denigration.²³⁶

As MacKinnon points out such rules also "tend not to address women to whom the female stereotype does not apply and not to challenge, beyond reflective accuracy, the content of the male standard as applied to men."

In a discussion about a woman laborer's complaint of sexual harassment and disparate treatment under the Ontario Human Rights Code, Kathleen Lahey discusses how a reasonable standard can be used to invalidate a complainant's position.²³⁷ The complainant, a woman labourer was employed by the regional municipality of Niagara, Ontario in the late 1970's and 1980's. Hearing officer John McCamus (then dean of Osgoode Hall Law School) chose as the "proper" perspective for his decision "the objective one of the reasonable victim."

Lahey says it was not until McCamus could use the other woman worker as a standard, the reasonable woman,

²³⁶. Catharine A. MacKinnon, "Toward Feminist Jurisprudence," Stanford Law Review, Vol. 34, 1982, p. 725-6.

²³⁷. Kathleen A. Lahey, "Reasonable Women and the Law," At the Boundaries of Law, (New York: Routledge, 1991), p. 18-19.

against which to hold the complaint "that he seemed to feel really confident about his judgment." Because the other woman worker had a cordial relationship with the supervisor involved and did not give evidence about verbal or other harassment directed at herself, McCamus determined that:

There appears to be no explanation--other than performance or attitudinal problems of the complainant--as to why Mr. Wales would treat the complainant differently from Ms. Marshall.²³⁸

And so, the woman who is a defendant in the criminal justice system, like the woman pursuing a complaint of sexual harassment, often finds herself up against societal norms which pre-determine her to have female characteristics which are the flip side of the coin from male characteristics. At the same time, if she does not conform to the feminine qualities embodied in societal definitions for 'Woman,' as Lahey's complainant example suggests, she is liable to be viewed as less credible.

Such credibility is often a crucial issue in determining what happens to women in the court room. As Sherene Razack points out in her comments on cases involving rape, courts often animate the stereotypical image of the "vengeful woman" when deciding whether or not to take women at their word.²³⁹

These images of the feminine norm and female

²³⁸. Ibid., p. 19.

²³⁹. Razack, Can. Feminism-L.E.A.F., p. 113-115.

deviance have historically been reflected in the reports which have through time examined the position of women offenders incarcerated in Kingston Penitentiary and now the Prison for Women.

As the studies on women and crime show, differences in societal viewpoints about what constitutes being male or female are reflected in the treatment and attitudes of offenders and their correctional keepers. Masculine and feminine, sex and gender, have traditionally been constructed and understood as opposites. But, can a particular role be attributed to biology in determining what characteristics belong to male or female, and in turn, what part does culture play in the assignment of genderized roles.

Brettel Dawson says that many mid-nineteenth century judges were influenced by Herbert Spencer's 1861 treatise on the Principles of Biology. She says Spencer viewed sex differences as a product of "mankind's successful adaptation to social survival and hence should not be interfered with by law or politics"--

That absolute or relative infertility is commonly produced in women by mental labour carried to excess, is more clearly shown. ...It must be contended that no considerable alteration in the careers of women can be, or should be, produced, and further, that any extensive change in the education of women, made with a view of fitting them for business or professions

would be mischievous.²⁴⁰

In judicial pronouncements of the day, Dawson found some recurring themes: women were viewed as "either less intelligent or intellectually less rigorous than men;" women were "valued, when they confined themselves to a separate and different sphere of domestic pleasures;" and judges did not recognize that "differences and abilities were socially constructed and rigorously enforced" nor was there any acknowledgement that such a "domestic sphere" did not apply to all women, but only to women "of a particular class, race and social position."²⁴¹

The 1879 case of Myra Bradwell, who was arguing for admission as an attorney but whose challenge was denied by the Supreme Court of the United States, is an example of such judicial biases.

Civil law as well as nature herself has always recognised a wide difference in the respective spheres and destinies of man and woman. Man is or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life.²⁴²

As Dawson notes, ideas of "inherent difference" and exclusion from the public sphere followed judicial attitudes into the twentieth century. In the 1968 case of

240. T. Brettel Dawson, Relating to Law: A Chronology of Women and Law in Canada, (North York, Ont.: Captus Press, 1990), p. 6-7.

241. Ibid., p. 6.

242. Ibid., p. 8.

a Sault Ste. Marie woman police officer objecting to being paid less than her male counterpart, the judge said:

She is not being discriminated against by the fact that she receives a different wage, for the fact of the difference is in accord with every rule of economics, civilisation, family life and common sense.²⁴³

Such beliefs about the inherent biology of 'Woman' and her proper sphere--family and home--were also evident in the reports that dealt with the situation of women offenders serving federal sentences in the Kingston Prison for Women. Often, the belief that the sexes were fundamentally different affected the treatment accorded these women. And, at the same time, they often suffered in comparison by their differences from the feminine ideal which was reserved for 'Woman.'

The following Chapter is an examination and analysis of the reports which have assessed these women, and more often than not recommended closure of the Prison for Women. These reports reveal the images reserved for women which were embedded in the minds of their writers when looking at the situation of women offenders and their relationship to the Canadian penitentiary system.

²⁴³. Ibid., p. 13.

CHAPTER IV

**STEREOTYPES, POVERTY AND PRISON PROGRAMMING:
Women Offenders and the Breadwinner Ideology**

Historically, men prisoners were expected to work and learn trades while in prison. Reform concentrated on making them employable "breadwinners" so they could become responsible citizens. Housing men close to their families and maintaining their community connections was seen as important in meeting this goal. In contrast, trades training with a view to making women prisoners financially independent, whether in reality they were "breadwinners" for their families or not, was virtually ignored along with ensuring their connections to their families and communities remained intact.

Today, though sex no longer means destiny, Heidensohn maintains that a woman's reality is likely to be quite different from that of a man.

In practice, being born a woman is likely to mean being poorer, less well-educated, having a more routine job, carrying a double burden of work in and out of the home; above all having far less autonomy and far fewer real choices in life than being born to manhood.²⁴⁴

As noted earlier, for federal women offenders reality most often means being a single parent, poor and a

244. Frances Heidensohn, "Models of Justice: Portia or Persephone? Some Thoughts on Equality, Fairness and Gender in the Field of Criminal Justice," Int. Journal of the Sociology of Law, Feb. 1986, 14, No. 1, p. 290.

victim of abuse. The problem is even more acute for Native women as this quote from a report by the Ontario Native Women's Association of Thunder Bay indicates.

Native women offenders face over-whelming odds because they are women, Native, poor, have several children, [are] dependent on social assistance, and addicted to the use of alcohol and drugs.²⁴⁵

It has been said that the problems faced by Native women which lead to conflict with the law are "employment barriers" such as

low self-esteem, a limited labour market for unskilled workers; low education level, for the majority of Native females; dependency on social assistance for survival; and of course, addiction to drugs and alcohol.²⁴⁶

But, Native women are not alone in their predicament. Increasingly, the majority of women who come in conflict with the law are recognized as needing, and wanting, education and marketable training skills. Two-thirds of the 170 federally-sentenced women interviewed in a study for Creating Choices "either hadn't completed high school or did not have any training or educational qualifications beyond high school."²⁴⁷

While the necessity for specialized programming has often been recognized, report after report documents the

245. Nancy L. Recollet, "Native Women and the Criminal Justice System: An Increasing Minority," Resources of Feminist Research, Vol. 13, No. 4, Dec./Jan. 1985/86, p. 16.

246. Ibid.

247. Creating Choices, p. 53.

system's failure to offer consistent progress in meeting these needs for women offenders.

Solicitor General researcher Holly Johnson says taking a look at the statistics and "getting the facts straight" means acknowledging that the marginal and poor economic status of many of the women who become defendants in the criminal justice system, is implicated in their involvement in crime.

Canadian statistics suggest a link between the social and economic status and the criminality of women . . offenders, like a great many Canadian women, need greater opportunities for advancement, job re-training and economic independence.²⁴⁸

These kinds of economic reasons have been tied by James Messerschmidt to women's involvement in prostitution at the turn of the century.²⁴⁹ Though the historical rise of the penitentiary system has been linked with capitalism's increasing demand for disciplined workers,²⁵⁰ economic factors have less often been implicated in

248. Holly Johnson, "Getting the Facts Straight: A Statistic Overview," Too Few to Count, p. 26, 43.

249. James Messerschmidt, "Feminism, criminology and the rise of the female sex 'delinquent', 1880-1930," Law, Crime and Social Policy, Vol. 11, 1987, p. 248.

250. Rosalind P. Petchesky, "At Hard Labor: Penal Confinement and Production in Nineteenth-Century America," Crime and Capitalism: Readings in Marxist Criminology, ed. David F. Greenberg, (California: Mayfield Publishing, 1981), p. 341. And, Michael Ignatieff, "The Ideological Origins of the Penitentiary," Crime and Society: Readings in History and Theory, ed. Mike Fitzgerald et al., (London: Routledge and Kegan Paul, 1981), p. 37.

theories about women's crime.²⁵¹

Although Freda Adler's "liberated" female criminal, a product of the emerging women's movement in the late sixties, was theorized on the basis of changing social conditions for women, it stressed the "masculinization" of "presumably docile" females rather than external pressures.²⁵²

Following Adler's lead, Rita James Simon in the mid-seventies argued that while female emancipation may give women more opportunities to participate in financial or white collar offences such as fraud, it may drive down women's involvement in crimes of violence, especially homicide and manslaughter. Simon reasoned that women's participation in such acts

typically arises out of the frustration, the subservience, and the dependency that have characterized the traditional female role.²⁵³

Simon argued that women's entry into the public sphere presents an opportunity for them to be exposed to positive influences which will remove the underlying causes

251. Two notable examples which tie capitalism with women and crime are: Freda Adler's Sisters in Crime, which links women's emancipation to increased crime during the 1970's; and James Messerschmidt's Capitalism, Patriarchy and Crime: Toward a Socialist Criminology, which stresses the economic power held by patriarchy.

252. Joseph G. Weis, "Liberation and Crime: The Invention of the New Female Criminal," Crime and Social Justice, Vol. 5, Fall/Winter 1976, p. 18.

253. Rita James Simon, Women and Crime, (Lexington, Massachusetts: D.C. Heath and Co., 1975), p. 2.

for their resorting to violence.

As women's employment and educational opportunities expand, their feelings of being victimized and exploited will decrease, and their motivation to kill will become muted.²⁵⁴

4:1 Dependency and rehabilitation

Former Prison for Women inmate, Kathy Misener, says focusing on the abuse and discrimination experienced by female offenders reduces the women to nothing more than victims.

It doesn't help them grow strong, feel independent, feel they can pick a decent guy . . . [Many prisoners] are debilitated people and it didn't start when they walked through the penitentiary doors.²⁵⁵

Misener's world view, succinctly expressed by Linda Hossie in her Globe and Mail article, is that "[w]hen you stop being a victim, sooner or later you stop being victimized."²⁵⁶

Such a rationale, one at least allowing women to be recognized as "agents" capable of acting, according to Hilary Allen, is necessary to challenge rather than reproduce sexually-specific conceptions of female incapacity. She maintains that

254. Ibid. Still, Simon's choice of words, "feelings of being victimized," seems to indicate that she, too, is falling back on the old theorizing of internal rather than external causes, such as the real experiences of battered women.

255. Linda Hossie, "Breaking out of a private jail," The Globe and Mail, July 12, 1990.

256. Ibid.

what is potentially oppressive to women--criminal or otherwise--is for the frailties and disadvantages that do tend to characterise their position in society to be treated as exhaustive of their condition as social or legal subjects.²⁵⁷

This has important implications for rehabilitation and programs developed for women offenders. British criminologist Pat Carlen has found that "many of the women who land up in prison do so because they are living unconventional family lives."²⁵⁸ Yet, too often, she says "existing social policies" ignore this reality and foster the traditional image of female dependency which leads women offenders "to believe that their only way 'back in' again is via men or motherhood."²⁵⁹ This is also evident in the inappropriate occupational training in women's prisons, another factor that inhibits women offenders.

As Maureen Baker has observed, in the Canadian situation "there does not seem to be any relationship between occupational training within women's prisons and market needs."²⁶⁰ She asserts that programs for women offenders in general "continue to focus on dead-end low-paying positions which reinforce conceptions of feminine

257. H. Allen, "Rendering Them Harmless," Gender, Crime and Justice, p. 93.

258. Pat Carlen, Alternatives to Women's Imprisonment, (Great Britain: Open University Press, 1990), p. 122.

259. Ibid.

260. Baker, "Male-dominated Criminology," Taking Sex into Account, p. 249.

dependence and service."²⁶¹ Some women have resisted such attempts to re-socialize them into what is defined as a more acceptable, more respectable lifestyle. As Baker notes

research evidence shows that the prisoners themselves often regard prostitution as a more lucrative "job" than what they were trained for while incarcerated (Haft, 1974).

While the issues surrounding programs, occupational training and rehabilitation for women offenders have historically been defined on a model of feminine dependency, the opposite approach was advocated for men. At the beginning of this century, the causes for male crime and the treatment men received while in Canadian prisons were tied to ideologies about work. Such beliefs also affected women albeit in different ways.

Early twentieth century penal ideology²⁶² linked the "reclamation of the unfortunates" to a prisoner's "right" to productive work.

Idle and dissolute he may have been when he enjoyed his liberty, and now for the first time in his life, probably he is made to appreciate the blessedness of labour. Increasing efficiency brings him fresh encouragement. He finds himself moving steadily towards a position of economic independence.²⁶³

Despite the reality of poverty in the lives of many men and women in the nineteenth and twentieth centuries,

261. Ibid.

262. The 1914 Report, p. 26.

263. Ibid., p. 32.

there was a 'confirmed' belief in Canada as elsewhere that an important root of crime was the "unwillingness to labour."²⁶⁴ In contrast to men, women's economic status was seen as a derivative of their husband or father, whether in reality they had one or were supported by them.²⁶⁵ But, then as now, many women worked out of necessity though they were rarely thought of as "breadwinners."

Prentice states that when Canadian women reformers turned to social activism in the late 1800's, it was mostly in response to rising levels of social distress, including a rise in the number of women being jailed.²⁶⁶ Migration and economic dislocation were affecting major changes in town and country and it was young women who were leading the shift to the cities.²⁶⁷ These women increasingly found work in the factories or did piece work at home.

By 1871 women and children comprised 42 percent of the industrial work force of Montreal and 34 percent in Toronto.²⁶⁸

Marjorie Griffin Cohen observes that women had long been employed in a variety of different industries in Canadian society at large. In 1871, sixty-one percent of

²⁶⁴. Dobash et al., The Imprisonment of Women, p. 102.

²⁶⁵. Prentice et al., Canadian Women, p. 154.

²⁶⁶. Ibid., p. 103.

²⁶⁷. Ibid., p. 109.

²⁶⁸. Ibid., p. 125.

all tailors and clothiers in Ontario were women, and by the turn of the century, they also made up a third of the province's footwear industry labour force.²⁶⁹

Still, domestic service tended to be the leading source of paid employment, particularly for immigrant women (Irish in the nineteenth and Europeans in the early twentieth centuries).²⁷⁰

4.2 Prison reform and the "breadwinner" ideology

In the mid-twenties, Canada's first female Member of Parliament, Agnes Macphail, led several House of Commons debates about prison reform. A few of the lengthiest discussions involved the passing of legislation which would provide prisoner's families with some payment for prison labour to alleviate the dire conditions they experienced while the family "breadwinner" was in prison.²⁷¹ Though the legislation referred to "inmates," the debate was gender specific in that Macphail and her fellow MPs consistently identified the prisoners as male "breadwinners" who were lost to their wives and

269. Marjorie Griffin Cohen, Women's Work, Markets, and Economic Development in Nineteenth-Century Ontario, (Toronto: Univ. of Toronto Press, 1988), p. 142-143.

270. Ibid., p. 123.

271. House of Commons Debates, Vol. 166, 4th Sess., 14th Parl., March 18, 1925 and Vol. 172, 1st Sess., 15th Parl., March 31, 1926.

children.²⁷²

Macphail's constant efforts lobbying for change-- she was the first woman to tour Kingston Penitentiary²⁷³-- were responsible for the establishment of The Archambault Commission to look into prison reform.²⁷⁴ Author Doris Pennington says Macphail was

a 'thorn in the flesh' of authorities until she got what she wanted--a Royal Commission to examine conditions in Canada's penitentiaries. . . Agnes introduced a resolution [in the House] to amend the administration of penitentiaries. She wanted sufficient productive work to keep the inmates employed, and a share of the proceeds to go to dependents, and in case of no dependents such share to be held in trust until release. ²⁷⁵

Macphail argued that "it would also have a tremendous effect upon the prisoner himself if he felt that he was still of some account, that he still had responsibility" when she spoke in the House on March 18, 1925.²⁷⁶

Though she independently supported herself and

272. House of Commons debates in 1925 and 1926 show that Macphail as well as her male colleagues referred to only male prisoners when discussing inmate labour. H. of C. Debates, Vol. 172, 1st Sess., 15th Parl. March 31, 1926, p. 2103, 2107, and Vol. 166, 4th Sess., 14th Parl. March 18, 1925, p. 1264.

273. Doris Pennington, Agnes Macphail: Reformer, (Toronto: Simon and Pierre, 1989), p. 59.

274. Peter Gzowski interview with author Doris Pennington on "Morningside," CBC Radio, Morday, March 26, 1990.

275. Pennington, Agnes Macphail, p. 59.

276. Ibid.

spurned the 'angel of the house' ideal which existed for the women of her day,²⁷⁷ Macphail did not appear to acknowledge the women prisoners whose lost income or "breadwinner" status may also have caused hardship for their families.

Macphail's beliefs were probably in keeping with ideas of the time period about women's work. As Jane Ursel points out, early Ontario labour legislation on the one hand recognized women in an effort to protect them (but often was used by employers and male trade unionists to exclude them), and on the other, excluded the majority of employed women.²⁷⁸ In an analysis of three pieces of labour legislation encompassing a broad range of occupational fields, Ursel found that the laws contained "twenty-three major distinguishing clauses which enumerated and entrenched the legal distinctions between male and female labour."²⁷⁹ As well, the single largest category of employed women--domestics--were excluded from the legislation, along with women working in their homes doing

277. Ibid., p. 51.

278. Jane Ursel, "The State and the Maintenance of Patriarchy: A Case Study of Family, Labour and Welfare Legislation in Canada," Family, Economy and State: The Social Reproduction Process Under Capitalism, eds. James Dickinson and Bob Russell, (London and Sydney: Croom Helm, 1986).

279. Ibid., p. 164.

piece work or in small establishments.²⁸⁰

Despite their movement into the labour force, societal expectations dictated that women in general would still find their true vocation inside the family as wives and mothers, and eventually leave their positions in the workplace behind. Diana Pederson's examination of the activities of the Young Women's Christian Association (Y.W.C.A.) at the turn of the century, shows that Canadian attitudes, even among those who supported women workers and improved legislation, remained "fundamentally" conservative.²⁸¹ She says the Y.W.C.A.'s programs were "limited by a vision of working women as future mothers rather than bona fide workers."²⁸² This attitude is summed up by Pederson in this Y.W.C.A. quote from 1915:

The problem of regulating female labour is very much complicated by the fact that the fundamental function of a woman is not to make goods, but to make men and women, and that men and women may be well made is the foremost necessity of every state. So when we come to consider the conditions of industry for women, we have to test their efficacy not only by those standards which we apply to conditions among men workers, but also to ask how these conditions will affect married women workers, and how they will affect the potential motherhood of the younger women workers.²⁸³

280. Ibid., p. 168.

281. Diana L. Pederson, "Keeping Our Good Girls Good": The Young Women's Christian Association of Canada, 1870-1920," Master's Thesis, Institute of Canadian Studies, Carleton University, September 1981.

282. Ibid., p. 139.

283. Ibid.

Such attitudes, so prevalent in society at large, were inevitably echoed inside the penitentiary walls.

4.3 Prison labour: divided by sex

Since 1840 when author Charles Dickens visited Kingston Penitentiary and later wrote about it in his American Notes, Canadian prison labour has been divided by sex.

The men were employed as shoemakers, ropemakers, blacksmiths, tailors, carpenters, and stonecutters; and in building a new prison, which was pretty far advanced toward completion. The female prisoners were occupied in needlework.²⁸⁴

While the labour of women in prison often contributed directly to the upkeep of the institution--the sewing or knitting of prisoner's clothes, and laundry; traditionally viewed as 'women's work'--Nicole Rafter maintains that such sex-segregated work policies led to a "vicious cycle of inferior treatment" for women.²⁸⁵ Women's work sustained the day-to-day 'house-keeping' of the penitentiary and so produced little outside revenue compared to the trades work done by men who worked in the prison shops. As a result, the women's contribution toward the upkeep of the institution was undervalued and, at the same time, their needs for training in employment skills or more productive revenue-producing labour were usually

284. J. Alex Edmison, "Some Aspects of Nineteenth-Century Canadian Prisons," Crime and its Treatment in Canada, (Toronto: Macmillan, 1976), p. 356.

285. Rafter, Partial Justice, intro. xxv.

ignored.

What Rafter found in her examination of U.S. women's prison history was also paralleled in the Canadian situation. An analysis of the Canadian annual reports of the Superintendent of Penitentiaries from 1921 through 1935 reveals that women incarcerated at Kingston were only once mentioned as producing revenue, an amount which totalled \$1,927.19.²⁸⁶ This compares rather poorly with thousands of dollars--for example, \$73,950 for mail bags alone²⁸⁷--brought in by male workshops in the penitentiary which prepared items for government departments. Little had changed for women prisoners since the mid-1800's. Then, both the Warden and prison inspectors had stated in their reports that women were a double burden at Kingston--they were more expensive to keep and their labour was considered unproductive.²⁸⁸

While men in prison were considered in terms of their labour potential with a view to their becoming independent and responsible (employed) Canadian citizens, women in prison were thought to have denied their expected roles as wives and mothers.²⁸⁹ Accordingly, women inmates

286. Annual Report of the Superintendent of Penitentiaries, 1926-27, Dept. of Justice, p. 15.

287. Annual Report of the Superintendent of Penitentiaries, 1929-30, Dept. of Justice, p. 15.

288. Smith, "Women Offenders," Master's Thesis, p. 85.

289. Feinman, "Imprisoned Women," Phd. Thesis, p. 309.

were taught "lessons" in morality and domestic labour in order to become "respectable" homemakers and acquire the habits of "industry, order and cleanliness."²⁹⁰

Women prisoners were generally regarded as seamstresses²⁹¹ and sewed towels, shirts, sheets and other items used in the penitentiary, as well as mending and knitting socks for male inmates.²⁹² Often the women did laundry for the male officers. In his 1921 Report, Nickle called the washing of the staff's personal and family clothes, a "most objectionable perquisite."²⁹³ He noted that the washings sent to the Kingston prison were "very foul" with "[d]isgusting stainings" even though it was well-known to the staff that the women did the washings by hand.²⁹⁴ As well, beautiful crochet or knit "fancy work" done by the women in their cells during their "leisure" hours became a perquisite for female officials who, in Nickle's opinion, reaped "the fruit of the female convicts'

290. Strange, "The Criminal and Fallen of Their Sex," C.J.W.L., p. 91.

291. Smith, "Women Offenders," Master's Thesis, p. 6.

292. Matron's Reports, Reports of the Inspector of Penitentiaries, Dept. of Justice; March 31, 1911, p. 71; April 1, 1912, p. 81; March 31, 1914, p. 85; March 31, 1916, p. 45. NOTE: Reports by Matrons were not published in subsequent years and appear to have been replaced by the Warden's reports on the women.

293. The 1921 Report, p. 7.

294. Ibid.

labour for a pittance per day."²⁹⁵

Of the few lines in the annual reports commenting on the situation of Kingston's women prisoners, the "cleanliness" of the women's quarters is most often mentioned.²⁹⁶ According to Michael Ignatieff, who examined penitentiary history during the industrial revolution from 1750 to 1850, cleanliness was viewed as symbolic of moving from "obscenity to decency" because it was a trait associated with those "virtuous and industrious."²⁹⁷ While it is probable that this underlying attitude was reflected in the reports' consistent remarks on cleanliness, Dobash believes it had a much more practical basis when applied to women prisoners. In British prisons cleanliness was necessary and valued in the production of women's needlework.²⁹⁸

The linking of cleanliness to respectability presented a problem for poor and working women in general. In early twentieth-century Canada "dirt was endemic" in the working class sections and slums of growing industrial and commercial cities and towns, and the poor had great

295. Ibid., p. 9.

296. For example, it is mentioned in the annual penitentiaries reports of 1918/19, 1922/23, 1924/25, 1926/27, and 1930.

297. Michael Ignatieff, A Just Measure of Pain. The Penitentiary in the Industrial Revolution 1750-1850, (London, Eng.: Penguin, 1978), p. 40.

298. Dobash et al., The Imprisonment of Women, p. 70.

difficulty keeping their households clean.²⁹⁹ As well, women who laboured in the factories and mills were often dirty from their long hours of work, and Sarah Eisenstein says this contributed to their exclusion, particularly in the minds of other women, from the popular image of feminine beauty.³⁰⁰

Cleanliness in clothing and language was dictated by the image of 'The Lady,' a model cherished by even working class women of the time.³⁰¹ Such a standard meant that when imprisoned, women were more acutely humiliated by the shaving or close-cropping of prisoner's hair--"they'd sooner lose their lives than their hair"³⁰²--and the wearing of uniforms which reduced a prisoner's individuality.³⁰³ It was a contradiction that women were expected to be concerned with their appearance but were also believed to be especially susceptible to the womanly sin of vanity which contributed to their sinful, and

299. Prentice et al., Canadian Women, p. 123.

300. Sarah Eisenstein, "Victorian ideology and working women," Give us Bread But Give us Roses, (London: Routledge and Kegan Paul, 1983), p. 69.

301. Ibid., p. 63.

302. Dobash et al., The Imprisonment of Women, p. 64.

303. Nickle, too, in his report about the Kingston Penitentiary women noted that individuality was lost by the "convicts being addressed by number and not by name." The 1921 Report, p. 16.

therefore, criminal ways.³⁰⁴

For the few women inside Kingston, as well as women in society at large, judgments about their respectability, decency and morality were often dependent on whether, or how well, they exhibited the appropriate standards set for 'Woman.'

While women's labour remained almost invisible, the emphasis on suitable work for men in Canadian prisons intensified. In his annual report covering 1925-26, Penitentiaries Superintendent W.S. Hughes repeated his call for government work to "remake men" and provide trades training so that a male inmate "might be made a profitable asset, rather than a dangerous liability."³⁰⁵

For some years, there had been ongoing debate over the use of the "stone pile"--hard labour--as work to keep male prisoners occupied. Under the Penitentiary Act, labour was considered the "second corrective influence" necessary for "reclamation of the unfortunates."³⁰⁶ Such unproductive work for inmates was considered comparable to the "unceasing moil of the galley-slave,"³⁰⁷ and was criticized by the Superintendent of Penitentiaries and in

304. Dobash et al., The Imprisonment of Women, p. 80-81.

305. Report of the Superintendent of Penitentiaries, fiscal year ending March 31, 1926, Dept. of Justice, p. 13.

306. The 1914 Report, p. 6.

307. Ibid., p. 8.

House of Commons debates.³⁰⁸

When pressed in the House of Commons on productive work for the men, Minister of Justice Ernest Lapointe assured Members of Parliament that forcing Canadian prisoners to "break stones" was a thing of the past. Lapointe said "a fair portion" of the inmates would be employed for some years to come in reconstructing, remodelling and repairing penitentiary buildings.³⁰⁹

At Kingston Penitentiary, construction of the new women's prison would provide years of work for the male inmates. The penitentiary had been criticized by the Royal Commission of 1914 for its "lack of proper employment" said to be the cause of the "institution's chief troubles."³¹⁰ Building the new prison would be a long and "tedious job," often requiring excavation through dozens of feet of solid rock to clear the way for the foundation³¹¹ and to lay ductwork from the female prison to the main boiler-house of the parent penitentiary (a

308. H. of C. Debates, Vol. 172, 1st Sess., 15th Parl., March 31, 1926, p. 2107.

309. H. of C. Debates, Vol. 166, 4th Sess., 14th Parl., March 18, 1925, p. 1264, and Vol. 172, 1st Sess., 15th Parl., March 31, 1926, p. 2108.

310. The 1914 Report, p. 36.

311. J.C. Ponsford, Kingston Warden's Report, Penitentiaries Report, year ending March 31, 1926, p. 22.

distance of 2,280 feet).³¹² In fact, as Penitentiaries Superintendent D.M. Ormond would report in 1933, for many years such construction and maintenance work was "the only type of labour available" to keep Canada's growing male convict population occupied.³¹³

It was an ironic twist of events that the building of the new and separate Prison for Women would provide years of labour and a form of trades apprenticeship for the men while the women's needs for more productive work continued to be ignored. As well, the new prison's male maximum-security design would enable it to securely hold its first prisoners--men, not women, would be the first to be incarcerated behind its high fortress-like walls.

4.4 Pressures behind a separate prison for women

Nickle was not the only one in the early 1920's to recommend a separate women's prison be built at Kingston. Less than five months before Nickle submitted his report to the Minister of Justice, the annual penitentiaries report carried other recommendations. Superintendent W.S. Hughes stated he was again recommending that the "female portions of the penitentiaries should be outside the male

³¹². J.C. Ponsford, Kingston Warden's Report, Penitentiaries Report, year ending March 31, 1927, p. 20.

³¹³. D.M. Ormond, Report of the Superintendent of Penitentiaries, Dept. of Justice, fiscal year ending March 31, 1933, p. 48.

enclosure."³¹⁴ At the same time, the new Warden, J.C. Ponsford, took an even stronger position.

The Female Prison should be removed from out the walls and I would recommend same be placed under an entirely separate management from that of the Male Penitentiary, and made to accommodate from 150 to 250 inmates.³¹⁵

Ponsford's comments in the annual report show he was clearly worried about a growing convict population. On March 31, 1921, Kingston had 732 inmates and he predicted "900 souls or more before the end of the fiscal year 1922." But, the Warden's concerns about "congestion" and the size of the women's prison needed, to hold 150 to 200 inmates, were predominantly based on a jump in the number of male inmates (an increase of more than 200 men in just two years³¹⁶) since the number of women offenders tended to fluctuate only slightly.

While Kingston's female population had remained stable at about thirty-five women in the preceding years,³¹⁷ the prison was crowded with only thirty-four cells, two of which were allocated for a "sick-bay." Still, "the small number of female inmates" (in comparison to the men), had prompted Penitentiaries Inspector Douglas

³¹⁴. Report of the Superintendent of Penitentiaries, Dept. of Justice, fiscal year ending March 31, 1921, p. 12.

³¹⁵. Ibid., p. 23.

³¹⁶. Report of the Inspector of Penitentiaries, 1917-22, Sess. Paper No. 34, Dept. of Justice, p. 16.

³¹⁷. Ibid., p. 9, 15.

Stewart to suggest "arranging for their custody and maintenance at the Mercer Reformatory, or some other well-regulated female prison under provincial control."³¹⁸

Though the 'female department' at Dorchester was re-opened during 1919-20 when Kingston transferred thirteen Maritime women there, Warden Ponsford reported only twenty-five women in Kingston Penitentiary in March 1921 when he made his appeal for a new and separate women's prison.³¹⁹ He would repeat his recommendation to remove the "female ward" to a "suitable distance" the following year.³²⁰ Within two years, Superintendent Hughes would report that work on the female prison had begun.³²¹

Eight years would pass before the cell block of the new women's prison was completed. In 1932, on the heels of a riot and with male inmates sleeping in the corridors because of severe overcrowding,³²² the Warden transferred a hundred men from Kingston Penitentiary to the new women's

³¹⁸. Ibid., p. 6.

³¹⁹. J.C. Ponsford, Penitentiaries Report, March 31, 1921, p. 20.

³²⁰. Penitentiaries Report, March 31, 1922, p. 25.

³²¹. Report of the Superintendent of Penitentiaries, fiscal year ending March 31, 1924, Dept. of Justice, p. 14.

³²². D.M. Ormond, Report of the Superintendent of Penitentiaries, fiscal year ending March 31, 1933, Dept. of Justice, p. 11.

prison.³²³ They would remain there for more than a year.³²⁴

4.5 Women's needs overshadowed by men's

An examination of the foregoing events leading up to the opening of the new Prison for Women reveals a recurring pattern--the needs of the overwhelming male inmate population overshadowed Kingston's small number of female offenders. Mounting pressure on the men's penitentiary to deal with its internal problems, the result of an overcrowded male inmate population, was compounded by external political demands to ensure the men were given more suitable work than breaking stones. Building a new prison for women provided a convenient solution.

As noted by Nickle, housing the women with the men created problems of 'sexual mischief.' As well, Warden Ponsford's comment, suggesting the women not only be moved but managed separately from the main prison, indicates that he did not want to be responsible for their care. (It was, therefore, not surprising that the Archambault Commissioners would find the women practically ignored after moving into their new quarters though they still fell under the responsibility of the men's penitentiary.)

For more than eight years, the building of the new

³²³. Report of the Superintendent of Penitentiaries, fiscal year ending March 31, 1934, Dept. of Justice, p. 11.

³²⁴. Ibid.

women's prison would keep a restless male penitentiary population occupied. Despite Nickle's recommendations for a less imposing structure for the women, it may have been more in the interest of the male prison system to repeat the reinforced "bastille" design because it dragged out the amount of construction work for the male convict labourers. Or, it may have been thought a foregone conclusion that eventually the building would be used to house an overflow of male inmates (which it did temporarily in 1932), since it was believed the women would be moved to the provinces. Additionally, another suggested use for the new prison building was circulating.

The penitentiary system was struggling to meet demands posed by a growing convict population classed as "insane." The Royal Commission Report of 1914 had recommended that a "separate institution for the criminal[sic] insane be established."³²⁵ Its Commissioners had criticized the "primitive" conditions at Kingston, the only institution in Canada which was "especially equipped for such a class."³²⁶ More than two dozen years later, with provincial mental institutions full, and the new Prison for Women holding so few female inmates, the new

325. The 1914 Report, p. 13, 44.

326. Ibid., p. 11.

building would be eyed by federal officials.³²⁷ It was suggested as an answer to the problem posed by "insane convicts" whose numbers had doubled by 1937.³²⁸

But, despite the pressures for change, the women would remain incarcerated in their new prison, locked into a penitentiary system that was always more responsive to concerns based on its overwhelming number of men prisoners.

While the early reports of women's work inside the Kingston penitentiary are overt in their bias towards the traditional vocational training for women, the basic emphasis on 'women's work' continued to dominate programming in the subsequent years.

A Royal Commission on female offenders in British Columbia in 1978 revealed the sometimes contradictory attitudes toward employment training for women in prison. It both criticized "woefully inadequate" programs like laundry, kitchen, sewing, and beauty parlour training while at the same time, the Commission applauded and recommended the sewing program be increased.³²⁹ As the Women for

327. Memo to the Superintendent of Penitentiaries from Inspector G.E. Short, Aug. 11, 1939, National Archives, RG-73, C1149, file 1-21-30 pt. 1.

328. Thomas Wayling, "Crime Increase Points Need of Prison Reform," The Montreal Standard, Jan. 7, 1939, National Archives, Access Section Interim 67, Vol. 1050, 58400-P.

329. John W. Ekstedt and Curt T. Griffiths, Corrections in Canada: Policy and Practice, (Toronto: Butterworths, 1984), p. 323.

Justice complaint would later prove, programs for women were inferior to those provided for men.

Some of the differences between what the men had access to and what the women did not, found in the reports over the years are notable. For instance, though the Fauteux Report in 1956 stated that all the federal prisons had a farm and industrial workshops,³³⁰ this was not true of the Kingston Prison for Women. Other comments from different reports are noteworthy because they echo repeated complaints for better vocational training from prison administrators and the women prisoners themselves.

In 1966, March's inquiry reported the concerns of the Superintendent of the Prison for Women, Miss I.J. Macneill. The Superintendent maintained that the laundry operation at P4W was useless as a modern training program for women and criticized its commercial aspect. Macneill told March that "she knew of no women who had gone into the laundries on leaving the institution" and said such laundry work was "heavy work - man's work."³³¹ While the prison had a "shirt factory" as well as a "sewing-room," Macneill argued that inmates employed making shirts should be "channelled into full-time educational activity."³³²

The lengthy Ouimet Report of 1969 included a short

330. The Fauteux Report, p. 40.

331. Inquiry by R.E. March, section 28.

332. Ibid., section 27.

section that discussed prison labour and prison pay. It refers primarily to the male offender as reflected by the cited example--"working as a shoemaker . . . an electrician"³³³--prison occupational training available only to men. The report had a separate chapter which dealt with the women offender's situation. It noted that because

[t]he number of women sentenced to prison in Canada, in comparison to the number of men, is so small it is difficult to plan prison services for them.³³⁴

The pattern set by these early reports and repeated in later ones would continue. Women's small numbers were cited as an excuse for their lack of treatment and training programs compared to the male majority. Close to a decade later, there would be yet another report examining Canadian penitentiaries. But, this one would unequivocally condemn the inequality that federal women offenders were subjected to at the Prison for Women.

³³³. The Ouimet Report, p. 319.

³³⁴. Ibid., p. 399.

CHAPTER V

CONCLUSION: Separation and (In)equality

Despite the promise that separation from the men's prison held and the potential Nickle saw in the women having a prison of their own, more than a half a century later P4W is little more than a monument to an archaic penitentiary past and a system which has repeatedly failed federally-sentenced women.

The Creating Choices Task Force found that virtually every report since 1934 has identified federal women offenders as "a correctional afterthought" in terms of programming variety and quality.³³⁵ While women's biological differences from men may have singled them out for differential treatment by the federal corrections system, their needs for programming and training to become independent and economically self-sufficient once out of prison, have rarely been acknowledged.

Historically, work performed by inmates inside Canadian federal penitentiaries has been sharply divided by sex. Today, the situation is marginally different than it was when Charles Dickens visited Kingston Penitentiary in the 1800's as this recent quote from a P4W staff member confirms:

335. Creating Choices, p. 36.

Mopping floors doesn't build self esteem. Women need incentives to do good work and to take pride in that work. We need vocational opportunities for women which simulate the real world and don't perpetuate stereotypic roles for women.

While the Federal Government's decision to build regional centres and close the Kingston Prison for Women may remove the geographical distance problem for federally-sentenced women, real change will depend on seeing these women as more than just an adjunct to the men's prison system.

The history of P4W documents the system's inability to ensure positive change. This was evident from the beginning of the Prison for Women's operation. The 1938 Archambault Report noted that the new prison's grounds were "disgraceful." They had been left ungraded for years and were still without walks which the commissioners reported was in "marked contrast to any other institution" which they had visited across the country.³³⁶

Though the women had been able to tend small vegetable and flower gardens at their former quarters inside the main Kingston Penitentiary compound, there were no provisions for outdoor exercise or recreation for the women once they were moved to the new institution.³³⁷ In contrast, exercise for men was considered important enough to have allowed softball games at Kingston just a few years

³³⁶. Ibid., p. 314.

³³⁷. Ibid., p. 314.

earlier.³³⁸

Also unlike the men, the women had no school or teacher provided for them while they were imprisoned in P4W. When they had been housed within the main Kingston penitentiary enclosure, the Matron had provided some lessons under the instruction of the men's teacher there.³³⁹ The women's "library" consisted of a small bookcase of books which were drawn on request from the library of the men's prison. Further, the women now found their outgoing mail censored twice, first in the women's prison and then by the male censor at Kingston.³⁴⁰

When it came to addressing the problems posed by imprisoning women who committed serious criminal offences, the Archambault Commissioners saw the women as comparable with young offenders who were better dealt with in provincial reformatories. They believed the few federal women inmates would fare better in the provinces where increased numbers of women allowed the "scientific principles" of classification and reformation to be applied. The Commissioners quoted a 1927 London Report on British Young Offenders and suggested that the legislature and the courts abandon imprisonment "as far as practicable"

³³⁸. Lt.-Col. W. B. Megloughlin, Kingston Warden's Report, Report of the Superintendent of Penitentiaries, Dept. of Justice, fiscal year ending March 31, 1933, p. 12.

³³⁹. The Archambault Report, p. 315.

³⁴⁰. Ibid., p. 315.

using it only "when no other means can suitably be applied."³⁴¹

Despite the Archambault Report's recommendations and its comments about disparities, treatment of federal female inmates would continue to fall short of the women's needs and lag behind the standards which were accorded men in penitentiaries. More than forty years later, Women For Justice, an Ottawa-based reform group of lawyers, criminologists and people active in corrections and related agencies, would file a complaint with the Canadian Human Rights Commission (C.H.R.C.) in an attempt to address the situation.

5.1 Discriminatory treatment

In February of 1981 when she addressed the Manitoba Association for Rights and Liberties, Inger Hansen was clear about how she viewed the situation of federal female offenders. Hansen had spent almost five years during the mid-70s as Canada's Correctional Investigator.

I think a woman who is incarcerated in the Prison for women in Kingston can succeed with an allegation that in the provision of services, facilities or accommodation customarily available to the general public, she is a victim of discriminatory practice on the ground that the federal government in this case differentiates adversely in relation to her because she is a woman.³⁴²

³⁴¹. Ibid., p. 145.

³⁴². Canadian Association of Elizabeth Fry Societies, Prison for women: Findings and Alternatives, draft paper prepared for Parliamentarians, April 1981, p. 3.

Hansen's speech would encourage Women for Justice to become a political action group. When Brigid Hayes filed their complaint with the Human Rights Commission in 1980, Women for Justice was seeking more than just the same programs and services that were available to federal male prisoners. The group wanted remedial measures that went beyond equalization. They sought an affirmative action approach which would provide women inmates "with the capacity and resources necessary to take full advantage of improvements that focused on decentralization, psychiatric and medical care, employment opportunities and pay, educational programs and financial resources."³⁴³

Hayes said the group's major concerns were "conditions at the Prison for Women, the lack of options available to the female offender, and in turn, to any woman who came into conflict with the law."³⁴⁴ Eleven separate charges made up the complaint which the group hoped would force the Commission to examine every aspect of the Correctional Services' policies and programs for women serving federal sentences.³⁴⁵ Women for Justice believed P4W conditions "reflected systemic discrimination in a

³⁴³. Women for Justice memorandum, "Remedial Measures to Rectify the Discriminatory Situation for Federal Female Offenders," dated October 16, 1981.

³⁴⁴. Berzins and Hayes, "The Diaries of Two Change Agents," Too Few to Count, p. 171.

³⁴⁵. Ibid., p. 172.

correctional system which designed its activities to meet the needs of men, and considered women as an after-thought."

On December 14, 1981, the C.H.R.C. ruled that the federal penitentiary system did indeed discriminate against women prisoners because it offered them fewer training and rehabilitation programs than it did men inmates.³⁴⁶ The Human Rights body ordered a conciliation process so Women for Justice and the Correctional Service (C.S.C) could negotiate remedial action.

Corrections Commissioner Donald Yeomans told The Globe and Mail that the Federal Government wanted to close the Prison for Women. He said Corrections was trying to reach agreements with the provinces to transfer women to provincial reformatories but the longer sentences of federal prisoners meant the provinces might have to develop separate programs to accommodate them.

A little less than three years later, the Canadian Human Rights Commission would report that improvements made at the women's prison had "partially redressed" the situation.³⁴⁷ The Correctional Service of Canada was no longer considering closing the prison.

What had satisfied the Commission--a one-million-

³⁴⁶. "Probe finds sexual bias in prison system," The Globe and Mail, December 15, 1981.

³⁴⁷. Canadian Human Rights Commission press communique, "Prison Reforms in Place for Women," June 21, 1984.

dollar inmate program building, renovations, an industrial workshop, a greenhouse, in-house courses in word processing and horticulture, and access to business and university courses held at the nearby Bath Institute and Collins Bay penitentiary³⁴³--did not satisfy Women for Justice.

Hayes said the group felt the onus for ending the discrimination had been placed on them instead of the Correctional Service.

At the only meeting arranged by the Human Rights Commission with prison officials during the conciliation process, we were asked to propose suitable remedies, which we had carefully broken down into short and long term objectives, benchmarks and proposed methods to achieve them. The CSC's responses were sketchy and non-committal. Ideas were shared, but there was little agreement. We wanted to see long term changes and new tools developed to work with women, while the CSC only seemed interested in cosmetic alterations.³⁴⁹

Though the C.S.C. had conducted interviews with women inmates, years later Hayes noted there had been no follow-up. The new activities building was being under-used. Keyboarding was taught with the new word processors, not programming.

In the end, Women for Justice refused to sign a conciliation agreement and asked the Human Rights Commission for a re-evaluation. Hayes said the Chief Commissioner responded by saying that while he believed

348. Ibid.

349. Berzins and Hayes, "The Diaries of Two Change Agents," Too Few to Count, p. 173.

broad sexual reforms may be needed in the Canadian penal system, he stated they could not

be achieved solely via the conciliation of a complaint of discrimination. Public debate and political lobbying have been the traditional routes used to elicit basic reforms of our institutions.³⁵⁰

Though Women for Justice had not satisfied its goal, the complaint did result in some positive changes at the Prison for Women. And, it brought media and public attention to the situation of women inmates at the prison.

But, the issue of treating women inmates according to their needs as a group or as individuals distinct from their male counterparts, was still left unresolved. As the Women For Justice complaint had shown, attempts to combat systemic discrimination often turned on giving the women what the men had, equalization, and even that had not been achieved.

Another case, one alleging that a sentence to P4W infringed on fundamental rights guaranteed by the Charter of Rights and Freedoms would again bring the issue of discriminatory treatment of federal women offenders, particularly Native inmates, into the public spotlight.

5.2 Failing to meet Native women's needs

In 1990 when she was convicted of the second-degree murder in the stabbing death of another young woman, Carol Daniels, a twenty-year-old treaty Indian woman from

³⁵⁰. Ibid., p. 174.

Saskatchewan, was pregnant and had a two-year-old son.³⁵¹ Daniels, whose conviction would bring her a federal sentence of life imprisonment without eligibility of parole for ten years, looked to be on her way to serve time at the Kingston Prison for Women.

Instead, Judge Marion Wedge of the Court of Queen's Bench of Saskatchewan agreed with Daniels' lawyer, Tim White, and intervenors, the Women's Legal Education and Action Fund (L.E.A.F.). Sending the Saskatchewan Native woman to the Prison for Women in Kingston would violate her constitutional equality rights.

Women like Carol Daniels who commit serious offenses must be punished for their crimes by imprisonment, even for life, but the high risk of death by suicide in a far away, "medieval, castle-like prison", is in my opinion unacceptable in a free and democratic society. . . Carol Daniels is not to serve any part of her sentence in the Prison for women in Kingston, Ontario.³⁵²

In the two years preceding the Daniels' case, seven women from the Kingston women's prison had attempted or committed suicide, six had died--Marlene Moore, Patty Bear, Sandy Sayer, Coreen Daigneault, Marie Ledoux, and Lorna

351. Canadian Press, "Authorities split on choice of jail for woman's term," The Ottawa Citizen, July 18, 1990, F14.

352. Judge Wedge, Her Majesty The Queen and Carol Maureen Daniels, Sentencing, July 15, 1990, p. 6, 13, 14, (transcript of a tape recording), Saskatchewan Judgments: [1990] S.J. No. 371, Q.B. No. 111 of 1989 J.C.P.A.

Jones.³⁵³ Of the seven, six were Native women and almost all were from Saskatchewan.³⁵⁴

In her ruling, Wedge ordered that besides Daniels, no other women of Native ancestry from the prairie provinces were to be incarcerated at Kingston. The testimony of a Native elder and spiritual counsellor who had worked for many years with women prisoners, had left a clear picture of conditions at P4W which Judge Wedge remarked on in her sentencing decision.

She described the high security, fortress like buildings, the dearth of programs which are available in men's prisons, and in particular the isolation, despair and hopelessness of Native women far from home and children, extended family, exiled to an alien culture. . . As Joan Lavallee said, to most Native families in this region, a trip to Kingston without funding is an unattainable as a trip to the moon.³⁵⁵

Wedge's decision said she was satisfied that through the federal-provincial agreement arrangements could be made to house Daniels at Pine Grove. The Saskatchewan provincial jail for women had life skills, workplace and literacy programs. Frequent family visits were allowed and a Native elder made regular calls. More important to the pregnant Daniels, the judge noted that the prison provided

353. Sherri Barron, "Life and death in The Cage," The Ottawa Citizen, March 9, 1991, B3 and Attorney General of Canada and Carol Maureen Daniels, Factum of the Respondent, Court of Appeal for Saskatchewan, C.A. No. 5038, p. 2.

354. Respondent's Factum, *ibid.*, p. 2.

355. Wedge, Q v. Daniels-Sentencing, p. 4, 9.

accommodations "for women who give birth during imprisonment" and allowed them "to be with their babies during the daytime hours."³⁵⁶

The Saskatchewan judge's attempt to force reform drew public attention. A newspaper editorial commenting on the situation at the Prison for Women said female offenders were "doubly punished--for their crimes and because fewer women commit violent crimes than men."³⁵⁷

5.3 Equality denied

But, despite Wedge's landmark ruling and her belief that Daniels would be incarcerated at Pine Grove, L.E.A.F. would report a different outcome. A year later, Daniels was being housed in the infirmary of a Saskatchewan men's prison, an arrangement "clearly not contemplated by the trial judge's order" and one that certainly did not meet the constitutional equality standards which Wedge had attempted to secure.³⁵⁸

The Daniels' decision would not be upheld. In June of 1991, a three-member panel of the Saskatchewan Court of Appeal ruled on jurisdictional grounds that Wedge, the trial judge, did not have the authority to hear the

³⁵⁶. Ibid., p. 9.

³⁵⁷. Editorial, "Prison Equality, Judge tries to force reforms," The Ottawa Citizen, July 23, 1990, A-8.

³⁵⁸. "Daniels, Court fails to address equality issues in native woman's case," Leaf Lines, Vol. 4, No. 3, July 1991, p. 9.

application for Charter relief.³⁵⁹ The Appeal Court said only the Federal Court of Canada was authorized to issue such an order. It also found that a sentencing judge did not have a legal obligation to a prisoner beyond the point of sentencing.

Judge Wedge's decision was an attempt to address the specific needs and rights of Native women from Saskatchewan who were disadvantaged in the Canadian federal penitentiary system by the limitations of only one federal prison for women. It recognized not only Daniels' cultural specificity, but also her biological condition, pregnancy, and her need as an mother, although incarcerated, to remain in close contact with her children.

L.E.A.F. held the same opinion. Its factum in the unsuccessful Daniels appeal had argued that the Correctional Service of Canada's failure to recognize and provide for the social reality that women are the child bearers and most often the child nurturers and caregivers was itself discriminatory treatment on the basis of sex.³⁶⁰

In Canada, women serving longer federal sentences have always been at a disadvantage compared to their male

³⁵⁹. L.E.A.F., *ibid.*, p. 9 and David Roberts, "Court ends ban on prison, Saskatchewan may transport inmates to women's penitentiary in Kingston," The Globe and Mail, June 5, 1991.

³⁶⁰. L.E.A.F., Factum of the Respondent/Intervenor, Attorney General of Canada and Carol Maureen Daniels, Court of Appeal for Saskatchewan, C.A. No. 5038, p. 8.

counterparts who usually could be housed in one of the several federal penitentiaries for men spread throughout the provinces. And, despite Wedge's positive comments regarding Saskatchewan's Pine Grove jail, L.E.A.F. noted what the 1990 Task Force on Federally-Sentenced Women had found--"almost all provinces that have such agreements would not house women sentenced to lengthy terms of imprisonment and conversely, do not offer programmes suitable to the needs of long-term inmates."³⁶¹ As L.E.A.F. stated in the Daniels' case:

In contrast to the federally sentenced male, the federally sentenced woman, if eligible under the Exchange of Services Agreement, is forced to choose between geographical proximity with no suitable programming, or some degree of long-term programming in a distant location.³⁶²

Indeed, for the women incarcerated at P4W the problem has been less than clear-cut. Rumors of the prison closing in the late 1970's and plans by the Federal Government to house federally-sentenced women in provincial jails, created an uproar among P4W's inmates. In an Equinox article, Brian Johnson wrote that the women charged sex discrimination and "promised that such a move would trigger a massive riot."

Despite the primitive facilities and the lack of programming at the time, they felt that they had more freedom of movement within this armoured shell of a maximum-security prison than they would have in

361. Ibid., p. 28.

362. Ibid.

provincial jails.³⁶³

One inmate mother, Debi Wesaquate, early in 1991 chose being closer to her family over having more freedom at the Prison for Women.³⁶⁴ Wesaquate, who had already spent almost half a year at the Saskatchewan Penitentiary with as long to go before being released on mandatory supervision, was the first woman to be incarcerated in the top security institution which housed 465 men.

A Native woman from Qu'Appell Valley, Wesaquate had previously been incarcerated for almost a year at Kingston and while there had only been able to see her three daughters once, for a total of three hours. In contrast, her stay in the Prince Albert men's penitentiary, three hundred kilometres north of her home, had allowed Wesaquate to see her children about once a month.

But, co-corrections--women serving their federal time in provincial penitentiaries for men--is not an option for many P4W women who have a history of physical and/or sexual abuse by boyfriends, husbands, common-law partners and others.³⁶⁵ Bonnie Diamond, co-chair of the Creating Choices Task Force Report, sums up the situation.

A lot of abused women here [at P4W] would be

363. Brian D. Johnson, "Women Behind Bars," Equinox, March/April 1984, p. 66.

364. David Roberts, "Taking a stand for mother's rights," The Globe and Mail, February 8, 1991, A1.

365. Creating Choices, p. 51.

terrified to be in an institution with men, and we only have one shot at this reform. Whatever we decide on has to last for another 50 years. As for the provincial option, there's an even bigger shortage of programs.³⁶⁶

In the late seven-ties, The MacGuigan Report was blunt in its opinion about the differences in treatment between women and men once imprisoned.

One area in which women have equality in Canada--without trying--is in the national system of punishment. The nominal equality translates itself into injustice. But lest the injustice fail to be absolute, the equality ends and reverts to outright discrimination when it comes time to provide constructive positives--recreation, programs, basic facilities and space--for women.³⁶⁷

One of the report's Commissioners described the Prison for Women as "unfit for bears, much less women."³⁶⁸

Douglas Chinnery, then Director for P4W, told the sub-committee which authored the report that the future of the women's prison had been uncertain for at least twenty years.

In 1948, when I started as a guard at the Kingston Penitentiary, I said to the fellow over there, 'What is the gray building up the street' And he said, 'Well, that is the Prison for Women, but do not worry about that because that is closing'.³⁶⁹

Lorraine Berzins, then "coordinator for the follow-

366. Sally Armstrong, "P4W, Lockup = Breakdown, A Formula for Despair at the Prison for Women," Homemaker's Magazine, September 1991, p. 28.

367. The MacGuigan Report, p. 134.

368. Ibid., p. 135.

369. Ibid.

up report on the female offender" argued that the small numbers of women should be viewed as an advantage, not a disadvantage, which presented an opportunity for the development of innovative programs.

We are always saying that if we only had fewer men we could really do something. What irony! Here we have a small number of women and instead of taking advantage of the situation we use it as an excuse for not doing anything because the numbers don't justify the resources. This is a perfect opportunity to work in terms of individuals--to create new and resourceful ways of handling problems. . . The fact is, that establishing programs for the small number of women, might serve as a pilot project for handling problems for some men.³⁷⁰

The Inmate Committee from P4W told the MacGuigan committee members that the women had a "great interest in taking courses which would qualify them in highly trained skills,"³⁷¹ an often-repeated comment.

5.4 Assessing and meeting the women's needs

The following year, a Progress Report on the federal female offender program authored by Berzins and Sheelagh Dunn was released. It observed that even making an evaluation of the women's vocational and training needs presented problems for classification officers who

were unable to make an assessment for 61 of the 117 inmates. According to the Supervisor of Classification, this is due to the fact that 'the institution is not yet geared to determine objectively the vocational aptitude of inmates', and further that 'the institution might not be in a position to provide for such diversity of

³⁷⁰. Ibid., p. 136.

³⁷¹. Ibid.

individualized programs.³⁷²

Though the action by Women for Justice in the early eighties stimulated some changes, the situation at P4W still fell short of meeting the women's needs.

In 1990, Creating Choices, the report of the Task Force on Federally-Sentenced Women once again restated the problem.

In general, women who had good, well-paying jobs prior to their imprisonment, have found successful employment on release. But women without good job experience and/or who have been living on the street, find it more difficult to cope on release. Jobs offered often tend to be poorly paid. Some women refuse to take these jobs if they have been used to better. There are also many women who are not employable in terms of the job market and for whom specific job training is particularly important.³⁷³

As well, the report noted another problem women offenders faced in finding employment once out of prison-- the stigma of having a criminal record.

Some have experienced discrimination from employers who often fire them on discovering they have a record. In more than one case, this information was disclosed to the woman's employer by a parole officer.³⁷⁴

While the courts and the police process fewer women offenders, Frances Heidensohn says women are still stereotyped into a "narrow range of feminine roles such as

372. Berzins and Dunn Report, Program Requirements section, third page (not numbered).

373. Creating Choices, p. 60.

374. Ibid., p. 61.

'wife' or 'whore'."³⁷⁵ She counters those critics who use outdated arguments of chivalry to argue that women are better treated than men, saying "this begs the question of what 'better' means [because] the standard as always is how males are treated."

We cannot say what a 'best' treatment for women offenders would be like; there has never, so far, been a judicial system which was based on women's behaviour or took them as a norm.³⁷⁶

Norwegian feminist, Tove Stang Dahl, has taken up this challenge in her book Women's Law: an Introduction to Feminist Jurisprudence. Dahl's project is reconstructing law "with an architect's plan drawn up by women, built upon the foundation of the material reality of women's lives."³⁷⁷

She targets three areas "where women experience injustice"--the unequal distribution of money, time and work--which provide the basis for "systematizing three areas of women's law: "money law", "housewives' law" and "waged labour law."³⁷⁸ Dahl maintains that a "double-track system" of rules emerges when gender-neutral laws,

375. Heidensohn, Women and Crime, p. 58.

376. Ibid.

377. Book Reviews/Tove Stang Dahl: Women's Law, International Journal of the Sociology of Law, 1989, Vol. 17, No. 4, p. 503.

378. Tove Stang Dahl, "Taking Women as a Starting Point: Building Women's Law," International Journal of the Sociology of Law, 196, Vol. 14, p. 242.

which are conceptually male, are applied to females. An example, she says is social insurance law in which the male model is built on waged labour while the female model is built on the woman as a privately maintained person whose benefits follow from the lack or absence of a male provider.

The concept of 'money law' grows from a "minimum right's reasoning" according to Dahl.

An independent income of one's own is a prerequisite for participation in, and enjoyment of, life in a number of respects, privately as well as publicly. Lacking money, on the other hand, gives a person little freedom of movement and a feeling of powerlessness. Consequently, the right of an adult to have access to his or her own money should be considered as a minimum welfare requirement in a monetary economy. Many women do not have this minimum welfare right, and many of those who have are still rather poor compared with the men in their environment.³⁷⁹

Author Virginia Woolf in A Room of One's Own remarked on how her life as an independent woman was transformed when she received a legacy which provided her with a regular income.

The news of my legacy reached me one night about the same time that the act was passed that gave votes to women. . . Of the two--the vote and the money--the money, I own, seemed infinitely the more important.³⁸⁰

It has been argued in Creating Choices and elsewhere that the women who are offenders doing their

³⁷⁹. Ibid.

³⁸⁰. Virginia Woolf, A Room of One's Own, (Great Britain: Collins, 1929), p. 37.

time in the Prison for Women must be able to rely on themselves and their abilities to achieve financial stability once they leave prison. Just as it was for Woolf, economic security is critically important to their freedom and independence, and to their breaking a repeated cycle of dependency.

Providing federal women offenders with the vocational and training programs they need, and want, to help them achieve independence, which the research and reports have said is essential to their self-esteem, would be a start towards equality and meeting their needs. In order to do this, it is necessary to see these women as they are and not through the stereotypes which are dictated for them and for women in general. As Carlen observes:

The belief that women are essentially creatures living primarily according to their emotions and dependent upon personal relationships to give meaning to their lives is an ideology which has not only been responsible for the dependency-inducing domesticity inherent in penal regimes and prison education for women (see Carlen, 1983a; Dobash et al, 1986), it has also increased that dependency by not taking women's employment needs seriously.³⁸¹

But, meeting these women's needs and helping them work towards independence means more than giving them what the male offenders in the penitentiary system already have. As Ross and Fabiano point out,

equity is not enough to ensure an adequate correctional response to the needs of female

³⁸¹. Carlen, Alternatives to Women's Imprisonment, p. 37.

offenders. The achievement of equity may only serve to limit female offenders to the services available to men; services which may not meet the needs of women or men.³⁸²

Change, as Lorraine Berzins suggested to the MacGuigan Commissioners, may mean innovative and radical pilot projects, and envisioning a penitentiary system which takes women offenders as its starting point.

³⁸². Ross and Fabiano, Correctional Afterthoughts, (Solicitor General, 1985), p. 2.

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