Have We Tried Improving Women's Lives? Women in Conflict With the Law in Canada

by

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Abstract

In this thesis, I sought to find out what types of crimes women in Canada are committing and if there is a link between women's offending and their lower economic status.

Drawing from feminist theories, particularly feminist criminology, and from an overview of Canadian women's current economic circumstances, I examined data from Statistics Canada on criminal charges against women for the years 1991, 1996 and 2001 as well as women convicted in the year 2000. No conclusive correlation between poverty and crime could be shown. However, given that the majority of women in Canada who commit offences, commit minor property offences, the statistics, combined with the literature and theories, suggest that an improvement to women's economic position would reduce the number of women in conflict with the law.

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Chapter1: Introduction

This thesis will examine women who come into conflict with the law, that is women who, for whatever reason, have been charged with committing an unlawful act. This thesis will examine the charges laid against women in Canada in 1991, 1996 and 2001 to explore how the offences with which women are charged might relate to their social and economic situation. More specifically, it will explore how women's poverty in Canada situates women in powerless positions and renders them invisible, thus creating conditions that lead to offending.

The women's movement has not led to an improvement in the economic status of working class and minority women; women continue to be marginalized. Boritch argues that the social portrait of the female offender shows her to be economically and socially disadvantaged along every major dimension.¹ According to Boritch, the female offender is young, non-married, a mother, has poor education and chronic unemployment. Further she abuses drugs and has been a victim of abuse.² Other studies indicate that these factors relate to the crimes she commits and that crimes are gendered.³ For example, females tend to steal items they need or feel they need - household goods, clothing, groceries, makeup and so on; males steal electronic equipment, tools and other goods of significantly higher value than those taken by females.⁴ In the age of women's liberation, female offenders continue to commit primarily "feminine" offences; they write bad

¹ H. Boritch. (1997). *Fallen Women: Female Crime and Criminal Justice in Canada*. Scarborough, On: ITP Nelson p 27

² *ibid*

³ D. Steffensmeier. (1998). The Nature of Female Offending: Patterns and Explanations. In R. Zaplin (Ed.), *Female Offenders: Critical Perspectives and Interventions* (pp 5-30). Gaithersburg, MD: Aspen Publishing p 5; M.B.Cameron. (1953). *Department Store Shoplifting*. Unpublished Doctoral Dissertation: Indiana University; A. Campbell. (1981). *Girl Delinquent's*. New York: St. Martin's

cheques, take items useful to them as homemakers and steal make-up from a perceived need to appear feminine. They commit fraud against the government due to need and in resistance against the destitution level of welfare allotments that are inadequate for their children's care.⁵ Both quantitative and qualitative research is needed to determine how many women who come into conflict with the law in Canada are charged with crimes that are directly related to the social and economic circumstances in which they live.

Only as recently as the 1970s have academics been interested in demystifying those women who come into conflict with the law and examining gender as a "social construct with deep significance for crime and punishment."⁶ However, despite this recent attention to female offenders, there has been overwhelming neglect by academic theory and research to studying how offending by women may be related to their low social status and the pressing social problems it creates.⁷ Women tend not to commit serious crimes. The majority of women charged with offences are likely to be charged and convicted of minor crimes.⁸ As we shall see, the offences women commit are closely tied to women's economic marginality and the ways in which they attempt to cope with poverty.

The interest for this thesis comes from my concern that women in Canada do not have a fair or equal voice to argue for our rights in the society in which we live. I have completed research and work with battered women and women who live in poverty. As a

⁴ W. Dekeseredy. (2000). *Women, Crime and the Canadian Criminal Justice System*. Cincinnati: Anderson Publishing p 21

⁵ *ibid* at p 22

⁶ K. Faith. (1993). *Unruly Women: The Politics of Confinement and Resistance*. Vancouver: Press Gang Publishers p 59

⁷ P. Evans. (1997). Divided Citizenship? Gender, Income Security, and the Welfare State. In P. M. Evans and G. R. Winkle (Eds.), *Women and the Canadian Welfare State: Challenges and Change* (pp 91-116). Toronto: University of Toronto Press p 96

⁸ Statistics Canada. (2002). *Canadian Crime Statistics 2001*. Ottawa: Canadian Centre for Justice Statistics

result of this work, I bring a perspective to this research, based on a contention that women, especially those who do not have the resources to meet their basic needs, face undue hardships in our country. By giving women the ability to provide necessities for themselves and their families, we can help women lead healthy lives and give them the courage and option to break free from the cycles of violence and poverty in their lives. I bring to this thesis the assumption that some women come into conflict with the law due to the inability to make healthy choices in their lives.

As Donna Haraway states, “the only way to find a larger vision is to be somewhere in particular.”⁹ I am a white, heterosexual, able-bodied, female student with a middle class upbringing. I bring to this work a perspective based on how my profile and beliefs have situated me in Canadian society and influence decisions I make in my daily life and choices I make in my work. The knowledge I have gathered from my experiences as a woman in my daily life, employment and school experiences, among others, has led me to question the basic assumptions society holds of women. I draw from this knowledge to question how the pressures and subordination of women in all facets of life relate specifically to women in conflict with the law.

A feminist gaze will underlie this thesis. This means that men’s experiences and priorities, while traditionally seen as central and representative, will not be relied upon here. Women matter; they deserve an analysis that is female centred. Women warrant studying in their own right and without comparison to men. Knowledge about females who come into conflict with the law is lacking and I hope through this thesis to provide at least a piece of that knowledge. In the criminal law context, this would mean looking

⁹ D. Haraway. (1998). The Persistence of Vision. In Nicholas Mirtzoeff (Ed.), *The Visual Culture Reader* (pp 181-190). New York: Routledge p 188

into the laws that women are accused of breaching, the offences for which they are convicted and, perhaps even more importantly, the life circumstances that may contribute to their offending. The power of feminist research and analysis is that it sheds light on previously unappreciated and unexplored areas. A key attribute of feminist research is that it is research aimed “by women, for women, about women”.¹⁰ To this end, women are positioned as experts on their own lives.

What I am Doing

The thesis will suggest that a funnel effect exists with respect to women’s offending. By this I mean that women’s offending may be directly related to the particular position she holds in society and certain contextual positions may lead her to choose to commit an unlawful act. Her contact with the criminal justice system is a result of the larger social position she holds and the narrowed choices open to her. In chapter two, I examine some basic assumptions of feminists and feminist theories, that inform this analysis of women who come into conflict with the law. These include the belief held by socialist feminists that, while women have made significant gains, they still hold subordinate positions of power to men in our society, based on their lower economic position. A critical feminist position notes the links between individual life chances and larger structural forces. This perspective examines how a woman’s race, class, sexual orientation and/or disability directly relates to her inclusion and power within our society. In chapter three I review control and opportunity theories of crime and examine how feminists have adapted these theories to address women who commit crime. The theory

¹⁰ L. Stanley and S. Wise. (1991). Method, Methodology and Epistemology in Feminist Research Processes. In L. Stanley (Ed.), *Feminist Praxis: Research, Theory and Epistemology in Feminist Sociology*

that I choose to explore more fully in the context of this thesis is an amalgamation of the approaches which suggest that women generally do not commit major crimes and those crimes that they do commit are often related to their economic position, their employment and their role as caregivers in our society.

In chapter four, drawing from the criminological theories examined in chapter three, I look to academic literature for links between women, poverty and crime. As the theories suggest a link between women's offending and their lower economic positions in Canada, one of the main areas of analysis for this thesis will be an examination of the conditions that contribute to women's poverty in Canada. Poverty will be examined as a context which generates many of the women who come into conflict with the law.

In chapter five, I will consider the statistics on females who came into conflict with the law in 1991, 1996 and 2001, in light of the literature and theories previously discussed. I will first examine statistics from the Uniform Crime Reporting Survey, which is issued by Statistics Canada. It gathers reports from the police across the country of the charges laid against men, women and youth. I will examine the data on women charged in each offence category for each of the years examined and pull from that the data I find to be the most relevant for discussion based upon the theory and literature reviewed. I will then analyze the conviction and sentencing data for 2000 as submitted by the courts across Canada to the Adult Criminal Court Survey, also released by Statistics Canada. I will conclude my thesis by suggesting that there are still more questions than answers about women who are in conflict with the law in Canada. However, there is evidence to support the notion that improving the subordinate status of

women in Canadian society, most specifically her economic conditions, will result in a reduction of women coming into conflict with the law.

Until relatively recently, the bulk of scholarship has reflected a male perspective on the world and has focused on the activities and experiences of men. It was assumed that what we learned about men was also true of women and could be extrapolated to females without modification. I challenge this assumption and choose to focus exclusively on women. While much of the contextual circumstance and discussion of women who come into conflict with the law could relate to men, I have chosen not to try to extend my analysis to examine men who come into conflict with the law. I am also not comparing women in conflict with the law to men in conflict with the law in the hope of providing new perspectives on women's activities, experiences and offending. However, in some areas of the data analysis, I have chosen to include the statistics on men to raise particular questions about women's offending and how it may relate to her social position.

Methodology – My Search for the Answers

I believe that those who come into conflict with the law are defined by the public act they have committed; their personal experiences are downplayed and individualized. Important information is missing from both the criminology literature and available statistics and its absence makes a systemic analysis very difficult. I want to know who the women are who are coming into conflict with the law and not just the offences they are committing. Women who come into conflict with the law are then given a label by society as an offender. Her life situation and the story about what led her to the choice to

commit an unlawful act are ignored. What I originally set out to do was to create a story that incorporated the experiences of the women about whom I was writing. I believe that scholarship that does not include the voices of those about whom it speaks is lacking an essential component. Unfortunately, I could not make the voices of women in conflict with the law a part of this thesis because I was not able to obtain direct access to them or information specifically about them. Nonetheless, I am seeking to tell one version of the story and, despite its shortcomings, I believe it is an important version. While it is indeed important not to speak for others, I believe that sometimes those of us with more power and access to power should speak about the issues that pertain to those who have less.

My intention to write about women in conflict with the law was solidified after reading a paper by Christine Boyle, Marie Andree Bertrand, Celince Lacerte-Lamontagne, and Rebecca Shamai.¹¹ The article examines crimes the authors deemed “female crimes” (such as prostitution), because they are crimes largely committed by women. The authors discuss each crime in detail with the underlying assumption that there are reasons behind women’s offending that must be addressed by the rest of society. The article intrigued me and sent me looking for more knowledge and literature on female crimes and the reasons why women commit these specific crimes. In their article, Boyle et al suggest that in order to be defined as a ‘crime’, an act should meet the following stipulations: A crime should cause serious harm to others, violate fundamental values and cause real harm to the community. Boyle et al further argue that the application of criminal law must not harm persons or society (including the accused or

¹¹ C. Boyle, M.A. Bertrand, C. Lacerte-Lamontagne, and R. Shami. (1985). *A Feminist Reading of Criminal Law*. Canada: Minister of Supply Services Canada

convicted offender), and must not violate fundamental rights.¹² The narrow focus of this definition of crime appealed to me and I was interested in applying it to assess the crimes that women are actually charged with. I also wanted to pursue the notion that the application of criminal law must not violate fundamental rights. This led me to look into rights literature.

MacKlein and Scott, defining social rights, argue that we must not give up the fight for social rights which can help ensure that women are visible, productive and indeed law abiding members of our society. They state,

Social rights are those rights that protect the necessities of life or that provide for the foundations of an adequate quality of life. The necessities of life encompass at minimum right to adequate nutrition, housing, health, and education. All of these rights provide foundations upon which human development can occur and human freedom can flourish. In addition, such basic social rights should be conceptualised in terms of both an entitlement to be equal as humans and to be equal as members of society.¹³

These basic rights are imperative for all members of our society, nonetheless they are denied to offenders. Offenders are denied what is needed for them to be full functioning members of society and to reduce the chances of recidivism. This reminded me of a lecture by Candace McCoy I attended, where she stated that these social rights would only be considered necessary for offenders if we believe the offending individual is a member of our group, that is a full and equal citizen. As long as we see offenders as the 'other', then they will not have the power or full ability to make positive decisions for themselves.

¹² *ibid* at p 3

¹³ P. Macklem and C. Scott. (1992). Constitutional Ropes of Sand or 'Justifiable Guarantees?' Social Rights in a New South African Constitution. *University of Pennsylvania Law Review*, 141, 1-148 p 9-10

Boyle et al also argue that there must be reason to believe that qualifying an act as an offence can lead to a solution to the problems caused by the crime.¹⁴ Drawing from the belief that women have traditionally not had the power to define what or whose values are considered important enough to be legislated and what is considered a violation of those values, they argue that offences should only be given the definition and label of a criminal offence if there is a foreseeable solution to both the result of the offence and also the reasons for the offence. This could be broadened to infer that an act should only be defined and punished as criminal if the root causes and reasons for the criminal act are also addressed. This approach would change the purpose of the criminal law and the justice system from one that focuses on charging and punishing acts that are committed against the *Criminal Code* to a system that is focused on prevention.

Drawing from the arguments by Boyle et al, I knew I wanted my thesis to be female centered, to focus on the offences women are committing in Canada and to explore possible links to offending out of need. A search of the academic literature on female offenders revealed a strong focus on the violent behavior of women in conflict with the law and on women prostitutes. There was almost no information on women who were charged and convicted with committing less violent offences, such as common assault, and on women who were charged with committing property offences. While there is widespread recognition that women commit fairly minor property offences, there is usually little more than a paragraph devoted to these women in the academic literature.¹⁵ This confirmed for me that this would be a worthwhile thesis.

¹⁴ *supra* note 11 at p 4

¹⁵ See for example, *supra* note 1 at p 27

I then turned to the statistics gathered by the criminal justice system to get a picture of the crimes women are charged with in Canada. The statistics show that women are not committing the offences that most academics were focusing on; they are committing property offences, with the majority committing the minor offence of shoplifting.¹⁶ A return to the literature focusing specifically on property offenders, revealed that there was very little information on property offending and none on shoplifting. I was intrigued and wanted to find the stories of these women. I wanted to find out why they are committing these offences.

In order to get a picture of female property offenders, I started by trying to get access to the pre-sentence reports of women who shoplift. Unsure as to the information these reports would contain or even if they would aid in my research, I began by first trying to see one or two so that I could decide how to proceed. There is a section of the city courthouse where the files of cases that have been decided are kept. However, I was told the pre-sentence reports did not remain in these case files and I should talk to the Crown Attorney who might keep a more detailed case file for up to three months or to the police who keep copies of all files. I spoke to a Crown Attorney whom I knew personally but she was unable to help me find the files I was looking for because her understanding was that for such minor offences the files were not kept for any length of time. I also met with a judge to ask about retention of pre-sentence reports and their content. She too assured me that they were not kept once the case was decided. She also advised me that in very few shoplifting and other low level offences are pre-sentence reports asked for. She did suggest that some parole officers may keep the pre-sentence reports on file but a few calls to them did not elicit a response either. The lack of pre-sentence reports on

¹⁶ *supra* note 8

female property offenders is extremely problematic. Pre-sentence reports would provide valuable information on women who come into conflict with the law and the circumstances in which they lived when committing the crime. The failure to ask for and retain these reports leaves the research picture of these women incomplete.

With no luck finding pre-sentence reports, I then decided to look and see what statistics I could gather and what story could be told from them. I was looking to see if there were any statistics in Canada that would give me a detailed account of the women who come into conflict with the law. Because it was easily accessible, I first glanced through the Correctional and Conditional Release Statistical Overview released by the Solicitor General's Department. While the most recent edition has improved, by including more gender breakdowns for the various statistical analyses they provide, there is still very little breakdown in the overview separating men and women and so it was of little use for my thesis. I then turned to the Daily's and Juristat's released by Statistics Canada, which are free and easily accessible. Each morning, Statistics Canada, through the Daily, issues statistical releases on current social and economic conditions and announces new products they are developing. Juristat's are overviews of the larger statistical reports Statistics Canada releases. Both of these sources failed to separate the male and female offending statistics. So, I had to turn to the larger statistical reports from which both the Daily's and Juristat's are created, in order to find a better breakdown of charges and convictions of women in Canada. I was able to find out which offences women are committing from the Uniform Crime Reporting Survey, released by Canadian Criminal Justice Statistics at Statistics Canada annually. The data in this survey is gathered from police agencies across the country on the offence(s) men and women are

charged with. Other statistics were gathered from the Adult Criminal Court Survey, which gathers information on convictions and sentences. The information is released annually on a fiscal year basis, from data collected from April to April and is derived from information sent by territorial and provincial adult criminal courts.

My first conclusion based on this review was that we need to gather fuller statistics to tell more of the story. The statistics do not disclose how many of the women are from a racial minority, how many are either mentally or physically disabled - or both. Further, the statistics do not tell us how many women in conflict with the law, both in the past or currently, are economically and socially disadvantaged. How many are unemployed or underemployed; how many have low educational levels? How many are alcoholics or drug addicts - both illegal and legal; how many are single mothers, caregivers for their families? Further, the statistics do not tell us what women are stealing when they shoplift. Are they stealing diapers and food as some academics suggest? While the Uniform Crime Reporting Survey has begun to record some of these statistics, the officers who charge women and the legal system that convicts and sentences them do not gather the information consistently or adequately. My questions were left unanswered.

I chose to review the charge data from the UCR for the years 1991, 1996 and 2001 in order to review the crime patterns of women in conflict with the law over a ten year span. I chose to start with the most current data available and work backwards. A series of factors that will be examined in the course of this thesis make the analysis of these years worthy of study. These factors include: the effect of a recession in the first

five years, changes to both sentencing guidelines and social transfer of money to the provinces in the final five years, and the increased attention to female offending.

Most people refer to women who have been charged with committing a crime as a female offender. However, Karlene Faith, along with many others, suggests that this terminology is problematic.¹⁷ Faith argues that to indiscriminately label all female lawbreakers as a “female offender” promotes gender-based stereotyping and denies the diverse dispositions of women who come into contact with the criminal justice system. As discussed by Faith, women’s groups in Canada succeeded in the 1980s in persuading criminal justice agencies to switch terminology from ‘female offenders’ to ‘women in conflict with the law’, which suggests a less judgmental description and a less permanent label.¹⁸ Indeed, when first looking for sources of data, I realised that the majority of the women I would be discussing, as taken from the Uniform Crime Reporting Survey, would be women charged by police for committing a crime, but not yet convicted, and so the label of female offender would not appropriately describe these women. Accordingly, I use the label women in conflict with the law.

Faith has suggested that the reference to ‘in conflict’ should be changed to ‘in trouble with the law’, as a woman cannot be in conflict with “power to which one is subordinate.”¹⁹ While I agree with Faith that many accepted labels are inaccurate, I would argue that it is conflict with power and conflict with their social surroundings that bring women into contact with the criminal justice system. Faith seems to overstate the exteriority of women to power. Women are not powerless even in the face of the law. They struggle and resist; the crimes women commit may sometimes themselves be acts

¹⁷ *supra* note 6 at p 59

¹⁸ *ibid* at p 57-58

of resistance against their social circumstances. Much of women's resistance when coming into conflict with the law may also be a struggle against other oppressions such as poverty, race, ability and others. For these reasons, the term women in conflict with the law seems appropriate and will be used for the remainder of the thesis.

Women are also positioned differently in society due to their race, class, disability, and sexual orientation. These factors combine with gender to make each woman's experiences and life situation in society unique. In "Mapping Identity", Crenshaw makes the point that gender, class, race, and sexuality intersect.²⁰ At any specific time, one of these variables may prove to be the primary operating factor or they may interact together depending on the situation. These factors provide important information about each of us, but that information is often not available. There is a lack of both literature and statistics on the racial, sexual and disability profiles of women who come in conflict with the law. These interesting factors are a hidden aspect of women offenders in Canada and unfortunately remain hidden in this thesis.

Perhaps given the limited information available to me, I should have given up. Perhaps I had encountered the same stumbling blocks others had encountered before me and they had given up, which would explain why academics have neglected to write about women who come into conflict with the law as property offenders and shoplifters. However, it seemed to me that there is so little information on women who come into conflict with the law in Canada that even with only limited information a worthwhile story can still be told about women who are minor property offenders. The statistics

¹⁹ *ibid* at p 58

²⁰ K. Crenshaw. (1994). Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color. In M.A. Fineman and R. Mykitiuk (Eds.), *The Public Nature of Private Violence* (pp 93-118). New York: Routledge

provide a starting point for a discussion and for questions. While it isn't the story I had set out to tell, it is a relevant story nonetheless. Hopefully, it will offer a glimpse into the lives of these women and suggest avenues for academics to pursue and analyze in the future.

Chapter 2: Feminist Perspective(s)

Feminists recognise that there is systemic sex and gender discrimination in our society and seek to understand the gendered nature of virtually all social and institutional relations. Feminists' goal is to eradicate gender oppression and thereby transform society. While it is more accurate to speak and write of "feminisms", it is possible to isolate, without essentializing, feminist theory and practice.²¹ A key attribute of feminism is its reflexivity, or the analytic attention to the researcher's role. Feminism is most interested in studying women's lives and both recognizes and integrates a multiplicity of views. This multiplicity has been termed "integrative feminisms". Feminisms suggest that not all feminism is the same.²² Feminism is able to appreciate and accommodate a variety of ideas and knowledges that result in counter-hegemonic discourses. While there is no one feminism that all who define themselves as "feminist" ascribe to, there are some basic tenets. Despite the definitional differences and debates among feminists, most adhere to some basic concerns and assumptions and that is the focus of this chapter. This chapter seeks to create a basis for a feminist analysis of women in conflict with the law.

Traditional scholarship has ignored the lives, experiences and voices of women.²³ Indeed, much of the literature and analysis on offending in Canada has not included a specific discussion of women and, more importantly, has excluded a discussion of those areas of the law in which the majority of women are found to be in conflict. Feminism, as

²¹ J. Grant. (1993). *Fundamental Feminism: Contesting the Core Concepts of Feminist Theory*. New York: Routledge

²² A. Miles. (1996). *Integrative Feminisms: Building Global Visions, 1960s-1990s*. New York: Routledge

an analytic tool, helps to explain why individual women come into conflict with the law and at the same time situates these women in the larger social, cultural, political and economic contexts. The use of feminist theory is emancipatory through its ability to 'make sense' of women's lives from their standpoint.

Feminists critique mainstream scholarship for creating a dualism that excludes the personal. Feminists believe that the personal is political and that what happens in women's daily lives is as important for study as the happenings in public life. Women who come into conflict with the law are not only committing acts which involve her in the public realm of the criminal justice system but have private lives and experiences that relate to her offending. While critical of the notion of one 'truth', feminists believe that a focus on the particularities of a person's real life experiences is essential to gain a better understanding and a more accurate picture of why she makes certain decisions and who she 'is'.²⁴ The public realm strips women, in particular women who come into conflict with the law, of the private aspects of her life. The criminal justice system, the literature and the statistics, by focussing only on the crime committed and the sentence given, are excluding the important 'private' part of her existence. Feminism seeks to reintegrate the private into the public by posing the question as to what life experiences related to a woman's decision to commit an act which brings her into conflict with the criminal justice system?

A feminist perspective is concerned with power, which often situates women at the bottom of the hierarchies in our society. We learn very early on where we fit into

²³ M. J. Matsuda. (1993). Liberal Jurisprudence and Abstract Visions of Human Nature: A Feminist Critique of Rawl's Theory of Justice. In K. Weisberg (Ed.), *Feminist Legal Theory: Foundations* (pp 476-484). Philadelphia: Temple University Press p 479

²⁴ *ibid*

societal power relationships. We learn this as we learn language, traditions, rules, norms, roles and identities as we grow and make sense of our social world. The possible choices available to women are in part shaped by the position of power (lessness) they hold in society. Of course, all of this is not static and unchangeable, or what would feminists be working towards? But change is premised on knowledge and knowledge is connected to power. "The feminist theory of knowledge is inextricable from the feminist critique of power because the male point of view forces itself upon the world as its way of apprehending it."²⁵

There are many ways in which power relating to knowledge is deployed, including the power of academics and the media to choose who to study and who to write about, the power to ask certain questions and not others and the power to only gather certain statistics. Much of feminist theory ties the articulation of power to the concept of patriarchy.²⁶ Patriarchy reflects a centralized notion of power that is hierarchical and in the hands of men. In this context, the oppression of women can be traced back to an explicit exclusion from the dominant spheres in which men operate and live. The work of Susan Boyd and others highlights this gendered difference in the public and private divide.²⁷ Others conceive of 'law as a gendering practice',²⁸ a notion that sees law's power as both enabling and constraining along gendered lines. In *Feminism and the*

²⁵ C. MacKinnon. (1993). *Feminism, Marxism, Method, and the State: Toward a Feminist Jurisprudence*. In D. K. Weisberg (Ed.), *Feminist Legal Theory: Foundations* (pp 427-436). Philadelphia: Temple University Press p 427

²⁶ S. Walby. (1990). *Theorizing Patriarchy*. Oxford: Basil Blackwell

²⁷ S. Boyd. (1997). *Challenging the Public/Private Divide: Feminism, Law, and Public Policy*. Toronto, On: University of Toronto Press

²⁸ D. Chunn and D. Lacombe. (2000). *Law as a Gendering Practice*. Oxford: Oxford University Press.

Power of Law, Carol Smart, posits that law is essentially male in its articulation.²⁹ This notion is echoed by Catharine MacKinnon in *Feminism Unmodified*.³⁰

There are two main schools of thought that I draw from for a feminist analysis of the criminal law in relation to women. First, to understand women's oppression, socialist feminists focus on the inequalities of both class and gender. They believe that the interaction of gender and class creates positions of power and powerlessness in the gender/class hierarchy, resulting in different types and degrees of criminality and varying opportunities for engaging in them.³¹ One major problem with socialist feminist analysis, is its exclusive focus on the economic placement of women. While central, that one factor does not override the importance of individual subjectivity that other factors such as race can contribute. Second, while feminism in general is a critical perspective, there is a subset within feminism of explicitly "critical feminism". Critical feminism "does not focus on individual flaws; rather it questions societal structures and the role of those structures in breeding and sustaining criminals"³² Critical theories raise questions about what gets defined as criminal and how laws are enforced to work in the interests of the powerful. Critical feminist criminologists question the role of human decisions in the creation of what is defined as 'crime' and who is criminalized. Questions arise asking whether the women who come into conflict with the law are truly bad or are there because of life circumstances. Further, critical feminists appreciate the role other

²⁹ C. Smart. (1989). *Feminism and the Power of Law*. London: Routledge

³⁰ C. MacKinnon. (1987). *Feminism Unmodified*. Cambridge: Harvard University Press

³¹ C. Brooks. (2002). New Directions in Critical Criminology. In B. Schissel and C. Brooks (Eds.), *Marginality & Condemnation: An Introduction to Critical Criminology* (pp 29-50). Halifax: Fernwood Publishing p 45

³² *ibid* at p 47

contextual factors, such as sexuality, race and disability can play on crime rates and who is defined as criminal.

Catharine MacKinnon has developed a theory of dominance, which shows how women are maintained in positions of poverty and abuse and how this could relate to women's offending. She posits that women are maintained in positions of poverty through the failure of society to recognize gender-specific discriminations when enforcing equity laws and by cutting back on social spending which would enable women to fight against their subordinate status.³³ MacKinnon argues that women are relegated to a subordinate position by men. By relegating not just individual women but women as a gender into inferior positions, women's gender-specific problems are unacknowledged and can be attributed as a natural difference, creating an unequal balance of power.³⁴ This unequal balance of power is generally not taken into consideration by the courts in the criminal law context and results in injustice.

While individual women are the ones who experience the 'power of law', it is far from an individual issue. The effects of law are systemic in that women are engaged through law as an entity rather individuals. So while the law individualizes women it does so through systemic application. It is crucial that feminists work towards unraveling the role that the law plays in reproducing and maintaining the sex and economic divisions in our societies, as it is these divisions that ensure that not all members of a society enjoy the same freedom. According to Karen Bartlett:

In law, asking the woman question means examining how the law fails to take into account the experiences and values that seem more typical of women, for whatever reason, or how existing legal standards and concepts might disadvantage

³³ C. MacKinnon. (1993). *Difference and Dominance: On Sex Discrimination*. In D. K. Weisberg (Ed.), *Feminist Legal Theory: Foundations* (pp 276-287). Philadelphia: Temple University Press

³⁴ *ibid*

women...the question assumes some features of the law may be not only non-neutral in a general sense, but also “male” in a specific sense.³⁵

Despite prevailing notions of equality before and under the law, the law is certainly not a value-neutral form of power. The law encodes the dominant values of western culture, values that are inherently reflective of male privilege. Law, in its emergence and evolution, has enshrined the dominant views of men as the creators and enforcers of law. Women are marginalized, silenced and subjugated through their lack of inclusion in dominant society.³⁶

Factors that circumscribe women’s lives and women’s choices are systemic and affect her power to make decisions. Women are the primary caregivers in our society. Childcare, eldercare and partner-care are all aspects of women’s caregiver role and have a major impact on women’s economic position. Of course, not all women are poor; contextual factors contributing to women’s life challenges are not static. And it is possible for women to ‘get out’ of poverty. However, I focus on poverty because it flows from a critical socialist feminist analysis as a central factor that directly relates to the choices women make, the power she holds and the way she is treated by the criminal justice system.

Feminist theories raise many questions about why and in what ways women come into conflict with the law. The theories suggest that women’s voices and feminist methods of analysis are required to examine women in conflict with the law. Are the offending patterns and behavior of women socially and historically specific? Do women feel pressured to commit unlawful acts to meet not only their basic needs but to meet the

³⁵ K. Bartlet. (1993). Feminist Legal Methods. In D. K. Weisberg (Ed.), *Feminist Legal Theory: Foundations* (pp 550-570). Philadelphia: Temple University Press p 551

expectations they have placed upon themselves and that have been placed upon them by society? How do the circumstances of women's lives relate to the crimes women are being charged with? These questions cannot be answered by gender-neutral theories of crime; they require a theoretical approach that acknowledges and responds to gender differences and the specificities of women's experiences. This is the subject of the chapter that follows.

³⁶ For a discussion of the values of women see C. Gilligan. (1982). *In a Different Voice*. Cambridge: Harvard University Press

Chapter 3: Women and Crime Theories

Introduction

Many theories have been created to explain why persons come into conflict with the law. Most of these theories were developed for men by men and lead to generalisability problems when applied to women. Recently, academics have been adapting theories of male offenders for use on women offenders. This chapter will review some of the theories contemporary theorists use for women in conflict with the law.

Feminist legal theorists are concerned with the treatment of women by the law. Feminist legal theorists provide an analysis and critique of women's position in patriarchal society and of the factors that contribute to their subordination. More explicitly, feminist legal theory explores the role of law in maintaining and perpetuating patriarchy. Feminist jurisprudence includes an exploration and critique of the interaction between law and gender and applies a feminist analysis to concrete areas of the law. Specific theories, more directly related to women in conflict with the law, have been developed by feminist criminologists who specifically examine how women interact with criminal laws as offenders and theorise possible causes for women's crime and offending. Feminist jurisprudence will be useful in the context of this thesis for posing questions on how policies, laws and practices that women interact with may affect their decisions and lead them into come into conflict with the law. Feminist criminology will be useful to examine if women's subordinate status, as a result of those policies, does relate to her offending.

Pursuant to my critical socialist feminist approach, I will focus on the interactions of gender and class and explore their relationship to varying degrees of opportunities and needs for women to engage in crime in Canada.³⁷ Carolyn Brooks explains the socialist feminist stance on women and crime as follows: “Either by choice or circumstance, some women are led to difficult life situations characterized by abuse, poverty and victimisation. For these women, criminal behaviour becomes a survival mechanism and an indirect response to oppressive gender roles.”³⁸

The theories discussed in the following sections all suggest that women’s economic and social position relate to the crimes she commits. I will examine the use of both control and opportunity theories that have been adapted from traditionally male theories for use in a women centred analysis and review these theories for their use in explaining why women come in conflict with the law.

Theories of Women and Crime

Theories of crime and offending behaviour are often separated into two categories. The first, referred to as trait approaches or internal dispositions, is based on biological and psychological explanations. These theories explain criminal behaviour as based on inherent dispositions caused by the law-breaker’s mental or genetic make-up. Some internal disposition theorists argue that fewer females commit crimes because they lack the level of testosterone or ‘male’ hormones found in men. Taking this argument the other way, there are those who masculinize women in conflict with the law and claim they are different from other women because they have increased testosterone levels

³⁷ *supra* note 31 at p 45

³⁸ *ibid* at p 46

which make them more violent or not ‘normal’.³⁹ However, this does not explain why women commit property crimes at such high rates compared to violent crimes or why women prostitute themselves. There are many arguments against these biological explanations for offending behaviours, but perhaps the most persuasive is the fact that there are changes in the behaviours of those who come into conflict with the law. Biological explanations would suggest that as long as the biology remains the same, criminal behaviours would remain the same. But, the crimes people commit are not at all times the same; the types and ways people commit crimes also change.⁴⁰ For instance, more women are now being charged with common assault. The biological explanation that would suggest that these women are “masculinized” does not explain why more women are now being charged than in the past. The increase in numbers would suggest environmental factors, not biology. Biological arguments also do not explain the geographic, temporal or social differences in crime rates. Why are more poor women in prison? Why are more Aboriginal women in prison?

For some, biological arguments make a tenuous link between sex and crime, but there has been little support throughout history for this line of reasoning. Current literature largely rejects biological explanations. For those who see gender as a key factor in criminal behaviour, the differences relate to social not biological differences. I will allow that biology may constitute a predisposing factor to crime, but it is likely that its impact is mitigated or exacerbated by social and environmental conditions. It is these factors that I will focus on in this thesis.

³⁹ J. M. Dabbs Jr., and M.F. Hargrove. (1997). Age, Testosterone, and Behaviour Among Female Prison Inmates. *Psychosomatic Medicine*, 59, 477-480

⁴⁰ *supra* note 8

The second category of theories of crime is socialization approaches or learned behaviours. As applied to female crime, these theories of female crime argue against biological explanations and rely on differences in environment and socialising patterns between men and women, which result in different levels and types of offences being committed. These theories posit that criminal behaviour is learned or a product of one's social environment. The majority of criminal offending theories that have been created and used in the past few decades rely upon the socialization approach.

Recently, feminists have been creating female specific analysis and theories of crime. There is a danger that this line of analysis could be interpreted as support for the biological theories. Gender specific theories can lead to the inference that there are biological explanations of crime. The media often plays a role in the perception that women who come into conflict with the law are 'different' from other women. Women are masculinised and portrayed as abnormally violent. As the principal source of public information on crime and the criminal justice system, the media often gives a false image of women who are in conflict with the law and a false impression of the rates of female offending. Property crimes are largely ignored by the media. While a discussion of media preoccupations is not within the scope of this thesis, it is interesting to note that the public's perception of the female offender through the media has been taken from those few sensationalized female offenders who have entered the criminal justice system in recent decades (for example: Karla Homolka and Lisa Neve).⁴¹ The media's function as gatekeepers with the power to decide what becomes 'news' has resulted in the portrayal of those few women who have committed violent offences as the new female offender. This gives the public the perception that female offenders are tough, cruel and

calculating. This perception of the cruel and calculating female offender is false; women are mostly property offenders who steal minor items or who shoplift. Further, evidence of violent crimes committed by women shows much of it is in retaliation to abuse.⁴²

Historically, there were fewer women charged with criminal offences than men and so less attention was devoted to understanding their behaviour. Females were either not considered at all, or if considered, it was based on the assumption that male theories could simply be transferred to women. Recent decades have seen a debate concerning whether these 'male' theories are equally useful in explaining female crime, or whether this attempted application created a generalisability problem that disclosed that female crime can only be explained by gender-specific theories. To assume that females can simply be added to existing, pre-formed theories of crime which were based on male lawbreakers and those crimes which men are more likely to commit, is for females to be perpetually subsumed by the male subjects on whom the theories were constructed. The particular conditions of women require a specific form of analysis, which cannot be the same as those that are used for men.⁴³

As male criminologists have pointed out, there are opportunities, desires and constraints confronted specifically by contemporary females that need to be examined as possible factors relating to women committing unlawful acts. While some may argue there are many similarities between men and women who come into conflict with the law, there are many differences that support arguments for creating more female specific theories. Traditional theories, for example, do not explain why committing crimes for

⁴¹ *supra* note 1 at p 33

⁴² A. Browne. (1989). *When Battered Women Kill*. New York: MacMillan Free Press

⁴³ V.Greenwood. (1981). The Myths of Female Crime. In A. Morris and L. Gelsthorpe (Eds.), *Women and Crime: (Cropwood Conference Series no 13)*. Cambridge: Inst of Criminology

one's family or one's children plays a much greater role in the offending patterns of women.⁴⁴ Dekeseredy suggests that women steal items, such as groceries, that are useful to them as mothers and homemakers. He further suggests that women defraud the government because they cannot support their children on minimal welfare payments.⁴⁵ As another example of gender differences, studies show that that women need a higher level of provocation before committing an unlawful act. Women require more coaxing and pressure (both external and internal) before committing an offence.⁴⁶

However, the need for a gender specific analysis presents a dilemma for me. I agree that women deserve their own specific theory and analysis and it is problematic to rely on male theories. However, in examining the current theories of women and crime, I have come to the conclusion that there are in fact no new female specific theories of crime. Theories of women who commit crime, while specific to women, have all been adapted from pre-existing theories for men. Even those feminist theorists who have argued against relying on theories that were created to explain male offending behaviour and patterns have themselves re-created previously accepted theories developed for men. And so, I am stuck (and it seems so were other feminists), because it seems impossible to start from scratch with so many pre-existing male theories. By and large the theories remain adapted male theories rather than female specific theories and these adapted male theories need further development to explain women in conflict with the law. There is, however, movement to more women based theories and it could be that the debate and

⁴⁴ K. Daly. (1994). *Gender, Crime and Punishment*. New Haven, CT: Yale University Press; D. Steffensmeier. (1983). An Organizational Perspective on Sex-Segregation in the Underworld: Building a Sociological Theory of Sex Differences in Crime. *Social Forces*, 61,1010-1032; D. Zeitz. (1981). *Women Who Embezzle or Defraud: A Study of Convicted Felons*. New York: Praeger Publishers

⁴⁵ *supra* note 4 at p 27

⁴⁶ D. Steffensmeier and E. Allan. (1996). Gender and Crime: Toward a Gendered Theory of Female Offending. *Annual Review of Sociology*, 22, 459-487 p 475

the dilemma presented as the dichotomy between male and female theories of crime will fade into a more sophisticated understanding of gender as a key factor in analyzing criminal behaviour. The following section will review many of these male theories adapted to try to explain why women come into conflict with the law. These theories include differential association or opportunity theories, and control theories.

Adaptation of Male Theories of Crime for Women

Opportunity Theories

Different academics have adopted different approaches to explaining opportunity theory. Some refer to anomie theory as a form of opportunity theory while others use the label differential association and still others use the term differential opportunity. Each version of the theory adds its own twist but the underlying theme of all of these theories as applied to women, is that women commit fewer major crimes due to a decreased opportunity, based on societal roles and expectations placed upon them. Opportunity theories further infer that a woman's role(s) as caregiver and family consumer gives her an increased opportunity to commit 'female' crimes such as shoplifting and fraud.

The anomie theory posits that structural factors such as poverty and inequality, particularly in the face of societal emphasis on success and profits, underlie most crimes that are committed. Persons are believed to commit crimes because the expectations for themselves and imposed by others do not reflect their realities, resulting in the decision to commit unlawful acts.⁴⁷ However, while women are usually from the lower ranks financially, which would indicate higher crime rates for women, it has been suggested that their offending reflects that there is less relevance or expectations placed on profit

goals for women.⁴⁸ While profit goals are not as high for women, I expect that economic marginality and expectations for self-sufficiency and ability to support oneself may be reasons behind female offending. I am not convinced that women commit unlawful acts due to unfulfilled expectations placed on them unless expectations are understood simply in terms of meeting basic needs.

The marginalization thesis, a flip or perhaps even a dismissal of anomie theory, was developed by Simon and Landis⁴⁹ to suggest that women commit crimes due to a lack of opportunity to make money. According to this theory, women do not have the opportunity (yet) to make stable and secure amounts of money and as a result commit crime out of need. Simon and Landis argue that women's greater participation in the paid labour force in recent decades has not meant that there is more equality between the sexes or an improved economic situation for women. They suggest that women's poor economic status is directly related to the offences they commit.⁵⁰ As evidence, Simon and Landis state that the bulk of female offenders, if employed at all, are concentrated in the pink collar ghetto, where their positions are characterized by poor pay and unrewarding and insecure work. They purport that the large numbers of petty property crime among women are due to a rational response to poverty and economic insecurity.⁵¹ Given the strong link posited between job status and female offending, one is led to ask questions about whether there have been changes in women's job status and women's ability to make secure amounts of money. Are more women obtaining white-collar

⁴⁷ *ibid* at p 474

⁴⁸ *supra* note 4 at p 27

⁴⁹ R. Simon & J. Landis. (1991). *The Crimes Women Commit, the Punishments They Receive*. Lexington, MA: Lexington Books p 9

⁵⁰ *ibid* at p 9

⁵¹ *ibid* at. p 9

positions? If so, is the property crime rate among women dropping due to the increased economic position(s) of these women? These questions and others related to women's current economic situation in Canada will be addressed in chapter three.

Focussing on male crime, in what they deemed the differential opportunity theory, Cloward and Ohlin claim, "those whose social status denies them the opportunities to gain material goods through legitimate means will turn to illegitimate means to acquire desired possessions."⁵² While this analysis might lead to the conclusion that women commit more crime than men because they have fewer opportunities to gain material goods through legitimate means, this is not Cloward and Ohlin's conclusion. They suggest that fewer females commit crimes regardless of social status because they have less opportunity. According to Cloward and Ohlin, while women may belong to a lower social status, they do not have the opportunity, due to familial or other obligations, to commit illegitimate acts. However, it is perhaps inappropriate to focus exclusively on the lack of opportunity to commit illegitimate acts and to dismiss the issue of women's lack of access to needed material goods. The lack of access issue raises the question as to whether or not women are committing theft, fraud and other property related crimes because they cannot acquire necessities through legitimate avenues. How do social status and power prescribe the range and possible choices open or closed to women and how does this affect offending patterns? If, as suggested, women's lack of time to attain wants and needs legitimately, is directly related to her role as a caregiver, the suggestion that there is less female crime because women have less opportunity to commit crime, may also be true. This suggests that women's social status and roles have created a dual subordination, further reducing her ability to attain necessities.

Another theory discussed under opportunity theories is the differential association or opportunity theory (to avoid confusion with Cloward and Ohlin, I will use the term differential association). According to differential association theory, men and women have different opportunities for learning 'criminal' values and skills and therefore, are affected differently by the self-fulfilling prophecies of labelling. Contrary to Cloward and Ohlin, this theory makes the assertion it is not that women have less opportunity to commit crimes but that women do not commit as many crimes as men because they do not have the opportunity to learn *how* to commit crimes. Differential association theory suggests that women avoid the labelling and stigmatization of those associated with criminal activity, which can impede those who come into conflict with the law from finding jobs so as to survive by legitimate means. Those who follow the differential association theory, similar to the differential opportunity theory, believe that lower class people are more likely to commit crime because they are blocked from achieving financial success by legal means.⁵³ I too question how a woman's marginalisation, poverty and economic insecurity relate to her committing crimes but I see the labelling issue as only a minor part of the problem. While avoiding labelling may be one step in avoiding the self-fulfilling prophecies of that label, I fail to see how avoiding labelling actually increases the likelihood that women will be able to survive by legitimate means. Instead I ask the question, if women are given less opportunity to learn how to commit crimes, does that mean that women are committing offences that would be considered less skilled, resulting in lower levels of financial gains. If women avoid stereotypes and labels related to criminal activity, this may affect her ability both to commit crimes and

⁵² R. Cloward and L. Ohlin. (1960). *Delinquency and Opportunity*. New York: Free Press

her ability to go undetected for committing crimes. But, I would assume her ability to go undetected would increase the likelihood that she would commit crime, not the opposite. However, women do not avoid the stereotypes and labels placed upon them for not conforming to the expectations of society and these labels could effect her ability to change and survive by more legitimate means. Women who are poor, single mothers, disabled, lesbian, of a non-dominant race, are all given labels in our society. These labels and stereotypes create a stigma or a devalued identity that can be hurtful and lead to a reduced sense of self. Further, these labels reduce employment and social network opportunities. The labels and resulting perceptions of difference may lead women to resort to criminal behaviour, because of reduced ability to provide for themselves and their families through legitimate means.

Adapting opportunity theory to explain offending patterns of women who commit property offences, Freda Adler suggests that future increases in property crime, in particular, would be a reflection of deteriorating socio-economic conditions for women who did not embrace traditional gender roles.⁵⁴ There would be more crimes committed by those women who failed to adhere to the stereotypical roles prescribed to women, such as homemaker. Adler hypothesised that increasing economic pressure on females, due in part to “family breakdown”⁵⁵, would result in diminished gender gaps in property crime. Further, “departure from the safety of traditional female roles and testing of uncertain alternative roles coincide with the turmoil of adolescence creating criminogenic

⁵³ National Council of Welfare. (2000). *Justice and the Poor*. Ottawa: Minister of Public Works and Government Services

⁵⁴ F. Adler. (1975). *Sisters in Crime: The Rise of the New Female Criminal*. New York: McGraw Hill p 7-8

⁵⁵ *ibid* at p 94

risk factors which are bound to create increases in female deviancy”.⁵⁶ In industrialised nations, the economic marginality of women has been further aggravated by rising rates of divorce and single motherhood, coupled with the ever present labour market segmentation and occupational segregation of women into jobs with low status and income. These issues of women’s current economic situation will be explored in the next chapter. The greater freedoms associated with changing gender roles have not been accompanied by improved economic status for women as predicted because while some women have gained access to the public sphere, most have not gained access to better paid positions or gained the necessary supports in the private sphere.

Other opportunity theorists suggest that the growing economic adversity among large sub-groups of women has increased the pressure to submit to opportunities to commit consumer-based crimes such as shoplifting, cheque fraud, theft of services and welfare fraud.⁵⁷ Given that women are still relegated to the stereotypical role of caretaker and purchaser of family necessities, the questions that this theory raises as to whether this role has an effect on women’s opportunity to commit crimes and if indeed these are the crimes women are committing seem highly pertinent. Have increased supplies of goods, self-service marketing, and credit-based currency, coupled with decreases in government-sponsored social services resulted in more opportunities for the traditionally “female” crimes of theft and fraud? It would also lead to the question of why those women who are not only principally caretakers and consumers but are also the sole providers for their families are not committing more crimes related to this role. Drawing from a socialist perspective, this theory supports the notion that women’s gender role expectations and

⁵⁶ *ibid* at p 95

⁵⁷ *supra* note 46 at p 472

class are intertwined with women's criminal activity. Accordingly, an examination of women in poverty in Canada will be useful in examining how gender and class have led to pressures on women to find alternative means for supporting themselves and their families. This will be undertaken in chapter three.

Control Theories

Control theories argue that weak social bonds account for much of crime. This theory maintains that those males and females who come into conflict with the law come from dysfunctional families, have lower levels of academic achievement, or exhibit other evidence of having weak stakes in conformity. Women from families where there were strong familial relationships and where there was strong conformity to societal values are considered less likely to commit unlawful acts. Some feminists have drawn from this theory to explain discrepancies between male and female offending patterns and to suggest that the fact that females have stronger bonds to their families and are under more scrutiny than their male counterparts can explain the gender gap in crime rates.

Steven Box theorized that, in comparison with their male peers, female adolescents are less powerful within the collective group and that this social difference follows them into adulthood. In adolescence, girls are under more stringent parental supervision than boys, making them less likely to take risks and be in control. Box theorized that it is harder for women to enter into powerful positions in adulthood and they are commonly found in lower "white-blouse" or "pink collar" occupations where they are subordinate to male supervisors. Due to this powerlessness, Box theorizes that women are not in "positions where they are free to execute major crimes; their resources

and opportunities simply do not facilitate it, and the level of surveillance and social control inhibit it. Consequently, the incidence of female crime is low, and when it does occur it is trivial in terms of the persons killed, injured, or deprived.”⁵⁸ In an increasingly technological society, crimes may be becoming more and more sophisticated and expensive to commit. Given Box’s theory, are women less likely to commit crimes that would require extensive finances ahead of time? If Box’s theory is true, do most women commit their crimes in the course of their daily activities? Do women have the opportunity to commit crimes that reflect a ‘major’ planned crime, available only to those who are not under close supervision by their families or the state and also have access to finances?

Similarly, Karlene Faith has suggested that an increase in minor petty thefts (and no corresponding increase in major, organised crime) by women starting in the 1980s, reflected increasing female dependency on the state. This increased dependency resulted from the “feminisation of poverty” and more specifically the effects of decreasing social spending on the working-class.⁵⁹ According to her power control theory, class position influences delinquency by controlling the quality of the family life of the woman. Hatch and Faith found that women in the late 20th century who steal, write bad cheques, or cheat on their welfare claims (the most common offences for which women in North America are convicted), do so not because they have gained independence but because they have not. They conclude that poor women are subjected to infantilising throughout their lives as the state takes the place of the father or husband and becomes the protector, punisher,

⁵⁸ S. Box. (1983). *Power, Crime and Mystification*. New York: Routledge p 188

⁵⁹ *supra* note 6 at p 64; M. Gimenez. (1990). The Dialectics of Waged and Unwaged Work: Waged Work, Domestic Labor, and Household Survival in the United States. In C. Collins and M. E. Gimenez, (Eds.),

and master of the woman's life when the former are not present.⁶⁰ Faith and others have suggested that adolescents who are subject to scrutiny do not have the opportunity to learn criminal behaviour and that, similarly, as adults, women are under the scrutiny of the state and thus still do not have the opportunity to learn criminal behaviour. According to Faith, the reason that the offences women most often commit do not cause serious harm to public safety is because women are under such close scrutiny they do not have the chance or the knowledge to commit serious crimes.

Faith has also suggested that paternalistic families control their daughters through a 'cult of domesticity' which makes opportunities for delinquency less likely. In these hierarchical families, the parents control and keep watch over their daughters more than their sons, giving them less opportunity to commit crimes or to learn the behaviour to do so. In more egalitarian families (those who have less control in the household because the parent(s) are out of the home working), there is less control over the daughter's time and behaviour, so more delinquency occurs. According to Faith, families in which all parents work outside the home have less intense supervision over their children and so there is less discrepancy between male and female adolescent offending patterns. The implication is that the learned delinquent behaviours follow the adolescents into adulthood. This would mean that women from more egalitarian families are more likely to offend than women from paternalistic families.

Other theorists have made similar findings relating parental and societal control to offending patterns. Heidensohn asked why the vast majority of women do not commit

Work Without Wages: Domestic Labour and Self-Employment Under Capitalism (pp25-45). New York: University of New York Press

⁶⁰A. Hatch and K. Faith. (1991). The Female Offender in Canada: A Statistical Profile. *Canadian Journal of Women and the Law*, 3(2), 432-456

crimes and proposed that this is because women are subject to greater social control both within the family and in society in general. She suggested that a number of studies show how females are more closely supervised, more willing to accept conventional values and less likely to be involved in delinquent groups.⁶¹ According to Hagan there is a social class twist to the control theory.⁶² Her view is that crime and delinquency are a function of both class position and family function, or power and control. The link she proposes is that within the home, the parents reproduce their role in the workplace. In paternalistic families, where the mother works in the home and is in charge of the children, daughters are closely monitored and sons are encouraged to take risks. Alternatively, in the egalitarian family there is less difference between the mother's and father's roles and there is less supervision over females. This would include single-parent families, which would have less intense supervision over the daughters. Both children in these families are encouraged to take risks and so would be more likely to experiment in delinquent behaviour. All of these theories suggest that delinquent behaviour in adolescence induces in women a certain acceptability of criminal behaviours and would make them more likely to commit crimes as adults.

Expanding on the theory proposed by Faith on women's socialization and crime, Steffensmeier proposes that we research crime through a gender theory. He argues that taking into account the organisation of gender in our society may help us to better understand gender differences in criminal activity. This includes gender norms, moral development and relational concerns, social control, physical strength and aggression and

⁶¹ F. Heidensohn. (1995). Gender and Crime. In J.R. Lilly, F.T. Cullen, and R.A. Ball (Eds.), *Criminological Theory: Contest and Consequences*, (2d Edition) (pp 997-1309). Thousand Oaks, CA: Sage p 1000

sexuality. Their previous criminal behaviour, the motivation for the offending and the context of the offending may explain a person's access to criminal opportunity.⁶³ While Faith also suggested that women commit less serious crimes related to their marginalized position, Steffensmeier is one of the few criminologists who has developed a theory to specifically explain why women commit mostly property crime(s). He argues that the traditional female role of doing the family shopping and buying necessities for those closest to her is related to the offences of shoplifting, misuse of credit cards, and writing of bad checks. A woman's moral development contributes to her motivation to need to take care of her loved ones, and her role gives her the opportunity. He explains the low level of female involvement in serious (property) crimes, such as theft over \$5000, is consistent with the female role(s) of caregiver and role model. Her role as caregiver would present few opportunities for female participation in serious criminal activity.⁶⁴

Chesney-Lind argues that females may in fact have had less opportunity to commit crime in the past but there has been increased opportunity for females to commit crime in recent decades.⁶⁵ She suggests that female offending patterns reflect not only economic marginalisation but also an increase in opportunities for committing crimes related to this economic marginalization.⁶⁶ As evidence that economic or class position plays a role in women coming into conflict with the law, she states that there has been an increase in female arrests for "economically motivated crimes".⁶⁷ She relies upon the same evidence as Steffensmeier as a final explanation for women's offending patterns.

⁶² J. Hagan, J. Simpson, and A.R. Gillis. (1987). Class in the Household: A Power Control Theory of Gender and Delinquency. *American Journal of Sociology*, 92, 788-816

⁶³ *supra* note 46 at pp 452-453

⁶⁴ *ibid* at pp 452-453

⁶⁵ Chesney-Lind. (1997). *The Female Offender: Girls Women and Crime*. California: Sage Publications

⁶⁶ *ibid* at p 36-38

⁶⁷ *ibid* at p 37

She points out that increases in property crimes by women have come largely in those categories which require little or no criminal 'skill', are related to merchandising and credit and lastly, are easily accessible to women in their roles as consumers for families. It will be useful to examine which offences women in Canada are committing to see if in fact they are often offences that could be committed in the course of the daily activities of a woman and if in fact there has been an increase in these offences. Shoplifting and defrauding the government by working under the table or receiving unclaimed sources of income do not require much skill and may be exercised in response to a familial or personal need for more income and necessities.

Conclusion

Starting with the belief that society is patriarchal, the themes from the theories suggest to me that factors contributing to women's subordinate status in society also contribute to women offending. The theories show there is a strong link between women's lower economic position and her offending and that poverty is a significant factor contributing to women's criminality. As the theories suggest, I would expect to find that large numbers of women respond to their economic adversity by submitting to economic and care-giving pressures and using the opportunities available to them to commit crime that are not major, require little skill level and are consumer-based, such as shoplifting. Further, I would expect her role as caretaker would restrict poor women's availability of time and money to commit major crimes and would instead give her greater opportunity and access to commit crimes based on her consumer role for the family.

Control theories also suggest that women do not commit major crimes, such as break and enter, because they have not learned the criminal behaviour and do not have opportunities for delinquency in adolescence due to surveillance by stay-at-home mothers. This later turns into surveillance by the state, especially for those who receive welfare or employment insurance. And so, I would expect that fluctuations in the numbers of women who receive welfare or EI would lead to fluctuations in crime rates for women. Also, with increased surveillance, I would expect women to commit those offences they have the opportunities to commit such as welfare fraud. With increased dependence on the state I would expect to find increases in the amount of welfare fraud. Further, the number of stay-at-home-mothers may be decreasing with increased economic need by families in Canada, and so with less surveillance girls may be learning more criminal behaviour and delinquent responses. This may lead to the expectation that more women are committing crimes and that the crimes women commit are more serious. There is a potential suggested by the theories that I draw from that more women will be committing violent offences due to this decreased surveillance during her adolescence.

It has been suggested that women's lack of adequate jobs leads to a lack of self-sufficiency and leads women to commit crimes in response. I would expect to find that there would be decreased female crime rates with better employment opportunities for women.

While no one theory adequately explains why women come into conflict with the law, most theories suggest that the social position and circumstances of women in Canada play a significant role in the offending behaviour of women. Based on the above expectations that women's crime is so closely related to her role as caregiver, consumer

and economic position, this next chapter will look more closely at women's economic situation in Canada - her dependence on the state, her experience of poverty, her employment, and her role as a caregiver.

Chapter 4: Women, Poverty and Crime

Introduction

The literature on crime stresses that the role played by discrimination, poverty and unemployment or underemployment, is central in the choice to commit crime.⁶⁸ The theories in the previous section suggested that a woman's class and social position contribute to her offending. To better understand the lives of poor women in Canada and thereby to better understand the conditions that contribute to putting women in conflict with the law, the following chapter discusses the factors relating to female poverty in Canada.

Gender-based inequality and economic vulnerability shape female offending patterns. Feminist crime theories suggest that gender specific factors, such as economic marginality and role entrapment, contribute to women coming into conflict with the law. Opportunity theories suggest that property crime may be in response to adverse economic pressures on women, that have been aggravated by heightened rates of divorce, single motherhood, and female-headed households, coupled with greater responsibility for children.⁶⁹ The following chapter will first discuss how poverty may be a significant factor in crimes committed by women. It will follow with a discussion of poverty in Canada and will finish with my hypothesis on what the statistical data might disclose given the information from the theories and literature.

⁶⁸ M.Chesney-Lind and R.G. Sheldon (1992). *Girls, Delinquency and Juvenile Justice*. Belmont, CA: Brooks/Cole; *supra* note 42; D. J. Steffensmeier. (1980). Sex Differences in Patterns of Adult Crime, 1965-1977: A Review and Assessment. *Social Forces*, 58, 1080-1108

⁶⁹ *supra* note 46 at p 470

Poverty and Women and Crime

While most studies and theories suggest a link between poverty and crime none are conclusive or complete. One study, comparing shoppers to those who shoplift, addressed “Economic Motivators for Shoplifting”.⁷⁰ Unfortunately, the data in this study is not gender specific. The study was conducted by using a self-reporting questionnaire administered to both shoplifters and shoppers at a shopping centre. The testimony in the self-reporting surveys was compared with evidence from shoplifting cases going before the courts. There are problems with the study’s method of data collection in that those deemed shoplifters by the stores could possibly not be an accurate sample of shoplifters. Detectives have the discretion to watch who enters their stores and may choose to concentrate on certain people more than others. Indeed, women who are white and appear middle class, may have received less scrutiny and be more likely to go undetected.⁷¹ Unfortunately this is the hidden figure of crime we have no way of studying. Indeed at all levels of the criminal justice system there may be a tendency to concentrate on the poor. Further, society has lower expectations of poor people and they are watched more closely by the middle and upper classes.

There is a further concern with such surveys, given that they are self-reporting, that those who are shoplifting might say they have done so out of a need as an excuse and to invoke sympathy. On the other hand, because it was a survey and not a response to criminal justice personnel, the respondents may have been more likely to tell the truth. I would argue that even with the possibility of some respondents invoking need as an

⁷⁰ J.A. Ray and K. Briar. (1988). Economic Motivators for Shoplifting. *The Journal of Sociology and Social Welfare*, 15(4), 177-189

excuse and the likelihood that some shoplifters were not caught, the study does give some evidence that indeed the shoplifters were having financial difficulty. According to the questionnaire, shoplifters were more likely to have been laid off the year before (fully 40% claimed unemployment was a stress factor) or to have had trouble finding employment, compared to shoppers. Also, more shoplifters were concerned about having money for basic necessities and repaying debts.⁷² As expected, more shoplifters than shoppers felt that people shoplift because they do not have sufficient funds. When reviewing the court cases, the researchers found that over one in three people charged with shoplifting were there for stealing food, arguably one of the most basic of necessities. These findings are closely related to those opportunity theories in the previous chapter that suggested women's roles as caregivers and consumers, coupled with their lower economic positions, contribute to their offending. This evidence also supports Walter DeKeseredy's argument that women are more likely to steal items such as clothes and groceries that are not high in value but reflect their roles as mothers and homemakers.⁷³

School performance is another poverty-based factor that is connected to women's criminal activity. According to the offender profiles prepared by the National Crime Prevention Council of Canada (NCPC), school performance is the best and most stable predictor for adult involvement in criminal activity.⁷⁴ A 1993 study explored the relationship between criminality and school experience during early and late adolescence.

⁷¹ This distorting factor would operate throughout the criminal process from this first detection stage through charging, the trial and the ultimate adjudication. White middle class women will benefit throughout and none of the data will provide a complete picture.

⁷² *supra* note 70

⁷³ *supra* note 4 at p 27

⁷⁴ National Crime Prevention Council of Canada (1995). *Offender Profiles*. Ottawa: Government of Canada p 3

“Poor school performance leads to weaker bonds to school and increases the probability of misbehaviour in school, which, in turn, provokes disciplinary reactions. This escalates through elementary and secondary school, leading to a higher level of adolescent delinquency and eventually to adult offending”.⁷⁵ Chisholm found that those who are poor are more likely to have poor school performance. Unfortunately, there was no data specifically on women and so I am unable to demonstrate a clear correlation between female children who are poor and do poorly in school and female adult criminal activity. However, studies have shown that those who are poor as children grow up poor. Adults who were poor as children are over-represented among those with low educational achievement, patterns of unemployment, poor health and family violence.⁷⁶ Given the link between poor children and low educational achievement and our knowledge that those with poor school performance are more likely to be adult criminals, the link between poverty and criminal activity becomes clear. It leads to the hypothesis that being poor is a direct link to criminal activity. By keeping women and children poor, we are contributing to crime levels in Canada.⁷⁷

Some studies have shown that there are higher rates of crime in those areas where there are higher rates of poverty.⁷⁸ I found no evidence of efforts to lower the rates of crime and delinquency through concerted efforts to reduce poverty and increase life opportunities. Some organisations dealing with crime emphasise the importance of job creation projects, measures to reduce unemployment and to improve housing, which are

⁷⁵ *ibid*

⁷⁶ P. Chisholm (1997). Growing up Poor: Child Poverty in Canada. *Macleans*, 10(8) p 42

⁷⁷ M. Morris. (2000). *Women and Poverty: A Fact Sheet*. Ottawa: Canadian Research Institute For The Advancement of Women p 2

⁷⁸ D. Petrovic (2000). Poverty and Reaction to Crime: Freedom without Responsibility. *European Journal of Crime, Criminal Law and Criminal Justice*, 8(4) p 380

all seen as contributory factors to the growth of crime.⁷⁹ Such projects are an attempt to respond to the marginalisation thesis discussed in chapter two that proposed that women who did not have secure and stable employment are more likely to resort to criminal activity as a rational response to their conditions. However, some of the existing projects that suggest a link between poverty and crime propose projects which force single-mothers to take job training programs and jobs while providing no assistance with childcare or other responsibilities the woman may have. Women who are being forced by “crime prevention” programs into jobs with no childcare may be coming into conflict with the law as a result. Those women who cannot afford childcare suffer the result of gender-neutral assumptions by those who have created programs that try to transform single mothers into paid workers while ignoring their childcare responsibilities.

Women in Poverty

There are many factors that contribute to a woman living in poverty in Canada and many women and their children have been living in poverty in this country for the past century. While feminists and others in the women’s movement have and continue to, effect many positive changes for women in Canada and across the world, their hard work has not produced the necessary changes to transform the economic circumstances of women in Canada and across the world.

Canada does not have an official definition of poverty. Most academics turn to the statistics and definitions compiled by Statistics Canada when researching poverty in Canada. To study poverty, Statistics Canada uses low income cut off’s (LICO’s), which are dollar amounts that a person or a family must earn above, based on the population of

⁷⁹*supra* note 74 at p 2

the city in which they live, to live above the set poverty line. Some groups feel that poverty levels in Canada are inflated because they are not measured by the same standards as developing countries, which have much higher poverty levels.⁸⁰ However, I would argue that poverty is a somewhat relative term and that those in Canada who live in poverty have different experiences of poverty than those in developing countries. Those in Canada who live in poverty are surrounded by wealth and goods, but excluded from them. We live in a country where there are abundant goods and services that can be accessed if one has the money to do so. Those who do not have money, face these consumer goods daily, including food, clothing and other basic necessities, knowing they do not have access to them. The glaring disparity between poor and wealthy people in this country, in a context of abundance, is a defining feature of Canadian poverty.

Also, the available statistics underestimate the levels of poverty in Canada because they fail to include data from First Nations reserves, homes for the aged, prisons, the Yukon, North West Territories and Nunavut, arguably those areas in Canada which have higher proportions of people living in destitute conditions.⁸¹ Excluding these groups skews the levels of poverty such that we do not get an accurate picture of poverty from Statistics Canada. But, even relying on their underestimates, the numbers are shockingly high. Five point one million people or 17.2 percent of men, women and children were said to be poor in 1997 by Statistics Canada.⁸² In a country with such prosperity, these numbers are unacceptable.

⁸⁰*supra* note 77 at p 1

⁸¹*ibid* at p 1

⁸² National Council of Welfare (1999). *Poverty Profile 1997*. Ottawa: Minister of Public Works and Government Services p 2

Most measures of poverty choose a specific numerical cut-off point or standard that separates those who are poor from those who are not. While I do agree this is useful, my definition of poverty would include measuring a wide array of characteristics above and beyond annual income, such as access to recreational facilities, access to cultural activities, quality of housing and so on, which would give a fuller picture of what it is like to live in poverty. All definitions need to include more than just the amount of money one has. The definition needs to also include the feelings and experiences of those in a situation where they are unable to make healthy decisions for themselves and their families due to their economic circumstances. Numbers alone do not give us insight into the personal experiences of being poor in our current welfare state. For a definition of poverty that could measure closer to the truth of the experience, it would be important to have more than just numbers.

Low-income women are not a homogeneous social group. While I use the term poor women to talk of those women who come into contact with the law who also have low income levels, I do not wish to mean to imply a generalization that they are all the same. Women who come into contact with the law as well as women who live in poverty have had different life experiences, and they have different identities related to their sexual orientation, their family and marital backgrounds, their economic positions, their histories of abuse and their racial or cultural backgrounds. There are many questions about poverty that can be raised. How do gender, class, race, disability produce conditions of poverty? The theories in the previous chapter did not address race or disability issues but opportunity and control theories would suggest that women's poverty would be exacerbated by women's racialization and disability giving her even less

opportunity to commit major crimes. A disability would put a woman under further scrutiny by the state giving her less control to commit major crimes and increase the likelihood she would live in poverty and commit those limited crimes that she has the opportunity to commit such as shoplifting and fraud. Women who are disabled and racialised are also more likely to have less secure jobs. The marginalization theory would suggest that this would increase the likelihood of being poor and committing crimes.

A disproportionate number of Aboriginal women are in conflict with the law. These high rates are related to their bleak socio-economic profiles in Canada.⁸³ There is a lack of information on how many of the women who come into conflict with the law live on reserves and how many represent the increasing numbers of Aboriginal peoples who are moving to urban centres to get jobs. With their lack of education and living in unfamiliar surroundings, is it possible that Aboriginal women in urban centres have an increased visibility and are more likely to be charged by police? Control theories would suggest that Aboriginal peoples on reserve are under closer state scrutiny and therefore commit less crimes in this location. More evidence needs to be gathered to answer this question. Unfortunately, while at least some questions can be raised about Aboriginal women who come in conflict with the law based on the data, there is no evidence gathered on women of other races who come into conflict with the law in Canada. Unfortunately, there is also a lack of evidence on the sexuality, the disability status (both psychological and physical), and the economic levels of women who are in conflict with the law. We do not know how these factors relate to women's offending in Canada.

However, we do know that female sex, motherhood, and single status are significant determinants of poverty.⁸⁴ Being a person of colour, an Aboriginal person, or a person with a disability further increases the risk of poverty.⁸⁵ Women generally are economically unequal to men: racialization and disability compound and deepen that inequality. Marika Morris provides eight main reasons for the disproportionate numbers of poor women.⁸⁶ First, women are socially assigned to the marginalized and unpaid role of caregiver and nurturer for children, men and the elderly. Morris's second reason for women's skewed poverty rates is that, in the paid labour force women perform the majority of work in the caring occupations such as nursing. Third, 'women's' work is generally lower paid than 'men's' work. Fourth, the lack of affordable and safe childcare decreases women's availability to enter the paid workforce. Fifth, the lack of adequate recognition and support for childcare and parenting responsibilities constrains women's participation in the paid labour force and doubles the burden they carry. Sixth, more women are poor due to the fact that women are more likely than men to have jobs with no job security, union protection, or benefits. Seventh, there is an entrenched devaluation of the labour of women of colour, Aboriginal women and women with disabilities. Lastly, there are economic penalties which women incur when they are not attached to men and/or have children alone.⁸⁷

The above reasons given by Morris for the disproportionate numbers of women who live in poverty also relate to the crime theories discussed in the previous chapter. A

⁸³ H. Johnson and K. Rogers. (1993). A Statistical Overview of Women and Crime in Canada. In E. Adelberg and C. Currie (Eds.) *In Conflict with the Law: Women and the Canadian Justice System* (pp 95-116). Vancouver: Press Gang Publishers p 110

⁸⁴ *supra* note 82 at p 1

⁸⁵ *ibid* at p 1

⁸⁶ *supra* note 77 at p 1

woman's reduced finances due to her role as an unpaid caregiver relates to the differential opportunity theorists who argued that women's role and obligations as caregivers give her less opportunities to commit illegitimate acts but increase the likelihood she will commit consumer based property crimes. Further, the reasons above related to women's lower pay and lower job security relate to the control theory proposed by Box who suggested that as a less powerful social group, women do not have the financial resources or opportunities to enable them to commit major crimes.

The third to the seventh reasons for women's increased likelihood of being poor are significantly related to the marginalisation theory of crime. As the marginalisation theory suggested, women's lower pay results in a criminal response by women in order to obtain necessities for their families. Those women who are both poor and have children without a male presence, are often stigmatized and scrutinized in our society, leaving little room for them to feel empowered and change their life circumstances.

Marika Morris also suggested that women's care giving role and the inadequate childcare provided by the state relate to her poverty due to a decreased ability to enter the paid workforce. Catharine MacKinnon's theory of dominance suggested that there are gender specific discriminations inherent in the role the state plays in choosing to support specific programs and the failure to support others.⁸⁸ Would supporting those programs that would help women fight against their subordinate status, such as childcare and equal pay for equal work, help reduce her probability of offending? Downsizing of public services under the rubric of encouraging self-reliance and deficit reduction increases not only the scrutiny but also the dependence of others upon women as care-takers and

⁸⁷ S. Day and G. Brodsky. (1998). *Women and the Equity Deficit: The Impact of Restructuring Canada's Social Programs*. Ottawa: Status of Women Canada p 7

decreases their own opportunities for independence.⁸⁹ The marginalization theory suggests that women's inability to obtain secure and stable employment leads her to commit crime.

In recent decades, the welfare state has been eroded through a reduction in spending and changes to policies and legislation. The definition of 'welfare state' adopted for this thesis "encompasses much more than the social services and income support programs designed for those 'in need'... to include those policies, programs and legislation that redistribute status, rights and life opportunities."⁹⁰ Evans and Werkle point out that it is policies, programs and legislation that can either expand or make more difficult the opportunities for women to enter paid work, that can improve or harshen the way in which caring for others is treated and that can regulate marriage and family to address or ignore women's roles. Women's life opportunities are significantly influenced by state intervention, especially for those women who live in poverty and must rely on the state's help more fully. As criminologists Hatch and Faith argue, women, especially those who rely heavily on state funded programs, are under the control of the state as their protector, punisher and master of their life. Does the increased state control of women who live in poverty mean that they are under too strict scrutiny to be able to commit major crimes? Indeed do poor women tend to commit only minor crimes in order to stay relatively undetected by the state's gaze?

In the last two decades, Canada, like many other industrialised nations, has gone through some radical transformations that have influenced its occupational structure,

⁸⁸ *supra* note 33

⁸⁹ P. M. Evans and G. R. Werkle. (1997). The Shifting Terrain of Women's Welfare: Theory, Discourse and Activism. In P. Evans and G. Werkle (Eds.), *Women and the Canadian Welfare State: Challenges and Change* (pp 3-27). Toronto: University of Toronto Press p 7

income distribution and regional (in)equality. To gain more power in the global arena, Canada has reduced spending, most notably on social programs and public services.⁹¹ Women make up the majority of those who use these programs and the increased scarcity of these programs contributes to maintaining women's unequal and subordinate position in society. A feminist analysis would suggest that because these programs assist women in their private lives, they are not seen to have the same significance as those more visible programs operating in the public arena and are therefore easier to eliminate. The lives of many of those women who come into conflict with the law have been influenced and determined by the cuts to those services. Childcare and other services are required by women in order to enter educational programs or the paid workforce but reductions in social spending mean that governments do not have the funds to institute such programs. The marginalization theory suggested that women commit crimes related to their inability to secure stable employment. Part of women's inability to secure stable employment is her role as a caregiver and this role combined with her role as consumer, gives her both the need and opportunity to steal basic necessities. The creation of subsidised childcare programs would likely reduce offending by women in Canada. The lack of these programs may be a contributor to women's offending.

Many Canadians are living without stable employment, without literacy or adequate education and without affordable housing. The theories of women and crime indicate that it is often these women who come into conflict with the law entering our criminal justice systems on a daily basis. Reducing spending on social programs may actually be increasing costs in other areas. Arguments have been made that 'saving'

⁹⁰ *ibid* at p 3

⁹¹ *supra* note 7 at p 104

money by not spending on social programs is decreasing the deficit and adding other benefits to our country but it may be that overall these “savings” will end up costing us more, particularly through the criminal justice system.

While women in Canada are entering the paid workforce in larger numbers, the majority remain marginalized in low paying occupations and those women who are in similar jobs to men are still making less money than the men.⁹² The marginalisation thesis from the previous chapter supports the notion that women commit crimes based on their inability to make stable and secure incomes. The jobs most women are employed in are unstable, unrewarding and have no benefits for the women or their families and so women commit property crimes to respond to their impoverished conditions and to support their families.⁹³

In Canada, women are the most at risk of and make up the majority of those who live in poverty; one in five (about 2.8 million) Canadian women lives in poverty.⁹⁴ As stated earlier, there are many risk factors that contribute to these numbers. Women’s inability to secure a stable source of income has been recognized as a predictor of crime; it is also a major reason why women are more susceptible to poverty. Women’s poverty is also related to the large wage gap between men and women. In Canada, women make only 73 percent of what men make for full-year, full-time work.⁹⁵ There are no occupations in Canada where women make more than men. Another factor contributing to women’s lower income levels, is the fact that women perform a lot of low waged and

⁹² *supra* note 87 at p 9

⁹³ R. Simon, & J. Landis. (1991). *The Crimes Women Commit, the Punishments They Receive*. Lexington, MA: Lexington Books p 2

⁹⁴ *ibid* at p 1

⁹⁵ *supra* note 77 at p 3

unpaid work. In Canada, 67 percent of those who earn minimum wage are women.⁹⁶ Twenty-one percent of women worked part-time in 1999 because they were expected to fill unpaid care-giving roles such as looking after their families and households. At that same time virtually no men worked part-time for the same reason.⁹⁷ According to Statistics Canada, women perform between \$234 and \$374 billion worth of unpaid work a year.⁹⁸ Coinciding with these care-taking expectations, the strongest determinant of the wage gap between men and women has been shown to be the presence of children, above education, age or marital status.⁹⁹ The private and personal lives of these women are not recognised by the state, making the personal political, as feminists have long asserted. Caring for others is not only unpaid but women take part-time and low paying jobs in order to have the flexibility to take care of their families. Thus, women's gender and class are linked due to expectations that have created an unfair dualism and a subordinate status for women that is accepted by society. Current data on women who come into conflict with the law cannot tell us how many women are also mothers but we do know that the majority of women who enter federal institutions are mothers.¹⁰⁰ Could her role as a caregiver also have been combined with a failure to have an adequate source of income? Could the two have contributed to the opportunity and perceived need to commit a crime?

Changes that have been made to unemployment insurance in the past decade have led to an increase in the number of people on welfare, as well as the number of those

⁹⁶ *ibid* at p 2

⁹⁷ Statistics Canada. (2000). *Women in Canada*. Ottawa: Canadian Criminal Justice Statistics p 4

⁹⁸ *ibid*

⁹⁹ *supra* note 74 at p 4

¹⁰⁰ C.A. Dell, R.L. Sinclair and R. Boe. (2001). *Canadian Federally Incarcerated Adult Women Profiles: Trends from 1981 to 1998*. Research Branch: Correctional Service of Canada

without financial assistance at all.¹⁰¹ Since the time of its development in the 1940s, the UI system has been changed many times. The latest change occurred in 1996, changing Unemployment Insurance (UI) to Employment Insurance (EI) and increasing the qualifying period while decreasing the duration a person can receive benefits.¹⁰² These changes have had a devastating effect on women. Now only 30% of unemployed women are covered by EI whereas a decade ago, 70% of unemployed women were covered by UI.¹⁰³ While the government has blamed these cutbacks on a lack of money in the EI system and a need to reduce the country's deficit, the surplus on the EI account for 1999 was 7 billion.¹⁰⁴ With the decrease in the amount of time one is allowed to be on employment insurance, many are forced to resort to welfare. The panic created recently by our governments and media over the increasing numbers going on welfare and the related hype over 'welfare fraud' may be explained in part by the changes in the way EI is given to Canada's workers.¹⁰⁵

Unfortunately, there have also been changes to the assistance plans in Canada over the past decade and women's lower social and economic position in Canada may be related to reduced social assistance programs. The Canadian Assistance Plan (CAP) was created in 1966 and instituted national guidelines for those receiving welfare benefits in Canada. The assistance provided was to be solely based on need (inadequate financial resources) and so the provinces could not refuse someone because they deemed them able to work. All applicants had the right to appeal a decision made about one's eligibility for welfare. While based on need and not ability, those seeking assistance could be asked for

¹⁰¹ *supra* note 7 at p 101

¹⁰² *ibid* at p 102

¹⁰³ *supra* note 77 at p 5

¹⁰⁴ *ibid*

proof that they could not find a job by the provinces and territories and many had programs they expected welfare recipients to participate in.¹⁰⁶

In 1996, the CAP was changed to the Canadian Health and Social Transfer (CHST) and all spending on health, education, welfare benefits and social services was combined into a single, reduced transfer that the provinces can distribute on their own accord.¹⁰⁷ The provinces are now receiving less money and national guidelines have been eliminated. There is no guarantee that those in need will receive the funds based solely on inadequate financial resources and there is no longer a national standard of living to be upheld.¹⁰⁸ Each province is free to institute any programs or criteria that it wants. In this new environment of federal deregulation, shelters and other services for those fleeing domestic violence, child-care subsidies, and homemaker services for the elderly and people with disabilities are vulnerable.¹⁰⁹ Further, by eliminating national guidelines, the federal government has abandoned responsibility for poverty in Canada.

The elimination of national guidelines permits the status quo of women's inequality to continue. The reasons given for the new social transfers suggest that there was an inadequate analysis of costs and benefits by the federal government. The reasons given for less spending focus only on the costs and savings associated with social spending without taking account of the costs of not engaging in adequate social spending. Spending on social programs and social assistance is not just an expense but a necessary

¹⁰⁵ S. Torjman. (1996). *Workfare: A Poor Law*. Ottawa: Caledon Institute of Social Policy p 8

¹⁰⁶ National Council of Welfare. (1994). *Social Security Background #4: Working for Welfare*. Ottawa: Government of Canada

¹⁰⁷ *supra* note 88 at p 3

¹⁰⁸ *ibid* at p 18

¹⁰⁹ *supra* note 87 at p 6

social investment. Further, this decision not to spend is not gender neutral because it affects women disproportionately more than men.¹¹⁰

The federal government's reduced commitment to elimination of poverty in our country has resulted in an increasing placement of blame upon those who seek help from the Canadian governments.¹¹¹ Those who appear able bodied are increasingly criminalized and seen as abusing the taxpayer's money, regardless of their care-taking responsibilities. Welfare assistance in Canada has roots in the belief that the 'employable' poor are at fault or are responsible for their situation. This involves a lot of scrutiny for single mothers to ensure they are not 'abusing the system'.¹¹² They are expected to adhere to the norms and expectations of society as to what a good mother is; failure to do so jeopardizes their access to financial assistance. Further, those who receive welfare assistance are forced to deal with policies that are aimed at ending welfare dependency instead of addressing structural causes of poverty. Women are forced into programs that make them the working poor and not persons who have left poverty behind them. These policies of assistance in Canada are focussed on reducing payments and instituting programs seen to modify "irresponsible" behaviours.¹¹³ Those who are seen as "legitimately" dependent on the state such as children, students, and the elderly are less subject to blame and coercion; it is those who have been labelled as employable who are seen as offenders and blamed for choosing to be on welfare.¹¹⁴

¹¹⁰ *supra* note 88 at p 10

¹¹¹ See Supreme Court of Canada decision in *Gosselin v. Quebec (Attorney General)*, [2002] 27418 S.C.R.

¹¹² M. Luxton and E. Reiter. (1997). Double, Double, Toil and Trouble: Canadian Women's Experience of Work and Family. In P. Evans and G. Werkle (Eds.), *Remaking the Welfare State: Women and the Canadian Experience* (pp 197-221). Toronto: University of Toronto Press p 214

¹¹³ N. Rose. (1995). *Workfare or Fair Work: Women Welfare and Government Work Program*. New Jersey: Rutgers University Press pp 177-8

¹¹⁴ *ibid* at p 179

There are many problems associated with the policies to help women off welfare as they can lead to blaming the poor for the situations they are in. These policies are often referred to as workfare, with the assertion that they will aid in changing the lives of poor people by giving them the skills to maintain a job.¹¹⁵ It is alleged that these people will then be less likely to 'cheat' the system. These projects do not work. We need to aid the poor to help themselves and their families into positions where they are economically stable. Children whose parents are poor and on welfare can often learn how to manipulate social assistance systems to ensure their basic needs are met. We will not break this cycle simply by moving them off welfare and into low paying jobs that maintain their poverty levels because, as the marginalisation theory proposes, the women will still resort to crime to fulfill their basic wants and needs.

Poor people in Canada have been increasingly stereotyped as undeserving and blamed for their situations. This stereotyping and blame make it easier for society to see their activities as criminal. By placing blame on those who live in poverty, governments are deflecting any focus away from themselves for reneging on their role in ensuring a decent standard of living for their citizens and failing to address the systemic reasons for poverty. This further distances government from any possible blame with respect to the criminal activities of those who come into conflict with the law for reasons related to their impoverished circumstances. This is not to say that people are not responsible for their own actions and decisions but there is a tendency for discussions about poverty and social programs to become divorced from a critique of underlying unequal power relations and of social institutions.¹¹⁶ Government and legislation have not caused

¹¹⁵ *ibid* at p 177

¹¹⁶ *supra* note 87 at p 5

individuals to be at the top or the bottom of the economic hierarchy, but they have provided a legal structure that defines some of the rungs in that income and wealth ladder and that determined the distance between the rungs.

The connections between women's poverty and the crimes women commit is made up of many strands. It is related to women's marginalization, their employment status, pay inequities, women's care-taking roles and the government's failure to rectify these. It has been claimed that women who live their lives in poverty often feel helpless and isolated from social structures and actors in society.¹¹⁷ Poverty threatens the physical and psychological health of its victims. Women who are unable to meet their own basic needs as well as their family's, make choices that nobody should have to make; mothers give their children pop instead of milk because it is cheaper or they skip meals because it is too costly to eat. The offences committed by women tend to be related to obtaining needed goods that they are unable to obtain otherwise.

The literature on female offenders characterizes them as being socially and economically disadvantaged. While this is also true for male offenders, women's lives before and after committing offences are different from men's and the offences that women commit tend to be different from those that men commit.¹¹⁸ Social status can have an indirect effect by amplifying life problems leading to crime. While it has not been established whether unemployment leads to crime or vice versa,¹¹⁹ it is most likely a cycle that people end up in and have a hard time getting out of because we are not helping them gain the necessary skills. The link between unemployment and crime may

¹¹⁷ M. Hurtig. (1999). *Pay the Rent or Feed the Kids: The Tragedy and Disgrace of Poverty in Canada*. Toronto: McClelland & Stewart p 240

¹¹⁸ *supra* note 1 at pp 189-190

¹¹⁹ *supra* note 53 at p 7

well be poverty. Economic inequality has profound effects on women's enjoyment of their basic rights. The economic marginalization of women has the effect of increasing their vulnerability to violence, sexual exploitation, and coercion. These in turn are linked to crime. Poverty deprives women of equal status and decision-making authority in domestic relationships and impairs their ability to care for their children. And finally, it has the effect of limiting women's access to justice, to expression of their ideas, and to participation in political life.¹²⁰ Economic policies in Canada violate women's right to equality because they permit and foster poverty among women, and they perpetuate, rather than repair, the status quo of women's economic inequality.¹²¹

This chapter explored women's poverty in Canada and suggested that her criminal behaviour may be related to and mirror her subordinate economic position. In light of this economic connection I would expect to find that women are committing mostly shoplifting and low level crimes. I would also expect to find an increase in property crimes due to the decreased amounts of money going into social assistance programs and the more stringent policies for those who apply. I would further expect the statistics to show that women are not committing violent crimes due to the surveillance placed upon them by the state.

¹²⁰ *ibid* at p 94

¹²¹ *ibid* at p 111

Chapter 5: Data on Women In Conflict With the Law

Compiled from charge reports submitted by police across Canada, the Uniform Crime Reporting Survey is the main source of data I use for this section of my thesis. Published annually by Statistics Canada, the UCR is the only national statistical crime data in Canada. Acknowledging the problems associated with only examining charge statistics, it would be beneficial to have statistics on all women charged and convicted and sentenced in the Canadian criminal justice system. Unfortunately, Statistics Canada abandoned releasing annual data on Adult Criminal Courts in the 1980s, and now only releases sporadic reports. Drawing on the most recent information from the Adult Criminal Court Survey, I will discuss the sentences women in Canada are receiving for various crimes.

There are many problems associated with the use of statistics.¹²² At every stage of the criminal justice system, inconsistent reporting and data collection create problems for obtaining an accurate description of female offenders. Comparisons among different criminal justice statistics are often not possible due to differences in definition, reporting, data collection and methods of statistical analysis. Despite being compiled by Statistics Canada, the data collection systems for the UCR and the ACCS operate separately and utilize different time frames that make it impossible to follow the same offenders through the system. The UCR includes all those recorded charges by police in a given calendar year, whereas the ACCS records conviction rates on a fiscal year basis, leaving one

¹²² J. Best. (2001). *Damn Lies and Statistics: Untangling Numbers from the Media, Politicians and Activists*. California: University of California Press; K. Haggerty. (2001). *Making Crime Count*. Toronto: University of Toronto Press

unable to make direct comparisons. It is important to note that the UCR only provides data on charges laid. Of those who are charged, while some would go on to be convicted of that offence, others would be found guilty of a lesser offence and still others would be acquitted.

Statistics are also a reflection of what happens only at the specific levels of decision making throughout the criminal justice system. For example, while often considered the first stage of the criminal justice system, the official police-recorded charge statistics in the UCR represent the end of a very long decision making process. This point was raised previously in relation to the discretion of store security personnel to watch and charge shoplifters. There is a hidden figure of crime. Not all crimes are detected by police and not all those who are caught are then charged. Police have a lot of discretion and may draw from societal stereotypes and expectations to watch and charge those who do not conform. Those who do not conform, then, would be more likely to come in conflict with the law. The entire criminal justice process is open to discretion. The criminal act must be detected by someone, the decision must be made to report the crime to the police and the decision must be made by the police whether or not to charge the offender. Charges may be a reflection of plea-bargaining that results in lesser charges being dropped as consideration for a guilty plea. Alternatively, offences may be over-charged in the hope of bargaining for a guilty plea to a lesser charge. This hidden figure of crime may be even more prominent for women if, as some theorists argue, they are more capable of deceit, more effective at concealing their crimes and if the victim, especially when male, is too embarrassed to report the crime. Further, some theories posit that police are reluctant to arrest women while others argue that police treat women

much more harshly, particularly if they deviate from gender stereotypes. Women are also shunted away from the criminal justice system towards other 'systems' such as medical and psychiatric hospitals.

As the only national source of crime data, the UCR cannot gauge this hidden figure. Still the UCR provides the most comprehensive information available on the kinds of crimes committed by women in Canada. While statistics do not provide a complete picture of offenders and do not offer insight into the effect that social, political or economic circumstances could have had on the commission of an unlawful act, statistics on charging and conviction rates do provide a snapshot of the offences that women commit. This information can help us develop other lines of inquiry and determine what is needed in terms of additional data.

When using statistics, it is important to look at both the actual numbers, as well as the changes in percentages and rates. Changes in percentage can be informative for short periods but are a problematic measure over long periods because shifts in population are not taken into account. Given the small number of women who come into conflict with the law, percentage increases can create an inflated impression of the trends in female crime. Thus, it is also important to consider the changes as a rate, usually adjusted to reflect per 100,000 women total. Unfortunately, Statistics Canada only keeps population totals in five year periods and since the age for a woman to be charged with an adult offence is 18, a comparison between population rates and charge rates cannot be completed accurately.

Charge data does tell us the number of women who have become involved in the criminal justice system in the years examined. First gathered in 1962, the UCR survey

can be used to highlight changes in the number of women involved in the criminal justice system over time. UCR data dating from 1962 to 1996 indicates that there has been a large increase in the overall number of women involved in the criminal justice system. In 1962 the total number of women in Canada charged with a criminal offence was 27,530 and in 1996 that number was 72,459. Data for 2001, indicates that the number of women charged was 70,732. While this data does not take into account population changes, it does show that the numbers of women whom the police are charging with criminal offences, excluding traffic offences, has risen significantly within this thirty-four year time period. There has been a slight decrease in the past five years; however, the numbers have not dropped to anywhere near the previous rates. The rest of this chapter will examine a breakdown of statistics from the UCR on the offences women are charged with, then it will examine sentence and conviction data from the ACCS and finish with my concluding thoughts on women in conflict with the law.

Uniform Crime Reporting Survey

A brief overview of charge statistics shows that, excluding traffic offences, the number of women charged with *Criminal Code* offences has decreased slightly over the past decade. In 1991, 83,773 women were charged with *Criminal Code* offences; in 1996, 72,459 were charged; and in 2001, this number further decreased to 70,732. The charge statistics are broken down into three main categories in the UCR. The first, violent crimes, are "person offences", which include homicide, attempted murder, sexual and non-sexual assault, abduction, and robbery. The second category is morality or

public order offences which include drug trafficking, possession, and prostitution. The third category of offences in the UCR is property offences which include theft and fraud.

Violent Crime

Women, of course, do commit violent crimes but the majority of these are minor or less serious forms of violence. The number of women charged with violent crimes has been increasing over the past number of years but not in alarming numbers. 12, 196 were charged in 1991 compared to 13, 978 in 1996 and 18, 239 in 2001, showing an overall increase of 6,043 women charged. Where these numbers can look more alarming is if you look at them as a percentage increase in the ten year period of 66.9 percent.

Table 1

As shown in table one, within the violent offence category, adult women are underrepresented in all categories except assault, which is the second highest category of charges against women, following property offences. There are three levels of assault, the first is common assault and is considered the least serious form of assault. The second level of assault charges are assault with a weapon or causing bodily harm and the final, and most serious category, is aggravated assault. With respect to the most serious charge under the assault category, aggravated or level three assault, only 284, 272 and

347 women, in the years 1991, 1996 and 2001 respectively, were charged. So, in 2001, only 1.9 percent of all those women charged with assault were charged with aggravated assault. A very small proportion of women committed the most serious category under violent crime offences – homicide. Forty-seven women were charged in 1991 with an increase in 1996 to 58 and a slight decrease in 2001 to 56. For the second level of assault, assault with a weapon or causing bodily harm, 2,357 women were charged in 1991; 2,851 in 1996 and an increase to 4,070 in 2001. Within the assault category, women are only highly represented in the sub-category common or level one assault, which represents the least serious form of assault. In 1991 this number was 7,999 rising to 9,448 in 1996 and five years later, in 2001, this number was 12,157, an increase of 65.8 percent, showing that in 2001, of those females charged with assault 66.6 percent were charged with the most minor form.

While charging data for the last decade has shown an increase in women being charged for the least serious form of assault, the charge numbers for the most serious have remained relatively stable. The anomalous statistic that undermines my argument that women generally do not commit serious violent crimes, is the figure showing a significant increase in 2001 for women charged with level two assaults. Because not all years in the ten year period are being examined, we do not know if this apparent dramatic increase in 2001 was actually a steady increase over the preceding five years or is in fact an anomaly in the ten year period. It remains to be seen whether women will continue at this higher rate of level two assaults or even if this escalation in violence will carry over into increased numbers of level three assault charges against women in the future. Even

with the large percentage increase, the actual numbers of women being charged with level two assault is still quite low.

As was stated earlier in this thesis, academics and the media tend to focus on the extreme forms of violence committed by women. Crimes of murder and extreme violence by women are the crimes which have most exercised the media's attention and yet the statistics over the ten years examined show that these are the crimes that women are the least likely to commit.¹²³ Discussions of violent acts committed by women often include discussions of abuse against women and bring some attention to violence against women in Canada. This is because much of the extreme violence by women has been in response to violent acts against them.¹²⁴ However, the focus on the female violent offender obscures the fact it is female victimisation that has increased over the past decade and not female violent crime and virtually all of the women who commit acts of extreme violence have histories of abuse.¹²⁵ The public is left with the impression that women who come into conflict with the law are committing serious violent offences. In fact, the statistical evidence shows that the violent offences with which women who come into conflict with the law are being charged are actually the least serious form under this heading. Most women who do commit "violent" crimes commit relatively minor acts of violence, that is they often commit common assault, which does not cause serious bodily harm.

However, the statistics do show that women are committing more serious violent offences, particularly level two assaults but also level one assaults. As referred to earlier, control theories suggest that the more that adolescent females are under the scrutiny of

¹²³ D. Howitt. (1998). *Crime the Media and the Law*. England: John Weiley and Sons p 136

¹²⁴ A. Browne. (1989). *When Battered Women Kill*. New York: MacMillan Free Press

their parents, the less chance they have to learn criminal behaviour. An increase in level two and common assault charges against women might then lead to the conclusion that adolescent females are now under less parental supervision than in the past, giving them increased opportunities to learn criminal behaviour. The increases in both level two and common assault may reflect that there are fewer stay at home mothers due to increased need for dual income families and the increase in the number of single mothers in Canada. With less supervision, daughters in these families may be both learning and resorting to more violent behaviour. This adolescent delinquency may be following women into adulthood such that they are now resorting to violent behaviour in increasing numbers. Other possible explanations for this increase may be related to the earlier discussion of women in poverty and the evidence that poor women are being put under increasing scrutiny and restrictions by the state. Perhaps with this increased scrutiny women are less able to commit property crimes to obtain basic necessities and are taking out their frustrations through anger and violence. Research into the details of the level two and one assaults might disclose or refute possible connection to women's poor economic condition.

While feminist theorising and action have been committed to ending violence, feminist analyses would applaud strength and independence in women and would encourage women to fight against their oppression. Women are being pushed to become stronger and improve their survival mechanisms in order to fight against their victimisation. Could it be that these increases in charges against women for common and level two assault are related to women who responded to acts that were first committed against them? Images of women as powerless and oppressed victims, as evidenced by

¹²⁵ *supra* note 99

control theories and the marginalisation thesis, may be resulting in increased awareness by women. While not necessarily the best decision, women may be acting out against their subordination and abuse through violent actions. I am not suggesting this response is positive but the increase in common and level two assault charges against women does suggest that we need to listen to the calls to end violence and abuse against women as it may be producing more violence in retaliation.

The notion that education may be a factor in women's more serious offending is supported by the data on federally sentenced women that states that those women often have very low educational achievement.¹²⁶ Aboriginal women are disproportionately those who are arrested for committing violent crimes.¹²⁷ What has also been found about Aboriginal women is that they often have very low education levels, most not reaching any higher than grade nine.¹²⁸

The general picture provided by these statistics shows us that, contrary to the public perception that women are now cruel and violent offenders, they are actually most likely to be charged with common assault. However, common assault has also been shown to be the second highest offence category for which females are charged and perhaps even more significantly, it is one of the offence categories where the numbers of women being charged has increased over the ten year period examined while many other offence categories have shown a decrease in the numbers of women charged over this time period. The increase in charges against women for level two assaults is even more

¹²⁶ *ibid*

¹²⁷ C. LaPrairie. (1993). Aboriginal Women and Crime in Canada: Identifying the Issues. In E. Adelberg, and C. Currie (Eds.), *In Conflict with the Law: Women and the Canadian Justice System* (p 235). Vancouver: Press Gang Publishers

¹²⁸ SkyBlue Morin. (1999). *Federally Sentenced Women in Maximum Security: What Ever Happened To Creating Choices?* Ottawa: Correctional Service of Canada

troubling and raises the fear that the public perception of large numbers of female violent offenders may become a self-fulfilling prophecy.

Table 2

There were some surprises among the other offence categories under violent crime. The abduction data, as shown in table two, was one such surprise. Abduction involves taking someone without their consent or the consent of their guardian without the intention of letting them go. The figures show that 73 women were charged with abduction in 1991, 72 in 1996 and 70 in 2001 versus 176 men in 1991, 113 in 1996 and 58 in 2001. These numbers show that there was a significant decrease for men between 1991 and 2001 but the rates remained relatively stable for women.

The subheading of abduction contravening a custody order discloses a steady escalation in the number of women charged while the number of men charged in the same decade declined steadily. This category breakdown provides a telling glimpse into female specific offending patterns. Twelve women were charged with contravening a custody order in 1991 compared to 30 men. However, these numbers were much closer together in 1996 when 35 women were charged and 40 men. In recent years, women have surpassed the number of men charged. In 2000, 53 women and 25 men were

charged and in 2001 36 women and 17 men were charged. While the numbers of men charged with abduction contravening a custody order are dropping, the number of women charged rose by over 33 percent in the ten years examined. This is one of the few categories of crime where women currently outnumber men in those charged. Other categories under abduction, including abduction with no custody order, showed that men outnumber women in those charged.

The data on abduction in contravention of a custody order is perhaps the most interesting and significant of the violent crime statistics. While perceptions of men kidnapping their children have dominated in the media and public perception, it has been women who are increasingly being charged with not returning their children. Many of the theories suggested that women commit crimes out of need. While most of the theories implied that women's poverty and lack of income made her resort to fraud and theft to fulfill her needs, the statistics for abduction contravening a custody order may suggest that poverty is having a different kind of impact on women. It may be that women's poverty has resulted in fewer women receiving custody of their children and these women are resorting to abduction to keep their children.

Other legal and social factors may also have contributed to this anomaly. Changes made to the *Divorce Act* in 1985, requiring courts to "put the best interest of the child" above all, have resulted in an increase in the courts awarding joint custody.¹²⁹ What this may mean in concrete terms is that men are being given increased control over the lives of their children. At first thought this may seem like a good thing, but for those

¹²⁹S. Boyd. (2003). *Child Custody, Law and Women's Work*. Don Mills, On: Oxford University Press; D. Bourke. (1995). Reconstructing the Patriarchal Nuclear Family: Recent Developments in Child Custody and Access in Canada. *Canadian Journal of Law and Society*, 10(1), pp 1-24; M. Hester and L. Radford,

women who have left their husbands and want to sever attachments, joint custody means that she has to remain in constant contact with him. There are actually two forms of joint custody, the most common being that one parent retains sole custody of the child while the other parent has visitation and must be contacted on any major decisions that will affect the child.¹³⁰ Under the other form of joint custody, the parents share time with the child on an equal basis. Major decisions in the first version of joint custody would include mobility. The parent who retains sole custody of the child, most often the mother, must get a court order to move away with that child and must prove that the benefit to the child of the move is greater than the benefits of having access to both parents. This is difficult to prove and, since the test is always the best interests of the child and not the best interests of the entire family, judges may find it difficult to grant a mother's application to move. The parent who does not have sole custody of the child is free to move wherever he or she chooses. This situation may partially explain the high rates of abduction by women.

The judge, in deciding the best interests of the child will also take into consideration the status quo of the child before the separation and which parent is more likely to give the child that same standard of living after the separation.¹³¹ Because women are often relegated to the caregiver role and, even when working in the paid labour force, receive lower levels of pay than men, their standard of living is likely to drop significantly upon separation. This may affect her ability to gain sole custody of the

(1996). *Domestic Violence and Child Contact Arrangements in England and Denmark*. Bristol: Policy Press

¹³⁰ Bourke, *ibid*

¹³¹ Boyd, *ibid*

children.¹³² This of course shows the increased need for those social supports that are being cut to aid women in maintaining a decent standard of living for herself and her family. For poor women, inadequate welfare may mean loss of custody of their children and may lead to abduction charges.

For those women who are charged with abduction contravening a custody order it would also be important to know how often abuse plays a role in her decision to abduct her child. Where there has been past abuse by the husband, visitation is always problematic and in those instances where the father has visitation with the children he may use the need to discuss the children as a way to contact the mother and continue the abuse.¹³³ In these instances, and out of desperation, the woman may make the decision to abduct her child and move where the father cannot hurt her or contact her any longer. In some instances the mother may fear that her former partner may abuse her children without her there and may abduct her child out of desperation.

Many interesting questions are raised by the data in abduction contravening a custody order. Women are increasingly unable to secure sole custody of their children and, in the face of this, are abducting their children in increasing numbers. This criminal law data needs to be examined in light of current family law analyses that examine the recent shift in custody awards. Why are women losing custody and how do these factors relate to her decision to resort to breaking the law in order to get her child back? Sadly, this response is likely to ensure that she loses any chance of gaining custody.

¹³²Bourke, *ibid* at p 5

¹³³ N. Bala, et.al. (1998). *Spousal Violence in Custody and Access Disputes: Recommendations for Reform*. Ottawa: Status of Women Canada; Bourke, *supra* note 128 at p 7

Public Order Offences or Morality Crimes

The *Criminal Code* refers to the offences discussed in this section as public order violations, while Statistics Canada refers to them as morality offences. This category includes violations of provincial liquor acts, federal drug offences and prostitution related offences. Within this general category, the crime category under which most women are charged is drug offences. In 1991, 5,321 women were charged with a drug offence, 6,743 in 1996 and 6,347 in 2001. The majority of these women were charged with possession or trafficking cannabis; the second highest number of charges under drug charges were for possession and trafficking cocaine. The dominance (within this category) of trafficking marijuana charges against women, relates to opportunity theories. It was suggested that women do not have enough income to commit major crimes as such crimes tend to require finances upfront. Trafficking in more serious drugs would require more money upfront and would also require training in more serious criminal behaviours. Control theories suggested that women are under more scrutiny and so do not learn criminal behaviour and may not know where to find those who sell more serious drugs. Marijuana would be easier to find, cheaper to finance upfront and would be more responsive to a need for quick cash as it is a drug that is in high demand. This data fits easily with the theories discussed previously. The rise in numbers for this offence fits with my expectation of increased minor criminal activity relating to easy access crimes.

Table 3

Stereotypically, the public perceives prostitution as a woman's crime and as a widespread social problem. However, the numbers of both men and women charged with prostitution related offences have been similar over the years studied. In 1991 5,075 men and 5,596 women were charged with a prostitution offence; in 1996 these numbers dropped to 2,977 men and 3,585 women charged, dropping even more to 1,769 men and 1,741 women charged in 2001. The majority of women arrested under this category are arrested for communicating offences or 'street prostitution', included under the "other" prostitution heading in the UCR. There was a major decrease over the past decade in the number of women charged under the category of "other" prostitution. In 1991 5,199 women were charged with other prostitution, 3,159 in 1996 and 1,438 in 2001, showing that in 2001, 89 percent of those charged with prostitution were charged under this category. In comparison, only 242 women were charged with a bawdy house offence in 2001 and 331 in 1991. In 1996, higher than any other year in that decade, 802 women were charged with this offence.

Table 4

The numbers of those charged under the category that captures 'street prostitutes' may suggest that their public visibility and frequent addictions may make these women more vulnerable to arrest for not only prostitution but perhaps other crimes such as assault, theft and drugs. Supervision and limited opportunity may lead women to engage in the most accessible and the most vulnerable form of prostitution. Poverty would be a primary contributing factor to this behaviour. The majority of those who were charged with prostitution were under the category other in the UCR (as opposed to bawdy house) and this is the category that includes street prostitution. This may show that law enforcement patterns focus on the form of prostitution that has been decreed by the public as the 'worst' or most in need of attention. Street prostitution is visible and shows women's lower class, poverty and drug abuse. Those who are middle and upper class often do not like to be reminded of those who are in need and push law enforcement to focus on the visible street prostitutes in their communities in order to get them off the streets. Street prostitution in fact constitutes very little of the actual prostitution in Canada. As a result of the increased focus on street prostitution, it may be that the numbers of those involved in prostitution are not actually decreasing but that street prostitutes are increasingly going behind closed doors in bawdy houses or under the guise

of escort services to make the money they require. But if this is the situation, it has not yet shown up in the statistics. Very few women were charged with bawdy house offences in the UCR.

Bawdy houses contain the hidden or enclosed form of prostitution, the public does not see prostitution that is done behind the closed doors of the bawdy houses. Perhaps in the absence of public outcry or attention, the police also pay less attention. These less visible forms of prostitution would include parlours, escort services, brothels, and call-girl operations where there are rarely any charges laid by police. While an in depth discussion of prostitution is too large for this thesis, the relationship to the theories is clear - many women who are prostitutes, especially street prostitutes, are there due to poverty. In her article examining poor women and prostitution, Hood-Brown argues, “in scholarship, public opinion and according to the state...women are defined as “criminal” or “deviant” rather than as impoverished citizens.”¹³⁴ She argues that women who engage in prostitution are in need of financial assistance and that viewing them as criminals and prostitutes first has excluded discussion of their poverty. Conversely, she points out that discussions of poor women have often excluded prostitutes. Further, poor women who engage in prostitution do not see prostitution as a way out of poverty.¹³⁵ Prostitution becomes a way of maintaining an impoverished life. The criminalization of prostitution, especially the criminal law’s focus on street prostitution further entrenches prostitutes in poverty. With lack of childcare and lack of other employment options, these impoverished women may be taking the opportunity available to them to make the necessary money they need to survive. Because their job is insecure and unstable, it is

¹³⁴ M. Hood-Brown. (1998). Trading for a Place: Poor Women and Prostitution. *Journal of Poverty*, 2(3) p 20

also conceivable that these women are taking other opportunities to commit crimes and obtain the necessities they require. The control theories may suggest that as fewer adolescent girls are under the scrutiny of stay-at home mothers, more will learn to survive on the streets. Some of these girls may be growing up and becoming prostitutes as a learned means of survival.

The dramatic decrease in the number of women charged with prostitution over the ten year period examined can perhaps be explained as a result of earlier tough enforcement practices and a resulting shift in offending behaviour in response. However, it may be that there are also fewer women engaging in prostitution. This may be a result of slightly improved employment opportunities for women such that women are opting for poorly paid and insecure employment over prostitution.

Property Crimes

The majority of female offenders are arrested for various types of property crimes. Property crimes include breaking and entering, fraud, theft over and theft under. As shown in table 5, the number of property offending charges against women decreased by approximately 10,000 between 1991 and 1996 from 47, 510 to 37, 085, with a further decrease to 28,324 in 2001. Despite these decreases, property crimes remain the category under which most women are charged. A detailed examination of the arrest statistics for 1991, 1996 and 2001, indicates that, within the category of property crime, the majority of women have consistently been charged with the least serious offences. Of all women arrested for property offences, only 3.6% (1,732 women) in 1991, 4.5% (1,678 women) in 1996 and 5.4 % (1521 women) in 2002, were charged with more serious crimes such

¹³⁵ *ibid* at p 23

as break and enter. And only 2.8 percent (1,345 women) were charged with theft over \$1000 in 1991, in 1996 1.4% (527 women) were charged with theft over \$5000 and 1.8 percent were (504 women) charged with theft over \$5000 in 2001.¹³⁶

While showing a decrease overall in property crimes committed by women over the ten year period, the statistics show a consistently high participation in property offences among women in Canada. This is consistent with their traditional roles as consumers and, increasingly, as low income, semi skilled, sole-support providers for their families. In keeping with the rapid increase in female headed households and the stresses associated with poverty, it is not surprising that the numbers of women being charged with property crime are still high.¹³⁷ What is surprising, is that the numbers of women charged with property crimes have decreased. Given that women as a group are still relegated to the stereotypical role of caretaker and consumer of the family necessities, I expected more women to be committing theft and fraud in order to obtain money and necessities. My expectations, based on the theories and literature examined were that there would be increasing numbers of women who would be committing property crimes due to less spending on social services and women's worsening economic situation. Indeed with increases in self-service marketing and credit based currency, coupled with women's ongoing responsibilities and decreases in social services, one would expect that need and opportunity would have to lead to higher rates of property offences by women. The decrease in numbers raises some interesting questions. What are women doing to

¹³⁶ The discrepancy between the theft under and theft over categories in the ten year period is due to a change in the theft category of the *Criminal Code* in 1996. At that time the amount determining what a person would be charged with was changed from \$1000 to \$5000.

¹³⁷ H. Johnson and K. Rogers. (1993). A Statistical Overview of Women and Crime in Canada. In E. Adelberg and C. Currie (Eds.), *In Conflict with the Law: Women and the Canadian Justice System*. Vancouver: Press Gang Publishers p 98

ensure the basic needs of their families are met? Is there increased scrutiny and surveillance by the state leading to a reduction in the numbers of women coming into conflict with the law, but increasing the numbers of women and children doing without basic necessities? Perhaps women are just getting better at not getting caught. Indeed the data does not tell us what other options women who live in poverty in Canada have or are resorting to in order to fulfill the need once filled by property offences.

Table 5

Table 6

The vast majority of theft charges against women were for the less serious charge of 'theft under'. In 1991, 30, 096 were charged with theft under \$1000, 23, 690 women were charged with theft under \$5000 in 1996 and 16,188 persons were charged with theft under \$5000 in 2001. Of these, the overwhelming majority were charged with the offence of shoplifting, showing this to be the most common crime women are charged with in Canada. In 1991 the number of shoplifting (under \$1000) against women was 26,095, falling slightly to 23, 690 in 1996 and to 12, 514 in 2001. There are two other sub categories in the "theft under" category, theft from motor vehicles and theft of bicycles. In both of these offence sub categories, the number of women charged has remained relatively stable in the three years examined here. For theft from motor vehicles, 269 women were charged in 1991, 284 in 1996 and 256 in 2001. For theft of bicycles, 47 women were charged in 1991, 52 in 1996 and 42 in 2001.

The theories and literature examined would lead one to expect a high rate of shoplifting offences among women, due to their poverty and the easy access to this type of offence. I also expected there to be an increase in the numbers of those charged with shoplifting over the ten year period, due to reductions in social spending, increased opportunities to commit consumer based crimes, insecure and unstable incomes for women and increased reliance on women as caregivers. Indeed, as table 6 shows, the majority of offences committed by women in Canada for all three years examined were for shoplifting offences under the theft under offence category. However, there was a surprising decrease in the amount of shoplifting over the ten years. What these numbers may reflect is that women are beginning to secure more stable and dependable employment. The marginalisation thesis proposed that poor pay and unstable work

contribute to women's opportunity to commit crime. Indeed the study which surveyed shoplifters at a shopping centre found that 40 percent of those who were caught for shoplifting said they were unemployed and were concerned about their basic necessities. A lowered shoplifting rate may suggest that fewer women are feeling that they need to resort to shoplifting to provide basic necessities for their families. Alternatively, overall crime statistics may suggest that women are turning to other forms of theft, fraud or other crime categories to obtain necessities. It is therefore important to examine these shoplifting statistics in the context of other female crime statistics in order to determine the full picture.

Given that shoplifting remains the highest category of charges for women, theories that suggest women commit crimes where opportunities present themselves are still confirmed by the statistics. Women remain the caregivers and consumers for families in Canada and are offending where the opportunities arise. Research and information on female property offenders and shoplifters more specifically is largely unavailable. This is a hugely neglected area that desperately needs attention. If need is a basis of this offence, there would seem to be lots of potential for prevention.

Table 7

After shoplifting, the most common offence category for women charged is fraud, which is also found under the offence category of property crime. Table 7 shows that a further 11,756 women were charged in 1991, 8,485 in 1996 and 6,700 or 26.6 percent were charged with fraud in 2001. Typically fraud offences committed by women involve the least sophisticated and least lucrative kind of fraud such as writing bad cheques and credit card fraud. The majority of women were charged with writing bad cheques in 1991 but this changed to the majority of women being charged under the category “other” in 2001. In 1991, 6,618 women were charged with writing bad cheques, dropping to 3,354 in 1996 and dropping even further to 1,962 in 2001. Under the offence category of fraud “other”, 4,126, 3,930, and 3,590 women were charged in 1991, 1996 and 2001 respectively. While there was also a decrease in the number of women charged in the “other” category, it did not drop as dramatically as the writing bad cheques category. Given the arguments made earlier on the potential impacts of cut-backs to social assistance and their possible connection to criminal activity, it is unfortunate that there are no specific statistics given in this charge data on welfare fraud. However, welfare fraud would fall under this category of “other” and might well explain the less dramatic decrease in the number of women charged.

As shown in table 7, 1,012 women were charged with credit card fraud in 1991, 1,201 in 1996 and 1,148 in 2001, showing the number of women who use stolen credit cards to have remained similar over the ten year period examined. In an increasingly credit based society, it is becoming easier for people to obtain credit cards and credit card numbers. For various reasons, including the fact that we are decreasing our use of cheques and paper based currency, and it is easy to track down a forged or

misrepresented cheque, it is understandable that fewer women would be writing false cheques, turning instead to credit card fraud.

The decrease in the numbers of women charged under fraud “other” was contrary to my expectations that welfare fraud would increase during this time period due to the poverty conditions of women generally and specifically because of cut backs in social spending and social assistance programs. The National Council of Welfare releases a yearly report on the welfare rates in each province and territory. Due to differences in the way each province and territory administers its social assistance programs (indeed there are 13 separate systems in Canada), there is no national data on persons who receive social assistance in Canada. What is increasingly not a surprise, there is also no gender specific data. That said, the National Council of Welfare reports that the basic assistance provided is often inadequate.¹³⁸ At no point since they began gathering data in 1986 until the most recent report in 2001, did any of the provinces or territories provide welfare benefits that allowed recipients to reach the poverty line (the low-income cut-offs determined by Statistics Canada).¹³⁹ It is not surprising then that women are still defrauding the government to increase their income levels while on social assistance. Those families which were supported by a single parent (which we know is most often a woman) were shown to be at minimum \$10 thousand below the poverty line and maximum \$26 thousand below the poverty line in the various provinces.¹⁴⁰ Given that these women have children for whom they need to provide basic clothing, food and shelter, and given the theory I proposed earlier that these women would be committing

¹³⁸ National Council of Welfare. (1999). *Poverty Profile 1997*. Ottawa: Minister of Public Works and Government Services

¹³⁹ Statistics Canada. (1999). *Low Income Cut-Offs*. Ottawa: Statistics Canada

¹⁴⁰ *supra* note 138

fraud in increasing numbers, due to increased need, one would conjecture that some of these women are committing minor theft and fraud offences, and not getting caught. We saw that shoplifting and credit card fraud are still at high levels, even though shoplifting charges decreased over the ten year period examined. The theories would suggest that women are trying to survive with incomes far below the poverty line by committing large numbers of minor property crimes. Need and opportunity combine to force these women to resort to crime to obtain necessities. According to the National Council of Welfare, the purchasing power of those on welfare consistently fell everywhere in Canada for most of the 1990s.¹⁴¹ When this fact is combined with the data on welfare discussed in chapter three that disclosed the decreased spending on social assistance, it is extremely surprising that there was a decrease in the amount of fraud under the crime category 'other' over the ten year period. I anticipated a significant increase.

One explanation for the decline in fraud levels may be the institution of strict laws through the 1990s in various provinces that limit or prohibit welfare benefits for those who have committed a crime while on welfare.¹⁴² Indeed, if the theory holds that more women who live in poverty are likely to come into conflict with the law, these new laws may be having the desired deterrent effect on women on social assistance and this may explain the drop in both fraud and theft related charges. Alternatively, or additionally, the decrease in access to welfare benefits may simply mean that fewer women commit welfare fraud because fewer women are on welfare. The most financially deprived women, that is those most likely to commit an offence based on their marginalization, are those who are no longer eligible for welfare benefits. However, if this explanation were

¹⁴¹ *ibid*

accurate, one would expect to see increased numbers of these women committing other poverty based offences such as shoplifting, other forms of fraud, theft, minor drug trafficking or prostitution. In fact, the data shows that there is a decrease in the numbers of women charged in almost all offence categories over the ten year period.

Decreases in welfare fraud are supported by control theories which suggest that women who live in poverty are likely to be under the more strict gaze of the state and so her opportunity to commit crime is diminished. These class based laws reinforce, even exacerbate, women's poverty. Poor women's actions are criminalized and further punishment is meted out through the denial of welfare benefits. The poor get poorer, are further criminalized and then are deterred by draconian laws from committing crimes in order to provide basic necessities. The poverty worsens.

Adult Criminal Court Survey

The Adult Criminal Court Survey (ACCS) is created by Statistics Canada from data submitted by the adult criminal courts across Canada. Unfortunately, since 1973, no comprehensive national court statistics have been collected to describe the kinds of sentences women in Canada receive. While Statistics Canada releases sentencing data from the 'Uniform Crime Reporting Survey', the statistics are not all encompassing, meaning the statistics released are not for all offence categories and are not gathered from every court in the country. As a result, most of the available data has been collected in provincial and local studies. The effect of having poor data means that general conclusions as to sentencing patterns and practices must be tentative. This is especially

¹⁴² See information on Kimberley Rogers who died, pregnant and under house arrest for welfare fraud. http://dawn.thot.net/Kimberly_Rogers/kria.html

true for non-custodial sentences, the type of sentence usually imposed for property offences. Generally all we know is the length of the sentence and the charge on which the person was convicted. As mentioned in the introduction, the more complete ACCS data is not available for the specific years discussed above. However, adult court data was released for the year 2000 by Statistics Canada. The data cannot be used for comparative purposes but will be discussed in order to highlight and reflect on how women's economic position may be affected by the sentence she receives.

I have chosen to include sentencing data because if women who are poor are committing crimes out of need and poverty, it will be interesting to see what sentences they are receiving and what possible implications these sentences will have on their ability to care for themselves and their children. What the discussion earlier posited is that many of the crimes committed by women in conflict with the law are motivated by financial circumstances, and as some have suggested, this can affect both the sentence women receive and the effect of the sentence on them and their families.¹⁴³

In 1996, after much consultation and scrutiny, the sentencing provisions in the *Criminal Code* were revised to include both a statement of the purpose of sentencing and a list of principles. According to s.718 “the fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions.”¹⁴⁴ There are six objectives included in the purpose of sentencing; each sanction must contain at

¹⁴³ *supra* note 4; *supra* note 11

¹⁴⁴ *The Criminal Code* R.S.C. 1985, C-46 as amended, s. 718

least one of these objectives.¹⁴⁵ The fundamental principle of sentencing set out in s.718.1, relates to proportionality and states that, “a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.”¹⁴⁶ The factors set out in s.718.2 (a) are to be taken into account by the court to increase or decrease an offender’s sentence by considering aggravating or mitigating circumstances relating to the offence or the offender.¹⁴⁷ Unfortunately, while the theories and literature suggest that women commit crimes out of need, this is not a fundamental principle or even a mitigating factor, to be taken into consideration by the courts.

Violent Crimes

The ACCS does not give a breakdown the same as the UCR for violent offences. Overall, for violent offences, women are more likely to receive probation than a prison sentence. The data shows that all of those women convicted of abduction received a term of probation. As shown in table 8, of those committing crimes against the person, which includes all assault convictions, 13 percent (409) received a prison sentence, 74 percent (2,262) probation and 16 percent (474) a fine. The majority of those charged and convicted of common or level one assault, received a sentence of probation (75 percent) with a median time of 370 days. For the 8 percent who received a prison sentence, the median amount of time was 21 days. In terms of actual numbers this means that of those convicted of common or level one assault, 5 were sentenced to prison, 1,458 to probation

¹⁴⁵ The six objectives are denunciation, general and specific deterrence, separation of offenders from society, rehabilitation, providing reparation from harms done, or to promote a sense of responsibility in the offender.

¹⁴⁶ *supra* note 144

¹⁴⁷ Aggravating factors include hate motivation, domestic abuse, abuse of trust or authority and association with a criminal organisation.

and 33 were given a fine. The data is not broken down for level two and level three assault; they are dealt with together under the heading “major assault”. The assault data labelled major assault showed that, 66 percent received a term of probation and 34 percent a sentence of imprisonment. None of those charged with major assault were given a fine. This sentencing data supports the previous discussion that contrary to media-generated perception, women are not committing serious violent offences or at least the sentences indicate that the criminal justice system does not perceive their crimes to be serious.

Table 8

Evidence in the following section on morality crimes will show that more women who were convicted of morality (public order) offences were given a prison sentence than women who were convicted of committing a “violent” offence. For example, the data shows that for those women who were convicted of a crime against a person, or assault, only 13 percent were given a sentence of incarceration. For those women who were convicted of a morality offence, including drug offences and prostitution, fully 42 percent were given a sentence of incarceration. Based on the analysis that links women’s drug and prostitution to their poor economic circumstances, this sentencing data indicates that

women are punished more harshly for poverty-related offences than for violence related offences.

Morality offences

Table 9

The ACCS for 2000 showed that for all morality offences, women were most likely to receive a term of imprisonment (42 percent), with 38 percent receiving a term of probation and 21 percent a fine. The number of women sent to prison was 394; 350 were given probation and 200 were required to pay a fine. Unfortunately there was no breakdown of the offences under this category. However, the Uniform Crime Reporting Survey data shows that the majority of women charged under the category of public order offences are charged with possession or trafficking in cannabis. When examined in light of the ACCS data indicating that women who were convicted under this same category were those who were most likely to receive an institutional sentence, one can extrapolate that women are being sent to prison for trafficking in cannabis. Institutional sentences are supposed to be given to those who are perceived to have committed the most serious crimes and for whom community sentences will not work. I would question the decision to sentence those convicted of possession, or trafficking in cannabis to prison, especially given the current political climate which is discussing liberalising marijuana possession

laws and allows medicinal marijuana to be prescribed. The response of the courts seems unduly harsh and contrary to the sentencing principals articulated in the *Criminal Code*.

My theory that women commit crimes out of need due to inadequate incomes and a need to support their families, may suggest that the courts recognize her role as caregiver and are treating her more harshly in response. Is it possible that the justice system is treating these women more harshly because they are mothers and their criminal activity is not only affecting themselves but those they care for? Are these women being further punished for acting outside gender stereotypes? Is trafficking seen as a male offence and considered more heinous when engaged in by women? Sentences to prison and probation rather than fines would suggest that women convicted of morality offences are seen as very serious dangers to public safety. Perhaps because they are perceived not to be putting the best interest of their children first, and because the courts do not take into account their economic status, these women are seen as threats to their family safety and are receiving harsher treatment by judges. This harsh treatment may also reflect the chivalry hypothesis that women who do not conform to societal (male) expectations are treated more harshly by the criminal justice system. Women drug dealers may be a breach of gender stereotype that judges are particularly uncomfortable with. If this is part of the judicial response it would indicate that judges perceive drug trafficking more of a gender breach for women than assault (at least minor assault), as evidenced by the harsher treatment accorded to the former.

Property Crimes

Table 10

Data from the ACCS in 2000 shows that women convicted of property offences were most likely to receive a sentence of probation. Sixty-one percent of those convicted were given a sentence of probation, 25 percent a sentence of a fine and 16 percent a prison term. For theft over \$5000, women were most likely to receive a probationary sentence, with 65 percent receiving this sentence (or 82 women), 5 percent a fine (6 women) and 19 percent (24 women) a term of imprisonment. A total of 112 women were convicted of theft over \$5000 in the fiscal year of 1999/2000.

Women convicted of theft under \$5000 were also most likely to receive a probationary sentence (54 percent or 1,970 women): 34 percent (1,220 women) received a sentence of a fine and 16 percent (596 women) a term of imprisonment. The total number of those convicted of theft under \$5000 in the fiscal year 1999/2000 was 2,786. There are no specific statistics for shoplifting. The ACCS did have a category called 'possess stolen property' but this could also include theft over. However, 55 percent were given a term of probation, 23 percent a prison term and 28 percent were given a fine for possessing stolen property.

The UCR and the ACCS break down the fraud offences differently. However, the statistics show that for those convicted of fraud over \$5000, 76 percent (344 women) were given a sentence of probation, 2 percent (9 women) a fine and 9 percent (41 women) prison. For those convicted of fraud under \$5000, 73 percent (336 women) were given a term of probation, 12 percent (57 women) a fine and 12 percent (56 women) a term of imprisonment. For those frauds, which were unspecified, 69 percent (625 women) received a term of probation, 19 percent (172 women) a fine and 14 percent (125 women) a term of imprisonment. That there is not a huge difference in the numbers of those who received probation for the three categories of fraud, suggests that, compared to those who are convicted of theft under, those who are convicted of theft over are actually not obtaining a great deal of money through fraud; the numbers may actually be close to the \$5000 dividing point.

According to the ACCS, many of the women who were convicted of offences in 1999/2000, including common assault and property crimes, were sentenced to pay fines. According to the ACCS, a fine is the second most frequently used sentencing option in Canada.¹⁴⁸ Any person convicted of an offence, except an offence punishable by a minimum term of imprisonment, may receive a fine in addition to or in lieu of another sanction imposed. A court may fine an offender if they are satisfied that the offender can pay the fine or work it off in a fine option program.¹⁴⁹ The court can be satisfied a person can pay the fine by only talking to them; evidence is not necessary. In some instances the offender is given a fine option program which allows offenders to work at a community

¹⁴⁸Statistics Canada. (2001). *Adult Criminal Court Survey 1999-2000*. Ottawa: Canadian Centre for Justice Statistics

¹⁴⁹ John Howard Society of Alberta. (1999). *Sentencing in Canada*. Alberta: John Howard Society of Alberta

placement to work off the amount of their fine. While this may sound like a good idea to some, the literature and the theories examined would indicate that many women have care taking responsibilities that would not be taken care of when they go to work off their fines. The court may recognise that the woman does not have the money to pay the fine but fail to take into consideration that community placements to work off fines are also an expense to these women. The cycle of poverty induced crime may be exacerbated by sentences of fines, even when working off the fine is an option. Women may once again be lead to commit offences to provide for themselves and their families.

While sentencing persons to non-custodial penalties and giving fines or community service are seen as lenient sentences, for those who are poor, these sentences can be very harsh, especially for women with children. Fines may have a dramatic impact on the lives of women who already live in poverty. Many of these women may not have the money to pay the fines but would tell the judge they do in order to be able to go home to their families. The impact of the inevitable inability to comply with the order due to competing childcare or eldercare responsibilities is severe. In instances where women have child-care responsibilities, non-custodial penalties may result in sentencing inequity if all persons who are sentenced are given similar sentences for similar crimes.

Those who fail to pay their fines or who fail to complete the fine option program are sent to prison. Subsection 734.3 of the *Criminal Code* states that “where an offender is fined under this section, a term of imprisonment, determined in accordance with subsection (5), shall be deemed imposed in default of payment of fine”.¹⁵⁰ The most restrictive form of punishment is deemed appropriate where an offender is unable to comply with the least restrictive sanction. Imprisoning people in such a rich country for

the inability to pay a fine is astounding. Women are more likely than men to go to prison for non-payment of a fine because they have less access to jobs and money.¹⁵¹ It is not unreasonable to conclude therefore that their relative poverty is one aspect of sentencing disparity.¹⁵² The result is that most women who are imprisoned to provincial/territorial institutions are there for the minor offences of shoplifting and the inability to pay the fine they were given when convicted.¹⁵³

Aboriginal women experience the harsh impact of the combination of race, poverty and minor crimes in disproportionate numbers. In her examination of “Aboriginal Women and Crime in Canada”, LaPrarie found that Aboriginal women were more likely to be arrested and serve time for defaulting on payment of fines due to the fact that they have lower incomes.¹⁵⁴ When fines become a way of buying your liberty, rather than a sanction, the system needs to be scrutinized and changed. In an investigation into the prison systems of Canada in 1938, the Archambault Commission found that, ‘imprisonment for non-payment, when the convicted person has not the means or ability to pay, is, in fact, imprisonment for poverty.’¹⁵⁵ This quote is both interesting and saddening given that the statement came from an inquiry to recommend changes needed to protect the rights of offenders that was completed almost seventy years ago. We are still resorting to the same practice. While sentencing options have certainly increased since this time and principles are now in place to encourage the judiciary to impose alternatives to prison, that prison is still the remedy for failure to comply with a

¹⁵⁰ *supra* note 142

¹⁵¹ D. Martin. (1999). Punishing Female Offenders and Perpetuating Gender Stereotypes. In J. Roberts and D. Cole (Eds.). *Making Sense of Sentencing*. Toronto, On: University of Toronto Press p 197

¹⁵² *ibid* at p 196

¹⁵³ *supra* note 127

¹⁵⁴ *supra* note 126

fine sentence is problematic and has a disparate impact on women as well as on racialized people and people with disabilities. Women with low economic resources are treated more harshly by the criminal justice system and the belief that those who are poor are serious criminals is thereby perpetuated.

¹⁵⁵ J. Archambault. (1938). *Report of the Royal Commission to Investigate the Penal System of Canada*. Ottawa: King's Printer

Chapter 6: Conclusion

The data shows that women in Canada are committing a diverse range of crimes. What is perhaps the most important conclusion to highlight from the data is the fact that while women are charged and convicted under every offence category, they are charged at varying levels and mostly at the lowest level. Those categories under which the vast majority of women are charged are for the least serious offences under the main categories of public order, property and violent offences.

The hypotheses I had developed from the theories and the literature were not all proven to be true. While many of the offence categories under which women are charged do relate to the theory that women commit offences related to her poverty, the numbers are not what I anticipated. In those offence categories, such as shoplifting, where I felt there would be an increase in those charged, due to women's worsening economic circumstances, there was actually a decrease, and under violent offences, there was an increase. Perhaps women are now under closer scrutiny of the state and the police and unable to steal to provide necessities for their families, are dealing with their frustrations through anger and violence. If indeed women are becoming more violent in reaction to life circumstances, it is even more reason for us to work harder at improving women's lives.

In the theory I had developed through chapters two and three, I suggested that women come into conflict with the law in Canada due to their subordinate roles in Canadian society. Many factors were shown to contribute to women's offending in chapters two and three. However, poverty was the contextual factor to which most other factors relating to women's offending seemed to relate. Her care taking for children,

elders and family, insecure job status, lower education levels, inadequate and diminishing social supports all leave women in oppressed positions with little room for empowerment or change of status. The data showed that women are committing fewer crimes but they are still committing crimes in high numbers in those categories, such as shoplifting and fraud, where poverty, and a lack of social rights, may be a cause for their choice to offend. The data on women being charged with abduction contravening a custody order provides evidence that poverty may be contributing to new offences for women. If a woman's economic circumstances are being considered when judging which parent can provide for the best interests of the child, women, who most often incur a drop in income in divorce cases, may be losing custody of their children and resorting to abduction as a result.

In the first chapter I introduced a report by Christine Boyle, Marie Andree Bertrand, Celine Lacerte-Lamontagne and Rebecca Shami.¹⁵⁶ They provided criteria to be employed in determining whether an action should be defined as a crime and the implications for the criminal justice system and the rest of society for giving actions such a stigmatizing label. They suggested that in order to be defined as a crime, an act should cause serious harm to others, violate fundamental values and cause real harm to the community. They further argued that in applying the criminal law to those acts defined as a crime neither the person charged nor society should be harmed and fundamental rights must not be violated.¹⁵⁷ Fundamental social rights include adequate nutrition, housing, health and education. Applying Boyle et al's criteria to the offences committed

¹⁵⁶ *supra* note 11

¹⁵⁷ *ibid* at p 4

by women leads to the recognition that the vast majority of these offences should perhaps not be labelled as crimes.

The literature and theories suggest that there are large numbers of women living in poverty in Canada and that women who come into conflict with the law are not able to obtain the necessities of life at adequate levels and women are resorting to crime to fulfill that need. Canadian crime statistics indicate that most women in conflict with the law commit minor property and public order offences that easily fit within women's role as caregiver and providers of necessities. The data thus supports the theory that poverty is a primary factor in women's offending. The majority of crimes being committed by women, that is, property offences and public order offences, do not cause serious harm to others or the community. While each of these offences – shoplifting, cannabis trafficking, welfare fraud, credit card fraud, prostitution and cannabis possession-may be a violation of societal values, I believe that adequate care for health and safety of families is a more fundamental value we adhere to. Again, based on Boyle et al's criteria the majority of those acts for which women in Canada are being charged should not be labelled as crimes at all.

Boyle et al also argued that to define an act as a crime there must also be a solution to the problems that lead to the choice to commit an offence as well as the problems caused by the crime. I argue that the root causes of most of the crimes committed by women as evidenced by the theories, literature and data, are due, at least in part, to her poverty and subordinate status in society. Instead of defining her acts as criminal offences, we must look into the offences women are committing and the circumstances under which they commit them to see if the underlying cause of these

actions can be addressed. If the sanction or resulting criminal record further hinders the woman from gaining the necessities she requires, we are not addressing the causes for her crime but increasing the likelihood she will resort to committing more crime. A feminist analysis of women's offending leads in the opposite direction, toward an argument for decriminalising much of the poverty induced actions that women take.

I of course do not mean to suggest that we should have a two-tiered system where there are certain laws for the rich and certain laws for the poor. What I am arguing is that the law needs to be reflexive and take into consideration facts that are relative to the situation. If social circumstance matters, the degree to which we as a society can find somebody culpable is the degree to which we have attempted to ameliorate those negative social circumstances. People fall through the cracks and there should be a way for law and government to meet the needs of its citizens as opposed to just punishing them. If law was reflexive it would ask if it is wrong for someone to steal to feed themselves or their family when we consider the pressures we place on women and our expectations that they nurture. If we took these kinds of pressures into account, the outcome would be a law that is not only punitive but is also a remedial.

Unfortunately, without the voices of women in conflict with the law in Canada, we can only speculate as to why they made the choice to commit an offence. Or perhaps it would be better to say that, without their voices, we will not know what we must do to prevent future cases of possible desperation leading women to the unavoidable choice to commit a crime in order to provide for their families. While we may not know conclusively, should we not be improving women's lives anyway? With better information, adequate funding for both current and new innovative support services and

an increased network, I believe the result for women in conflict with the law would be more effective interventions, increased prevention and reduced recidivism. Indeed, we may purport to have tried many things, but have we tried improving women's lives?

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