

## *Beyond Prison: Women, Incarceration and Justice?*

### *Introduction*

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One impetus for this special issue of *Current Issues in Criminal Justice* has been the marked rise in women's imprisonment in Australia and in many international jurisdictions, especially over recent decades. Between June 1995 and June 2009, the number of female prisoners in Australia increased by 154.5 per cent (from 835 to 2,125), as compared with an increase of 63.9 per cent for male prisoners (ABS 2004, 2009). The faster growth in imprisonment for women than men has been noted in several comparable countries including New Zealand, England and Wales and the United States<sup>1</sup> (ABS 2004). This trend has been particularly pronounced for unsentenced women, whose numbers in Australia had increased by 321 per cent over the same period, and for Indigenous women. By 2009 approximately 28.4 per cent of women prisoners in Australia were Indigenous, which is greater than the proportion of Indigenous male prisoners (24.9 per cent) (ABS 2009).

Studies in several jurisdictions have found that the increase in women's imprisonment 'was not due to increases in the seriousness of women's offending but instead was driven by more severe responses to the less serious offences that women tend to commit' (Home Office 2002:21; see also Victorian Sentencing Council 2010:51). While changes in sentencing practice have clearly been important, the marked increase in the numbers of unsentenced women prisoners indicates that this is not the whole story. Yet few studies of bail and remand have paid adequate attention to gender. Harsher bail and other laws, changes in police policies and practices, an increased use of imprisonment as a sentencing option, and longer sentences are all implicated in shaping prison rates. However, as several contributions to this issue note, women's incarceration must also be seen in the context of reductions in welfare provision and a range of exclusionary social policies. Pat Carlen and Jacqui Tombs (2006) have analysed the ways in which rhetoric, insisting that prisons can be therapeutic and reintegrative, has contributed to rising women's prison populations in numerous jurisdictions. They offer empirical evidence that claims about the rehabilitative and reintegrative potential of prison have both legitimated incarceration as a sentencing option, with imprisonment often justified as a means of meeting women's needs, and obscured the damaging effects of imprisonment and the structural conditions in which crime arises. They point to the logical inconsistency in claims of 'seeking to include via exclusion'—that is of claims that women who were never socially integrated in the first place—can be reintegrated using the mechanism of imprisonment, which instead narrows options and further harms the disadvantaged (2006:354). Their analysis offers a cautionary note against commonsense assumptions that prison can be, or should be seen as, rehabilitative and not punitive, and against a too ready belief that the aspirations of progressive reformers are likely to translate into practice.

In conjunction with this special issue, the Sydney Institute of Criminology hosted a conference *Women, Crime, Custody and Beyond* and several contributors to this volume were participants at the conference, which occurred almost 25 years after the NSW Women in Prison Taskforce (1985) produced a progressive, for its time, strategy intended to cap prison numbers and to improve prison conditions for women in NSW. In reflecting on that work, conference delegates noted a familiar refrain, that while some improvements in physical conditions for women had occurred since that time, much of the reformist agenda had never been implemented, and women's prison numbers in NSW were now many times

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<sup>1</sup> Data was not available for Canada in this report.

higher than had ever been contemplated by the taskforce. That conference had a similar character to one described by Pat Carlen in *Women and Punishment: the Struggle for Justice* (2002) in that there was a tension between critique and reform, as committed practitioners offered accounts of progressive programs while others were troubled by the limits of reform. But as Carlen notes, inaction is not an option: 'while penal incarceration for women exists there will always be better and worse prisons' and thus the need 'to do something' (2002:18). This tension between critique and reform is also reflected in this special issue (Kilroy and Pate, Hannah-Moffatt, this volume).

Several trends and themes are apparent in the articles that make up this special issue of *Current Issues in Criminal Justice*. First is the need for gender-specific policies, programs, data and analysis of imprisonment patterns and experience. For example, contemporary conceptual frameworks driving both policy and research—such as desistance, throughcare, mentoring, re-entry or criminogenic needs—are often derived from, and grounded in, the experiences of male prisoners. Women's patterns of imprisonment often vary significantly from men's, through shorter sentences, the role of post-release employment or relationships with children and family (Baldry, Brown and Ross, this volume). Prison and post-release regimes need to take the support needs of women into account in planning and implementation. However, the articles also provide some salutary lessons, for instance, in the manner in which gender responsive programming was given effect in the Canadian experience (Hannah-Moffatt, see also Kilroy and Pate, this volume). A narrow construction of gender, over laid on existing penal practices using risk-need classification, has reinscribed the centrality of the prison and produced a troubling new mode of gendered governance with little regard for social structural context. Like Hannah-Moffatt, Corcoran (this volume) points to the troubling ways in which women's needs have been coupled with criminogenic risk in England and Wales in her account of the retreat under the New Labour government, from what had appeared to be a promising reductionist reform agenda for women prisoners.

Second, the needs of women as prisoners and ex-prisoners go beyond material questions of housing, employment and substance abuse, often produced by deep structural disadvantage. These women very often live in a state of *liminality* (Baldry, this volume) where they find themselves 'betwixt and between' conventional social roles (Turner 1986); a period of limbo, instability and movement between positions of marginality and resistance: prisoner, mother, victim, perpetrator, addict, unemployed, and mentee. The complex, chaotic and contradictory lives of these women can only be understood within often extensive histories of abuse and violence (Kilroy and Pate), as both children (McFarlane, this volume) and adults. This calls for holistic support services that respect human rights (Scraton and Moore, Kilroy and Pate, this volume), respond to complex needs (Hamilton, this volume), and buck the trend towards narrow risk-based assessments and institutional fragmentation (Brown and Ross, this volume). Support for the children of imprisoned parents, and for young people in out of home care, are also essential. The nexus between incarceration and a history of having been in out of home care requires urgent attention (McFarlane, this volume), both in response to the historical legacy of institutional care for Indigenous and non-Indigenous people, and at the present time since increasing numbers of young people are going into out of home care (Wood 2008).

Indeed—and third—several contributions to this volume demonstrate the importance of acknowledging, and addressing, the emotional dynamics of women's prison and post-release experiences (Brown and Ross, Carlton and Segrave, Baldry, Scraton and Moore, this

volume). As a still neglected area of penal study, further investigation is needed into the emotional trajectories—particularly trauma, fear, grief, loneliness, boredom and despondency—that characterise the lives of these women and the manner in which they feed into, and amplify, cycles of criminalisation and institutionalisation. For many women who find themselves in prison, it is but one stop amongst a lifetime of traumatic events, where the line between victim and perpetrator, or subjugation and agency, is indeed a blurry one.

Part of our rationale for commissioning this special issue has been to put women's imprisonment, including remand, firmly back on the agenda and to encourage further research and debate to seek to better understand these trends, and to better inform policy and practice. This issue provides a rich, international collection of articles focused on key concerns related to women's incarceration, the challenge of responding to their needs and interests effectively while in custody, and of providing adequate support within the community both to prevent incarceration, and to ensure the health and well being of women on release. They demonstrate continuities, and some differences, across and between jurisdictions, such as the gendered implications of the increasing politicisation of punishment. They demonstrate, too, the challenge in bringing about meaningful change at a time when prisons have a renewed centrality in contemporary penal practice, bolstered in contradictory ways by both popular punitivism (Pratt et al 2005) and by appeals to rehabilitation and reintegration as Carlen and Tombs (2006) have demonstrated.

Much remains to be done.

Thank you to the contributors for making this an important and ground-breaking special issue and to the reviewers for their timely and constructive feedback.

Finally we would like to thank Corrective Services NSW (CSNSW), and Luke Grant, Assistant Commissioner, Offender Services and Programs, who funded the conference and contributed to the cost of this special issue in the spirit of supporting research and debate, and did not seek to avoid challenging issues. We also thank the Women's Advisory Council of CSNSW who had the vision for the conference and used that as a forum to shape the future development of its agenda.

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