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**The Social Construction of Female Criminality:
Women, Mental Health, and the Criminal Justice System**

Gabrielle Czaika

A Thesis

In

The Department

Of

Sociology and Anthropology

**Presented in Partial Fulfillment of the Requirements
For the Degree of Master of Arts at
Concordia University
Montreal, Quebec, Canada**

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ABSTRACT**Gabrielle Czaika*****The Social Construction of Female Criminality: Women, Mental Health and the Criminal Justice System***

The goal of this thesis is not to determine a causal relationship between the closures or reduction in available mental health care and a direct increase in the incarceration rate of women. Rather it is to show that ideology is primarily at the root of this shift in remanding certain individuals from mental health care facilities to penal institutions. I am making this assumption based on evidence uncovered through previous studies that examined the differential treatment of female and male inmates and the circumstances of their incarceration. Many of these studies have repeatedly shown that where female inmates are concerned, there is a much stronger psychiatric or emotional label attached to the acts of deviance committed by women, whereas, there is a rational connotation attached to the criminality of males.

I believe the *social construction of womanhood* and of a woman's *natural* place within a patriarchal society was further determined as capitalism gained momentum in the latter half of the 19th century. Yet, I also believe gender inequities began centuries before this as a result of the church interpreting the creation myth and painting women in a picture of *natural* evil, a temptation, but a *necessary evil*. This interpretation has been re-constructed in a capitalist society because in order to function, a capitalist society needs women in the home to ensure its survival. Therefore, the social construction of "woman" is no longer solely rooted in ideological thoughts, but also in the base of today's social structure, the economy.

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CHAPTER ONE

INTRODUCTION

In this thesis, I am arguing that the establishments of the Criminal Justice System and the Medical Association, particularly the branch of psychiatry, are holding on to the belief that women are somehow, “different” than men, and must therefore be treated differently. There is evidence (Boritch and Hagan, 1990; Kaufman et al., 1995; Myers, 1995) that other than the actual numbers of criminal “acts” committed by women and men, there is no significant difference in the types of crimes that women and men commit. In fact, they found that both genders are susceptible to similar socio-economic factors such as class, education, and shifts in employment opportunities as well as several other factors which will be discussed later. It has also been argued that these factors are correlated with, although not conducive to criminal activity.

Notwithstanding these findings, numerous studies (Boritch, 1996; Frazier et al., 1983; Kritzer and Uhlman, 1979) have found that regardless of the similarities between female and male offense patterns and types of crimes, gender still seems to be a deciding factor when it comes to the differential treatment of female and male offenders. For example, Frazier’s 1983 study found that being a woman reduced the chance of incarceration by 22% compared to the percentage of males being incarcerated for similar offenses (313). Throughout the early phases of the judicial process, women are discriminated against legally as well as systemically which leads to their being treated “differently” than their felonious male counterparts, and the primary reason behind this

differential treatment can be explained by physiology, psychology and ideology, the latter having the greatest impact.

There is evidence that this differential treatment of female and male offenders begins even before the sentencing stage in the Criminal Justice System. It has been found that the very statutes that should be applied equally to all individuals in society are in fact gendered, and thus, imposed in different ways. There exist laws for women and laws for men. According to Adler and Simon (1979: 293), some laws can be further divided into two distinct boundaries or genders:

1. Laws which make distinctions based upon sex *plus* some other factor
2. Laws which punish men and women offenders differently for the same crime

The first category can be further divided into two additional types. In the first type, the *plus* represents age. An example of this application of the law is seen in the state of New York's law regarding the endangerment of a child. The law protects males under sixteen and females under the age of seventeen. In Arkansas, the law "criminalizes tattooing a minor without the consent of his or her parents. However, the law protects a female under eighteen and a male under twenty-one years" Again in New York, the law "defines a person in need of supervision as any male under sixteen or female under eighteen who is habitually incorrigible, disobedient or truant" (Adler and Simon, 1979: 294). Therefore, it would appear as though depending on the situation, females need supervision longer than their male counterparts, whereas in other situations, males appear to be more protected under the law.

The second type of the first category, that of "sex plus" pertains to marital status. Adler and Simon (1979) argue that "laws which make marital status distinctions are

based on stereotyped sex roles. English common law defines adultery as “sexual intercourse by a man, married or single, with a married woman not his wife. Today four states apply the common law definition of adultery and provide penalties for sexual intercourse between a married woman and a man not her husband. In these states [however], there is no similar penalty for intercourse between a married man and a woman not his wife” (295).

Other examples where women are being treated differently and sometimes more severely than their male counterparts who have committed similar offenses include women who have “violated traditional role expectations by having committed, and thus being convicted of serious violent crimes, which are typically thought as male crimes” (Boritch, 1996: 152). This differential treatment of violent female offenders in part explains the concept known as the *Evil Woman Thesis*. Heimer and Coster (1999: 283) claim that

Violence [in women] is inconsistent with nurturance, passivity, non-aggressiveness, and physical and emotional weakness: Aggression is often subject to censure, in the form of either condemnation or a warning to behave properly. Females who depart from traditional definitions of femininity by engaging in violence are labeled as more deviant than aggressive males. For girls, violent behavior is viewed as *doubly deviant*.

Moreover, there are still some non-violent acts that are considered to be *more* deviant if they are committed by women, than if committed by men. These “acts” are what the literature refers to as *morality crimes*. Belknap (1996: 50) states that

There has been a concerned effort to control females’ sexuality, both socially and legally, which has resulted in a double standard. A “good” girl is never sexual, although she must be sexually appealing, while a healthy boy must

prove his masculinity by experimenting sexually. The status offenses of “running away” in the United States and “being in moral danger” in the United Kingdom are strongly related to sexual “promiscuity

These are but a few examples of how some laws, laws that should treat all individuals equally, “discriminate” against women. The point is that these women are still being treated differently than men simply because of their gender. There is therefore little surprise that once women enter the judicial system, that discrimination, or at the very least differential treatment occurs.

This ideology according to Singer et al. (1995: 103) has led to the belief by many in society who are in positions to “control” women who violate the criminal code, or even commit a status offence, are “seen as ‘expendable’, ‘evil’, ‘women gone bad’, ‘not really women’, and ‘incapable of change’. Furthermore this belief has led to countless “crimes” against women by administrators of both the Criminal Justice System as well as the sphere of medicine. Therefore, it would appear that women who have broken the law, even if it is merely a status offence, are somehow still seen as physiologically, psychologically, or morally “defective” compared to men. It would also appear that because of this belief, it is (still) justified to treat women offenders differently than their male counterparts.

Therefore, it is by no means a “leap of logic” to claim that if women who break the law are seen as different and more deviant than men who break similar laws, that the treatment by the Criminal Justice System of these individuals would differ also. The dissimilar way that female and male offenders are treated by the administrators of the Criminal Justice System is the reason why this is an important area to investigate.

Because, if similar social forces affect women and men, including those that could potentially lead to criminal behavior, why then are the individuals who are in the position of enforcing a supposedly unbiased criminal code, still treating female offenders differently than their male counterparts? According to Rhode (1989: 1) [it is] “by examining how the law reflects, reinforces, or challenges persistent patterns of inequality [that] we may gain a better understanding of the cultural construction of gender”.

As mentioned above, women who behave outside of their socially prescribed role of meekness, passivity, and nurturer are seen as *doubly deviant* and as having some sort of psychological deficiency. However, the differential treatment of women is rooted in ideological beliefs rather than from significant differences between the two genders. Furthermore, because the construction of *ideal womanhood* was developed centuries ago, there is a long history of gender bias as well as differential treatment of the genders within the Criminal Justice System.

Several studies (Morris, 1987; Menzies et al., 1992; Heidensohn, 1985; Axon, 1989 as cited in Boritch, 1996) in England surveyed sentenced individuals and found that 32% of women compared to 18% of men were remanded for psychiatric evaluation. They also found that women who break the law are more likely to be seen as “emotionally disturbed and admitted to psychiatric institutions, while males are seen as evil, and [should] be controlled by the Criminal Justice System”.

Baskin et al. (1989) looked at gender role incongruence and the prescription of mental health services in prisons. They found that women and men did not differ in terms of prison violence, yet female inmates who committed acts of violence against others or property, were significantly more likely than men exhibiting similar behavior to

be placed in mental health units. “The likelihood of mental health placement was increased significantly if the female inmate engaged in prison violence. Men who committed similar yet (for them) role congruent acts were placed in disciplinary confinement. These differences in situational responses to inmates behavior reflect an historical concern of correctional administration with reproducing the *cult of true womanhood*” in female inmates” (310). In other words, women should act like women, mild-mannered and submissive to male authority; if they deviate from this, they will be punished. However, there is also evidence that another method of controlling or “normalizing” these women lies within the jurisdiction of the Criminal Justice System’s disciplinary branch.

According to Adelberg and Currie (1993: 107) typically, the type of offences women are arrested for, charged with, and incarcerated for are “predominantly non-violent. For a substantial proportion of women admitted to provincial jails in Canada, their greatest crime is poverty: three in ten were incarcerated for not paying fines”. In the early 1990s in Canada, there were 280 women in federal penitentiaries or 2% of the 12 000 federally sentenced prisoners (Shaw, 1992: 441). A task force was established in 1989 with an agenda to investigate the Correctional Services of Canada in order to consider the correctional management of federally sentenced women. The task force employed primarily interviews as its method of data collection. Prior to interviewing the women, it found that as in the general population, “two thirds of the women have children, and of those, half had children under sixteen. Two thirds of these had been a single parent for part or all of their children’s lives” (Shaw, 1992: 445). Another circumstance the task force discovered was that the women are still “reduced to a child-

like status" [by a patriarchal system]. They are still referred to as "girls" and the guards are still called "matrons", but not in men's institutions. These are referred to as houses, and there are *correction officers*, and as mentioned above, there also appears to be an overriding need to "control" female inmates (Shaw, 1992: 448).

McClellan (1994) found that "women in prison still receive some of the worst of the old *separate spheres* abuses, particularly in the area of social control" (82). For one year, McClellan (1994) observed the federally sentenced inmates of the state of Texas. Most men in her sample (63.5%) had no "citation or only one for rule violation, only seventeen percent of the women in her sample had such clear records". Women prisoners were more likely to receive *numerous* citations and receive them for different sorts of offenses than men. Mostly women were cited for the "violation of rules, whereas men were cited for refusing to work" (77). Violation of posted rules included

Excessive artwork (too many family photographs on display), failing to eat all the food on their plates, and for talking while waiting in the pill line. Possession of contraband included "an extra bra or pillow-case, peppermint sticks, or a properly (not through extortion or coercive means) borrowed comb or hat. Trafficking and trading included sharing shampoo in the shower and lighting another inmate's cigarette (85).

Maden et al. (1994) found similar patterns of over-policing of the women in the British penal system. The results of the study show that women are more likely than men to have at least one disciplinary offence on record during the three months preceding the interview. Eight women (3%) had a record of five or more disciplinary offenses compared to 19 men (1%).

In this thesis, I am attempting to show a link between federal cutbacks leading to closures of mental health care facilities and the increase in the incarceration rate of females, and the resulting psychiatric treatment of female offenders in prison. I am arguing that women have not necessarily become more “criminal”, but rather that because of the closures of mental health care facilities, women, who were once “committed” to these facilities are now instead being “incarcerated” in penal institutions.

However, upon the closure of health facilities, women were not immediately transported to a penal facility. I am claiming that their treatment may have been hurried, and they were considered “cured” and released. However, because of the hastened and perhaps incomplete treatment, these women were not ready to adjust or to cope with life’s problems, and as a result, found themselves under the scrutiny of the Criminal Justice System. They came under scrutiny of the Criminal Justice System perhaps because they were behaving strangely in public or were causing a public disturbance meriting a call to the police. Arresting officers being told there were no spaces available in mental health care facilities often have no choice but to incarcerate these women in a penal institution, and once incarcerated, their chances of receiving the proper treatment are remote because of the *Separate but Equal* ideology that plagues the penal system. However, just because women make up a small number of federal and provincial inmates, this cannot justify the treatment they are receiving from the Criminal Justice System.

These women are incarcerated not necessarily for having committed a serious offence, but simply for having disturbed the peace due perhaps to an intoxicated state, and, as will be discussed later, alcoholism and drug addiction are a common denominator

in women who have come into conflict with the law. This is not to say that this is not a problem for men also, but within male penal institutions, drug and alcohol rehabilitational programs are more prevalent, and the men receive a more complete treatment. However, if it is indeed the situation where intoxication is the cause for arrest, if the offense is a minor one, then it is not a prison these individuals need, but rather a detoxification or rehabilitation center. Unfortunately, these centers have also seen their budgets reduced, and therefore, women (and men) are now being sent to prison because there is no more room in mental health care facilities or rehabilitation centers available where they may have received proper treatment for their drug or alcohol problem. Later we will see that there has been a form of transinstitutionalization occurring between mental health facilities and penal institutions, causing an increase in prison populations. Based on this increase, recently, there has been much discussion around the issue of female criminality being on the increase at a much faster rate than that of males. However is there any truth behind this rhetoric?

Campbell (1991: 1-5) found that “between 1962 and 1989-90, the rate of women charged per 100,000 increased by 527 percent for property crimes and 563 percent for violent crime. In 1989-90, women accounted for 15 percent of all charges, up from eight percent in 1962”. However, other researchers have found evidence that these numbers are over-inflated and often misleading. Furthermore, Boritch (1996:36) maintains that the use of percentages and ratios are misleading because “small numerical increases in women’s crime can appear substantial” especially when comparing these to statistics for males, because of the larger difference in the total number of cases involved. Boritch

(1996) also claims that some researchers misinterpret or distort the data to support their claims.

For example, the period of 1962 to 1989 shows a narrowing of the gap in violent crimes between men and women. However, Boritch (1996) points out that once the sum total of the offences are standardized in order to account for the disproportionate number of males, Boritch notes that “female increases were matched by male increases. In other words, there was little change in the relative gap between males and females in this category”(36). For the same period, other researchers claimed that for violent offenses, the ratio between women and men went from 21.3:1 to 9:1. However, Boritch (1996) maintains that the ratio for violent offenses has declined only because “of the relative increase in women charged with assault, which prior to this period was a rare occurrence” (36). Moreover, Boritch and Hagan (1990) claimed that there has always been a similarity in the trends of female and male criminality, therefore, in order to discern what these trends were, Boritch and Hagan (1990) used the annual reports of the Toronto Police Department for each year from 1859 to 1955.

For each year Boritch and Hagan (1990) classified female and male arrests to create three broad categories: “violent offenses (including homicides, attempted murder, assault, robbery and possession of illegal weapons), property offenses and public order offenses” (572). They noted “an overall decline in male and female rates, as well as an overriding similarity in long-term patterns of male and female arrest rates for different categories of offenses” (567). What they also found was that, other than the actual numbers, women and men follow similar peaks and valleys of criminality, and that these are highly affected by the economic situation of a given period.

Boritch (1996: 19) goes on to say that one way to make not just crime statistics, but all statistics more meaningful would be to take into account the increase in the general population as well. Therefore, the numbers would be more valid if they were stated by rates, for example, "charges per 100 000". Based on the use of rates and not percentages, Boritch (1996: 36) claims that the crime rate for females *has* increased in recent years, but Boritch also reminds us, that "the actual number of crimes committed by men still remains much higher than those committed by women" (36).

The figures cited in the table one below could be interpreted as "dated", as the figures shown are almost ten years old. However, the Canadian Correctional Services compiled more recent data to demonstrate, that regardless of the use of ratios or percentages, the rate of female incarceration is in fact on the increase. In table 2, we see that for the fourth quarter for the 1998/99 period, "nationally, the population of incarcerated females has increased from 329 in 1996 to 354 in 1999" (Statistical Overview: Women Offenders: 933). However, regardless of this increase, if the argument can be made (and it has) that women have always been involved in criminal activities, Therefore, can we truly claim there is a new *breed* of female criminal? (Boritch, 1996: 36). Boritch (1996: 36) would say no.

TABLE 1**ADULTS CHARGED FOR SELECTED OFFENCES, CANADA, 1974-1992***

| | 1974 | | 1992 | |
|--------------------------------------|---------------|---------------|----------------|---------------|
| VIOLENT OFFENCES | MALE | FEMALE | MALE | FEMALE |
| ATTEMPTED | 357 | 40 | 710 | 98 |
| MURDER | | | | |
| HOMICIDE | 417 | 73 | 495 | 68 |
| ROBBERY | 4,674 | 302 | 7,751 | 710 |
| ASSAULT | 33,407 | 2,725 | 101,236 | 13,294 |
| PROPERTY OFFENCES | | | | |
| THEFT | 41,205 | 16,085 | 62,841 | 30,922 |
| FRAUD | 14,641 | 3,811 | 26,632 | 11,254 |
| BREAK & ENTER | 25,978 | 923 | 36,269 | 1,955 |
| DRUG RELATED OFFENCES | 48,822 | 4,811 | 35,769 | 5,860 |

* Boritch, Helen (1997). Fallen Women: Female Crime and Criminal Justice in Canada. Toronto: International Thomson Publishing Company.

TABLE 2
INCARCERATED FEMALE POPULATION TRENDS*

| | ATLANTIC | QUEBEC | ONTARIO | PRAIRIES | PACIFIC | TOTAL |
|---------|----------|--------|---------|----------|---------|-------|
| SEPT 96 | 26 | 54 | 134 | 82 | 33 | 329 |
| SEPT 97 | 35 | 66 | 99 | 81 | 33 | 314 |
| SEPT 98 | 32 | 63 | 119 | 83 | 32 | 329 |
| SEPT 99 | 35 | 64 | 103 | 120 | 32 | 354 |

* http://www.csc-scc.gc.ca/text/prgrm/fsw/sw/statistical/toc_e.shtml

This thesis will be divided into six chapters. Chapter one will be comprised of my introduction. Chapter two will include my methodology and look at some of the past literature that has been accumulated on this topic. Chapter three will include a theoretical and ideological analysis that will provide an insight into the roots of the social construction of the *ideal* woman. Also included in this chapter some examples of how this ideology has been turned into practice. Chapter four, will look at the state of mental health care in Canada as well as in the United States, including a look at who the individuals are that are using these facilities, why they are using them, as well as the rate of closure of these institutions. Also examined in this chapter will be the potential implications that the closures of mental health facilities have had on individuals who need them. Chapter five will look at the trends in female criminality, as well as examining the socio-demographic make-up of female criminals in Canada, the United States, as well as those in Great Britain. This chapter will also include a case study that

will provide an empirical aspect of how the social construction of the *ideal* woman played a major role in the re-building of a penal institution for women in England. Lastly, chapter six will contain my concluding thoughts.

As mentioned earlier, the goal of this thesis is not to determine a causal relationship between the closures or reduction in available mental health care and a direct increase in the incarceration rate of women. Rather it is to show that ideology is primarily at the root of this shift in remanding certain individuals from mental health care facilities to penal institutions. I am making this assumption based on evidence uncovered through previous studies that examined the differential treatment of female and male inmates and the circumstances of their incarceration. Many of these studies have repeatedly showed that where female inmates are concerned, there is a much stronger psychiatric or emotional label attached to the acts of deviance committed by women, whereas, there is a rational connotation attached to the criminality of males.

I believe the *social construction of womanhood* and of a woman's *natural place* within a patriarchal society was further determined as capitalism gained momentum in the latter half of the 19th century. Yet, I also believe gender inequities began centuries before this as a result of the church interpreting the creation myth and painting women in a picture of *natural* evil, a temptation, but a *necessary evil*. This interpretation has been re-constructed in a capitalist society because in order to function, a capitalist society needs women in the home to ensure its survival. Therefore, the social construction of "woman" is no longer solely rooted in ideological thoughts, but also in the base of today's social structure, the economy. This shift in ideology is known as *structural sexism*. This theory "refers to the ways in which the culture of society, its

norms, values, beliefs, and symbols perpetuate the subordination of one group because of the sex qualification of that group”(Mooney et al., 2001: 216).

I believe that the capitalistic society of today, which is still male dominated, is perhaps subconsciously placing restrictions on women who want to work outside the home, just as it did at the start of the Industrial Revolution, and the era known as *modernity* after the Second World War. Why? To answer this question, I turn to Marx and his theory of how a society which has a capitalistic mode of production is structured.

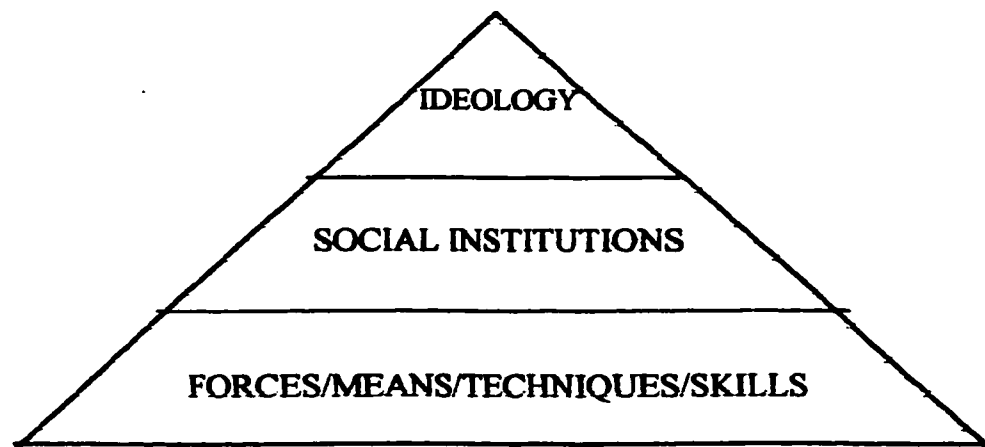
Those who work for the owners are found in the base of the structure, and those who own the means are situated in both the center as well as in the peak of the pyramid, and, even today, these owners or managers are typically men. A recent study (Klein 1998 as cited in Mooney et al., 2001: 211) found that “less than eleven percent of all the seats on the fortune 500 company boards were women”. The peak of the pyramid contains the legislative body, ideas, values and religious beliefs of the society, all of which have a strong impact on policies as well as the structure of society, and the majority of these are also men. According to Hamilton (1989: 90), “the success rate of women candidates is about half that of male candidates. In the provincial and territorial legislatures, women represent on average, 18 percent of the membership, from a low six- percent in Newfoundland to a high of 25 percent in British Columbia. [Yet], women are better represented on city councils and other elected offices at the municipal level [but] there is less power at the local level”.

Marx argued that in a capitalistic mode of production, there is always one group that monopolized the means of production as well as one group who works for those who

own these. And within a capitalistic mode of production, the system itself and patriarchy reinforce each other. According to Hamilton (1996: 105), men (the Fathers of Confederation) negotiated the Canadian [as well as those of Great Britain and the United States] state. [And because of this], the legislation of the state, from family law to criminal law, has been gendered in ways that disadvantage women politically, socially, and economically". Hamilton (1996: 105) goes on to say that "not only have those with influence been male, but they respond to the world in ways that protect the interests of men throughout the society, and the male ruling class in particular.

As will be discussed later, in times of crisis, such as after both World Wars, women were "allowed" to leave their home to enter the paid labor force. Corporations, in order to maintain a balance between supply and demand often use a *reserve pool of labor*, which in large part is comprised of women, and the former allowed many corporations to become successful, and then as now, the majority of these corporations are owned by men. This is a reason why patriarchy and capitalism sustain each other.

MARX'S SUPERSTRUCTURE¹



However, once the crisis is over, women are expected to return to their *natural* place, the home. Because women are “used” in this manner, on a temporary basis, corporations do not feel obliged to pay women a comparable salary to that a male worker would receive. In fact pay equity often is not in corporations’ best interest. This is particularly the case if it is a small corporation which has smaller profit margins than larger ones, and consequently, there has been much opposition to this notion (Hamilton, 1996: 92).

These companies justify pay inequities because it is assumed that women, although they are working, are living within a nuclear family, and that they are working for the “little extras” a family may need. Within a capitalistic mode of production, the notion of a family is an important one because it is within this institution that the future lies. Therefore, in order for this system not only to function, but to succeed, it needs women to remain in the home to ensure that there will be a future generation of workers that will ensure that production of goods and services will go on. However, as will be discussed later, the home, the *natural* place for women is often an important factor that leads to women becoming involved in the Criminal Justice System.

We will also see in this thesis when women become involved with the Criminal Justice system, there is a contradiction. On the one hand, I am claiming that because of an ideology constructed within the last century, women more often than men have a psychiatric label attached to their criminal behavior. However, sometimes this label *seems* appropriate. I make this claim because often women are victims of sexual, physical, and even psychological abuse, and these are often the cause of their “irrational”

¹ Class notes, Classical Social Theory, 1997/98, Professor C. Boucock

behavior. However, the treatment women will receive in the correctional institution (I am arguing) is far below the standard of care they would have received in a health care institution. Moreover, not only is the treatment they receive in penal institutions inferior to that in a rehabilitation center, the little treatment they do receive in penal facilities is far below the standard of treatment men receive for similar drug or alcohol problems in male correctional facilities. Furthermore, because women make up such a small number of the total penal population, as previously mentioned, two percent of 12,000 (Shaw, 1992: 441) governments are reluctant to increase spending to improve rehabilitational programs in female penal institutions. This can be tied not only to the construction of *ideal womanhood* but to economical factors as well as the *Separate but Equal* ideology.

This thesis focuses on the situation of women within the Criminal Justice System. On several instances within this thesis I make references to the overly harsh treatment of women at the hands of the Mental Health Care system as well as the Criminal Justice System. This is not to say that men have always been given a fair treatment by these institutions. On the contrary, these two institutions have carried out injustices on both genders. However, in keeping with the theme of differential treatment within the Criminal Justice System, the reasons for the harsh treatment of both genders differs also. For women, it is rooted in gender ideology, for men it is rooted in peneology.

CHAPTER TWO

METHODOLOGY

In order to carry out this research, I set up a literary analysis to examine the ways in which the Criminal Justice System and the medical branch of psychiatry treat female and male offenders differently. I relied primarily on previous sociological and governmental studies that were published between the 1970s and the year 2000, as well as sociological, psychological and criminological theories that were developed in the late 19th and early 20th centuries. A problem that can arise using this type of data lies in the size or scope of the studies. Several of the studies included in this analysis of justice and gender were based on small samples. Therefore, their results cannot be generalized to the population at large, but the studies provide an indication of the differential treatment of women by those who enforce the Criminal Code.

I am also relying on sources from countries other than Canada. I am using several studies from the United States as well as from the United Kingdom, but I do not consider this to be a problem, since Canada, the United States and England share similar patterns of social, economical, legal and ideological development. Furthermore, the United States and Canada are former colonies of the United Kingdom, and therefore have their present-day laws rooted in old English Common Law.

Both Canada and the United Kingdom have crown prosecutors and the United States has state prosecutors that act on behalf of the people. Even though there may be certain procedural differences within their legal systems, I believe that this does not effect the ways in which the men who administer these three judicial systems treat female

offenders. Moreover, Shaw (1992) maintains that the “history of women’s imprisonment in Canada has many parallels with other countries in terms of small numbers, neglect, and subjection to regimes designated for men and to stereotyped views of the role of women in society” (338). Therefore, based on these similarities, I do not see using results of studies or statistics from other countries as problematic, in fact, what these studies show, is that transnationally, female offenders are viewed with resentment and even negligence by the administrators of these countries’ Criminal Justice Systems.

My argument is that women were previously remanded to if not psychiatric facilities but dealt with “outside” the legal system in lieu of prisons. Therefore, in order to establish whether there is a *link* between an increase in the incarceration rate of women and the cutbacks to the health care system, I would have to look at the rates of closure of these facilities, the decrease of available beds, and the potential consequences of these factors. The next step in my research would be to examine the trends in female criminality to ascertain if in fact there has been an increase. The next step, because I am claiming that ideology is at the root of the differential treatment of women (and men) in penal institutions, I will examine which treatments are needed and which are available within these institutions. We will see in the literature that because of this ideology, women are in fact remanded more often than men to the mental facilities within the penal institutions, yet once they are, often the treatment they receive is inadequate and even at times inappropriate.

According to Tepplin et al. (1997:604), there are several factors that come into play when carrying out comparative analyses between females and males, including the allocation of mental health services in penal institutions. Firstly, “many studies suggest

that gender affects prevalence rates, diagnostic profiles, and service utilization patterns: women in jail have higher rates of severe mental disorders, especially depression, than men in jail ". The authors go on to say that "gender affects how mental disorders are defined and treated". The second reason why there are difficulties comparing female and male inmates can again be linked to ideology. "Men and women are managed differently in correctional settings: female offenders may be more likely than men to be defined as *mad* rather than *bad*. Women are disproportionately represented among persons found 'unfit to stand trial' or 'guilty by reason of insanity', suggesting that the criminal justice system may be more likely to treat female offenders than male offenders as mentally ill" (Tepplin et al. (1997:604). The third reason suggested by Tepplin et al. (1997:604) lies in the resources available to women and men in prison: "The resources available in women's correctional facilities are different from those available in men's facilities. Ironically, because there are relatively few female inmates, the per capita cost is too high to provide them with comparable services". This ideology strongly resembles the doctrine of the United States in the latter half of the 19th and first half of the 20th century; this was the doctrine of *Separate but Equal*.

This concept was largely based on the passing of the 14th Amendment to the United States constitution which states that, "the states are forbidden from making or enforcing any law which shall abridge the privileges or immunities of citizens of the United States, or shall deprive any person of life, liberty or property or deny to any person within their jurisdiction the equal protection of the law". In theory, what this amendment was supposed to accomplish was the abolition of segregation, however, in practice, this was hardly the case. It was on the precedent of the Plessy v. Ferguson

case² that the United States government would build schools for Blacks, thereby keeping the “White” schools that; white. However, the quality of the schools that were built for the Blacks were far below the standards of those built for the White population. There were four walls and books, but not much more. Therefore I am using this same argument when comparing the prisons built for women and the programs available to the inmates that are incarcerated within these walls, compared to the facilities available for inmates within male institutions.

Before discussing the literature, it would be helpful to bring in a discussion of why individuals, be they female or male, become involved in criminal activity. Although it has been mentioned that similar factors affect both women and men. Because of the construction of *ideal womanhood* these have been interpreted differently. What Boritch and Hagan, 1990, Myers, 1995, Adler and 1975 found was that industrialization, urbanization and capitalism played major functions in explaining the changes in patterns of criminality for both women and men. Adler (1975) claims that

as urbanization increases, traditional roles decrease; with increased mobility people lose stable, continuous personal relationships; disintegration of family life grows; the importance of goal attainment is emphasized at the expense of the means used to attain the goal; and society is continuously fragmented into depersonalized compartments” (104).

This theory of modernity can be linked to Merton’s theory of anomie. Merton claims that Western society, primarily due to capitalism, has encouraged individuals to believe that they can achieve material and spiritual success if only they apply themselves to their endeavors, but that society has failed to provide each member with the legitimate

² The Supreme Court on Racial Discrimination. Ed. Joseph Tussman (1963). New York: Oxford University Press.

means in reaching these goals. This failure leads to “an imperfect state of affairs or anomie” (Gomme, 1993:66).

Myers (1995) looked at the role industrialization and capitalism played on gender and the law in the Southern United States. To make her analysis, Myers used two sources: annual reports from the Georgia Penitentiary, and the Central Register of Convicts obtained from the Georgia Department of Archives and History. What she found was that “urbanization involved changing norms about social behavior and the attendant growth of institutions that supervised and shaped social behavior more intensely” (19). She also found that the “civilizing” influence of modernity weighed more heavily on men than women because of the “bifurcated gender roles (that) accompanied the shift to a market economy” (19). However, Myers (1995: 19) also noted that once women became more involve in the “active” labor force, they too fell under the “eye” of the formal social control mechanisms such as the police and the courts.

LITERATURE REVIEW

In order that the data in the upcoming literature review be able to give their full impact, a brief look at some possible reasons of female criminality would be beneficial at this point. In the 1970s, a theory of female criminality was established: *The Broken Home Thesis*. This theory was based on official crime statistics, and claimed that “intact homes, containing both parents, were better at socialization and controlling children than households where one or both parents were absent” (Fanrnsworth, 1984: 351). Although this theory was developed almost a quarter century ago, I believe its fundamental premise still holds true today, particularly when looking at young girls or adult women. This is not to say that this theory could not be applied to males.

Youths, who grow up in neighborhoods that do not provide any constructive opportunities, often struggle to change their environment, even if this struggle results from delinquent or criminal behavior. Some would argue that these juveniles (and later adults) choose their paths in life freely. But how free a choice is it when outside forces such as violence in the home or unequal access to legitimate opportunities push individuals, be they female or male, in a direction that they would most likely avoid given different circumstances?

Young girls in particular are vulnerable when they are forced to live in families that offer little in the way of a nurturing environment. Faced with unhealthy or even dangerous living conditions, and often victims of sexual and/or physical abuse, many may come to believe that life on the street would be a safer alternative to life in a violent home, and so they run away and are often forced into a life of crime simply to survive.

Furthermore, there is a link between “childhood sexual victimization and runaway females and consequently delinquency”(Rhodes and Fischer, 1993: 880). When girls are forced to leave home at a young age, the chances of them being able to continue their education are very slim, and without adequate education or job training, their chances of earning a decent salary are remote. For many of these young girls, the only way to survive is through illegal activities such as prostitution, theft, fraud, or drug trafficking.

The above-mentioned scenario leads into a factor that explains the increase in female criminality: the feminization of poverty. “Half of all single-parent families are headed by women who have low incomes” (Tepperman and Rosenberg, 1991: 157), and women are primarily jailed for crimes of *need* rather than crimes of *greed*. Many women are raising their children alone; they are not able to secure full-time employment. If they are lucky, they may find part-time employment, but at a much lower salary and with very little job security. They may have to take on two or even three part-time jobs in order to supplement their first job. Therefore, faced with these frustrating and often hopeless conditions, many women will be “forced” into making difficult and sometimes “innovative” or illegal decisions simply to survive. Some may choose prostitution, others petty theft (shoplifting) and others may commit welfare fraud in order to provide themselves, and their children with the basic necessities of life.

In most countries, “women are being jailed for being poor” (Carlen, 1989: 1) and the Criminal Justice System exacerbates the process of victimization. To fine a woman, as an alternative to jail for minor offenses seems pointless, as most of the offenses were related to a lack of money in the first place, and when women fail to pay the fine, they are

eventually jailed anyway, and once in prison, the system fails them again. According to Boritch (1996: 28),

The typical female offender is economically and socially disadvantaged, poorly educated, frequently addicted to alcohol or drugs, and the victim of neglect and physical or sexual abuse...is often without a husband, is a mother, and is usually the sole supporter of several young children.

The ultimate goal of the Canadian Correctional Services (CCS) is to “provide incarceration for limited periods of time, to look for the eventual release, and to the least possible likelihood of a return to prison. It is therefore a simple argument that the system should direct its energy to prepare these individuals for a return to normal society” (The Ontario Institute for Studies in Education (OISE), 1976: 72). The CCS must “guarantee each inmate capable of benefiting from formal academic schooling or vocational training” (OISE, 1976: 62) to do so. “The aim of all prison programs is the development and the positive learning experience of the inmate” (OISE, 1976: 62) Even though the CCS has been given specific recommendations with regard to educational programs for female inmates by OISE, the former fall short to the task set before them by the latter with regard to the women who are currently serving a sentence in a federal correctional institution. Matters (1984) and Ross and Fabiano (1986) (as cited in Jackson and Griffith 1994) found that

Women inmates received instruction and training aimed at transforming them into ‘good’ mothers, wives, and homemakers. [Furthermore], today, many programs are aimed at women law breakers are still based on stereotypical assumption about women; that lawbreaking is the result of a basic irrationality and impulsiveness or lack of femininity... Therapy and behavior modification have been added to the treatment arsenal for the re-socialization

of the deviant...psychotherapies are the most popular treatment programs for female offenders.

McClellan's 1994 study also found that women's prisons do not have the same range of programs as men's prisons. The speculation behind this play on the Separate but Equal ideology is attributed to the fact that women make up only a small percentage of the total penal population and therefore, "women's needs are unlikely to receive attention in the near future" (Chesney-Lind, 1997: 169). Jackson and Griffith (1994: 175-177).

If the goal of the CCS is to reduce the likelihood of individuals returning to prison, in other words, to lower the recidivism rate, at present, women who are released without having received any counseling for substance, physical or sexual abuse or any meaningful job training, are in the very same position they were in when they were sent to jail in the first place, and upon release, resort to the only way they know how to survive: prostitution, drug trafficking, theft, and fraud, only to be caught again, and the cycle continues. In this thesis, I am proposing that the Criminal Justice System's ideology toward women today is analogous to the patriarchal views developed in the last century.

At the end of the 19th century, we had Lombroso's *Female Offender* in which he characterized female criminality as an "innate condition produced in individuals, that could be regarded as biological atavism, a freak of nature, not as evolved as 'modern' man" (Adler and Simon, 1979: 59). In order to come to his conclusions on female criminality, Lombroso looked at the skeletons of 74 "deviant" females. Of these, four were prostitutes, twenty had committed infanticide, four "wounding", ten were convicted assassins, three were convicted of homicide, four for poisoning, one had an abortion, two were charged of complicity in rape and fourteen women were charged with theft

(Lombroso, 1897: 3). By looking at these skeletal remains, Lombroso claimed that criminal women had certain physical abnormalities. He sought to categorize those abnormalities that would predestine women to be criminals from birth, asserting that females had innate propensities to certain types of crimes. He also applied this typology to male criminals. However, he examined living entities, and not just the skeletal remains of convicted male criminals in order to draw his erroneous conclusions.

Freud's theory on women and crime was a turning point in the construction of ideal womanhood as well as the construction of female criminality. Freud, largely influenced by Lombroso's theories on female criminality, based his theory on the premise that all women were afflicted with universal physiological traits, such as their reproductive instinct and their "natural" passivity. He saw these traits as "invariably producing certain psychological reactions. Women turned to crime as a perversion or rebellion against their natural feminine roles" (Adler and Simon, 1979: 59). The notion that women who break the law are somehow psychologically flawed, and therefore not to be held accountable for their actions is still prevalent in social theories as well as practices over ninety years after Freud set forth his theory. Evidence for this is seen by the fact that women in prison today are still being medicated more than men, as well as being remanded for more psychiatric evaluation within penal institutions.

In the 1940s, Otto Pollak set forth the theory that women were not charged with violating the Criminal Justice Codes as often as men because of the "masked" nature of their criminal activities. He argued that it was impossible to tell how many "natural deaths" were actually homicides committed by women. Nothing is simpler, Pollak argued, than for a woman to slip a poison to another individual, and claim to the

authorities the following morning that their husband or child had taken ill during the course of the evening and died during the night. He concluded that women were “dangerous” at all times. The hormonal changes during menstruation, pregnancy and menopause made women more prone than men to commit deviant acts because they were being controlled by their bodies, unlike men, who when committing a crime, are rational in both mind and body.

Pollak’s theory had a powerful and lasting ideological impact on future theories of female criminality developed as well as on those who enforce the criminal code. In the 1970s, a probation officer in London commented on the young girls he has counseled. He made reference to the fact that girls who shoplift wear disguises in order to make identification by witnesses more difficult. He went on to say that “The danger is, you see, the girls are much better at disguise... they’re much smarter in their approach... the problem is they may eventually become better than men” (Adler, 1975: 101). This officer believed, as Pollak did, that women could be more devious than men when committing crimes, and should therefore be considered more dangerous.

Today Lombroso’s and Freud’s theories would be laughed out of the scientific community for their unsubstantiated theories of deviance for either females or males. It has been shown by Boritch and Hagan (1990) Kaufman et al. (1995) and Myers (1995) that deviance is not an innate behavior, but a learned one, and therefore a sociological phenomenon and not a biological trait.

At the beginning of the industrial revolution at the turn of the 20th century, there occurred massive social changes. Families were torn apart as members left the rural setting and moved into urban areas where they encountered a wider variety of individuals

coming from many different backgrounds. For some, these changes were too rapid, and as a result, were unable to cope. As politicians and social administrators became aware of the chaos resulting out of this revolution, they saw a need to establish exactly who was unable to cope and, they wanted to “control” these individuals. One outcome of this time resulted in the scientific method being applied in order to discover who this “unruly” population was, and how to “label” them, and to decide how these individuals should be dealt with. “In Canada, this occurred with the creation of two key institutions, the Kingston Penitentiary in 1835 and Toronto’s temporary Lunatic Asylum in 1841” (Moffat and Shaw, 2000: 83). However, these institutions were only the beginning. Once they were established, administrators soon wanted to further categorize these “deviants” in order to create more efficiently run institutions. “Thus, institutional populations were closely monitored and classified into ever more precise categories of difference. The psy-sciences emerged” (Moffat and Shaw, 2000: 83).

Another aspect of the application of the scientific method was that “norms” of conduct had been established from studies that had been carried out in these institutions, and individuals entering them were “encouraged” to follow or adapt to these norms. However, this was a new way of treating people and it was far from un-biased as what was considered as “normal” was a reflection of the dominant or the most powerful group in society, namely middle-class white males. “The further away individuals [were] from the dominant norm, the greater [was] there perceived difference and deviance. People’s *otherness* [was] then used against them” (Moffat and Shaw, 2000: 84). The authors go on to say that the populations of asylums and prisons have “historically comprised of

marginalized groups...and when measured against white middle-class males, they could never be *normal*" (Moffat and Shaw, 2000: 84).

Those who were considered to be "criminal lunatics" were at best considered as nuisances within the prisons; they disrupted the silence, routine and discipline of the institution and within the asylums, it was feared they would "contaminate and harm innocent patients" (Moffat and Shaw, 2000: 84). Females who were seen as criminal as well as "lunatic", were an even greater enigma to administrators due to the ideological belief that women were "virtuous and innocent". "This belief meant that women who transgressed social boundaries were generally more likely to be regarded as insane than criminal; [again], it was believed that women's biology made them sick" (Moffat and Shaw, 2000: 85). Female criminals were

Either disregarded as anomalies or rationalized as extreme variations of women's greater predilection to madness. Female criminal *lunatics* were treated with negligence and hostility. Psy-experts employed a variety of interventions, including plastic surgery, drug therapy (for example, in the 1960s LSD: some inmates received the drug a number of times, and others while in dissociation or segregation), psychotherapy, aversion therapy, group counseling, and individual counseling. It was claimed that these methods were humanitarian and benevolent because they were for the prisoners' own good. (Moffat and Shaw, 2000: 85-87).

By the middle of the 20th century, still largely influenced by Freud's theory, not only were women still seen as being "slaves" to their hormones, they were also increasingly seen as having more psychiatric problems than men because of their physiology. It was on this premise that in the 1970s, the re-building of the Holloway prison for women in England was based. The Holloway prison was to be a "secure hospital rather than a *prison*, the aim being to "cure" females of their offending

tendencies” (Maden et al., 1994: 173). The results of studies show that there are differences in the history of offenses for women and men, but the results do not indicate that these differences are due to the fact that women were serving sentences for less rational or less violent offenses (Maden et al., 1994: 84). The reasoning behind this ideology is that women who break the law are not only considered to be a nuisance, but they were also considered to have more psychiatric problems than men, as well as being either “incapable” or “tricked” into committing a criminal act (Adler, 1975: 98).

From the beginning, prison officials viewed women as a nuisance to be housed and managed in whatever ways least disruptive to the dominant male population. In 1836, a prison inspector referred to female inmates as an “inconvenience, and in the same year, it was felt necessary to hire a female matron to oversee them” (Boritch, 1996: 172). Historically, women and men in prison have not been treated equally. “Gender-based disparities in the treatment of male and female inmates encompasses virtually every aspect of imprisonment, including the basic architectural design of men’s and women’s prisons, to the quantity and quality of programs and services available to men and women in prison” (Boritch, 1996: 170). Again, these differences are based in the belief that women who break the law are not only violating a statute, they are violating the social boundaries that have been constructed for them.

Forsythe (1993) also contends that the rules of the penal system are treating women inmates in a discriminatory manner. Forsythe (1993) uses an historical approach to describe how since the 1840s, the Home Office and Prison Commission in England have “systematically discriminated against women prisoners” (525). One element that was similar for both female and male inmates was that the “single cell arrangement

dominated the penal system in both the prisons for women and men in theory and in practice” (526). However, he did observe marked differences in the way the penal system treated its female prisoners. In instances where inmates deviated from the prison routine and discipline,

Punishment for this was much more frequently inflicted on women than men. We saw evidence of this in McClellan’s 1994 study in Texas. The penal regimes for women were being enforced in a more rigorous manner than those established for men, and that any deviation in women, was punished because the deviant act constituted a moral offense” Forsythe (1993: 526).

Again, rooted in the construction of *ideal womanhood*, those who designed the penal system wished to condition women to their roles of homemakers and nurturers of children based on the social construction of *ideal womanhood* which had been developed centuries ago. Therefore the women were punished repetitively for each departure from their “womanly ideal” (Forsythe, 1993: 527). Women who wrote of their prison experience in the latter half of the 19th and early 20th century, remarked that “too much discipline and too much gloom, had reduced their natural vitality” (Forsythe, 1993: 533).

In Canada, the first women to enter the Kingston Penitentiary in 1835 were Susan Turner, Hannah Downes and Hannah Baglen. All were serving a two-year sentence for larceny (Curtis et al., 1985: 86). There were no facilities within the prison for the women, and so they were temporarily placed in the infirmary. For the next four years, women who were sent to Kingston were also housed in the hospital wing (Curtis et al., 1985: 86). Twenty years later, the female inmate population grew, and during this time, the women were relocated several times within the confines of the prison. In 1858, eight women were forced to sleep in the corridor, since there were not enough cells for all the women.

It took another fifty years before officials decided to construct a separate facility for women prisoners. Inspector James G. Moylan conceded that the cells in their original location, which were underground, were “gloomy”. However, another factor that led to the construction of a separate facility was the “objectionable proximity of the women to the male prison” (Curtis et al., 1985: 87). Shaw (1992) states that four years after the completion of the new Prison for Women in Kingston, “a major government commission found conditions at the Prison for Women (P4W) very inferior to those in men’s prisons and recommended the closure and the transfer of all women back to their home provinces” (339). Again, we see the doctrine of *Separate but Equal* as well as the *construction of ideal womanhood* with regard to women who come into conflict with the law. Due to the “objectionable proximity of these women to the male prison” (Curtis et al., 1985: 87) the Canadian government was “forced” into providing a separate facility for female inmates, yet they did not want to spend too much money on this project, and so the facility built for the female inmates was far below the standard of the facility for the male inmates at Kingston.

Tubbs (1993: 37) also claims that women offenders today are still considered *doubly deviant*: firstly, women offenders not only break the law but also violate socially prescribed gender roles. Therefore, if women break the law, there must be something psychologically “wrong” with them, and this belief leads to female offenders being treated radically differently than their criminal male counterparts. Evidence for this differential treatment of female offenders can be seen by the fact that women in prison today are still being more medicated than men for apparent psychological problems while serving their sentence. Investigators of the New Jersey Lloyd McCorkle Training School

for boys and girls, in 1992, “reported extensive use of psychotropic medication. They found that roughly one third of all the girls who went through the facility in the last year had been given medication, compared to no more than 4.5% of the boys” (Chesney-Lind, 1997: 88); in fact, the “majority of girls were on some kind of medication, either tranquilizers or sleeping pills” (Chesney-Lind, 1997: 88). Could it be possible that this type of treatment is the result of an over-burdened system with un-qualified or over-worked employees that feel that the only way to deal with these “lunatic females” is to simply keep them drugged for the duration of their stay because there was simply nowhere else for these women to be sent? Could this treatment be a carry-over from the days when women were not sent to prison but rather dealt with by the medical profession i.e. psychology? And, could there be a link established between the use of drugs in female penitentiaries and the closure of mental health facilities in Canada?

Tully and Saint-Pierre (1997:33) found that between 1986-87 and 1994-95, the overall number of hospitals in Canada (including psychiatric facilities) has decreased by “14% and the number of beds decreased by 11%”. Furthermore, Randhawa and Riley (1996: 55) also found that “since the early 1980s, there has been an increase in hospital separations”, particularly for mental health hospitals. Separations are “counts of cases, not individual patients. For example, if one patient is admitted and “separated” three times during the reporting year, this would be counted as three separations” (Randhawa and Riley, 1996: 56). Therefore, the authors state that it is not necessarily the number of patients that increases, but rather the number of times a patient is admitted and released from an institution. By virtue of this definition, it would appear there is a faster turnover of patients in hospitals. How could this affect the treatment patients receive? Is it possible

that these hospitals are having difficulties in dealing perhaps not with an excess of patients, as they are seeing the same patients over and over again, but rather with an excess of “cases”, and that as a result, some individuals get lost or rerouted once in the system? What could be some implications of this type of practice? Although the examples of some of the treatments women received mentioned above occurred almost half a century ago, it has been shown that the “psy-ences” still have a strong influence on the way female criminals are treated today.

These studies mentioned above contend that women who break the law violate stereotypical gender roles, and that their actions lead those in positions of power to decide on a sentence to “question their mental health”, and therefore, “women who break the law, are more likely to be seen as suffering from some sort of psychiatric disturbance” (Boritch, 1996: 144-45).

CHAPTER THREE

THE SOCIAL CONSTRUCTION OF THE *IDEAL WOMANHOOD*

Since the late 19th century when science was gaining more and more momentum, men of science continued to build on previous theories or ideologies about women. It is well known that all theories are built upon previous ones. No one individual works in a vacuum. Influential individuals from a multitude of spheres including the clergy, philosophy, the natural sciences as well as the social sciences have had a hand in the social construction of *ideal womanhood*. In fact “since the 19th century, virtually every major sphere had firm ideological foundations about women, and relegated them to a subordinate role” (Rhode, 1989: 10). These individuals, using the tools of their disciplines claimed the feeble nature of woman’s body, morality, and intelligence. (Sprenger and Institoris, 1970; Ussher, 1989; Ranke-Heinemann, 1990; Gould, 1981; Darwin, 1981; Synnott, 1993; Dobash, Dobash, and Noaks, 1995) Therefore, based on past literature that has discussed women’s physiology, virtue and intellect, it is not surprising that women’s psyche came to be considered as inferior to that of men’s as well.

In the late 19th century, science and medicine were treating women for a number of physiological ailments, such as those of the stomach, liver and so on. In other words, normal afflictions that act upon humans. However, what Dr. Direx author of *Women's Complete Guide to Health* found was that all the physiological diseases women were complaining about were in fact linked to one particular part of

their anatomy. According to Dr. Direx, women were suffering from the “disease of the womb” (Ussher, 1989: 4-5). Furthermore, it did not take long for this affliction to be associated with women’s mental capacities.

As mentioned above, a connection between women’s biology, their mental capacities as well as their morality, had a lasting impact on theories about women in general and about women who break the law. Also as mentioned above, no one theory is developed in a vacuum. Each new theory is in conversation with one that preceded it. Therefore, it would appear that where women are concerned, they have been thought to be inferior to men. Moreover, this belief has been used to justify the differential treatment of women who come into conflict with the law receive at the hands of the administrators of the Criminal Justice System. (See Boritch 1996: 170-72)

It did not take long for the notion that it was women’s biology that made them mentally “sick” to become a determining factor in the treatment women received by the Criminal Justice System. This ideology has led to the fact that women’s behavior, whether legal or illegal, enabled the male-dominated scientific community to medicalize, pathologize and psychologize all women as if they were all the same, regardless of their socio-economic status or their culture, but particularly if these women broke the law. According to Dobash, Dobash, and Noaks (1995: 20),

To be a woman is to be, somehow mad [and] madness serves to categorize, censure and disqualify. Madness serves as a signifier. It points women as the “other”, as the outsider, as the “second sex”. And these beliefs have given a patriarchal society the green light to treat women as “other” (than man).

As previously mentioned, it did not take long for this ideology to be carried over to the Justice system, thus determining the treatment women who broke the law receive. Women who entered the male-dominated Criminal Justice System, be it that of Great Britain, the United States, or Canada were in fact not seen as “real” women. Why? Because “real” women are taught or socialized to be passive, nurturing and obedient to authority, in particular, male authority. In the 18th and 19th centuries the crimes women committed were “translated into the language of moral degeneration, biological throwbacks and mental inadequacy”. (Dobash, Dobash and Noaks, 1995: 28). Furthermore, Zedner (1991) as cited in Dobash, Dobash, and Noaks (1995: 28) found that

Responses to female crime were deeply entrenched in a complex value structure, at the heart of which was the highly artificial construct of an *ideal womanhood* (my emphasis added). Thus the sinful women offended against the law but also against ascribed social and moral values and roles. Women’s criminality was thus translated in sexual deviance because women’s transgressions were indicative of the increased demoralization of society as a whole.

Therefore, women who broke the law were deemed as flawed or defective, to be dealt with in whatever fashion “experts” deemed necessary in order that these women learn how to be “real” women once again. The fact that women today are more remanded to psychiatric evaluation upon sentencing (Chesney-Lind, 1997: 88), as well as once incarcerated, shows that the Criminal Justice System and psychiatry still see women as “appropriate patients for psychiatry which in turn is nourished by society’s views on the proper feminine behavior” (Dobash, Dobash, Noaks,

1995:20). Thus, based on these beliefs, administrators of both penal and psychiatric institutions saw fit to treat women in whatever way they deemed necessary in order for these women to learn their proper and *natural* role. Some of these treatments included shock therapy, aversion therapy, drug therapy, and even plastic surgery. Often these “treatments” were done without the “patient’s consent as they were believed to be benevolent and humanitarian because it was believed they were for the patient’s (the woman’s) own good (Dobash, Dobash, Noaks, 1995:20).

The reason for this was that female criminals not only broke the law, they also violated prescribed and ascribed social norms: those of passivity, nurturance, and compliance to authority. On the other hand, men who broke the law only violated a criminal statute because it was deemed “normal” for them to behave in this manner. Men are supposed to be aggressive and be able to assert a position for themselves in society, and sometimes the only way to accomplish this, which is also an ascribed and prescribed characteristic, is to break the law.

WOMEN AND THE CRIMINAL JUSTICE SYSTEM

As mentioned earlier, women, upon entering the domain of the criminal justice system were never seen as “real” women by the system’s administrators. Therefore, it is not surprising to see that these women were viewed with contempt and even hostility, and that this contempt carried over to the treatment these women received at the hands of Criminal Justice Systems of Canada, the United States and of Great Britain.

In late 18th and early 19th century England as today, women's participation in criminal activity revolved mostly around petty theft, picking pockets, and prostitution. However, the government of England did not always place these women in jail, rather, it sent these "criminals" to its colonies, Australia for example, where there was a lack of women for the already established male population.

The women who were sent to these colonies so that they could carry out their sentences were mostly women of low economic and social status. According to Beddoe (1979) as cited in Chesney-Lind (1997: 96), the women who were "remanded" to Australia were to serve out their sentence as "servants, maids, or laundresses". However, the number of women who were sent, and the conditions they were sent under are was appalling.

Between 1787 and 1852, no less than 24,960 women, fully a third of whom were first offenders, were sent to relieve the 'shortage' of women in the colonies. Shipped in rat-infested holds, the women were systematically raped and sexually abused by the ships' officers and sailors, and the death rate in the early years was as high as one in three. Their arrival in Australia was also a nightmare; no provision was made for the women and many were forced to turn to prostitution to survive.

So, we see that as in the present, administrators of the justice system, in this case that of Great Britain, mistreated women for being poor. The crimes committed that earned these women this harsh treatment were, often as they are today, crimes of need rather than of greed.

The government of the United States did not have a much higher opinion of women who broke the law than did their British counterparts. Bynum (1992) as cited in Chesney-Lind (1997: 96) found that "free black women and unmarried poor white

women were most often likely both to break social and sexual taboos and to face punishment by the courts". The contempt that the administrators of the criminal justice system of North Carolina felt for these "unruly women" was so high that had they been legally been allowed to they would have "rid society altogether of these women" (Bynum, 1992) as cited in Chesney-Lind 1997: 96).

The scenario took place during a time in human history where there were many changes going on; changes that affected every aspect in society, from the political to the economical, from the scientific to the social structural. This period is known as the Industrial Revolution. As noted earlier, many (Boritch and Hagan, 1990; Meyers, 1995; Adler, 1975) observed that industrialization played an important factor in the trends as well as in the types of criminal activity of both women and men. For example, Boritch and Hagan (1990: 582) had looked at the crime rate in Toronto, Canada for the years 1859 to 1955. They had categorized crimes into three broad categories, and what they found was that industrialization highlighted the lower economic status of women as they found that the majority of women (as today) were arrested for crimes of poverty, such as petty thievery and prostitution. We saw what happened to women who committed minor offences and how they were treated for their acts. How then were the women who committed a serious offence such as murder regarded and treated? And who were they?

According to Jones (1980) as cited in Chesney-Lind (1997: 97),

Many of America's early women murderers were indentured servants. Raped by calculating masters who understood that giving birth to a 'bastard' would add one to two years to a woman's term of service. These desperate women hid their pregnancies and then committed infanticide. [Furthermore], the author also provides evidence of desperate women murdering their brutal 'lovers' or husbands, and the

women's decision to kill, often by poison, characterized the Victorian murderesses.

From the example above, we see where in the 1940s Otto Pollack (mentioned in chapter 2) got the idea to develop his theory on the “masked “ nature of female criminality. However, what he failed to provide in his theory, were the circumstances that led these women to kill their children or their husbands. To a point Pollack was right when he said women were “devious” when they committed a crime, that often they killed in the night, and that yes, they often used poison. However, Pollack ignored one of the most important variables in his theory about female criminality: He forgot or ignored the why behind female criminality. It is not enough to say that an individual has committed a crime, one must also look for the motivation behind the act. Indeed, without defining a motive, prosecutors may have a difficult time proving guilt. Why? Most people, other than psychopaths, have a legitimate or logical reason that would explain why they have done something. It was not enough for Pollack to claim that women are devious and susceptible to violence and therefore dangerous at all times because of the hormonal changes that are out of their control. When looking at all the circumstances behind these women who committed infanticide or murdered their husbands or “masters”, it is not difficult to understand why these women committed these acts. This is not to say that this should legitimize the murder of children or adults, but it does demonstrate that just as no one theory stands alone, no one act stands alone either. For every action, there is an equal reaction, and often in the case of women who have a long history of abuse, it is not only an act of violence they are committing, it is more a reaction to violence that has been inflicted on them.

Thus far, this chapter has given an overview of the roots of the construction of the *ideal* woman, and the treatment of women who violated their ascribed social role during the pre-industrial era. To further demonstrate the power behind this ideology, an examination of more recent events concerning women and the law would be beneficial.

WOMEN, THEORY AND PRACTICE

As was seen by the brief ideological or theoretical overview above, we can argue the deviance or the “otherness” of women has been pathologized, psychologized, and often criminalized. Often, certain behaviors or acts women committed that were criminalized, such as being independent, assertive, and even aggressive, were not considered to be deviant if they were associated with men, because these behaviors were considered normal or acceptable for men, but not for women. Interestingly, even when the activities of these deviant women were beneficial to a mode of production that would later become known as capitalism, their actions were deemed unconventional because these women were violating a socially prescribed role of meekness and submissiveness. (See Dobash, Dobash, and Noaks, 1995) Therefore, women who acted outside of their ascribed role, that of mild, passive, nurturer must have some sort of flaw, and must be put back in their proper place by any means necessary.

There is evidence of this notion as early as the 13th century in Europe. According to Dobash, Dobash, and Noaks, (1995: 25), “after the Black Death, women became more and more active in the economy and increased their economic power”. As a result of women’s involvement in the economy, although not termed as capitalism yet, there was a decrease in the rate of birth, and consequently, the population did not increase as rapidly

as was expected once the threat of the plague had ended. This slackened population growth occurred mainly in the latter half of the 14th century, and was due primarily to an increased use of contraceptives by women as well as an increased number of women terminating their pregnancies through “un-natural” methods. According to Dobash, Dobash, and Noaks, (1995: 25), the actions of these women “provoked serious demographic changes in the 15th and 16th centuries. [Furthermore], this situation was denounced by the church as evil and thus linked to witchcraft”. By this anecdotal reference, we see that because a handful of women challenged their boundaries by seeking economic freedom and consequently independence for themselves, the church constructed this behavior as “evil”, and thousands of women were mercilessly tortured and killed based on this belief. Dobash, Dobash, and Noaks, (1995: 27), contend that “the message [was] then, that when women transgress from accepted boundaries, their downfall is imminent”.

Today, the image of witch is still an important one as there are still instances where the behavior of women who violate “acceptable boundaries” are demonized not by the church, but by the modern-day equivalent, the media.

In Italy in 1983, Carole Compton was convicted of arson and acquitted for attempted murder. She was referred to by the press as a *strega* - a witch – because of some allegedly bizarre and supernatural aspects of the case (Heidenshon, 1985: 93 as cited in Dobash, Dobash, and Noaks, 1995: 27). Or, the case of Lindy Chamberlain in Australia who was demonized as a witch by a witness who stated that all the time she was there behind me, staring... I could feel her eyes burning holes through my back (Bryson, 1985 as cited in Dobash, Dobash, and Noaks, 1995: 27).

WOMEN AND CAPITALISM

An example of a brief acceptance of women over-stepping their boundaries, particularly the boundary of the private sphere, was that in almost all wars, while men were away, women replaced men in the industries in order to maintain the nation's economy. However, once the wars were over, women were returned to their "proper" place, the home. After the second world war however, many women refused to abandon the economic and social freedom they had gained while the men were away, and often these women were deemed as deviant and even immoral because they were not content with their predestined life, that of care-giver and taking care of the home.

RE-GAINING CONTROL OF WOMEN

Clearly, the "discourses on criminal women and [moral]-psycho-biological representations in the late nineteenth and early twentieth centuries affected the development of penal philosophies and institutions for women" (Dobash, Dobash, and Noaks, 1995: 27). In other words, it did not take long for these three traits to be intrinsically linked to the nature of women. The interdependence of these three factors, morality, biology, and psychology will become clear when we look at the re-building of the Holloway Prison in England in the 1970s in chapter five.

Today, as in the past, a large part of deeming an activity by a female as deviant or criminal is rooted in ideology. The *nature* of woman was a strong component in the "teachings" of the early Christian church. Women's deeds and behaviors were much

more essentialized than those of men, or, rather, there was a “naturalness” behind men’s behavior, for example to be assertive, and an “un-naturalness” in women for behaving this way. As will be discussed later, when looking at strain theories as a way of explaining the gap in female and male criminal activity, essentializing a behavior is damaging to both genders. However, for the moment, we will look at the “nature” of women’s deviance or criminality. Based on the social construction of woman, the crimes of women were

Translated into the language of moral degeneration, biological throwbacks, and mental inadequacy [and], responses to female crime were deeply embedded in an even more complex value structure, at the heart of which was the **highly artificial construct of ideal womanhood** (my emphasis added) (Dobash, Dobash, and Noaks, 1995: 28).

It was believed that females were incapable of rational thought in all activities and at all times, including criminal behaviors, instead, their criminality was due to an uncontrollable biology, a flawed psyche, and their *natural* depravation as was dictated in Freud’s theory. With these beliefs, women’s criminality was “translated into sexual deviance because women’s transgressions were indicative of the decreased demoralization of society as a whole” (Symons, 1849: 25 in Zedner, 1991: 328 as cited in Dobash, Dobash, and Noaks, 1995: 29). Were women becoming more outspoken and challenging social boundaries that had been constructed for them because religion, as a binding structure was losing its hold on society? If so, what structure could replace the power of the church in order to re-gain control over women, and return them to their *natural* sphere?

Women were attempting to enter the labor market. However, if they were to do this, many would neglecting and even rejecting their ascribed role of mothers of the

future generations of workers that would ensure the success of capitalism. Based on this reasoning, we can see why it did not take long for women who broke away from their ascribed role to be closely scrutinized by those in power. Therefore, it is not surprising that their activities, in particular those leading to their economic independence earned these women the label of *deviant*, and for them to be socially constructed as either mad or bad, because they dared leave the private sphere.

Dichotomizing women into these two categories serves two main functions. Firstly, it teaches appropriate gender roles to all women who do not want these labels, and by demonizing women who do violate their ascribed role, the labels act as a warning for other women not to behave in this manner if they wish to avoid a similar fate. These fates included being burned at the stake from the 15th to 17th centuries. Today, women are no longer being hunted and accused of witchcraft. However, all ideologies and theories are built upon previous ideas and theories, hence the “end of one ideology is the beginning of another. Where religious heresy ends, psychiatric heresy begins; where the persecution of the witch ends, the persecution of a mad woman begins” (Dobash, Dobash, and Noaks, 1995: 25). “To label women mad and disorderly is a strategy to disqualify women’s protests, resistance and defiance” (Dobash, Dobash, and Noaks, 1995: 21).

There is evidence that this strategy, that of disqualifying women’s resistance to the dominant power structure has been used by the latter to keep the former in their ascribed social position within the private sphere. Even when women over-stepped their boundary of the private sphere, and ventured into the public, where their actions were beneficial to the economy, their actions were classified as “evil” by the church, why?

Because these women who ventured out into the paid labor market were neglecting their true calling; that of a passive, nurturing mother and caregiver and, by virtue of this, they were infringing on a predominantly male domain. For their involvement in the male domain of the economy following the Black Plague, these women were branded as witches and persecuted for centuries. By the end of the witch hunts in Europe women were no longer hunted as witches, but whenever they over-stepped their socially ascribed role, their activities were constructed as *deviant*.

RESTRICTING THE RESISTANCE OF WOMEN

At the turn of the 20th century women were again attempting to go up against the system, and again they came up against a brick wall. However, by this time, the structure realized that it could no longer use the same tactics of suppression as it did in the past, for example, deportation to a colony, torture and even murder, but it did have a vast pool of ideological assertions from which it could draw on to bring women back to their *natural* position in society. Therefore, it did not take long for those in control of the structure to devise yet another method of “hunting” these abnormal or *deviant* women and of de-legitimizing their protests and resistance to the power structure.

Norms about women had been constructed and already in place when women were once again beginning to form a cohesive social and political group (Dobash, Dobash, and Noaks, 1995: 38). This was the Victorian era and women demanded the right to vote by the end of the 20th century in England. However, “women’s demand for the vote was surrounded by a certain kind of regime of meanings [which had already

been constructed] which precluded as well as framed their demands” (Dobash, Dobash, and Noaks, 1995: 38). This established regime of meanings led to the demands of these women being dismissed. For the next twenty years women worked at getting the right to vote. However, while the women were attempting to legitimize their positions in society, the government was hard at work attempting to de-legitimize the women’s movement.

The latter succeeded over the former. “In 1910, the House of Commons announced that a bill for the enfranchisement for women was to be abandoned” (Dobash, Dobash, and Noaks, 1995: 38-39). Naturally, the women were angered by the government’s response to their demands and organized a protest march to the House of Commons. This day was to become known as Black Friday. The women were met by police and by the end of the day 135 statements of police brutality were filed by the women. What is interesting to note was that the majority of complaints and injuries afflicted on the women was that they were of a sexual nature. It was noted in earlier how it was believed that women who over-stepped the boundaries that had been constructed for them were depraved due to the weakness of their *nature*. It appears as though this ideology was soon turned into practice as the account of one of the women clearly indicates. “One policeman put his arm around me and seized my left breast, nipping it and wringing it very painfully, saying as he did so, “You have been wanting this for a long time haven’t you?” (Dobash, Dobash, and Noaks, 1995: 39).

Therefore, according to Dobash, Dobash, and Noaks (1995: 38), “ the disciplinary matrix of criminalization/sexualization/ psychiatrization was clearly in operation in the process of disqualification of women’s political protest”. Furthermore,

Black Friday was portrayed as disorder which stemmed from the women themselves. If women's demands were presented as demands from the insane, their disqualification was legitimized as the insane do not constitute legal subjects; the mad cannot make legitimate protests and demands (Dobash, Dobash, and Noaks, 1995: 39).

Thus, because a *cult of true womanhood* had been constructed, any woman, particularly if she broke the law and stepped outside this construction, was immediately disqualified as insane or evil. And as was seen in chapter two, these norms of conduct were far from un-biased as they were determined by those in society who were in control of the power structure.

The power structure was aware that it could no longer de-legitimize women's protest with accusations of a super-natural nature. However, this dominant power structure devised three important methods that would de-legitimize women's protest most effectively. The first mechanism of de-legitimization of women's resistance used by the all-male power structure was rooted in the legislative system.

Parliament had no opposition to pass anti-assembly laws, as there were no women within this structure to oppose them. The passing of this statute would legitimize the arrest of women who broke this law, while de-legitimizing the women themselves who were arrested as they were clearly breaking the law. The second mechanism of control used by the dominant power structure to control women was rooted in the early teachings of the Christian church that claimed women were over-sexed and full of lust. Thus, the second mechanism of control was to sexualize the women protestors. We saw this ideology was not difficult to implement as was evidenced by the quote above which noted the behavior of male police officers upon

arresting the women who marched on the House of Commons. Therefore, it is not difficult to see why the police behaved in the manner it did because the behavior of these women “was not considered proper, ladylike or acceptable. Their militancy was degrading womanhood”(Dobash, Dobash, and Noaks, 1995: 40). As mentioned above, there were three inter-connected dimensions to the construction of true womanhood. These were morality, physiology, which was re-interpreted from a hormonal imbalance to sexual obsession, and the third mechanism of de-legitimization of women was to question the mental (in) capacity of those women who attempted to go against the dominant power structure.

“Their militancy was seen as fueled by mental disorder. A condemnation of women was thus brought about and their demands trivialized” (Dobash, Dobash, and Noaks, 1995: 40). From this time on, women who came into conflict with the law were “twice as likely as men to be dealt with by psychiatric means rather than penal ones” (Allen, 1987 as cited in Dobash, Dobash, and Noaks, 1995: 40). Psychiatry is one third of the equation that has been used to construct the notion of true womanhood. The other two, morality and biology combined with psychiatry are still being applied to the criminality of women today.

Therefore, today, a century after women’s morality was put into question by those positions of power, such as those in the science community, the clergy, as well as the criminal justice system, women who break the law, or behave outside of the boundaries that were socially constructed for them, are today, in the 21st century still considered as “not authentically a woman” (Messerschmidt, 1997: 68).

“MAD” WOMEN RESISTING THEIR NATURE

Today, women who come into conflict with the law face similar stigmatization as the suffragettes did at the turn of the century in England. It was I am arguing simply un-natural for females to behave in an aggressive or assertive manner, contrary to their *nature*. When a woman breaks the law, either by having committed a minor, non-violent offence, but even more so if her crime is of a violent nature, by virtue of this, there must be something “wrong” with her. Unfortunately, many offences, even violent offences committed by women are often taken out of context and this not only diminishes the motive of the crime, it denies or belittles the social circumstances behind a large part of female criminality. Moreover, a woman’s *natural* place is often a place that can at times be more dangerous than an unlit alleyway.

The home, or the private sphere, is often a place of violence primarily because it is private. Therefore, in order to fully understand female criminality, we must get the complete history behind their offending. When looking at the complete story behind a woman’s criminality, we see that her place in the power structure is a stronger indicator of her criminality than this factor is for men. The “criminal behavior of women must be taken in total [in order] to illuminate the ways in which the injuries of girlhood produce problems that young women often solve on the streets of poor neighborhoods” (Ferrell and Websdale, 1998: 130). This argument is relevant in that women are more often the victims of psychological, physical, as well as sexual abuse than are men. Furthermore, previous victimization often leads to anti-social behavior such as drug or alcohol abuse, and these often can be considered as pathways to criminality. This will be discussed later

in chapter five. Another argument that can be made regarding the violence committed against women in the private sphere is one that is still rooted in the construction of *ideal womanhood*:

Women have always been exposed to violence, [but] that they respond in ways that can be categorized as 'violent', has [only] served the interests of the powerful [who] ignore or minimize women's ability to engage in violence. Androcentric perspectives on women's violence are that *violent women must be either trying to be men or just crazy* (Ferrell and Websdale, 1998: 130).

The notion that women behaving in a violent manner are considered as either mad or bad is a strong determinant of the way the Criminal Justice System will deal with women who come into conflict with the law. Often it is the case where a woman's behavior is related to a history of physical and sexual abuse and this often leads to a pattern of self-destructive abuse that is sometimes projected on to others. Therefore, if a woman has a history of being abused or is caught in a cycle of self-destructive behavior that brings her into contact with the criminal justice system, would not the proper treatment for this woman be of a psychiatric or therapeutic nature in order to help her overcome the trauma of her abuse? How does it serve the best interest of society if this individual is simply given a prison term instead of having these issues taken care of? As will be seen in the next chapter, there have been drastic cutbacks in many areas that would cover these social services, and therefore, unfortunately, jail has become the alternative solution to solving this problem. We will also see in the next chapter, this is far from a viable solution.

CHAPTER FOUR

THE MENTAL HEALTH SYSTEM

As mentioned earlier in chapter two, there has been a decrease in the availability of hospital beds in Canada, both for the general hospitals as well as the "specialty" hospitals, which include psychiatric facilities. Tully and Saint-Pierre (1997: 33) maintain that since the 1980s, many countries including Canada have been forced to make changes to their health care systems, largely due to the increasing cost of operating these facilities.

As a result, "the number of hospitals, and consequently, the number of staffed beds have declined". Tully and Saint-Pierre (1997: 33) found that in the "1994/95 period, the staffed beds (actually available to patients) numbered 120,774, and that this figure was down 30 percent from the peak of 172,425 staffed beds in the 1986/87 period".

TABLE 3
**Staffed Beds in Hospitals, by Type of Care Unit, Canada and Provinces,
1986/87 and 1994/95***

| | <u>All Units</u> | | | <u>Short Term Units</u> | | | <u>Long Term Units</u> | | |
|---------------|-------------------------|---------|-------------|--------------------------------|---------|-------------|-------------------------------|---------|-------------|
| | 1986/87 | 1994/95 | % | 1986/87 | 1994/95 | % | 1986/87 | 1994/95 | % |
| Canada | 172,425 | 120,774 | 30.0 | 111,695 | 81,673 | 26.9 | 60,729 | 39,101 | 35.6 |
| NFL | 3,401 | 2,753 | 19.1 | 2,691 | 1,987 | 26.2 | 710 | 766 | 7.9 |
| P.E.I. | 755 | 513 | 32.1 | 662 | 477 | 27.9 | 93 | 36 | 61.3 |
| N.S. | 5,705 | 3,722 | 34.8 | 5,242 | 3,324 | 36.6 | 463 | 398 | 14.0 |
| N.B. | 5,151 | 3,397 | 34.1 | 3,949 | 2,494 | 36.8 | 1,202 | 903 | 24.9 |
| QC | 54,741 | 38,849 | 29.0 | 27,089 | 25,121 | 7.3 | 27,652 | 13,728 | 50.4 |
| ON | 51,181 | 37,303 | 27.1 | 37,334 | 24,354 | 34.8 | 13,847 | 12,949 | 6.5 |
| MA | 6,369 | 5,527 | 13.2 | 5,134 | 4,482 | 12.7 | 1,235 | 1,045 | 15.4 |
| SASK | 7,272 | 4,675 | 35.7 | 6,448 | 4,097 | 36.5 | 824 | 578 | 29.9 |
| ALTA | 17,990 | 8,372 | 53.5 | 11,755 | 7,598 | 35.4 | 6,235 | 774 | 87.6 |
| B.C. | 19,466 | 15,527 | 20.2 | 11,040 | 7,628 | 30.9 | 8,426 | 7,899 | 6.3 |

* Health Reports, Spring 1997, vol.8 no.4.

At first glance, it would seem inappropriate discussing provincial differences within the health care system when the discussion of the increase in the female incarceration is discussed on a federal scale. However, only been recently has there been regional correctional facilities for women established. Regardless of this fact, these institutions are still under the jurisdiction of the federal government. Therefore, during both the federal and provincial cutbacks to the health care system the discussion gains validity. In other words, when these provincial health care facilities were being affected by the cutbacks, the individuals that would have been remanded to these often found themselves with no where to go. Moreover, if they came under the scrutiny of law enforcement agents for behaving strangely or disturbing the peace, because of the decrease of available spaces within these facilities, they would now be sent to federal penal facilities, and if they are women, the only facility prior to last year was the Kingston Prison for Women.

As we can see from table three above, there is a decrease in staffed beds available to patients. However, we can also note there are differences on a provincial scale. For example, Alberta saw a 53.5% decrease in available staffed beds in all units for the period 1986/87 to 1994/95, from 17,990 to 8,372. Similarly, the province saw an 87.6% decline in the availability of staffed beds in their long-term units for the same period, from 6,235 to 774. Quebec was slightly under the national trend by displaying a decrease of 29.0% of staffed beds in all units, from 54,741 to 38,849, while only having a 7.3% decrease in their short-term units, from 27,089 to 25,121. However the province showed a 50.4% decrease in the availability of staffed beds in their long-term units from 27,652 to 13,728.

Similarly, Prince Edward Island was slightly above the national average in its decrease in terms of available staffed beds for all units, from 755 to 513, showing a decrease of 32.1%. However, the province showed a 61.3% decrease in the availability of staffed beds in their long-term units, from 93 to 36. Manitoba showed the smallest decrease in staffed beds available in all their units, from 6,369 to 5,527 for a decrease of 13.2%, and also showed a decrease of available staffed beds in their long-term units that was well below the national average, from 1,235 to 1,045 for a decrease of 15.4%. However, these small decreases could be accounted for by the fact that Manitoba is a province which has the most stable economy due to its revenue from the sale of gasoline and crude oil. British Columbia was below the national average in terms of a decrease of staffed beds in all units, from 19,466 to 15,527 for a decrease of 20.2%. The province was only slightly above the national average in terms of a decline of staffed beds in its short-term units, from 11,104 to 7,628 for a decrease of 30.9%. However, the province showed the smallest decrease in its long-term units, from 8,426 to 7,899, for a decrease of only 6.3%. An important issue regarding this reduction of available beds is that “across Canada, health care authorities have shut down hospital beds despite the fact that a system to care of discharged patients in the community is not in place” (Mooney et al., 2001: 58).

In other words, the consequences of these closures as were previously stated is that for many, upon the closure of health care facilities, including those for mental health care, is that for what ever reason, should their services be required, these are no longer readily available. The result of this will be discussed later with the discussion of the phenomenon called *transinstitutionalization*.

INCREASE IN HOSPITALIZATION TIME

Randhawa and Riley (1996: 55) found that regardless of the overall similarity in health care cutbacks across Canada, there were differences in hospitalization patterns between provinces.

For short-stay patients in psychiatric hospitals, averages varied from 24 days in Saskatchewan to 79 days in British Columbia, and from 15 days in Prince Edward Island to 29 days in Quebec. For long-stay patients, the range was from one year in Prince Edward Island to 20 years in Saskatchewan.

Randhawa and Riley (1996: 58) also found that in general hospitals, there was an increase in the average length of stay for patients with mental disorders, from 27 days in the 1982-83 period to 33 days in the 1993-94 period. Randhawa and Riley (1996: 58) not only found disparity in terms of how long individuals spent in hospitals, they also found there were differences in how long women and men were hospitalized. In the 1982/83 period, "the average stay in general hospitals for female patients with mental disorders rose faster than for male patients (30% versus 12%). By the 1993/94 period, female patients averaged 36 days compared with 29 days for male patients".

Randhawa and Riley (1996: 59) note that for the examined period, "the majority of patients treated for mental disorders in general hospitals were women (55%), and women received 60% of the total days of care that general hospitals provided for mental disorders". Randhawa and Riley (1996: 59) also found that the reasons why women and men were hospitalized differed.

As mentioned earlier, there have been extensive cutbacks to Canada's health

Care system. However, regardless of these cutbacks leading to a decrease in staffed beds available for patients both in general hospitals as well as specialty hospitals, individuals need to be hospitalized for longer periods in order for them to receive adequate treatment. In other words, there are less beds available, but for those who need them, or are assigned to them, they need them for longer periods of time, but because of the shortage of beds, patients are released at a faster rate in order to accommodate as many individuals as possible.

However, what happens if this individual was in a substance abuse treatment center as part of a reduced sentence, and this center is closed? A potential outcome is that patients are often released before the completion of their treatment, often with minimal or without any supervision, and as a result, they must be re-admitted to the hospital. But what if there is a long waiting period before being re-admitted for further drug or alcohol counseling? Where do they go for help? Unfortunately, sometimes, they fall between the cracks and could end up “lost in the system”. If these individuals do not follow up on their counseling or treatment, they may “fall off the wagon” and subsequently return to a world of drug abuse. And, because there are no available beds in treatment centers, the only place left for these individuals should they come into conflict with the law, which is often the case, is to be treated within a penal institution. For women, this scenario leads to other consequences primarily because of the doctrine of *Separate but Equal* which was discussed earlier.

REASONS FOR HOSPITALIZATION

Tables four and five display the different reasons for admittance into psychiatric and general hospitals for individuals suffering from mental disorders. In table 4, for psychiatric hospitals, schizophrenic psychoses are the leading cause of hospitalization for women and men. However, for the 1993-94 period for women, this cause drops to the second most frequent reason for hospitalization behind affective disorders, whereas for men, schizophrenic psychoses remain the leading cause of hospitalization.

Interestingly in neither observed period is alcohol disorder a reason for women's hospitalization whereas for men in both observed periods, this is the second and third leading cause of hospitalization. What is interesting about this is that alcohol abuse is a leading determinant for the incarceration of women into penal institutions. Would this problem not be better taken care of in a facility that specialized in this type of treatment? Furthermore, what happens to those who need this type of service but because of cutbacks, find their program has been cancelled?

Table five looks at the leading causes of hospitalization into general hospitals. For men, again we see that schizophrenia is a leading cause of hospitalization (1993-94) whereas alcohol dependency is the leading cause of hospitalization for the 1982-83 period. And as in table four, we see that in table five, alcohol and drug dependency are not among the leading causes for the hospitalization of women for either period.

As we have seen, there have been cutbacks to the health care system in Canada. This has led to a decrease in the availability of staffed beds for patients in all types of institutions, from general to specialty hospitals. Moreover, as mentioned above, there

has also been an increase in separations both in the general health care system as well as those based in the community. We also saw that regardless of this decrease in available beds, patients need to be hospitalized for longer periods but due to a shortage of available beds, they may be released before their treatment is finished, hence an increase in the separation rate. Therefore, with an already reduced number of available beds, and an increase in the length of hospitalization, these combined conditions place an even greater strain on an already over-burdened health care system. One solution to this problem has been the creation of community-based programs that would provide services to those individuals who are in need of some sort of out-patient service in lieu of hospitalization. However, as was discussed earlier, often the rate of closure of hospitals is not equally matched with similar implementations of community-based services that would ensure a continuum of adequate care.

Without proper care, many who, had they had received the proper treatment for whatever their medical problem was, be it substance abuse or a psychiatric ailment or simply emotional support, find themselves without any source of support. What is a potential outcome of this? There are many individuals that are not receiving adequate treatment. Unfortunately, for some of these individuals, they are forced to return to the environment that may have initially caused their health problem, and as a result, find themselves falling back on behaviors that may place them in a different institution, namely a penal institutions. The reason why these individuals may find themselves remanded to a penal institution for a behavior that may not necessarily be “criminal”, but never-the-less deemed inappropriate in a public space, is because there is simply nowhere else to place this individual.

TABLE 4**Five Leading Diagnoses, Psychiatric Hospitals, by sex, 1982-83 and 1993-94***

| 1982-83 | | 1993-94 | |
|-------------------------|----|-------------------------|----|
| Males | | | |
| Schizophrenic psychoses | 30 | Schizophrenic psychoses | 33 |
| Alcohol dependency | 15 | Affective psychoses | 14 |
| Personality disorders | 12 | Alcohol dependency | 10 |
| Affective psychoses | 10 | Adjustment reaction | 6 |
| Neurotic disorders | 5 | Personality disorders | 5 |
| Subtotal | 72 | Subtotal | 68 |
| Females | | | |
| Schizophrenic psychoses | 25 | Affective disorders | 26 |
| Affective disorders | 19 | Schizophrenic psychoses | 24 |
| Neurotic disorders | 11 | Adjustment reaction | 8 |
| Personality disorders | 9 | Personality disorders | 7 |
| Adjustment reaction | 5 | Neurotic disorders | 7 |
| Subtotal | 69 | Subtotal | 72 |

* Health Reports, Spring 1996, vol.7 no.4

TABLE 5**Five Leading Diagnoses, General Hospitals, by sex, 1982-83 and 1993-94***

| 1982-83 | | 1993-94 | |
|-------------------------|----|-------------------------|----|
| Males | | | |
| Alcohol dependency | 21 | Schizophrenic psychoses | 16 |
| Neurotic disorders | 14 | Affective psychoses | 15 |
| Schizophrenic disorders | 13 | Alcohol dependency | 11 |
| Affective disorders | 10 | Neurotic disorders | 8 |
| Alcoholic psychoses | 6 | Adjustment reaction | 7 |
| Subtotal | 54 | Subtotal | 57 |
| Females | | | |
| Neurotic disorders | 16 | Affective psychoses | 23 |
| Affective disorders | 17 | Neurotic disorders | 13 |
| Schizophrenic psychoses | 10 | Schizophrenic psychoses | 10 |
| Depressive disorders | 10 | Adjustment reaction | 9 |
| Adjustment reaction | 5 | Depressive disorders | 9 |
| Subtotal | 68 | Subtotal | 64 |

* Health Reports, Spring 1996, vol.7 no.4

CONSEQUENCES OF CUTBACKS

If as mentioned above, there are less available beds for psychiatric patients in all types of hospitals, what happens to these individuals, if for whatever reason they behave “strangely” in a public place, and the police bring them to an institution that has no bed for them? As mentioned in the previous section, chances are these individuals will be placed in a jail, where the chances of properly assessing their psychiatric needs and subsequent proper treatment are unlikely to occur. Furthermore, this is a condition that applies more to women than men because of the differences in available rehabilitational programs in prisons for women that were discussed earlier.

It would be unfair however to claim that it is only women with mental illnesses, emotional problems or substance abuse problems that are sent to jail. There is evidence that one reason why prison populations have increased in the latter half of the 20th century can be partly explained by the closures of mental institutions as well as other health care facilities that come under this umbrella, such as drug and alcohol rehabilitation centers. Once these institutions are closed, what happens to the individuals who need their services? Where do they go for treatment? Who ensures that they continue to take their medication (if they are required)? What happens to them if they don’t follow up with their medications, and as a result behave “strangely” in public? Where do they go for counseling? What happens as Walsh and Bricout (1997:421) found was that the “number of persons with mental illness admitted to jails increased greatly during the last 20 years. Between 1955 and 1985, the annual national state hospital population fell from 634,000 to 221,400, while the number of persons with mental illness in jails rose from

185,780 to 481,393". A resulting symptom of the closure of mental facilities is what Walsh and Bricout (1997:420) call transinstitutionalization or admission from one institution into another institution. The authors explain that:

For the elderly this has meant that many have left mental facilities and have been placed in nursing homes, but for many younger adults, jails have served as sites for containing deviant behaviors that in many cases are more reflective of mental illness than of criminality. Jails are not well suited to the care of persons with mental illness [or individuals with drug or alcohol problems because they were not designed to serve that function. Without proper care such persons may experience a resurgence of symptoms and become less able to function in the community after release.

Therefore, a major concern of this increase of inmates with mental illness or those needing counseling for drug or alcohol problems into penal institutions is according to Torrey et al. (1992) as cited in Walsh and Bricout (1997: 422) that "correctional officers received either no training or less than three hours of training in managing the special problems of this client population". Often, according to the authors, the correctional officers are not aware of the fact that an individual was brought to the institution because s/he actually broke the law, or simply that there was no other facility available to place this individual in. Therefore, if an individual has been placed in jail simply for having disturbed the peace, but is actually in need of psychiatric treatment or drug or alcohol treatment, this could cause serious problems. If an individual who has been placed in a correctional facility for psychoses or an affective disorder, which according to Holcomb and Ahr (1988) as cited in Walsh and Bricout (1997: 422) are the second most frequent reasons for arrest, (the first being substance abuse), violates prison rules, and the correctional officers are not aware of the reason for this individual's incarceration, then

the correctional officers are unaware of the proper treatment they should be providing this individual, and this could further aggravate this individual's mental faculties as well as their ability to recover from whatever their affliction is.

What is interesting to note about the scenario above is that the main reason for arrests is substance abuse be it alcohol or drugs, which coincidentally, is the primary reason behind the incarceration of females. According to Boritch (1996: 17) women are typically charged with offenses such as "being drunk in a public space, drinking under age, or purchasing liquor under the legal age". Therefore, when an individual is arrested, be they female or male, for this behavior, and is simply "thrown in jail" for a set time without any treatment, how has the Criminal Justice System helped this individual? Furthermore, as was discussed previously, because women make up such a small number of the total penal population, the range of rehabilitational programs within female penal institutions is far below that available in men's institutions.

CHAPTER FIVE

TRENDS IN FEMALE CRIMINALITY

As mentioned above, there is evidence that female criminality has increased steadily over the last 30 years. This is not to say that the male rate of criminality has not also increased, but it would appear that the female rate has increased at a much faster pace than that of their male counterparts. What could cause this increase? Some (Simon and Landis, 1991; Adelberg and Currie, 1993; Boritch, 1996) claim that the main reason for the faster increase in the female crime rate is due primarily to the socio-economic status of women. As stated by Adelberg and Currie (1993: 98), “women who come into conflict with the Criminal Justice System tend to be young, poor, un-educated, and unskilled. Many are addicted to alcohol, drugs or both, [and], a majority have been victims of physical and/or sexual abuse, and many are emotionally and/or financially dependent on abusive male partners”.

The fact that women’s criminality can be linked to their socio-economic status is supported by the fact that women are involved largely in non-violent crimes. However, the rate for violent crimes has in fact increased for women. Table 6 shows that for the period 1970-80, the number of women charged with murder or manslaughter had increased, but that for the period 1980-1991, the rate decreased. Women charged with attempted murder/wounding/assault increased steadily over the 1970-1991 period, as did robbery, but the latter at a much slower rate than the former. However, as will be discussed later, there are reasons for this increase in the number of women involved in violent crimes.

When looking at property offences, we see that women charged with theft over \$1,000 rose from 1970 to 1980, but fell for the period of 1980-1991. However, for the category of theft under \$1,000, the number of women charged steadily increased for the period 1970-1991. The number of women charged with fraud also steadily increased for the sample period. We can stipulate with the increases in the categories of fraud and theft under \$1000 that in fact women commit crimes on need rather than greed. I make this claim because when looking at the total number of women charged with property offences, when combining theft under \$1 000 and fraud, these two account for over 90% of the total for this category.

The number of women charged for prostitution increased dramatically for the cited period, from 1,427 in 1970 to 5,601 in 1991. As Adelberg and Currie (1993: 101) remark, “charges for prostitution related offences quickly surged in 1985 when Bill-C49 was passed. This bill was designed to address the increase in street solicitation by criminalizing the act of *communicating in a public place for the purpose of exchanging money for sex*”. What this bill did was target *visible* prostitutes, those working on the street, and consequently more visible to law enforcement and hence an increase in charges laid against women. When looking at table 7, Men Charged with Criminal Code Offences, we see a similar increase in men charged with prostitution. However, this is not to say that there were more men involved in the sex trade. Rather, that men, because of the changes in the law, changes that were aimed at women, were caught up in police raids that led to an increase of charges laid against both genders. However, men are not usually charged with prostitution, they are charged under the criminal code for having

“purchased” the service, and are usually fined. The women on the other hand, if they are habitual offenders, are more likely than not sent to jail.

When looking at other Criminal Code offences, we see that women charged with impaired driving increased steadily for the stated period, from 1,916 in 1970 to 9,812 in 1991. As mentioned earlier, this could perhaps be linked to the fact that many women who come into conflict with the law have drug or alcohol problems. In the category of “other Criminal Code Traffic (cc)” which includes, criminal negligence, failure to stop at the scene of an accident, dangerous driving and driving while disqualified, the number of women charged for these offences rose dramatically from 1970 to 1980, from 624 to 2,101 but fell by almost half by 1991 to 1,170.

When comparing the number of women charged with Criminal Code offences to that of men (Table 7), we see a similar pattern emerging, however, as was stated in the literature, regardless of the similarities in the rates, more men are charged with a Criminal Code offence than are women. According to Adelberg and Currie (1993: 98), “[the number of] women charged with criminal code offences doubled during the cited period, however, they also noted that forty-six percent of women charged with a criminal code offence in 1991 were charged with theft or fraud”.

We also see from table 6 that the number of women charged with a violent offence increased during the observed period. However, it should also be noted that the reason why the rate for charges for violent offences has increased for females can be directly related to a zero tolerance policy on violence (Boritch, 1996: 36) by the government of Canada as well as in other countries. In other words, in the past when a woman was involved in a violent altercation, chances were that no charges were laid

against the woman. However, with an increase in violence in the general population, for example “road rage”, “phone rage”, “parking rage” and countless others, authorities instead of simply issuing a warning to individuals cite them. Individuals who are involved in a violent incident, today, or at least in the last ten to fifteen years, will now have charges laid against them. Furthermore, victims of violent crimes are also more outspoken today.

In the past, when an individual was attacked by a woman, odds were that no report was ever filed for the simple reason that they (the victim) were embarrassed to admit they were attacked by a woman, particularly if the victim was male. Therefore, when one looks at what *types* of violent offences women are being charged with the most, we see that in fact women are most often charged with assault. In fact, “96% of all females charged with a violent crime are [charged] with assault (15), and that the “majority of these charges (67%) are for the least serious form of assault – common assault or level one, and the most serious crime, homicide makes up only a very small proportion (0.5%) of all violent crime charges laid against women” (Boritch 1996:16).

Table 7 looks at the patterns in male criminality. What is interesting to note is that unlike the pattern for females, there are steady increases in the number of males who are charged with a criminal code offence in all categories except for “other offences”, which include prostitution, impaired driving, and other criminal code traffic offences of which driving without a valid license and leaving the scene of an accident are examples. We saw that for the number of females charged with criminal code offences (table 6), other than for prostitution, impaired driving, robbery, theft under \$1 000, fraud, and assault, increases were seen between 1970 and 1980, but a decrease in the number of

women charged between 1980 and 1991 was noted. However, we also cited systemic reasons for these increases.

TABLE 6
Women Charged With Criminal Code Offences, 1970-1991*

| TYPE OF OFFENCE | 1970 | 1980 | 1991 |
|-------------------------------------|---------------|---------------|---------------|
| VIOLENT OFFENCES | | | |
| Murder/Manslaughter | 33 | 61 | 48 |
| Attempted murder/ Wounding/ Assault | 1,667 | 4,261 | 11,989 |
| Robbery | 206 | 538 | 647 |
| TOTAL | 1,906 | 4,860 | 12,684 |
| PROPERTY OFFENCES | | | |
| Break and Enter | 545 | 2,031 | 1,759 |
| Theft over \$1,000 | 1,509 | 2,746 | 1,956 |
| Theft under \$1,000 | 8,414 | 24,707 | 30,077 |
| Fraud | 2,197 | 7,426 | 11,890 |
| TOTAL | 12,665 | 36,910 | 45,682 |
| OTHER OFFENCES | | | |
| Prostitution | 1,427 | 960 | 5,601 |
| Impaired Driving | 1,916 | 9,091 | 9,812 |
| Other CC Traffic | 624 | 2,101 | 1,170 |
| TOTAL | 3,967 | 12,152 | 16,583 |

* Adelberg, Ellen and Claudia Currie (1993). In Conflict With The Law: Women and the Canadian Justice System. Vancouver: Press Gang Publishers

What is interesting is that the number of males charged with a violent offence almost doubled for the periods 1970-80 as well as for 1980-90, whereas the rate for women almost tripled during these periods. Therefore, by simply looking at numbers, one could easily see why there is so much rhetoric around the increase in the female crime rate. Unfortunately, statistics often do not provide the most accurate or complete picture of a situation. Numbers alone do not explain why an individual commits a certain offence, and as will be discussed later, we will see that there are many differences in terms of what motivates an individual toward a criminal act.

Regardless of the increase in the number of both females and males charged with a criminal code offence, males are by far more involved in all types of criminal activity compared to females. Table 8 illustrates further, but with more recent data, that men are in fact much more involved in criminal activity than are women. The data from this table were not compiled with the tables above, as the categories of offences (property, violent, other cc offences, and federal statute offences are not specified.

THE CRIMES WOMEN COMMIT

We see in table 8 that for all offences, for both females and males, that the number of individuals charged with criminal code offences dropped from 78,196 in 1995 for women to 74,298 in 1999, and for men, from 376,269 in 1995 to 352,540 in 1999. In the category of violent offences, we see a drop in the number of men charged, but an increase in the number of women charged for the 1995-1999 period. However, as mentioned above, there are many reasons for this increase.

For property crimes, we see a reduction for both females and males, and we can also observe similar patterns for other criminal code offences and federal statute offences. Interestingly, this table reflects an opposite view of what the bulk of the literature suggests; that women are less involved in violent offences than in property offences. Looking at the numbers we see that for men, this is the case. Yet for women, there is a steady increase in the number of individuals who were charged with a violent offence for the 1995-1999 period. However, as mentioned above, there are many systemic and cultural reasons for this increase. Therefore, could one truly make the argument that there is in fact a new breed of female criminal? Boritch (1996), and I would agree with her, would say no.

As noted in table 8, the rate of women charged with prostitution increased dramatically in the last fifteen years. Unfortunately, for many women who turn to prostitution in order to augment their income, often, the little money they do earn must be turned over to their pimp, and if the women fail to be “productive”, the outcome is usually violence against the women. Singer et al. (1995: 108) carried out a study that examined the psychosocial issues women face when serving a jail sentence. During the course of their research, through the use of open-ended interviews, they found that for many women, violence was a daily-occurring event prior to their imprisonment. As one woman interviewed stated, “I was living with this pimp and he sent me out to work. I got locked in a car and [was] forced to perform for free. When I went home he tried to drown me in the tub. I played dead and he stopped.” Another woman tried to leave her pimp, and for her actions, she relates that “he hit me upside the head and then shot me in

the leg". The authors also found that it was not only pimps who inflicted violence on women.

Some women related that it was their husbands or boyfriends who did not want them to leave the house and get an education in order to improve their financial situation, thereby gaining independence and consequently more power. Which because of the social construction of *ideal womanhood* was deemed *un-natural*.

One woman "recalled how the boyfriend with whom she was living broke several of her fingers to prevent her from attending stenography classes" (Singer et al., 1995: 108).

Why would this man break several of his girlfriend's fingers to prevent her from attending stenography classes? Because by wanting to attend these classes, she was violating the social boundaries that had been constructed for her in the latter half of the 19th century. A woman's *natural* place was in the home, not out in the labor force. Therefore, this man felt that it was within his right to *re-educate* his girlfriend as to her *natural* role in society.

Moreover, Adelberg and Currie, (1993: 101) claim that one of the primary reasons women enter into prostitution is characterized by (youths) "running away from home, often to escape physical and sexual abuse [and that] rather than providing a refuge from ill treatment, street life puts women at great risk of further violence and abuse, and significantly increases their vulnerability to identification and arrest by police".

TABLE 7**Men Charged With Criminal Code Offences, 1970-1991***

| TYPE OF OFFENCE | 1970 | 1980 | 1991 |
|-------------------------------------|---------------|----------------|----------------|
| VIOLENT OFFENCES | | | |
| Murder/Manslaughter | 298 | 426 | 486 |
| Attempted murder/ Wounding/ Assault | 24,822 | 36,435 | 90,299 |
| Robbery | 3,399 | 6,834 | 7,950 |
| TOTAL | 28,519 | 43,695 | 98,735 |
| PROPERTY OFFENCES | | | |
| Break and Enter | 19,872 | 44,557 | 37,654 |
| Theft over \$1,000 | 19,879 | 25,829 | 16,395 |
| Theft under \$1,000 | 24,273 | 49,825 | 60,613 |
| Fraud | 13,952 | 23,255 | 29,072 |
| TOTAL | 77,976 | 143,466 | 143,734 |
| OTHER OFFENCES | | | |
| Prostitution | 452 | 569 | 5,162 |
| Impaired Driving | 76,178 | 148,401 | 101,372 |
| Other CC Traffic | 21,436 | 45,523 | 16,211 |
| TOTAL | 98,066 | 194,493 | 122,745 |

* Adelberg, Ellen and Claudia Currie (1993). In Conflict With The Law: Women and the Canadian Justice System. Vancouver: Press Gang Publishers.

TABLE 8**Adults Charged in Criminal Incidents: Criminal Code and federal statutes, by sex***

| | 1995 | 1996 | 1997 | 1998 | 1999 |
|-------------------------------------|---------|---------|---------|---------|---------|
| offences | | | | | |
| All offences | | | | | |
| Adults charged | 454,465 | 454,971 | 429,898 | 427,608 | 426,838 |
| Male | 376,269 | 376,236 | 355,032 | 352,639 | 352,540 |
| Female | 78,196 | 78,735 | 74,866 | 74,969 | 74,298 |
| Criminal Code | | | | | |
| All Criminal Code | | | | | |
| Adults charged | 408,791 | 409,894 | 388,211 | 383,606 | 377,012 |
| Male | 337,061 | 337,435 | 319,440 | 314,957 | 310,021 |
| Female | 71,730 | 72,459 | 68,771 | 68,649 | 66,991 |
| Violent crimes | | | | | |
| Adults charged | 117,409 | 117,246 | 115,095 | 113,498 | 111,379 |
| Male | 103,051 | 102,393 | 99,733 | 97,795 | 95,392 |
| Female | 14,358 | 14,853 | 15,362 | 15,703 | 15,987 |
| Property crime | | | | | |
| Adults charged | 159,128 | 162,946 | 147,849 | 141,246 | 133,067 |
| Male | 122,940 | 125,861 | 114,179 | 109,441 | 103,528 |
| Female | 36,188 | 37,085 | 33,670 | 31,805 | 29,539 |
| | 1995 | 1996 | 1997 | 1998 | 1999 |
| Other Criminal Code offences | | | | | |
| Adults charged | 132,254 | 129,702 | 125,267 | 128,862 | 132,566 |
| Male | 111,070 | 109,181 | 105,528 | 107,721 | 111,101 |
| Female | 21,184 | 20,521 | 19,739 | 21,141 | 21,465 |
| Federal statutes | | | | | |
| Adults charged | 45,674 | 45,077 | 41,687 | 44,002 | 49,826 |
| Male | 39,208 | 38,801 | 35,592 | 37,682 | 42,519 |
| Female | 6,466 | 6,276 | 6,095 | 6,320 | 7,307 |

* <http://www.statcan.ca/english/Pdgd/State/Justice/legal14.htm>

Combined with systemic changes to the law, we saw what this impact had on the number of women charged with prostitution. Furthermore, Adelberg and Currie, (1993: 101) go on to say that

Prostitution thrives in a society which values women more for their sexuality than for their skilled labor, and which puts women in a class of commodity to be bought and sold, [and that] the major causes of prostitution [have been found] to be the economic plight of women, particularly young, poor uneducated women who have limited, *legitimate* employment records.

In addition to prostitution, women are also charged (more so than men) with other “morality crimes”. When combining a variety of morality offences such as “violations of provincial liquor acts, federal drug-related offences and prostitution, [these offences] accounted for 22.3 percent of all charges laid against women in Canada in 1992” (Boritch, 1996: 17). As mentioned above, the socio-economic status of women is a major factor behind their criminality. We saw that one way women attempt to “improve” their economic status is through prostitution, the other primary method women use to augment their income is through petty theft. In 1994, “68.8 percent of female arrests consisted of theft-related charges. The vast majority of theft charges (94.1%) were for the less serious charge of theft under \$1,000 and 83 percent of all theft charges were for shoplifting” (Boritch, 1996: 17).

Chesney-Lind (1997) also looked at trends in female criminality as well as the types of crimes females are involved in, however, the following data come from reports compiled by the Federal Bureau of Investigation in the United States. As stated in the literature review by Shaw (1992:338), “the history of women’s imprisonment in Canada has many parallels with other countries in terms of small numbers, neglect, and

subjection to regimes designated for men and to stereotyped views of the role of women in society". Therefore, the data will be interesting in that they allow for a comparison.

Chesney-Lind (1997: 95) found that as in Canada, "the majority of women offenders are arrested and tried for relatively minor offences. In 1994, women were most likely to be arrested for larceny theft (15.5%), followed by drug abuse violations (9.3%)". In other words, these two offences account for over one quarter of all the offences for which women in the United States are arrested. The author also found that as in Canada, women's criminal activities are directly related to their socio-economic status.

Chesney-Lind (1997: 101) points out that "between 1985 and 1994, shoplifting was up 14.1%, check forgery rose by 41.6%, welfare fraud increased by 11.4% and drug offences soared by 100.1%". Again we see that because the majority of women are forced into low paying jobs either because of family obligations or because the "glass ceiling" is still holding them down, in the United States as in Canada, women's crimes are primarily of need rather than of greed.

Chesney-Lind (1997) also looks at females who are committing more traditional types of "male" crimes. To illustrate female involvement in a more male crime, she used the offence of embezzlement. Here she saw an increase in women who have been arrested for embezzlement, but unlike males who are arrested and charged for this offence, the actual "take" of women is much smaller than that of their male counterparts. Moreover, this difference can be directly tied to the status of women in society, thereby disproving the tenets of those who advocate the liberation thesis (to be discussed later) as a means of explaining an increase in the female crime rates. Chesney-Lind (1997: 103) notes that "women [who are charged with embezzlement] are concentrated in low-

paying, clerical, sales, and service occupations. They are not in a position to steal hundreds of thousands of dollars, whereas men who are charged with embezzlement [hold] professional and managerial positions such as bank officers and financial managers". Daly (1989) as cited in Chesney-Lind (1997) found that "of those arrested for bank embezzlement, 60% of the women were tellers and 90% percent were in some sort of clerical position. The motives for theft are also different for women and men: for women, the motive "involves family responsibilities rather than a desire for personal gain, which is the main motive behind males who embezzle" (Chesney-Lind, 1997: 103).

WHO ARE THE WOMEN IN JAIL?

In the previous section, we looked at what types of crimes women commit. One offence that was not explained in great detail was violent crime committed by women. Although it was mentioned that violence was an important factor in the daily lives of women in prison, particular, circumstances were not provided to explain why females engage in violent behavior. This is not to say that women commit violent offences solely as a means of "lashing out" at a violent "lover" or society in general. On the contrary, women even though deemed as "lashing out" are as rational as males who commit similar violent offences.

However, often, as was found by the 1989 Task Force on women " 80 percent of women in the federal prison system have been physically and/or sexually abused during their lives, the majority by intimate partners" (Adelberg and Currie, 1993: 102). The authors go on to say that " the criminality of women may be understood as symptomatic

of a sense of futility with a desperate life situation, such as poverty, homelessness, or abuse” (Adelberg and Currie, 1993: 102).

Singer et al. (1995) looked at the psychosocial issues that affect women in jail. As with other authors (Boritch, 1996; Adelberg and Currie, 1993), they found that the “majority of incarcerated women are sentenced for non-violent offences such as prostitution, fraud or drug offences” (103). They go on to say that “many of these females inmates come from impoverished backgrounds, are addicted to drugs or alcohol, and have emotional and mental health problems”. The 1989 Task Force on women (as cited in Singer et al. 1995: 104) also found that for many women serving a jail sentence, “victimization is another key factor to their incarceration”. The goal behind Singer et al.’s 1995 study was to “establish the needs of incarcerated women and to formulate the appropriate rehabilitative interventions for women in prison”. Their final sample (p. 107) consisted of 201 women, and their sample was reflective of the population of female inmates in Canada and of those serving a sentence in the United States.

The mean age of the women in the sample was 29.5 years. Eighty-five percent of the women were not married. Almost two thirds (64.7 %) did not complete high school. Most women (73.1%) had children under the age of 18 years. More than half the women (50.7%) had received treatment for a drug or alcohol problem, and 23.5% of the women in the sample reported having taken prescribed psychotropic medication at some point in their lives.

Dowden and Blanchette (1999) carried out a similar study in Canada. They remark that until recently, there was only one federal institution where women serving a sentence of two years or more could be sent. However, they also noted that with the opening of five regional federal facilities for women in Canada, this event emphasizes the “need to provide an appropriate environment to manage and rehabilitate women

offenders" (1). Their final sample comprised of 251 women incarcerated within these five institutions. This was an important study mostly because as mentioned above, women are primarily arrested for "criminal" behaviors that are associated with drug or alcohol problems. The goal of their research was to "examine the characteristics of substance abusing female offenders to those of non-substance-abusing females. The demographics of their sample are similar to those found by Singer et al. (1995).

The substance abusers were younger than their non-abusing counterparts; the mean age for the former was 32.7 years compared to 34.9 for the non-abusers. The majority of substance abusers were classified as medium (46%) and high risk (26%). Non-abusers were predominantly low risk (60%). Substance abusers also start their criminal career at a younger age than non-abusers, with 39% of them having youth court experience compared to only 8% of non-abusers, and substance abusers were five times more likely to be placed in disciplinary confinement as compared to non-abusers.

One could argue that the data from the study above continue to reflect the doctrine of *Separate but Equal* with regard to the female penal population. Why are substance abusers five times more likely to be placed in disciplinary confinement as compared to non-abusers? If these women have substance abuse problems would it not make more pragmatic to treat these women rather than locking them up? Are they being locked up rather than treated because there is insufficient qualified staff to treat these women? In the following section, we will see that in fact this is a problem that is still evident within female penal institutions.

As previously mentioned, over the last thirty years, the number of individuals who are serving time in jail while suffering from some sort of psychiatric problem, that could be linked to substance abuse has increased from 185, 780 to 481,393 (Walsh and

Bricout, 1997: 421). It is based on these numbers that Singer et al., 1995: 104 claim that “jails have become a receiving facility for a host of disguised health, welfare, and social problem cases”.

THE MENTALLY ILL IN PRISON

A national survey of 1,391 jails in the United States which hold 62 percent of that country's inmates, found that “the average daily population of persons with mental illness within jails was 30,000” (Walsh and Bricout, 1997: 422). The same study also found that “39% of jails held persons with mental illness without formal charges” (Walsh and Bricout, 1997: 422). “The purpose of imprisoning these individuals [was] to provide temporary sanctuary for persons who do not have access to other housing and supports” (Walsh and Bricout, 1997: 422). However, “more than one in five jails had no formal access to mental health services. Eighty-four percent of jails reported that correction officers received either no training or less than three hours of training in managing the special problems of this client population”.

Morris et al., 1997 also looked at the prison population in the United States and drew similar conclusions to those of Walsh and Bricout (1997). They noted that the prison population has increased dramatically in recent years. “From 1982 to 1995, the number of persons in jail in the United States increased from 209,582 to 507,044” (Morris et al., 1997: 3), and adding to the problem of this population explosion in jails, the number of individuals with mental illness has also increased in recent years. The authors note that there is an

Increasing reliance of communities on jails as alternatives for inadequate community-based mental health services. [Moreover], most jails are not equipped to appropriately handle the influx of citizens with mental health needs into their facilities. The negative impact of inappropriately incarcerating the mentally ill in facilities that offer inadequate mental health services affects everyone: mentally ill detainees, correctional officers, and the members of the community from which they come and to which they inevitably will return (Morris et al., 1997: 3).

As was discussed more thoroughly earlier, the primary reason for the arrest of women is related to their socio-economic status (SES), and therefore, women are mostly involved in petty, non-violent crimes. In addition to the low SES of women, another catalyst to their involvement in these types of offences can be directly linked to either drug and/or alcohol abuse and to a history of physical and/or sexual abuse, which could potentially be linked to mental illness, or at the very least emotional problems. Therefore, if these are the major concerns revolving around the issue of female criminality being largely motivated by substance abuse, what services would these women need once incarcerated, and to what extent are these services provided, since the health care system in general has had to cut back its services?

MENTAL HEALTH SERVICES NEEDED IN PENAL INSTITUTIONS

Ahr, 1988; Belcher, 1988; Meyerson, 1992 (as cited in Walsh and Bricout, 1997: 422) believed that “homelessness [was] a major problem for persons in jail who no longer qualify for psychiatric hospitalization”. Furthermore, their studies of inmates

with mental illness in Ohio and Missouri jails found that for the most part, the inmates were incarcerated for non-violent offences.

Persons with substance-abuse disorders were arrested most often, followed by persons with psychoses and affective disorders. The most common charges involved disorderly conduct, parole or probation violations, failure-to-appear warrants, simple assault, aggravated assault, shoplifting, trespassing, robbery, and burglary (Walsh and Bricout, 1997: 422).

As previously mentioned, the offences cited above have been noted as being the primary reasons for the arrest of women (see Boritch, 1996). Furthermore, Singer et al., (1995: 104) have found that “one third to two thirds of women newly admitted to jails suffer sufficient psychological distress to require mental health services”. Could these psychological problems of these women be due to physical and/or sexual abuse? Moreover, throughout their study, Singer et al., (1995: 104) found evidence that supports previous studies (Adelberg and Curie, 1993; Boritch, 1996; Chesney-Lind, 1997;) that victimization is an important motivator for female criminal activity. The authors go on to say that “often, young women turn to drugs or alcohol as a means of coping with histories of victimization, and that the rate of violent acts committed by women increases with their involvement in substance abuse and drug dealing” (Singer et al., 1995: 104).

Morris et al. (1997) conducted a survey within penal institutions to determine what services are needed, and with the help of the American Psychiatric Association (APA), developed and recommended a model that would be better able to meet the needs of inmates with mental health problems. The recommendations included:

Firstly, initial screening done by the booking officer immediately upon booking into the jail to ascertain suicide potential, mental health history, and current medications.

Secondly, a member of the mental health staff should do intake mental health screening within 24 hours of booking, and thirdly, appropriately trained mental health professionals in response to referrals made from the screening process, custodial staff, or the detainees themselves should complete mental health evaluation. Such evaluations should take place within 24 hours of referral. (Morris et al., 1997:7)

We saw earlier, that because women make up such a small percent of the total penal populations in Canada, the United States, as well as Great Britain, penal institutions for women will find it difficult to meet the recommendations above. Earlier, a number of problems meeting the needs of women in jail either psychological, emotional, or vocational were discussed. Walsh and Bricout (1997: 423) point out there are many other obstacles in meeting the above recommendations. Firstly, there is a lack of coordination between the legal system and the health care system. Furthermore, there is a need for employees from both systems to look beyond their traditional roles, and to decrease the amount of time taken up with deciding which department should be the primary decision maker and care giver. Walsh and Bricout (1997: 423) go on to say that “differing philosophies within the two institutions perpetuate these difficulties, including legal theory (absolute judgements) versus mental health theory (relativism) and the conflicting values of rehabilitation versus punishment”. We will see later that conflicting ideologies are also a problem at Halloway.

Teplin et al., (1997: 607) noted a dramatic increase in the penal population in the United States. Between 1985 and 1994, “the national jail census increased from 223,551 to nearly 5,000,025”. They note that although health services, including mental health care, are important administrative factors to the daily running of these institutions,

financial resources are not meeting the actual monetary needs of these institutions. Therefore, if these institutions do not have enough financial resources in order to maintain proper mental health care facilities, what are some potential outcomes of this lack of funding? Are penal institutions capable of meeting the recommendations set forth by the American Psychiatric Association? Many would say no.

In order to determine more precisely which mental health services within penal institutions are needed most, Walsh and Bricout (1997) delivered a questionnaire to the directors of mental health services of 93 penal institutions in Illinois, whose primary task was to establish and maintain a link with the director of mental health services for the State Departments of Corrections, Mental Retardation, and Substance Abuse Services of that state. "The majority (59%) of respondents indicated that they were unable to adequately provide some aspect of mental health treatment at [their] jail" (Walsh and Bricout, 1997: 424). In other words, in most jails, the mental health care needs of inmates are not being adequately met.

TABLE 9

Treatments Inadequately met, in Order of Importance*

| | |
|--|-----|
| Jail environment problems ¹ | 44% |
| Lack of acute, specialized psychiatric care ² | 39% |
| Unmet special needs ³ | 39% |
| Lack of adequate mental health and substance abuse evaluation and counseling | 32% |
| Lack of services for persons in jails for extended periods | 21% |
| Jail resource shortage ⁴ | 17% |
| Shortage of staff for delivering treatment | 8% |

* Walsh and Bricout (1997). "Services for Persons with Mental Illness in Jail: Implications for Family Involvement". Families in Society. July/August

¹ Includes mistreatment by inmates and the extremes of isolation and overcrowding.

² Includes detoxification and sex offender treatment

³ Includes social skills development, prevention of symptom relapse, medications, assistance with functioning in the general jail population, and general mental health services.

⁴ Includes inadequate staff training, treatment information, and linkage services.

Morris et al., (1997) also studying inmates' needs found there is a need for prompt and correct evaluation of an inmate's mental state in order to ensure proper treatment. In addition to the recommendations of the APA, there are many other steps that could ensure adequate treatment of inmates in need of mental health services. Some of these include, "training staff to recognize a crisis situation, 24-hour availability of mental health professionals to provide evaluations, special housing for those requiring medical supervision, and 24-hour availability of a psychiatrist for clinical evaluations and to prescribe emergency medication" (7).

The two studies mentioned above looked at the unmet needs of individuals within penal institutions. Clearly many penal institutions are unable to adequately provided mental health care to their inmates. Not only is this harmful to the individual who is in need of mental health services, but if this individual's needs are not adequately dealt with within the penal institutions how does this affect the former and those s/he will come into contact with once released back into society? For the individual, who is released under these circumstances, the potential outcome is that s/he for a time will appear to be "cured". However, if all the emotional or psychological issues were not properly dealt with, most likely this individual will return to the lifestyle that led to the involvement in the Criminal Justice System in the first place. Only this time, as a repeat offender, the "treatment" this individual receives may be harsher, because now, they are deemed as a habitual offender. This is not to say that this will be the case for all who are released

under these circumstances. However, the potential for this to happen is evident nonetheless. Furthermore, the potential of psychological or emotional needs not being met is more likely to occur in a prison for women than one for men, because as mentioned earlier, female penal institutions do not have the same range of educational or rehabilitational programs as men's institutions.

However, even if an institution were capable of meeting all the mental health care needs of its inmates, how do these institutions fare once the individuals are released? This is an important issue if correction departments want to lower the recidivism rate of criminals; it is not enough to simply treat them within the institution. This is an important issue as was mentioned earlier, even though there have been massive cutbacks to health services, there has not been a matched increase in community-based services that would provide follow-up services needed to those granted an early release. Adequate supervision upon release is also required, particularly if the recommendations cited above were only loosely met.

MENTAL HEALTH SERVICES PROVIDED IN PENAL INSTITUTIONS

Morris et al., (1997) carried out a survey of U.S. jails with a main objective of discovering which services are provided to inmates with mental health problems. Their initial sample consisted of 87 jails, and their final sample consisted of ten facilities that were chosen for their size and because they had "noteworthy practices, policies, or procedures in their management, supervision, and treatment of detainees with mental illness" (5). What the researchers discovered was that all the jails had one

aspect in common, they were all over-crowded. “The jails; stated capacities ranged from 12 to 15,592, and the annual bookings ranged from 8 to 250,451” (Morris et al., 1997: 6). They also found that “crisis intervention and psychotropic medications were commonly used methods of treating and managing detainees with mental illnesses, especially in the larger jails. Overall, more than 50% of the jails reported providing these two *services*” (Morris et al., 1997: 6). However, can one really say that providing psychotropic medication is a service? Furthermore, we saw that women are in fact more often medicated than men in jail are.

Walsh and Bricout, (1997: 5) believe the reason behind this type of *service* being provided is linked to “problems in jail administration of mental health services, which include inadequate staffing, lack of service coordination, low ratios of staff to inmates, lack of training, and the primary need to maintain a safe environment”. And, as previously stated, these are common problems in penal institutions for women. However, the authors note that “larger jails are more likely to provide formal mental health services” (5).

However, Walsh and Bricout (1997), found evidence that supports the argument that women, because of the non-violent nature of their offending are often incarcerated for brief periods, and because of this, “appropriate treatment must be short-term and focused on mental-status stabilization. Hence, the reliance on medication to “help” these women return to society.

Teplin et al. (1997) also asked the question, “which mental health services are provided in penal institutions?” Through a multi-varied process, their final sample consisted of 1272 women who were awaiting trial and were placed in the Cook County

Department of Corrections. The women were aged between “17 and 67 years, with a mean of 28 years. Of these women, 40.4% were African-American, 33.6% were non-Hispanic White, 24.7% were Hispanic, and 1.3% fell into the “other” category. (Teplin et al., 1997: 605). In order to uncover which services were provided, the researchers used “jail records and case files until the subjects’ cases were disposed of by the courts or for six months, whichever came first”. They found that the services provided often fell short of the recommendations set forth by the APA which were mentioned earlier (Teplin et al., 1997: 605).

The researchers came to the conclusion that although there appeared to be a wide range of services provided to these women, this fact could have been due to a Hawthorne effect. In other words, the health care workers within the institution may have become more sensitive to the mental health needs of the inmates because of the presence of the researchers. In fact, they believed that “the true rate of service provision may have been lower than the actual rate of services provided” (Teplin et al., 1997: 608). Another problem area the researchers uncovered lay behind the screening methods many facilities used to determine who needed mental health services. For example, some facilities relied on the treatment history of a detainee.

They found that of detainees with prior treatment histories, for schizophrenia for example, “75% received treatment compared with 25% of detainees who had the disorder, but no history” (Teplin et al., 1997: 608). However, the researchers note that by relying on this criteria, many ill detainees will not receive proper treatment simply because they have not been treated for a disorder previously. Individuals with schizophrenia and a dependency problem were “less likely to receive services than

those with only the disorder. Jail personnel, who are often not qualified to make these decisions, may have attributed this disorder's symptoms to the effects of drugs or to drug withdrawal"(Teplin et al., 1997: 608). Lastly, the researchers found that compared with men, considerably fewer women in jail received needed mental health services. The authors note that this difference can be attributed to the fact that "women in jail have rates of depression that are four times higher than rates for men, and depression is often undetected in jails"(Teplin et al., 1997: 608). If women are indeed more like to be depressed than men are, what are some additional services that women would need in jail?

MENTAL HEALTH SERVICES WOMEN NEED IN PENAL INSTITUTIONS

As mentioned earlier, the majority of women are incarcerated for non-violent crimes such as prostitution, theft, and fraud. Furthermore, many female inmates are "addicted to drugs or alcohol, come from impoverished backgrounds, have been victims of both sexual, psychological, and physical abuse, and as a result, have emotional and mental health problems" (Singer et al., 1995: 103) that must be dealt with before they are released into the community. Because, if they were left untreated, a recourse for a majority of these women would be to fall back on the only method of survival they know; petty theft, drug dealing, fraud, and prostitution.

What is interesting about Singer et al.'s 1995 study is that they do not ask the administrators what the most important follow-up needs are for inmates upon release,

rather, they asked the female inmates themselves what they believed to be the most important factors that would prevent their return to prison. "Of the 201 women interviewed, only 18 stated that no services were needed after their release. The remaining 183 inmates cited 15 types of help or services needed, with many listing multiple services".

Table 10
Types of Help Women Need After Release From Jail*

Category N

| | | | |
|--------------------------|----|-----------------------------------|----|
| Housing | 71 | Specific items (food, clothes...) | 12 |
| Drug counseling | 66 | Help getting children back | 8 |
| Mental health counseling | 39 | Child care | 6 |
| Financial aid | 26 | Parenting classes | 6 |
| Alcohol counseling | 24 | Religious support | 4 |
| Education and training | 20 | Legal help | 3 |
| Medical care | 13 | Other | 6 |
| Family support | 12 | | |

* Singer, Mark I., Bussey, Janet, Li-Yu Song, Lunghofer, Lisa (1995). "The Psychosocial Issues of Women Serving Time in Jail". Social Work. January

The authors state that the primary reason why women thought housing was the most important service needed was because "most of the women had been arrested for prostitution and drug related offences. Therefore, if they are to have a reasonable chance of escaping the pressures of pimps and drug dealers, a change of location may be necessary" (Singer et al., 1995: 108). The women questioned also stated that drug counseling was the second most important follow-up service they needed. Ironically, the

two services that women claim are needed most are those that are often too expensive, and therefore, the least likely to be provided. Again we can see that because women make up only a small number of the total penal population, the treatment they are likely to receive is either different or inferior to the treatment men receive.

The several studies mentioned above give an indication of the services that incarcerated individuals need. Next, we will examine to what extent these services are in fact provided.

MENTAL HEALTH SERVICES PROVIDED TO WOMEN IN PENAL INSTITUTIONS

Many authors (Teplin et al., 1997; Morris et al., 1997), argue that inmates with mental health care problems not only have a legal right to adequate and appropriate treatment while serving out their sentence, rather, it is their constitutional right. Many would argue that money could be better spent for other social programs than spending limited resources on individuals who have committed a crime. However, what many fail to notice is that an effective way of reducing the cost of housing inmates and to lower recidivism rates would be to provide inmates with the proper treatment for their general and mental health care problems. Why? Does it not seem a waste of time, money, and effort if we are to simply incarcerate individuals without treating them?

On average, the cost of housing an inmate is approximately \$50, 000 annually. Therefore, would it not be more economical in the long run to invest a large sum to install drug rehabilitation programs, educational programs, and other types of counseling

programs an inmate could potentially need to ensure that when they are released they are able to function in the general population and do not return to prison? By refusing to spend this money on prison rehabilitation programs, particularly within female institutions, governments are simply applying a Band-Aid to the prison population. Whereas, if they were to ensure proper treatment of their federally sentenced inmates, they could lower their operating costs within a few years of the initial expenditure.

However, researchers (Boritch, 1996; Chesney-Lind, 1997; Maden et al., 1994; Moffat and Shaw, 2000) have found that “mood-altering drugs are prescribed two to three times more for women in jails than for men” (Chesney-Lind, 1997:104). Therefore, if drug and or alcohol abuse, and previous victimization are leading causes to the criminality and consequently the incarceration of females, is prescribing psychotropic medication to women a viable solution to their existing dependency problem? Is the prescription of psychotropic drugs used as a means of dealing with women who break the law because of a shortage of funds and /or qualified staff, or as an ideological reaction to women who have violated the boundary that has been socially constructed for them centuries ago based on the belief that women who break the law have some sort of mental deficiency and that the former can be cured?

So far, we’ve looked at a brief historical overview of the ways in which women have been theorized and treated based on theories that were developed in the latter half of the 19th century and built on at the turn of the 20th century. One could argue that these practices, such as shock or aversion therapy, or even extreme situations of deprivation, no longer exist in mental or penal institutions. However, there is an example that would

believe the statement above, and would show that the thread of this ideology is still being pulled or maintained today. A case study will elaborate this point further.

The case study will show that the treatment of women who break the law are still being treated as they were at the turn of the century; with hostility and negligence. Why? Because of an ideology that states that women who break the law are not “real women” and therefore, must be re-taught their proper role in society that has been constructed for them.

The case study begins in Great Britain in the 1970s, where the administrators of one of England’s largest prisons decided to turn this institution into a hospital that had an agenda “to cure women of their offending tendencies” (Maden et al., 1994: 173). True, one could argue that this institution’s agenda was mandated in the 1970s and that this was over thirty years ago. But I believe it is as important to discuss *how* Halloway’s agenda was changed as *why* it was changed.

Therefore, why was the prison given this mandate? Because as was discussed earlier, it was believed that women who turn to crime, do so “as a perversion or rebellion against their *natural* feminine role” (Adler and Simon, 1979: 59). Therefore, Halloway remains a valid example of the implementation of the ideology that was at the root of the construction of *ideal womanhood*.

True, one could make an argument that Halloway is not a valid example because it is not a Canadian example. It is a penal institution in Great Britain. Furthermore, it can be argued that Halloway is not representative of all female penal institutions. However, as was mentioned in chapter two, many of the studies cited in this thesis were based on small samples and therefore not representative of the conditions in penal institutions, but

that they do define a pattern. It was also mentioned that the situation of women who come into conflict with the law in Canada and Great Britain face similar circumstances prior to and once incarcerated.

Halloway remains a valid example because even though it received its injunction to become a secure hospital rather than a prison in the mid 1970s, today this prison is still in operation based on the construction of *ideal womanhood* that was developed in the latter half of the 19th century. Halloway is operated on the belief that women who commit criminal offences have some sort of psychological flaw, and therefore can be cured of this affliction. Furthermore, it has earned the reputation of being one of Great Britain's most notorious prisons because of the mandate it was given thirty years ago.

HALLOWAY: A DREAM THAT BECAME A NIGHTMARE³

A Case Study

Halloway prison, in England, was built in 1851 and was originally designed to be a penal institution for males. However, by 1902, the British government decided to turn Halloway into a female institution. Thirty years ago, this was a peaceful institution where the inmates were at most times cooperative. However, in the late 1950s, a new governor, or in this case governess arrived at Halloway, and the latter had a particular notion about how female inmates should be dealt with, and she also had a clear vision of how Halloway should be designed. In 1959, forty-nine year old Joanna Kelly took charge of Halloway. She held this post from 1959 until 1966. At this time, the institution's design had not changed in the last one hundred years. Catwalks still lined the walls inside the institution, and guards had an unobstructed view of an entire floor. In 1965 in a taped interview for the BBC, Kelly talked about her views on female criminality. What is interesting to note about the following quote is that Kelly, although a female, shared the same views about women who break the law as did the dominant voice of society, white middle-class males. Kelly explained that "women don't mean to take to crime, but they are weak, and often, when faced with difficult circumstances, turn to crime... they're mentally unstable and therefore turn to crime when they can no longer cope with said difficult situation".

Kelly also shared her views with Dorothy Speed, medical officer at Halloway from 1963 to 1965. Kelly had often talked to her about the special needs female criminals

³ Halloway: A Dream that became a Nightmare. Investigative Reports: A&E, Wednesday April 18th, 2001, 10:00 p.m.

had. Speed: “Joanna Kelly wanted to turn female inmates into patients, in other words, she wanted to medicalize female’s criminality”. According to Kelly, Holloway was unsuitable for women, and these women should be in a hospital not a prison. At this time, within the British Corrections Services, there was a lot of rhetoric around Kelly’s views on female criminality and criminality in general. The consensus was that Kelly didn’t believe in punishment. In fact, Kelly saw individuals who broke the law as mentally unstable and psychically disturbed. In 1966, the British authorities approved Kelly’s visions, and Holloway was to be re-built and re-designed to better suit female criminals.

However, not all agreed with Kelly’s views, but these individuals had little or no say in the changes that were to come. In 1969, Helen Young was the new prison officer and all the inmates liked her. She relates an anecdotal experience where word had gotten out to the inmates that she liked raspberry tarts, and when this item was on the prison menu, inmates would save their share so that they could give them to Young. Chris Tchaikowsky, an inmate during Young’s term of service, recalls how the prison was an “austere and grim place, but it was an open place. There was laughter and people got along. The staff knew where we were and what we were up to, but you weren’t shut away. You could see people”. In 1966, a newspaper photographer was sent to Holloway to take pictures before it was to be torn down. He claimed he saw neither cruelty nor mistreatment of the women while he was there. In 1970, the demolition of Holloway began. It took seven years to rebuild this prison into a hospital. Initially, there was a sense of hope as the walls came down.

Notwithstanding the design of the institution, women who were to be housed there were still criminals. Regardless of this fact, the designers rebuilt Holloway with

women and rehabilitation in mind. The final design was so that this penal institution could have been featured on an issue of *Better Housekeeping*. There were even plans drawn up for a mini shopping mall within the institution's walls. Ialloway was to be re-built as a hospital, not a prison. The re-construction of Ialloway was completed in 1977 with the idea that female prisoners have special needs; that violence is a male trait and therefore, prisons designed for males were unsuitable for women. As mentioned above, Ialloway had a mandate to "cure females of their offending tendencies".

According to Helen Young, from the beginning, the new design was flawed. It was built with rooms rather than cells. There were no more catwalks lining the walls. No longer could an officer stand at one end of a corridor and see what was going on at the other end. The "cells" were also badly designed. Prior to the new design, in the doors, there were spy-holes, that allowed guards to look in and monitor the inmates. However, in the new Ialloway, the spy-holes did not enable a guard to see the entire room, which is a must, but instead a guard would now have to open the door in order to see what was going on inside, and according to Young, "any guard will tell you that's no good". Therefore, the design had the opposite effect on the treatment women received. Because guards could no longer see around all the blind corners, the only way to monitor the inmates properly was to lock them up. Because the women were now being locked up for longer periods of time, they began to devise more and more disruptive methods to get some attention, even if it would be negative. According to Young, Ialloway was soon regarded as a "modern-day chamber of horrors". In the "old" prison, women were out of their cells for up to twelve hours a day. Under the new prison, women were out of their

cells for one hour a day, and sometimes not even every day. As one inmate stated “we’re supposed to get 20 minutes of association a day, I’ve had nothing for three days”.

In the mid 1980s, even though the construction of Halloway had not been completed, women were being housed in this institution. In 1986, the BBC show “Forty Minutes” went inside Halloway, and the only way the reporter was able to describe Halloway was “chaotic”. Collin Allen, governor at Halloway from 1985 to 1989 stated that “instead of helping women, the design made things worse. The rate of alarm calls (situations of crisis) increased dramatically after the new design was implemented”. As Young before him, he saw the only way to minimize alarm calls (for example fights between inmates) was to keep the women locked up. The reasoning was that the less time inmates spent outside their “cells”, the less disruptive they would be. However, by locking the women up, this had the opposite effect. According to Dorothy Speed, “locking the women up only made them act up more than before. Some women turned their frustration and anger on property, more turned their anger on themselves. By 1986, self-mutilation reached epidemic proportions at Halloway”.

The “new” Halloway was “making women crazy”. There wasn’t even a hospital within the institution. The administration adapted the hospital wing from the old institution which was in the basement. “It was the dampest and saddest place. Everything echoed. Sound was amplified. You could hear women banging their heads on the walls or on bars and hear their wailing in desperation all the way outside” Dorothy Speed.

Pru Stevenson, educator at the prison from 1982 to 1986 stated that teaching the women academic or vocational skills at Halloway was a trying experience for her. In fact because of the design of the institution, according to Stevenson, you could hear banging

and yelling all day long. This made it extremely difficult to focus on the subject at hand. Furthermore, Stevenson stated that individuals who are highly medicated emit a strong body odor. "It often overwhelmed you when you walked into the room". She stated that had she had to stay inside Halloway "I would have gone mad in days". Yet, for the women remanded to Halloway, this was in fact the case: they were slowly going mad.

Not only was the ideological and architectural design of the "hospital" flawed, there were also many bureaucratic problems. This combined only exacerbated an already difficult situation for the inmates. According to Angela Burgess, prison officer at Halloway from 1986 to 1991, there was increasing tension between the guards and the medical staff. More and more often there were heated discussions over jurisdictions within the walls. "Prison officers felt that their job description was not properly stated". Both the guards and the medical staff believed they were there for different reasons. "We were working in separate vacuums, and this didn't help the women". According to Burgess, at one point there were three separate incidents going on at the same time. These incidents involved guards restraining women and having to wait for the doctor, there was only one, to arrive at the scene and decide what to do for the women. "The prison was suspended between punishment and cure. A confusion that damaged all those caught up in it, and placed the staff under strain as well as hardening them to the complaints of increasingly disturbed inmates" (Angela Burgess).

According to Allen, after an inmate's successful suicide, "something had to be done. We were caught up in a vicious cycle: locking up the inmates, the inmates get angry and express their anger through verbal and physical attacks on the guards, the staff, in order to protect themselves react by keeping the inmates locked up". What this

situation did was create two very distinct camps within the walls: the guards and the inmates. However, when Holloway was a prison, regardless of the bleak situation of the prison, there was openness, trust, and even laughter. When Holloway became a “hospital”, all this was gone. No longer did the inmates trust the guards and the guards no longer interacted with the inmates for fear of physical violence, which thirty years ago was a rare occurrence. “The structure of the new Holloway brought everybody down. It was a tragedy” (Helen Young).

All these problems had been escalating since Holloway had been turned into a hospital, and by 1988 it reached its climax: prison guards walked out. At one point during the strike, 800 women were placed in police station cells because there was inadequate staff available in the penal institution. At the height of the strike, there were only three night staff to supervise over 500 women. The strike lasted seven weeks and it was one of the longest in British history, ending in the second week of September 1988. One view about the prison triumphed: “you can’t treat prisoners as patients” (Bill Curtis). The situation at Holloway had deteriorated to such a low that in 1995, Britain’s Chief Inspector of Prisons walked out not even half way through his inspection stating “it’s worthless to continue this visit”.

Years after she retired Joanna Kelly, the principal advocate responsible for the Holloway’s new vision ran into a former colleague on a bus. “I saw she wanted to talk about Holloway, but I didn’t ask. I knew it was wrong. I didn’t want to know. It was a mistake. We know that now” (Kelly).

From the start, the new Holloway was a mistake. Instead of helping “cure” women of their offending tendencies, the new regime only played into an existing

ideology concerning women offenders: that they are unstable. Yet, for the majority of women that entered Halloway, there was nothing wrong with their mental faculties. It was the institution that made them “crazy”. Because of what happened at Halloway, those that believe that mental deficiency is at the root of female criminality have been vindicated in large part because of the design of Halloway.

In 1966, Joanna Kelly played into the hands of this ideology when she stated that women have special needs and that actually women who break the law do so because of mental or psychic defect, and that it could be possible to *cure* women who break the law. Then, when administrators of the new facility became aware that the new system was not working, that the new Halloway caused more harm than good, it was too late. The entire institution had been re-built and re-designed with Kelly’s new vision of rehabilitation: there was nothing of the old prison to go back to. Angela Burgess remarked that “they destroyed a better building that was more open, they destroyed a better atmosphere. The first one was designed as a prison, this one was not”, and now it’s the women who are inside who suffer. Helen Young agrees; “from the beginning this was a white elephant. I don’t think it will get better, it’ll only get worse until eventually it’s closed for ever”.

There have been some changes made, but the basic ideology and design of thirty years ago still remain. Most women continue being locked up twenty-three hours a day, and even for twenty-four hours if the institution is low on staff. Is it a wonder that women go a little “crazy” when they have no one to talk to for three days on a regular basis? The spy-holes on the doors of the cells are designed so that the door does not even have to be opened to feed or give the inmates their medications. However, one of the changes that

have been implemented was that young women, women who are first time offenders, are now separated from “hardened” criminals.

These young women are provided with intensive rehabilitation for drug and or alcohol problems as well as for emotional problems that stem from a long history of physical and or sexual abuse, and they receive extensive vocational training. The aim of this is to reduce the recidivism rate among these young women. However, because this is still a new program, it will be years before the success of these new programs can be determined. This is a similar situation with the Kingston Prison for Women here in Canada. Four years after it opened, it was deemed inadequate and inferior to the penal institutions for males, and a government commission had recommended that it be closed down and that the women be sent to their home provinces. It took almost one hundred years for the Canadian government to act on this recommendation. Today in Canada, there are now five regional correctional facilities for women, but as with Halloway’s new programs, it will take years before success or failure can be evaluated. Regardless of the fact that all involved with this institution are aware that it is flawed, Halloway remains one of England’s largest prisons for women.

CHAPTER SIX

CONCLUSION

Although I was unable to discover the exact reasons why women were remanded to psychiatric institutions in the past, I believe that in large part they were institutionalized for having behaved outside of their *natural* role as was set out for them by those in positions of power. Furthermore, once government cutbacks affected these psychiatric facilities, the crime rate of women increased. The crime rate or as I am claiming, the incarceration rate for females *has* in fact increased over the last twenty-five years. But have women become more *criminal* in recent years? Regardless of the studies that found an increase in the female criminality rate, many would say no. In fact, studies that claim women are becoming more criminal and at a faster rate than men, are misleading. Why would this be the case?

The answer can be found when carefully examining the statistics of women in the Criminal Justice System. As was stated previously, because women make up such a small base number of the total individuals charged, convicted, and incarcerated, small numerical increases in women's rates appear to be substantial when comparing these to similar increases for men. In fact one study found that an increase of over five hundred percent in women charged with property crimes for the period 1962 to 1990, in fact represented only fifteen more women who were involved in this criminal activity (see Boritch 1996). If this is the situation, why is there rhetoric around the issue of female criminality being on the increase at a faster rate than that of males? The reason for this

alleged or “constructed” increase I am arguing is rooted in ideology. An ideology that reflects a concern of those in positions of power and control in maintaining the idea or the “construction” of *ideal womanhood* not only in women who break the law but in all women. Women should be passive, nurturing, and subservient.

Evidence has shown that women have always been involved in crime, but when they were, there was usually a psychiatric label attached to their criminal behavior. Where did this belief that women who break the law or behave “differently” or outside of their socially constructed boundaries come from? Who constructed this ideology? And what are some of the consequences of this ideology? Why did this ideology lead to the belief that women who break the law can be “cured of their offending tendencies” (Forsythe, 1993) whereas men who break the law do not have this psychiatric label or stigma of immorality attached to their criminal behavior?

Evidence as far back as the 19th century has shown that when women stepped outside their socially constructed role, their behavior was according to Dobash, Dobash, and Noaks (1995) “translated into the language of moral degeneration, biological throwbacks, and mental inadequacy, and the responses to female crime were deeply embedded in an even more complex value structure at the heart of which was the highly artificial construct of *ideal womanhood*”.

At the turn of the 20th century, norms and ideas about the *ideal* behavior for women were deeply entrenched within the social structure. Therefore, when women wanted the right to vote, a behavior that was deemed un-natural for women, a system or a body of ideas was already in place that would bring women back to their *natural* place in society.

For example, in England at the turn of the 20th century, the House of Commons passed a bill that would deny women the right of vote. Women, angered at this legislation, organized a march to protest the government's position on this issue. This day was to become known as *Black Friday* as police confronted women protestors in the street. Black Friday was according to Dobash, Dobash, and Noaks (1995) "portrayed as disorder which stemmed from the women themselves". If the demands of the women were presented as demands from the insane, their disqualification was legitimized "as the insane do not constitute legal subjects; the mad cannot make legitimate protests or demands". Because of this legislation, and because there was no opposition to it, the voice of women was silenced.

Why is there still a psychiatric label attached to many women who break the law? I am claiming that it is because of an ideology of *ideal womanhood* that was constructed in the latter half of the 19th century which states that any woman who steps outside this construction faces the possibility of being (dis) qualified as insane or evil. Furthermore, these norms or this construction were far from un-biased as they were typically established by those in society who were in control of the power structure.

Women offenders today are still considered as *doubly deviant*. Firstly, women offenders not only break the law, but they also violate socially prescribed gender roles of nurturance and passivity which were constructed in the last century. However, for many women, their criminality is also rooted in their lack of access to legitimate means of support and to their lack of power in society.

The typical female offender is often a single mother, is economically and socially disadvantaged, poorly educated, frequently addicted to drugs or alcohol, and is often a

victim of neglect and physical or sexual abuse. Interestingly, it is within these last factors where we see a contradiction or a dichotomy regarding women in the Criminal Justice System.

On the one hand, I have been claiming that women are labeled as more deviant than men when they become involved in criminal activity and that this belief is rooted in ideology. Moreover, based on, or because of this ideology, not only are women in jail more disciplined and controlled than men as was seen in chapter one, other studies have found that women in jail are more often prescribed psychotropic medications than are men (see Chesney-Lind 1997, Boritch 1996, McClellan 1994). It was also believed that women could be “cured of their offending tendencies” (Forsythe 1993) and at least one female penal institution was re-designed based on this belief.

On the other hand, I am also claiming that in some cases, some women are suffering from some sort of psychiatric or emotional problem that could be considered as a precondition to their criminality. Why would this be the situation? Many studies have found that victimization is a common denominator to women who have come into conflict with the law.

Abuse be it physical or sexual, often leads to emotional problems for the women who have been victimized. Some victims of abuse at times turn to drugs or alcohol as a means of “helping” them “forget” their trauma. However, by doing so, many find the only way to support this coping mechanism at time leads to criminal activity, which increases their risk of falling under the scrutiny of law enforcement agencies, and consequently their involvement in the Criminal Justice System. These are also important factors for many men who are serving out a sentence in a correctional facility. However,

as we have seen, female penal institutions do not have the same range of vocational, educational or rehabilitational programs as men's correctional institutions do. I believe this situation is analogous to the doctrine or the ideology of *Separate but Equal* which has its origins in the United States during a period in their history where segregation was still applied.

This law or this doctrine was established because the constitution of the United States claimed that all its citizens were equal before the law and had the right to pursue whatever goals they wished. Based on this, Blacks wanted to obtain formal education, but because of segregation laws, they were denied access to "White" schools. However, because the constitution stated they had the right to do so, "separate" facilities were built for Blacks. However, these schools were far from "equal" to the schools for Whites. In fact, many schools for Blacks were often nothing more than four walls and a roof with very few books or resources that would enable the students to acquire a proper education or at least one that was "equal" to that offered by a school for Whites.

When women first entered the Kingston penitentiary, there were no provisions made for them. In fact the first four women who were sent to Kingston were forced to serve their two-year sentence in the infirmary. Over the years, as the female population increased in Kingston, the women were eventually relocated to the cells in the basement that were abandoned because the damp conditions were causing health problems for the men who had been housed there. Eventually, prison administrators saw no other alternative than to build "separate" facilities for the women.

However, this decision was not solely taken because of the inadequate and even un-healthy conditions of the women's cells, but primarily because of the ideology that

stated that women who break the law are flawed or somehow “sick” and turn to crime as a perversion or a rebellion against their *natural* feminine role (Adler, 1979). Hence, their close proximity to the men’s quarters was from their first entering Kingston seen as a problem and even a threat. Moreover, from the beginning, the Kingston Penitentiary for Women was inferior to that of the men’s; from its basic architectural design to the quantity and quality of programs that were available to the inmates (see Curtis, 1985).

Why was this the case?

Firstly, because of the ideology or the social construction of *ideal womanhood* that stated that women who break the law are somehow “sick” and therefore, it became justified to treat female inmates with hostility and even neglect. Secondly, because of the doctrine or ideology of *Separate but Equal* and this because women make up a small number of the total inmate population, this justified, or at the very least enabled the inadequacy or the lack of programs in female penal institutions.

Because of the doctrine of *Separate but Equal*, at present, many women are released from jail without having received adequate educational or vocational training, treatment for their drug or alcohol addiction, or for their emotional problems due to their history of abuse, and for many, these are key factors to their criminality as well as their recidivism. In fact, a Task Force (as cited in Adelberg and Curie 1993) found that eighty percent of women in the federal prison system have been physically or sexually abused. Therefore, if women are released under these conditions of not having received adequate treatment, many often fall back on the only way they know how to survive; the very lifestyle that led to their involvement in the Criminal Justice System.

Therefore, programs within the community need to be developed that would prevent women from getting caught up in the Criminal Justice System by helping them get out of abusive situations while at the same time providing them with legitimate means of support. Women know how to be independent, but often, their innovative methods of self-sufficiency lead to a life of crime and consequently their involvement with the Criminal Justice System.

Regardless, or in conjunction with community-based programs, programs within female penal institutions must also be initiated to provide women in these institutions with adequate vocational, educational, and rehabilitational programs. This is important so that once released, these women have other options than returning to an innovative lifestyle that may increase their chances of coming into conflict with the law.

But, because women make up such a small number of the total inmate population, women's jails do not have the same range of programs as men's prisons do. In fact programs in female penal institutions fall short of the goals set out by the Canadian Correctional Services (CCS). In the mid-1990s, studies found that

Women inmates received instruction and training aimed at transforming them into 'good' mothers, wives, and homemakers. [Furthermore], today, many programs are aimed at women law breakers are still based on stereotypical assumption about women; that lawbreaking is the result of a basic irrationality and impulsiveness or lack of femininity (Jackson and Griffiths, 1994).

Interestingly, these assumptions are similar to those Freud made ninety-years ago when he claimed that women turn to crime as a perversion or a rebellion against their *natural* role. Therefore, to what extent have the theories or the assumptions about female criminals changed in the last century?

The goal of this thesis was not to establish a causal relationship between cutbacks to Mental Health Care facilities and a direct increase in female criminality, but rather to show a form of transinstitutionalization was occurring. However, why would there even be a link between these two variables particularly in the case of women? I believe, based on studies that have shown that women in jail are more remanded to the Mental Health Care facilities within penal institutions than men, more controlled and disciplined than men in jail, and more medicated than men in jail, that it is still believed that women can be “cured of their offending tendencies” and re-taught their “proper” role in society, hence the psychologization of women, particularly “deviant” women continues.

The goal of the Canadian Correctional Services (CCS) is to provide “incarceration for limited periods of time, to look for the eventual release and to the least likelihood of a return to prison (Ontario Institute for Studies in Education, 1976). If these are the goals of the CCS, then it must guarantee each inmate equal opportunity to benefit from formal academic schooling and vocational training as well as rehabilitative programs. However, we have seen that when it comes to the situation of women in the Criminal Justice System, The CCS is not meeting its own goals, and it is the women who are caught between the system’s inadequacies and an ideology that was constructed at the turn of the 20th century.

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