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WOMEN AND JUSTICE ARE WE MAKING PROGRESS?

JUSTICE FOR WOMEN: SCOTLAND'S SEARCH FOR A PENAL UTOPIA?

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IT IS NOW five years since the publication of the Report by the Commission on Women Offenders (Commission on Women Offenders, 2012) set out its recommendations for Scotland, and ten years since the Corston Report (Corston, 2007) set out its own significant proposals for England, Wales and Northern Ireland. Both reports heralded an optimistic tone setting out explicit recommendations aimed at improving criminal justice responses to women.

In Scotland, the possibilities for change have generally appeared closer than they have in England and Wales. When Cabinet Secretary for Justice, Michael Matheson announced his decision to stop the development of HMP Inverclyde in favour of smaller units with closer links to the community, he heralded an approach that was going to be 'radical and ambitious'. In the context of calls for 'radical' change in the treatment of women in the justice system in Scotland it would be reasonable to assume this would involve a fundamentally different response that would be innovative and progressive.

There have been many opportunities to introduce a fundamentally different way of dealing with women in the Scottish criminal justice system, going back to the early 1980s when Pat Carlen produced an (unpublished) report and recommendations for the Scottish Office in 1982 preceding the publication of her work on women in prison (Carlen, 1983). The tragic deaths in HMP and YOI Cornton Vale in the 1990s led to the publication of *A Safer Way* in 1998 (Social Work Services and Prisons Inspectorates for Scotland, 1998) and a number of subsequent enquiries, prison inspection reports and publications led up to the *Commission Report* in 2012. These reports contained a wealth of concise recommendations and creative ideas for significantly improving the experiences of women in prison while simultaneously reducing the number of women in prison.

Many of the recommendations made in these reports have been successfully introduced and in Scotland we have seen the development of excellent resources including the

218 Centre, the Willow project, the development of women's services and centres across the country, and the increasing use of mentoring projects. However, over the years, in many ways, things have not *fundamentally* changed. Consistent themes from service-providers and women accessing services in the criminal justice system show frustration at the short-term nature of many community-based resources, the continual emphasis on evaluation and evidencing 'successful outcomes' in the absence of longer-term security for these resources, the seemingly arbitrary sentencing practices in some courts, and the difficulties women often encounter in completing lengthy community orders that can bring challenges in maintaining focus and compliance. Attention has often seemed more focused on the restructuring of the women's penal estate in recent years, than on the context of the communities into which 'community custody units' are likely to be introduced.

More importantly, the circumstances of women coming into the criminal justice system do not appear to have changed: addiction issues remain a significant problem, experiences of violence, being accommodated, living in conditions of financial precarity remain much the same. Social workers report that they are witnessing unprecedented levels of poverty in communities, and providers of mentoring and after-care services are often focused on getting women food to eat: taking them to food-banks, delivering food parcels or negotiating with benefit providers. These are fundamental problems that the criminal justice system is not set up to address and highlights the need to challenge poverty rather than simply to manage it.

In order to achieve fundamental change, it is important to consider the basis of current harms, develop alternatives to existing institutions and social structures that mitigate these harms, and provide responses and concrete solutions. In Scotland, we are well aware of the problems that face women in relation to the criminal justice system and we have had the very explicit proposals for change set out in the Commission

report and elsewhere. Some significant changes have occurred, yet in many ways, they have not gone far enough. Similar frustrations are evident in Northern Ireland, England and Wales following the Corston report, and experiences from Europe, Canada and the United States suggest that challenges in instigating changes for women in international criminal justice systems are shared: social and institutional structures seem to be persistently obstructive to transformation.

Rates of imprisonment have very little to do with rates of crime and it is evident that the majority of those in prison are disproportionately drawn from particular social groups, so inequality is a recurring feature that needs to be addressed. Evidence also indicates that particular gendered assumptions operate in the way that systems of punishment and control operate throughout society (patriarchy). However, generally and for very understandable reasons, attention is focused on the potential for pragmatic reforms. Attempts are made to define and then address 'criminogenic needs' rather than structural inequality, which is understandably overwhelming to contemplate. Work is done to develop relationships rather than to erode patriarchal structures. The focus is on short-term incremental changes rather than on long-term solutions which do not change or even challenge these broader (and deeper) structures.

The targeting of punishment towards the most marginalised is indicative of wider social inequalities and highlights the need for 'justice' for women to be sought both within and outwith the justice system

Pragmatic reform certainly has its place, but to achieve 'radical and ambitious' change we need to combine this with an ongoing challenge to the deeper social structures that reproduce inequality, that support and enforce processes of criminalisation and which ultimately focus on individual responsibility rather than social, political and economic inequalities. The targeting of punishment towards the most marginalised is indicative of wider social inequalities and highlights the need for 'justice' for women to be sought both within and outwith the justice system.

In Scotland, there is a space for greater collective efforts and recent political events initiated by the Scottish Referendum and preceding campaign, brought many people together to continue the dialogue about a 'Just Scotland'. The Scottish Government and Prison Service have gone beyond national borders to consider what 'effective' prison systems might have to offer: it is important that penal reformers look beyond the boundaries of the justice system for 'radical' solutions. Prison abolitionists argue for collective action (to include penal reformers, women's groups, trade unions and other engaged social movements) to work towards far reaching change aimed at tackling poverty, inequality (both financial and opportunity) and focus their campaigns on the prioritisation of affordable housing and social support. Kim Pate, formerly of the Canadian Association of Elizabeth Fry Societies has highlighted the importance of making every effort to address the interconnectedness of economic, social, legal and political decisions (Pate, 2013).

Women for Independence www.womenforindependence.org/ and their campaign 'Justice for Women', not only called for 'criminal justice' for women but located this within the social context of economic need and representational opportunity. The Soroptomists International in collaboration with the Prison Reform Trust have urged individuals to take action in their Action Pack on Reducing Women's Imprisonment (Soroptomists International and Prison Reform Trust, 2013) and suggest contacting police, social work departments and courts to find out what responses are in place for women.

Women in Prison <http://www.womeninprison.org.uk/about/who-we-are.php> state: "Our vision is of a world without women's prisons. A world where the abuse, marginalisation and poverty at the root of so much of women's offending is addressed before women come into contact with the criminal justice system". They focus their attention on campaigning to provide specialist support services by women for women and promoting alternatives to custody wherever possible. If radical change is sought, it is important to organise outside the criminal justice system. To date, many of the anti-prison organisations that do so vocally are seen as outside the traditional political system: radical groups such as the Empty Cages Collective <http://www.prisonabolition.org/> and others that organise towards a 'prison-free world'. Sisters Inside <http://www.sistersinside.com.au/values.htm> (an Australian group who support women in prison), state their commitment to changing unjust social structure, while encouraging people to act in their own collective interests, and to 'challenge those who are a barrier to productive social change'.

Such outspoken challenges are unlikely to be universally popular, nevertheless, political allegiances aside, collective vision is required in the work that is necessary to secure meaningful change. Importantly it also requires a genuine exploration of just how radical we want to be.

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