

Convicted Women: Before and After Prison[†]

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As curses volley-shot the yard
veer to shadow
don't get caught in the cross-fire
in this hot house
tinder box
holding woman
separate from
and
different to
draw the line hard
then smudge it slightly
— it's an aquired art
the being and the not being here.
Nights of wire and hollow bone.
Mercy mother mercy
fill me with darkness
and sweet rain.

*by Margaret Maude Lamont*¹

Introduction

The number and rate of women in prison in New South Wales has increased substantially over the past 12 years. The rate of Aboriginal women in prison has increased disproportionately and alarmingly over the same period but particularly over the past four years. All this is despite the unambiguous recommendations of both the *Report of the New South*

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1 From *Water and Wishbones* (1995). Reprinted with permission from the author.

Wales Task Force on Women in Prison (1985) (*The Report*) and the *Royal Commission into Aboriginal Deaths in Custody: National Report* (Johnston 1991). These reports recommended that women and Aboriginal women in particular, be given prison sentences only as the very last resort and that a number of changes take place to ensure that numbers of women in prison be reduced. These included ensuring social provisions and health and education programs for poor and disadvantaged women, changing legislation (for example, decriminalising certain current offences and overhauling sentencing legislation), changing police culture and practice and providing well resourced community services both to divert girls and women from custody and as viable alternatives to prison. It seems almost in defiance of these recommendations and subsequent government undertakings, that women are more likely today to be given a prison sentence than a decade ago. This situation is even more indefensible when, as will be discussed in this paper, there is ample evidence that some of the non-Aboriginal and most of the Aboriginal women in prison are survivors of various forms of abuse, there are similar jurisdictions with much lower rates of women's imprisonment and there are strategies available to help keep women out of jail.

The New South Wales Department of Corrective Services produced *The Women's Action Plan* (*The Plan*) in 1994 which took many of the recommendations of *The Report* seriously, updated information and drew on more recent international and interstate material to recommend a series of actions to improve women's prisons. The creation of the Women's Services Unit³ within the Department was one important outcome. Although some very appropriate and reformist statements were made in *The Plan* concerning the sentencing and post-release aspects of the system, the emphasis was on prison. This paper, though, concentrates on what have been termed, most inelegantly, front-end and back-end strategies.

Let us rehearse some of the most compelling reasons for pursuing women specific policies in the whole process termed the justice system:

- Women, for whatever reasons, have not historically and still currently do not commit as many crimes as men, nor do they commit the same types of crimes in the same proportions, most notably many fewer crimes of violence or crimes against the person (Walker 1989, 1992; NACRO 1993:3–5; Alder 1994:141–142). The severity of their crimes have also been consistently less as well (*The Report* 1985:40).
- Regardless of what many would hope for in the way of shared responsibility for children, the reality is that a sizeable proportion of women facing a sentence have the sole responsibility and care of children (Hampton 1993:117; NACRO 1993:6; Kevin 1995:13). This requires special attention, particularly for the sake of the children, but also for the sake of the mother.
- If special attention is not paid to disempowered minorities, experience tells us they are likely to be discriminated against. Women are a minority within the justice system and vigilance is necessary to ensure their particular needs are not subsumed (Moffat 1991:187–188; Hampton 1993:4–5; NACRO 1993:3; *The Plan* 1994:3; *The Report* 1985).

2 The Women's Services Unit was established within the New South Wales Department of Corrective Services in 1994 with a brief to implement *The Women's Action Plan* and pay particular attention to services for women prisoners.

These considerations apply at the point of arrest and sentencing and at the point of release from prison as well as in the prison itself.

The current state of women in the New South Wales criminal justice system

The gross number of women in full-time custody in New South Wales prisons has not only increased alarmingly over the last 12 years, from 160 to 320 (*The Plan*:11), but the rate of women in prison per 100 000 of the population has increased. In 1984 the rate was 9.4 but had risen to 17.4 by 1992 (Hampton 1993:2; Walker 1993:20). This situation is not unique to New South Wales of course, nor to women. Most 'Western' countries have experienced rises in prison populations. The current government makes the point that the number of women in prison has been fairly stable over the last four years or so. This may be true but is ducking the issue. The 1992 figure at which it has stabilised is higher than all other Australian States (Walker 1993:20), especially Victoria, which is the most comparable State, at 6.6 per 100 000 of the population.

To this must be added the massive rise in numbers of Aboriginal women in prison. *Their* numbers have not remained stable. In 1984 the rate per 100 000 of the population of Aboriginal women in full-time custody in New South Wales prisons was 56 (*The Report*:314) but four years ago (1992) it was 241. The number involved represented 12.3 per cent of the New South Wales female prison population in 1992 (Walker 1993:22-23). This is an appalling rate given the non-Aboriginal rate for women was 15 per 100 000. Although the *rates* for subsequent years are unavailable, the percentages are. By 1994 Aboriginal women were 18 per cent of the New South Wales female prison population (Edwards 1995:3). According to calculations based on the Corrective Services New South Wales Inmate Census 1996 (Eyland 1996) it has risen to 19.5 per cent in 1996, well above the male Aboriginal percentage of 13.9 per cent and well above the 1992 percentage. This increase in Aboriginal women's imprisonment is not only a scandal, but criminal in itself, given that it is in direct contradiction to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody, particularly those requiring that numbers of Aboriginal people in custody be reduced (Cunneen 1992:13).

There are a number of possible reasons often given for this overall increase in the number of women in prison:

- The effect of the 1989 *Sentencing Act* (NSW) (or Truth in Sentencing as it is popularly known) has been to increase sentences overall and therefore increase the number in prison at any one time. Again, this is common to many countries where prison sentences have been lengthened due to a perceived rise in crime and to public demand for harsher penalties (Junger-Tas 1994:Ch1).
- More women are committing crimes, particularly theft and other 'economic' crimes in relation to drug addictions and poverty.
- Police are catching more criminals in general, including women, under the get-tough policies of recent and current governments.

Do any of these justify the increase in women in prison? The sentence lengthening effect of the 1989 *Sentencing Act* was condemned by most in the justice field as counter-productive. Nevertheless it cannot be the main reason for the increase because there was a strong rise from 1982 onwards, well before the 1989 *Sentencing Act*, so that, although by 1992 there had been 160 per cent increase in numbers of women in prison (*The Plan*:12), a good proportion of that increase had taken place before 1989. Cunneen (1992:14) also

points out that, although there have been increases in reported offences across Australia, they have not resulted in comparable rises in imprisonment rates between the States and Territories. Some of the increases in terms of convictions of women, lie in offences attracting short sentences. In 1994, 61 per cent of women committed to prison in that year had sentences of less than six months (Edwards 1995:1). As Vinson (1995:79) points out, in 1994, Aboriginal women accounted for 25 per cent of the female prisoners in New South Wales serving aggregate sentences of three to six months and he has argued most convincingly that most short sentences should be replaced with community based sanctions, as has happened in some European jurisdictions. For example, Austria eliminated prison as the sanction for all who would have been given a sentence of less than six months (Junger-Tas 1994:7–10).

As has been argued convincingly for years, certain crimes such as use of/possession of drugs for personal use should be decriminalised (Ryan 1983:124–141; *The Report* 1985:Rec 52 p247) and some minor property crimes and offences against good order should not carry a prison sentence. As Murphy and Dison (1990:8) put it, '... prisons were never intended to correct every social ill ... (but) somehow the fear of incarceration is supposed to outweigh the effects of long-term unemployment, reduced educational opportunities, social dislocation, and the despair that accompanies a lack of upward mobility.'

Some reasons to provide pre-trial or sentencing options in the community

New South Wales has been shocked at each turn of the current Police Royal Commission. Some of what is being revealed may be relevant to women being incarcerated, from the corruption associated with drugs, to that associated with child sexual abuse, as may be the information concerning the abuse of children that is emerging from the National Inquiry into the Removal of Aboriginal and Torres Strait Islander Children from their Families.

In Kevin's sample (Kevin 1995:15) of 130 women serving full time sentences in New South Wales between July and October 1993, 62 per cent reported being under the influence of a drug (including alcohol) at the time of arrest and 72 per cent reported a relationship between their drug use and current imprisonment. To this must be added the growing literature reporting the high incidence of women in prison who were sexually and/or physically abused as children (*The Report*:54; Heney 1990; Robinson 1992; Hampton 1993:Ch6; Denton 1994:34–35; Kevin 1995:13–15) and whose crimes are related to substance abuse.⁴ Although a punishment for a crime committed may be appropriate, imprisonment may not be the appropriate place for that punishment. Many inmates and ex-inmates who seek CRC Justice Support's services are women with drug or alcohol addictions who want to stop and who seek a comprehensive service to help them do that. Going to prison exacerbated their problems partly because drugs were so readily available inside but also because prison, by its very nature, takes away self responsibility and does not equip someone to return to the community (Hampton 1993:109–112; discussions with ex-inmates and CRC Justice Support workers; Denton 1994:59). Women who come before the courts who have addictions are much more likely than men to have committed theft or fraud, not a violent offence (Kevin 1995:26–27). An intensive supervision order attached to a detoxification unit and drug rehabilitation would be a more helpful response. Mental health problems are also more likely among women offenders (Denton 1994:20;

3 Research indicating that former child sexual abuse victims are significantly more likely to have a history of substance addiction, mental health problems and to be victimised in adult life is increasingly available (see Wyatt and Powell 1988; O'Donohue and Geer 1992).

Robinson 1992:225) begging the question as to whether prison is the appropriate place for women with mental disorders and ignoring the question as to what caused these disorders.⁴

There is growing evidence (Denton:1994:37–38; Alder 1994:143) that a higher proportion of women in prison than in the community in general has been subject to violence in various forms — child abuse, child sexual assault, domestic violence, rape — and it is impossible to avoid questioning the use of prison for these women. As Alder points out, these women may owe reparation for their acts, but reparation may also be owed them (1994:144).

When we look at the situation for Aboriginal women, their jeopardy is greatly increased. As Payne (1993:65–66) notes, Aboriginal women suffer the same underlying problems the Royal Commission into Aboriginal Deaths in Custody identified as affecting many Aboriginal peoples; they are racism, alienation, poverty, powerlessness often leading to hopelessness and alcoholism. Aboriginal women in prison are also likely to have been treated violently and may have been removed as children from their parents by the state or have had members of their family so treated. That the state now locks them up for minor offences that may well be as direct results of that treatment, is unjust (Broadhurst 1991). Direct links between unfair social structures and policies and over-representation of Aboriginal people in prison must be acknowledged and steps taken to create more just situations (Johnston 1991; Ward 1996).

From this discussion it can be concluded that:

- the justice system could be seen as perpetuating abuse of certain women, abuse often started in childhood or youth and usually perpetrated by males and/or the state;
- some laws and their interpretation result in a massive over-representation of Aboriginal women and drug addicts in prison and laws that have these results could be argued to be unjust; and
- Aboriginal women are so over-represented in prison in general and on short term sentences in particular, that, to have arrived at this point, there is no other analysis than that the state has neglected the human rights of these women, has supported structures which are discriminatory and racist and has used the criminal justice system as a means of social and moral control over them comparatively more often than over any other group of women in New South Wales.

Real diversion

What is to be done to keep women out of prison?

As many writers have pointed out, we must be very careful with this notion of 'alternatives to prison'. Theoretically they should keep people out who would otherwise have been sentenced to prison. If this were their true use, prison numbers would drop as a consequence. The evidence indicates the opposite (Correctional Services Division, Victorian Department of Justice 1993:7). Although numbers serving so called alternative sentences — community service orders and the like — have increased over the past seven years or so, so have prison numbers. Some of these alternatives do not necessarily divert from prison (Junger-Tas 1994:Ch1&2).

'Alternatives to prison' is also a well worn path with excellent programs having been proposed and trialled many times in the past (for example, see National Institute of Law

4 See footnote 3.

Enforcement and Criminal Justice 1977). Unfortunately prisons continue to be a popular option. Nevertheless, some women-specific diversions or community sanctions have been proving successful both in keeping numbers of women in prison down, in helping women deal with addiction and offending and in providing reparation or restitution to the community via community work or restitution payment out of works release. These are most pertinent because they are examples from the country with the highest rate of imprisonment in the 'Western' world — the USA (Sherrin 1995). Use of mediation and individualised fines are other sanctions which may be applicable to some women (Junger-Tas, 1994).

North Carolina runs a scheme to identify female offenders at serious risk of a prison sentence. Probation and community representatives prepare a sanction program which makes use of community service, individual or group counselling, day care provisions and third party supervision. This is a form of Intensive Supervision (Immarigeon and Chesney-Lind 1993, Mauer 1988).

Delaware prepared a scheme to greatly reduce the number of women currently in prison and then maintained the program to try and ensure pre-trial diversion or sentencing diversion to keep the numbers down. Work release beds were increased, all prisoners serving less than one year were reclassified, pre-trial staff were increased to provide supervision in the community, residential drug treatment spaces were increased and a day reporting program was initiated. Release plans were developed for a number of women already in prison and a unit was established to apply this scheme prior to sentencing. Emphasis in this program is on the individual situation and needs of the woman, with staff, together with the woman concerned, addressing financial problems, domestic or other violence, drug dependency and educational, vocational and other special needs (Immarigeon and Chesney-Lind 1992).

Robinson (1992) reports a program in Oregon which accepts women, who would otherwise be imprisoned, as probationers and offers a wide array of services including housing, mental health, drug and alcohol counselling, child care, maternal education, literacy and other education, life skills training, incest abuse counselling and so on.

All these programs have so far reported low recidivism and positive outcomes in terms of lower numbers of women in prison.

The plight for Aboriginal women could be addressed in a variety of ways. First, real diversion must be implemented for young Aboriginal girls — keeping them out of detention in greater numbers than is happening now is essential to keeping them out of adult prisons (New South Wales Ombudsman 1996; Community Services Commission 1996). The formation of Committees, with Aboriginal community members, are being trialled to work with young Aboriginal girls who exhibit 'offending' behaviour. Most importantly these committees should be focused on keeping girls and women out of detention.

The Alberta Native Counselling Service, Canada, runs services specifically designed for native peoples which act as diversion programs. Some similar programs for males have been initiated in New South Wales, for example, Doonooche on the New South Wales South Coast which is Aboriginal-run and works to help heal those in its residential program. Such a program for Aboriginal women would seem an excellent step. Small, residential centres strategically placed around the State and run by Aboriginal women, with drug rehabilitation, strong personal support, living skills and health programs may be one appropriate strategy.

Vital features of the programs referred to are that:

- they are coherent, that is, they are coordinated from one place and take women's whole situation into account and do not expect them to have to manage uncoordinated services;

- they recognise that staff in the service and support roles must have a realistic case load and resources on which to call; and
- they take a woman's individual risk and needs as the basis on which to plan her community program.

A major problem for women in New South Wales if they need health, mental health/drug programs, social security, employment, housing and child care services while on a community services order is the absence of coordinated services.

After prison

After the decimation of post-release programs 1988–1991,⁵ it has taken community service organisations much lobbying and work to even have the 1988 level of funding and provision restored. A review of post-release community services in New South Wales was undertaken and presented in early 1995 and the new Minister, Bob Debus, took its recommendations seriously. A more integrated approach to post-release is now being implemented with increased resources, and where women are concerned, a positive working relationship between community service agencies and the Women's Services Unit. In particular, the women's post-release programs, all of which were under threat, were funded by the Minister and have been included as ongoing funded programs in the future. For the first time since 1988, those who have a dedication to seeing women ex-inmate services secured can begin to look at reviewing, fine tuning and improving them. The introduction of the Transitional Houses this year is one excellent step to preparing women for release.⁶

Given that, even if the proposals to reduce women's numbers in prison are implemented, there will be some women going to prison, and that, currently there are hundreds being released each year, what services do they say they need and what do they have?

There are very few women specific programs for ex-inmates in New South Wales. They are: Guthrie House which provides accommodation for nine to 12 women being released who are on methadone and/or who are being released on a Section 29 (to care for young children) and who are generally in critical need of shelter;⁷ 'Children of Prisoners' although not a women-specific project, inevitably works with many women inmates who have children;⁸ CRC Justice Support has accommodation, employment and support, counselling and referral services for women ex-inmates.⁹

5 The then Minister for Corrective Services, Michael Yabsley, reduced funding by half to most services and put them on short cycle budgets, leading to uncertainty and discontinuity for staff and clients.

6 The introduction of Transitional Houses for selected women towards the end of their sentences were part of *The Plan*. The first one, two large houses, not distinguishable as prisons in any way, was opened in Paramatta in June 1996 and allows for a more open and normal lifestyle with some children spending prolonged periods with their mothers, women working or going to courses and being responsible for their own living.

7 Guthrie House is run by a Board of Management with a number of staff on roster so that the House has 24 hour staffing. Staff are funded by the New South Wales Department of Community Services.

8 Children of Prisoners, a community organisation based at the entrance to Silverwater/Mulawa prisons, is mainly funded by the Department of Corrective Services New South Wales and provides invaluable support to children of incarcerated parents by providing a number of services including taking children on visits to their parent, advocating on their behalf, keeping parents in touch with their children and parenting support.

9 CRC Justice Support (formerly known as Civil Rehabilitation Committee) receives core funding and funding for a number of specific projects from New South Wales Corrective Services Department and funding

What do women say are their most pressing problems upon release? Workers from the few community organisations that work with women inmates pre-release hear the same urgent requests: accommodation especially for women with children, employment or financial support, someone who gives personal support, acceptance and direct help when needed and help reestablishing their family. Managing drug/alcohol addiction is a major problem for many, as are negotiating relationships with family members and feeling part of society again. Most women want to talk with other women who understand their situation. Even those who have had short stints of a few months in prison may have major adjustment problems.

What is there for women to go to? Accommodation is extremely difficult. CRC Justice workers spend much time trying to find reasonable accommodation for ex-inmates and their families. Women form a disproportionate number of these clients. There is a critical shortage of acceptable places. Women ex-inmates may have a number of problems, such as the taking of methadone, that preclude them from the already scarce crisis beds available and do not augur well for long term shelter. Many women who have nowhere else to go but back to a violent or drug addicted partner or the street scene, who are desperate to get their children back together but cannot do so until they have suitable accommodation, see little hope.

Supported accommodation is essential for many. In mid-1996, CRC Justice Support opened the first two of four houses provided by the Department of Housing in cooperation with a Community Tenancy Scheme. The women will be assessed as to the level of rent they will pay. These houses have support staff and take a variety of women, but with a special focus on women with children. They are to be intermediate to long term accommodation and will complement Guthrie House which is shorter term crisis accommodation. There is still a need for women specific residential detoxification and drug rehabilitation programs (both pre-trial diversion and post-release).

The CRC Justice Support's Women's Ex-inmate Support Project grew out of the suggestions of some ex-inmates and was initially funded out of the royalties from Blanche Hampton's book *Prisons and Women* (1993) and a seeding grant from The Mercy Foundation. A cornerstone of the project is that one of the workers on the project be a woman who is an ex-inmate. Its intent is to ascertain what needs a woman may have upon release by having pre-release sessions, to provide practical and personal support and referral to appropriate agencies. Maree Peters, an ex-inmate and an Aboriginal woman, established the service. Apart from arranging practical matters such as liaising with Prisoners Aid or the CRC accommodation service for financial and housing matters, she has found her most demanding role is as the person many women ex-inmates contact when things become too difficult.

There have been important lessons in these projects for the workers and management. Government departments have to understand that the all important 'outcomes' will not be as high when working with ex-inmates as with many other groups in society. Not only do women ex-inmates face emotional and personal crises in their first few months out of prison that many people do not face in a lifetime but they are the hardest to find employment for, the most difficult to find accommodation for, are likely to continue or relapse into drug taking when things go badly, and are likely to need very intensive support in de-

veloping social and living skills. It is important not to give up working for their well-being in these crisis times. Balancing producing outcomes for the funding body and actually doing the job well are not necessarily the same thing.

Policy responses

In the long run, social reform to help ensure that girls and women are not the subject of sexual or other assaults, that poor women are enabled to move out of poverty and that Aboriginal women are given restitution for the abuse and wrongs perpetrated against them, at the least, will be necessary to alleviate some of the factors leading to much 'criminal' behaviour. In the meantime, in response to the current situation, a number of overlapping policy reforms, drawn from a variety of sources, can be reiterated.

The New South Wales prison population must be reduced (New South Wales Labor Party 1995; Vinson 1995). There is no justification for the current rate of 17 per 100 000 for women when the State of Victoria, for example, has less than half these rates and most European jurisdictions have lower rates still (Prison Reform International, 1996).

Rather than *prison* being the only *real* punishment, different forms of punishments should have validity in their own right. The concept of a sanctions or sentencing continuum where justification must be given by the sentencer for giving, for example, a prison sentence when the offence only warrants a community sanction on the penalty scale (Correctional Services Division, Victorian Department of Justice 1993:9; Brown 1995; Vinson 1995) is most appropriate. Prison should not remain the yard stick, so to speak, of punishment (Vass 1990:163–176; Junger-Tas 1994:5).

The philosophy of prison as the last resort should be further developed by changing current sentencing to ensure that prison is not a resort at all for certain offences for which it is currently a possible sanction and for which it is the default sanction; that is, only crimes that in the first instance would warrant a penal sanction should result in imprisonment, and some matters which are currently offences be decriminalised (*The Report* 1985:Rec 50–62 pp247–248; Correctional Services Division, Victorian Department of Justice 1993:7–12; Payne 1993:70; Vass 1990:167; Immarigeon and Chesney-Lind 1992:9; Brand 1993:25; Junger-Tas 1994:Ch2, Vinson, 1995). This would be particularly relevant for women, for example, regarding possession/use of drugs, minor theft, fine default, against good order.

Although the adoption of all of these policy positions would be beneficial for women, there are also some specific strategies regarding women which need to be adopted. These include:

- a range of women specific non-custodial sanctions which would act as more realistic, helpful responses than some of the non-custodial sentences currently given and certainly than that of prison (*The Report* 1985:Rec 51, 53–66, 247–248; Carlen 1990; Correctional Services Division, Victorian Department of Justice 1993:10–12; Immarigeon and Chesney-Lind 1992:9–10; Chesney-Lind 1992:31; Brand 1993:25–30); and
- the continuation of and increase in women specific post-release services that work with parole, and with a wide range of community services and to which all women being released are introduced well before their release date (Carlen 1990; *The Report* 1985:Rec 267 p256; Hampton 1993:Ch10; Arnold 1992:37; Immarigeon and Chesney-Lind 1992:8–10; Eaton 1993).

Conclusion

The situation of increased numbers in prison and lack of diversionary programs is somewhat of a mystery. A mystery because, since 1991 (and before 1988), each successive Justice and Corrective Services Minister, senior politician and departmental head and staff have agreed that the numbers in prison must drop. And it is not that information and successful programs have not been placed before policy makers for years. As far as convicted women are concerned, the evidence is overwhelming that the majority do not present a threat to society and that both they and society benefit financially and socially when they are given something other than a prison sentence.

For years, New South Wales governments have responded to the situation by running sentencing reviews which, it is said, will deal with the matter. That has so far proved a false hope. Sentencing reform is essential but, as has been shown in this paper, much could be done to keep women out of prison without waiting for a sentencing review. With a reorganisation of some resources and cooperation from community groups dozens of women in prison could have release plans drawn up and be out on a community or other order. Many women who would otherwise be sent to prison in these coming weeks could have pre-trial diversion plans drawn up. It requires absolute commitment to the project, re-assignment of resources or better use of currently assigned ones. It also requires cooperation between the courts, probation, community organisations including Aboriginal groups, community health and housing. And for those trying to balance budgets, in the long run, such approaches will save money. Prison is by far the most expensive option in both social and economic terms.

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