

Dangerous Dichotomies: The Potential for Restorative Justice to Resolve Feminist Dilemmas

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ABSTRACT

This article explores dilemmas that have emerged from my work on gender, culture, violence, and justice. I examine feminist positions regarding, first, violence against women and, secondly, female offenders. The summary of feminist perspectives reveals that feminists are simultaneously supporting and rebelling against the current punitive approach to crime. A major source of the problem is dichotomous thinking in terms of: the interests of victims versus the interests of offenders; the experiences of girls/women versus the experiences of boys/men; and state intervention versus community intervention. I argue that restorative justice has the potential to overcome dichotomous thinking and to resolve the dilemmas facing feminist/critical scholars. Indeed, core elements of a feminist vision of justice coincide with a restorative vision of justice.

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An Inuit woman is badly beaten by her common-law husband, again. The only shelter for women and children lies over five hundred miles away, accessible by airplane three times a week. Her community is small, with no programs for either her or her husband. Tolerance for wife abuse is high, with a deafening blanket of silence. Her family, like the community at large, does not want to interfere. No one confronts the man who abuses her. Many blame her for the abuse. After talking to the nurse at the nursing station where she is treated for her wounds, she finally decides to turn to the local police. Charges are laid. Her husband is angry at this turn of events and his anger is, of course, directed at her. The circuit court finally arrives over a month later and holds court for the day in the school. A foreign adversarial battle takes place in a foreign language; the entire process excludes her in every way. The accused is convicted. The judge does not want to remove this man from his community to a far-away correctional facility, especially because this is his “first offense”. Her husband is fined and given probation. The court party flies away. He tells her she must pay the fine because this is all her fault, which she does although their family cannot afford to. He goes to the probation officer (who is also the social worker for their community and, it turns out, a relative) for two months, then stops going. She has learned her lesson - it is not worth turning to the white man’s justice system. The abuse continues.¹

The above case example highlights the no-win situation of the woman who is abused as well as the ineffectiveness of the criminal justice system. The judge left the abuser in a community that has no infrastructure to confront violence and to support victims; this decision thus endangers the life of the woman and the welfare of her children. If the judge had chosen instead a term of imprisonment, then the seriousness of violent crimes against this woman, and against women overall, would have been acknowledged. Yet, that sentence would have resulted in another minority man being locked up. The correctional institution is not equipped to confront his violence; if anything, his violent behavior would be reinforced. When the offender returned home, he would more than likely re-victimize his wife, or a subsequent partner. In both scenarios – whether the offender remains in the community or is removed - the woman is re-victimized, no work is done with the offender to eliminate his violence, and no attention is given to changing community responses to violence against women.

This article explores such dilemmas that have emerged from my work on gender, culture, violence, and justice. I argue that a major source of the dilemmas, and what prevents us from finding resolutions, is dichotomous thinking. I am particularly interested in the dilemmas and dichotomous thinking found within feminist/critical scholarship. Dangerous dichotomies that I focus on are: considering the interests of victims versus the interests of offenders; taking into account the experiences of girls/women versus the experiences of boys/men; and calling for state intervention versus community intervention.

I examine feminist positions regarding, first, violence against women and, secondly, female offenders. The summary of feminist perspectives reveals contradictions and dilemmas surrounding state intervention and imprisonment: On the one hand, feminists have generally focused on a criminalization strategy for confronting violence against women. This has put some battered women in an impossible situation, and some feminists on a collision course with minority women and into bed with right-wing conservative forces. On the other hand, feminists critique the criminalization of female offenders, particularly in terms of women's imprisonment. In effect, feminists end up simultaneously supporting and rebelling against the current law-and-order, punitive approach to crime.

We are in desperate need for true alternatives to the dominant criminal justice system. I argue that restorative justice offers a valuable paradigm for creating a more just society. The paradigm calls for partnerships between victims, offenders, communities, and government to resolve crime and build safe communities. In its most general sense, "restorative justice is a process where stakeholders affected by an injustice have an opportunity to communicate about the consequences of the injustice and what is to be done to right the wrong" (Braithwaite & Strang, 2002, p.4). In the first section of this article, I summarize what I mean by restorative justice.

In the following subsections, I outline dilemmas in terms of violence against women, female offenders, and imprisonment. I use “feminists” and “feminism” in a broad sense, knowing that it refers to diverse individuals and a vast literature where debates abound. There is no one definition of feminism or one feminist perspective. Rather there are many feminisms – such as liberal, Marxist, socialist, radical, psychoanalytic, standpoint, lesbian/queer, black, and multicultural/multiracial (see, for example, Lorber, 1998; Tong, 1989; Daly and Chesney-Lind, 1988). It is beyond the scope of this paper to discuss the various feminist perspectives, especially in terms of my main arguments. I ask the reader to keep in mind that feminists do not take a uniform policy position on any of the issues raised. Feminism refers both to the theories of women’s oppression and the strategies for overcoming oppression. In this article, I am interested in the latter.

The restorative justice paradigm has the potential to overcome dichotomous thinking and to resolve the dilemmas facing feminist/critical scholars. Dialogue between feminists and restorative justice advocates has been limited and oftentimes strained. Feminists are generally reluctant to embrace restorative justice. I conclude that core elements of a feminist vision of justice – such as safety and empowerment – coincide with a restorative vision of justice. The challenge is to develop partnerships to transform current approaches to crime and to create meaningful, effective alternatives.

When taking a stand throughout this article, the reader can note that my feminist perspective is informed by critical race theories, critical criminology, Indigenous scholarship, and Buddhist spirituality. I care deeply about ending the oppression of women, especially the violence perpetrated against girls and women. Simultaneously, I focus on ending *all* forms of oppression and injustice, including those perpetrated against boys, ethnic minorities, Indigenous

peoples, gay/bisexual/transgendered peoples, and prisoners. Thus in the final section, I offer resolutions.

The multi-layered complexities of the issues challenge us to find sophisticated yet clear language. For instance, it is difficult to refer to various forms of simultaneously occurring oppressions and inequities surrounding gender, race, ethnicity, class, sexual orientation, disability, etc. I have chosen to use the term “gender-race-class” to capture the dominant biases under discussion.

I take the liberty to use words and phrases throughout this article without further explanation in order to be able to focus on my main arguments rather than utilize space and divert attention to issues surrounding discourse. For example, I use “victims” knowing that this allows people to instantly recognize what I am referring to, especially since this term is used extensively in the literature I draw upon. Yet I do not mean to imply that this captures the whole identity of someone or that a victim does not have agency. Thus, I will also sporadically use “survivors” or “the person harmed” to remind the reader of this issue. Similarly, I use “offenders” but do not want to imply that this captures an individual’s identity and whole character. As Aboriginal teachings, among others, point out, it is important to separate judgment of an act from judgment of the person, so that what someone does may be inappropriate or unacceptable but the whole person is not “bad”.

This article confronts dilemmas that have haunted feminist/critical scholarship. Restorative justice offers a potential way out of our quagmire.

RESTORATIVE JUSTICE

Restorative justice offers an alternative paradigm and deserves careful consideration. There have been confusion and misunderstandings about what restorative justice is, and hopes to become (Morris, 2002). Part of the problem lies in the fact that there is no singular definition.

This paradigm is still in its formative stages. I agree that we need to “set up the meaning of restorative justice as a matter to be contested rather than as a matter of prescription” (Braithwaite & Strang, 2002, p.4).

Restorative justice refers to a broad vision of how we can understand crime and achieve justice. We not only need a restorative response to crimes committed but also a broader transformative process within communities.² Below, I outline the vision by summarizing generally agreed upon, core principles that have emerged in the literature (Karp & Clear, 2002; Braithwaite, 2002; 1989; Bazemore & Schiff, 2001; Strang & Braithwaite, 2000; Bazemore & Walgrave, 1999; Clear & Karp, 1999; Zehr & Mika, 1998; Daly & Immarigeon, 1998; Van Ness & Strong, 1997; Galaway & Hudson, 1996; Zehr, 1990).

The restorative paradigm begins with the following assumptions:

- Crime is a violation of people and of interpersonal relationships
- Violations create obligations
- Justice seeks to heal and put right the wrongs

The following are 6 core elements of a restorative approach:

1. *Participation and Empowerment of Stakeholders:*

The victim, offender, and community are all active participants in the justice process as early and as fully as possible. These stakeholders assume an active and directive role.

Participants come together in a facilitated dialogue, for example through a restorative process such as mediation, conferencing, or peacemaking circles. The state also retains a role, especially in terms of resources and in protecting civil liberties.

2. *Accountability:*

Offenders are held accountable whereby “accountability” is defined as accepting responsibility for one’s behavior, understanding the harm caused by their behavior, and taking

action to repair the harm. Responses are tailored to the specific crime committed and individuals involved. Therefore, crime is more than simply lawbreaking and justice is not simply achieved through the imposition of punishment. Rather a holistic approach is taken in responding to criminal behavior.

3. Restoration, Reparation, and Healing:

The process and the outcomes involve healing, repairing harm, and attending to damaged relationships. Restoration has a number of dimensions and is directed at victims and communities. The following is a list of some of these dimensions: property loss, injury, sense of security, dignity, sense of empowerment, deliberate democracy, harmony based on a feeling that justice has been done, and social support (Braithwaite, 1996). A restorative approach has been deemed “victim centered”. The focus is nonetheless also on the offender in terms of not only accountability but also uncovering root causes of criminal behavior, healing, and building competencies (for example, vocational, educational, and social skills).

4. Reintegration:

Rather than stigmatizing and ostracizing offenders, offenders who take responsibility for their crime are positively reintegrated back into their communities, with resources to assist them in leading a law-abiding life. Braithwaite’s (1989) theory of reintegrative shaming is a huge contribution to this aspect of the paradigm. Note that reintegration can also apply to victims since they may feel disconnected or even stigmatized as well.

5. Safety:

Both immediate and long-term safety is considered. To reduce crime and recidivism, offenders are responded to according to their individual situation, including their risk to others. Offenders are monitored and supported in terms of fulfillment of any agreements. Public safety,

especially in the long-term, is achieved by building the capacity of communities to prevent and control crime.

6. Transformation:

Transformation in the roles and responsibilities of individuals, communities, and government is another focus of restorative justice. Authority is decentralized and partnerships created to solve problems. There is a commitment to a broader transformation of society to overcome inequities and increase quality of life.

Restorative justice is thus not a program but offers a new paradigm in how we understand and approach crime and the achievement of justice. Various restorative programs and strategies have begun to be implemented around the world, such as family group conferencing, peacemaking circles, and community reparative boards. A particular project can be deemed restorative based on its commitment to the values and principles of the paradigm.

THE DILEMMAS

Dilemmas or internal tensions in terms of theory, practice, and ethics have emerged over the course of my research over the last fifteen years.³ To provide an overall synthesis in this article, I highlight two dilemmas by providing a flow of brief arguments.

DILEMMA #1: VIOLENCE AGAINST WOMEN AND IMPRISONMENT

The following points summarize the first dilemma in terms of violence against women, focusing on intimate partner abuse, and imprisonment.⁴

Feminists have successfully raised awareness of the extensiveness and brutality of the various forms of violence against women. Many families and communities tolerate and even at times promote this violence. We now know that women are in danger within their own homes as they are most likely to be victimized by someone they know (Gelles, 2000; Coker et al., 2000; Johnson & Sacco, 1995).

Clearly, the violence must be stopped and perpetrators held accountable. Feminists turned to the authority and resources of the state in developing responses to violence (Walker, 1990). The state has money and agencies, particularly the police and courts, which have been used in a feminist campaign to end violence.

State agents have traditionally not taken violence against women seriously and have often, through their actions and words, perpetrated further violence. Therefore, feminists have focused a lot of their energy on achieving the criminalization of violence against women (see for e.g. Lewis et al., 2001). This has meant getting laws passed, the police to arrest, prosecutors to prosecute, and judges to convict and severely sentence those who batter and rape, as both a symbolic and instrumental way to acknowledge, condemn, and prevent violence.

The criminal justice system is a track where one action needs to be followed by another in order to achieve its full effect. So, if the police arrest but the prosecutor does not prosecute or the judge does not convict, then there is a breakdown in the criminalization process and outcome. Currently, the breakdown is occurring at each step – most crimes of violence against women go unreported, almost half of the incidents that are known to police have not resulted in charges, few are prosecuted and even fewer convicted (McFarlane et al., 2000; Buzawa & Austin, 1998; Greenfield et al., 1998; Frohmann, 1997; 1991; Zorza, 1994; Buzawa & Buzawa, 1992; Ferraro & Boychuck, 1992).

Each component of this criminal justice system can have varied impacts on women who are harmed and men who do the harming. Overall, feminists show that women are commonly revictimized and perpetrators are not held accountable. Feminists are working to have cases effectively channeled through the entire criminal justice system. Cahn and Lerman (1991, p.97) argue: “unless there is prosecution following arrest, law enforcement is a fiction”. Ultimately, the

success of criminalization is determined by a conviction and the sentence given by a court of law.

Possible sentences currently available in court are limited and I argue are problematic for a variety of reasons. For example, I argue that fines should never be used in such cases. A fine sends an inappropriate message about the value of women's bodies as commodities and property. It also brings more hardship to women who economically suffer the consequences of money being taken away from their family/children and given to the court. Probation is another problematic sentence primarily because of the high caseloads of probation officers and the lack of resources invested to ensure that women are safe and offenders do not re-offend. Many do not take this condition seriously.

Excluding the death penalty (which I oppose), imprisonment is the ultimate sanction and really the only one in the courts' repertoire for serious, violent crimes. Imprisonment, as currently practiced, perpetrates violence against inmates in various forms, such as sexual assaults, racism, misogyny, etc. It is well known that those who spend time in prison are worse off when they leave and face numerous barriers to living a healthy, law-abiding life upon re-entry to society. Recidivism rates are extremely and unacceptably high. It is also well documented that prisons are primarily reserved for the poor, minorities, and political dissidents (for example, Reiman, 2001). Ultimately, it does not resolve or reduce violence but perpetuates it.

Therefore, we are left with the following dilemma: Violence against women absolutely must be confronted. The most serious criminal sanction fitting for a serious, violent crime is prison. Imprisonment does not deter violence and does not make men non-violent. If anything, it promotes the opposite. We must acknowledge the devastating consequences of imprisonment, particularly for poor and minority individuals and communities. However, in not turning to the

state for criminal justice intervention, women are left in the hands of their abusers within families and communities that tolerate the violence.

We have created the deplorable situation whereby women are being asked to choose – either endure the re-victimization of criminal justice intervention or endure the re-victimization at the hands of their abusers. I see this dilemma clearly articulated by minority and Aboriginal women (for discussion see Zellerer, 2000). They want the violence to end but in turning to the criminal justice system, the successful end result would be another minority man being locked up and further disintegration of their community.

In their calls for state intervention, feminists have long been on a collision course with minority and Indigenous women, which has resulted in on-going debates, tensions at meetings, hardships in coalition-building, and the fact that many women, especially Aboriginal women, are rejecting the label “feminist”. Feminists also find themselves with strange bedfellows – the state, the very legal apparatus that they have spent much energy criticizing and lobbying *against* when it comes to intervention in women’s bodies.

Some feminists and others (especially conservative lobbyists) have added another layer to the problem by arguing for mandatory reporting, arrest, prosecution, and sentencing policies (see for e.g. Stark, 1993; Humphreys & Humphreys, 1985). There are certainly legitimate reasons for such policies but the net result is that women are beginning not to have choice at all, even the above deplorable choices. Once the abuse is known, some women are being dragged through the process without any say at all. Authorities are certainly not always enforcing mandatory policies or, more accurately, are selectively enforcing the policies. Those who argue they must be consistently enforced set up the following scenario – if abuse becomes known to authorities, police must arrest and the case gets channeled through the system to its only logical successful conclusion – a conviction and serious sentence, i.e. imprisonment. This all without input from

the woman in terms of what she wants or needs (Smith, 2000). In effect, it silences her voice and denies her agency.

Numerous unintended consequences have begun to emerge (Miller, 1990). For example, feminists were immediately confronted with the problem of women victims also being arrested along with the men who abused them, because of dual charging and counter-charging practices. The police literally enforced the mandatory or pro-arrest policies upon seeing a “domestic fight” or a victim act in self-defense (Martin, 1997). So, feminists are working hard to further educate the police who are starting to respond with a modified mandatory/pro-arrest policy of only charging the “primary aggressor” or “dominant aggressor”. In addition, women who do not want to proceed with or support prosecution are being subpoenaed and charged with contempt of court if they do not cooperate and testify against their batterer.

Mills (1999) persuasively argues that the coercive policies and actions of state representatives results in a replication of the very abuse we are aiming to eliminate (see also Harris, 2000; Mills, 1998; Snider, 1998). Women who are victims are increasingly being brought into the system and punished as offenders, in effect for such things as fighting back against an abuser, failing to leave a batterer, not cooperating with authorities, etc.

We are currently faced with various options on how to resolve this situation. We can continue to focus on improving the responses of the criminal justice system so that it (1) takes the violence perpetrated against women seriously, and (2) no longer re-victimizes women who come forward to report crimes. This is understandable and even laudable; I argue components of this strategy should continue. For example, all forms of violence against women must be clearly articulated as against the law. It is also crucial that justice agents, especially the police who are front-line workers, be educated and trained about gender-based harms.

However, solely focusing on a criminalization strategy is inherently limited and flawed (Snider, 1998; 1994; Martin & Mosher, 1995; Smart, 1989). We must come to terms with the reality that imprisonment will not, indeed cannot, resolve violence and empower women. We have reached an impasse – we cannot leave abusive men in their homes and communities when there is no infrastructure in place to ensure women’s safety and men’s accountability. We also cannot simply remove men wholesale to prison. Individuals, families, and communities that are already struggling economically and socially, are further disempowered and harmed. Focusing on criminal justice not only perpetuates harm but also diverts attention away from the necessary transformative work that needs to be done. Innovative processes and effective outcomes are desperately needed; I argue that restorative justice is a viable alternative paradigm.

DILEMMA #2: FEMALE OFFENDERS AND IMPRISONMENT

An important body of literature has also grown from feminist work on female offenders and women’s imprisonment (for example, Carlen, 2002; Pollock, 2002; Belknap, 2001; Van Wormer & Bartollas, 2000; Cook & Davies, 1999; Miller, 1998; Owen, 1999; 1998; Zaplin, 1998; Bush-Baskette, 1998; Chesney-Lind, 1997; 1995; Chesney-Lind & Bloom, 1997; Owen & Bloom, 1995; Sommers, 1995; Daly, 1994; Chesney-Lind & Pollock, 1994; Feinman, 1994; Faith, 1993). In the past, female offenders were simply ignored, as aptly captured in an early text entitled “Too Few To Count” (Adelberg & Currie, 1987). Feminist scholars have uncovered numerous problems in how the criminal justice system responds to female offenders – such as neglect, inadequate programs, and the perpetuation of stereotypes. They have mounted evidence to show that there is institutionalized sexism.

Researchers have simultaneously focused attention on uncovering the profile of who are the female offenders brought under state control. Women who are imprisoned are predominately unmarried, mothers, poor, under-educated, unemployed or under-employed, with a history of

physical and/or sexual abuse, and from a minority group (especially African-American in the United States and Aboriginal in Canada).

In recent times, there have been dramatic increases in the number of females imprisoned. Indeed, women's imprisonment has been increasing at a faster rate than men's imprisonment. An apt phrase that has been used to capture the current climate is "equality with a vengeance" (Barak, Flavin, & Leighton, 2001; Chesney-Lind & Pollock, 1994). The state seems to have decided that now is a good time to provide "equality" for women, but within its dominant masculinist, punitive framework. Thus, justice officials are to get tough, period. Women are bound by the same mandatory sentencing schemes (like "three strikes") and, oftentimes, similar prison regimes (like boot camps). Women overall, and minority women in particular, are deeply and negatively affected by this war on crime (see, for example, Danner, 1998).

The punitive approach and resulting dramatic increases in women's imprisonment cannot be justified by thinking we have a corresponding increase in the number of violent offenses committed by women. Female offenders' profile has not changed much over the years. They continue to predominately commit property crimes – larceny-theft, fraud, forgery – and engage in prostitution. The one key change since the 1980s is that women are being imprisoned at an alarming rate for drug related offenses. Three-quarters of women in federal prisons in the U.S. are imprisoned for drug charges. The war on drugs has arguably turned into a war also on women, especially against minority and poor women and women who are used as "mules" in the international drug trade.

One thing is absolutely clear to feminists – we must stop the tide of the imprisonment of women and find alternatives to the current punitive, law-and-order approaches. Common recommendations include the following:

- stop criminalizing girls'/women's survival strategies (prostitution, self-defense in the hands of violent males, etc.)
- stop construction of women's prisons
- decarceration, especially of non-violent offenders
- provide gender-specific programming for female offenders

With respect to imprisonment, again we are faced with various tensions and dilemmas.

This time, feminist visions of justice are not a source of the dilemmas. Rather, the source is what I call ethical and theoretical inconsistency within feminism itself. Simply put, it is problematic that feminists argue *against* state intervention in women's lives, with the goal of minimizing women's imprisonment, and at the same time, argue *for* state intervention in the lives of men, especially in terms of harsh responses to abusive men. In other words, it is theoretically inconsistent and ethically problematic to argue for women to be kept *out* of prison and for men to be put *into* prison. Feminists end up simultaneously *rebelling against* and *supporting* the current law-and-order, punitive approach to crime and justice.

One may say that this is not a contradiction if we take into account violence. That is, we are talking about violent men when calling for state intervention, and about the decarceration of female offenders who are predominately non-violent offenders. Interestingly, this should lead us to at least support restorative justice for the huge numbers of individuals committing non-violent crimes.

Yet focusing on violent offenders as a category does not actually resolve the issues. Should feminists, then, lobby for the incarceration of violent offenders, which would have to include all women charged with violent offenses? No, not comfortably. Feminist scholars are actually deeply concerned about the increasingly large numbers of girls/women who are deemed violent and incarcerated.

The following words of Marcia Bunney (1999), a female prisoner in California, one of over 18,000 lifers who was convicted of killing her abuser, reminds us of the inter-connectedness of violence on the outside and on the inside:

Conditions within the institution continually reinvoked memories of violence and oppression, often with devastating results ... I do not feel 'safer' here because 'the abuse has stopped'. *It has not stopped*. It has shifted shape and paced itself differently, but it is as insidious and pervasive in prison as ever it was in the world I knew outside these fences. (p.30)

We can start to find resolutions by taking into consideration the context of violence. Most predominately, feminists have argued that the extensive prior victimization of girls/women should lead to a response different than simply incarceration, a more compassionate response given that women may, as Richie (1996) states in the title of her book, be "compelled to crime". Feminists have provided important contributions to the problematization of the labels "offender" and "victim", pointing out the often blurred boundaries between them. Richie argues that the feminist movement's focus on criminal justice intervention, however, fails to address women's needs; for example, women involved in illegal activity are excluded from obtaining the services they need as battered women.

Theory and research into the complex relationships between victimization and offending remain in their infancy. An encouraging development is the notion of "pathways" (see, for example, Sadeghi-Fassaei & Kendall, 2002; Richie, 1996; Daly, 1992; Gilfus, 1992). Simply and briefly stated, feminist scholars are tracing the path that so many girls and women take from childhood to prison. For example, many female offenders begin with experiencing abusive childhoods, become runaways from such violence, and end up on the streets with few options for survival. Those coping strategies that are at their disposal – stealing, drugs, and prostitution – are

the very ones for which we bring girls and women into the criminal justice system and ultimately, imprisoned. Yet very little is done to respond to the roots causes of their criminality and the inequities they suffer.

This feminist line of thinking that humanizes female offenders, considers the context of their crimes, and grapples with how we could effectively, appropriately, and compassionately respond to offenders provides a sound policy direction. Except there still remains a tension: Feminists have rightly focused on women's experiences, placing them at the center of inquiry. Yet in the process of doing so, they have disregarded the correlating circumstances of men's lives. That is, feminist scholars have chosen to take into consideration what propels women to commit crime but not what propels men to commit crime when calling for state intervention. Simultaneously, feminist perspectives regarding criminalization have focused on its impact on female offenders but not on male offenders.

For example, feminists have (wrongly, I argue) shied away from consideration of the extent and impact of childhood abuse against boys. The fact that I hesitate to raise this to feminist audiences speaks volumes. I am bothered by a prominent feminist advising a colleague not to study male survivors of childhood sexual abuse because that is "not the problem", violence against girls is. I am haunted by too many disclosures by men who have endured violence at the hands of family members. We find that the extent and negative consequences of childhood abuse is horrific, for *both* boys and girls (Widom & Maxfield, 2001; Widom & Ames, 1994). We will surely find that the majority of men in prison have suffered multiple traumas, including prior physical and sexual victimization, neglect, and various forms of racism/genocide. An Aboriginal man who was abusive reflected on his childhood experiences with government enforced residential schooling: "when I wet the bed the Priest would take me to his room and rape me and then he would beat me for wetting the bed" (quoted in Hodgson, 1991, p. 13).

It is simply untenable to acknowledge that women are victims of male violence and then build justice strategies around this sole insight, without consideration of the other gender-race-class issues surrounding victimization and offending. Much work remains to be done to overcome violence taking place within a patriarchal, racist society. In the process, we can neither turn a blind eye to the suffering of girls and women nor turn boys and men over en masse to imprisonment. I am truly beginning to appreciate what minority and Aboriginal women have been saying all along – we cannot forsake our communities and our men to the coercive power of the state that inflicts such pain and degradation in its war on crime. Justice must include social justice for *all*.

RESOLUTIONS

Violence must be a crime, stopped, and ultimately prevented from occurring. Those who are harmed must be supported, empowered, and offered opportunities for healing. Those who perpetrate crimes must be held accountable, regardless of whether the offender is a male or female, is of any particular ethnic background, or has experienced prior traumas.

I do not argue for a “sameness” approach or “equality”. On the contrary, I argue for humane, appropriate, and effective responses that are tailored to an individual’s offense and circumstances. Such a tailored approach must take into account the individual and structural gender-race-class realities. The current, punitive approach is only moving further and further away from this recommendation, indeed, has never actually seriously considered such realities, except to the detriment of women, minorities, and those of the lower socio-economic strata.

The statistics of the prison-industrial complex in the U.S. are hopefully now well known yet still startling. The number of prisoners doubled then tripled over the last two decades with two million people behind bars in the U.S. by 2000. Beginning in 1998, America incarcerates more than one million non-violent offenders (Irwin, Schiraldi, & Ziedenberg, 2000). Five percent

of the world's population but 25% of the world's prisoners are in the U.S. One-half of those incarcerated are African-Americans, and women are the fastest growing segment of the prison population. Almost all those behind bars are from the lower socio-economic strata of society (Reiman, 2001).

Government spends billions of dollars to lock people up. It is no coincidence that expenditures for prison have increased at the same time that expenditures for health, social service programs, and education have dramatically decreased.⁵ Yet, there is not a correlation between reductions in crime and imprisonment rates. In other words, states that have increased their incarceration rates do not have corresponding decreases in their crime rates and visa versa. The use of imprisonment as the prime tool for crime control has little benefit but enormous economic and social costs. These costs are being acutely felt by women and minorities (Danner, 1998; Chesney-Lind, 1995).

We should thus *not* encourage the contemporary judicial approach of the United States. It is of deep concern that countries have looked to the U.S. for leadership in this sphere and that many countries are indeed increasing their rates of imprisonment, especially for non-violent offenders and for women. As Snider (1998) points out, the U.S., "one of the most violent and disordered countries in the developed world, and certainly among the least successful in controlling criminal behaviour, has become the world model for penal policy" (p.6).

We must devote our energies now to developing a truly viable alternative paradigm. The Status of Women Council of the Northwest Territories (1993) was asked: "Why do women's groups call for longer sentences on the one hand and call for community healing and community based services on the other hand? Why do women's groups say jail doesn't work on one hand and call for longer sentences on the other?" The women answered: "the reason, of course, is that we lack options" (p.5).

The now global movement toward restorative justice offers a powerful framework for responding to crime and achieving justice.⁶ It has the potential to resolve the dilemmas and tensions I have highlighted. Theoretically, the vision offers the following possibilities:

1. Offenders are held accountable in a meaningful way. Violence is not tolerated. Communities learn to regulate wrong-doing through disapproval and support.
2. Offenders, victims, and communities are empowered and active participants in the justice process. Their voices are heard and their needs met.
3. Criminal behavior and victimization are placed within the context in which they occur. Solutions are developed that are appropriate to particular individuals, communities and cultures. Multiple resources and support are provided to victims as they move toward healing, to offenders to develop their competencies and understand the roots causes of their illegal activities, and to communities to resolve the underlying causes of crime and enhance safety through effective crime prevention as well as through overall community building.
4. Safety and respect are enhanced for all community members, including women and children. Offenders are carefully assessed and monitored to ensure compliance with agreements and to ensure that incidents of violence do not reoccur. When safety is threatened and the community is unable to effectively respond, the state steps in to help bring resolution, including removal of offenders when necessary. Note that various outcomes can be restorative if agreed upon and deemed appropriate; restorative justice certainly does not preclude the use of imprisonment.
5. There remains a broader commitment to social justice, with resources allocated to resolving inequities and transforming society.

I am struck by, and inspired by, the potential correspondence between a feminist and a restorative paradigm of justice. I argue that the core elements of a feminist vision of justice – such as safety, accountability, and empowerment - coincide with a restorative vision.

Harris (1987) wrote an article on a “feminist vision of justice” that illustrates this potential correspondence (see also Heidensohn, 1986; Daly, 1989). Harris summarizes three core tenets of feminism – “that all people have equal value as human beings, that harmony and felicity are more important than power and possession, and that the personal is political” (p.30).

The first core belief, equality, does not mean treating all people in an identical way but in providing different people identical consideration. It further means, “creating a different set of structures and relations that are not only nonsexist, but also non-racist and economically just” (p.30). The second value, harmony and felicity, recognizes that we are all interconnected and so we should oppose orientations and structures that create power-over and hierarchical stratifications. Feminist efforts include “identifying and confronting characteristics and values ... that are not conducive to the full realization of the human potential in individuals or society” (p.31). A guide can be answers to the question: “What kinds of behavior and responses will achieve the goal of the greatest possible harmony?” (p.34). The “personal is political” refers to the need to act upon and live core values, such as empathy and compassion, in both public and private arenas.

We must recognize the vast differences in power yet work toward “a world in which conflicts and injuries can best be responded to by a process of ongoing communication and involvement that considers the needs, interests, and motivations of all involved” (p.31). The challenge is to: “search for a more complete vision of justice ... that encompasses concern for process and outcomes, as well as principles and rules, and for feelings and relationships, as well

as logic and rationality ... to find ways of more fully integrating abstract notions of justice and rights within contextual notions of caring and relationship” (p. 32).

Given the obvious congruence between such a feminist vision of justice and restorative justice, I am somewhat surprised that our searches for justice have not brought us together. Both feminists and restorative advocates seem to be committed to similar values. This is particularly true in terms of female offending and non-violent offenders. For example, a task force appointed by the Solicitor General to evaluate federal corrections for women in Canada reflects feminist perspectives (Task Force on Federally Sentenced Women, 1990; see also Hannah-Moffat, 2002; Shaw, 1996). Their report outlined the following five “woman-centered principles”, all of which clearly coincide with restorative principles: empowerment; meaningful choices; respect and dignity; supportive environment; and shared responsibility.

Yet dialogue between feminists and restorative advocates is limited and oftentimes strained. It seems that state intervention lies at the heart of many controversies and is a major reason feminists hesitate to embrace restorative justice. Dichotomous thinking prevents us from seeing each other’s perspectives more clearly and from overcoming barriers to collaborative efforts.⁷ It should not be a dichotomy or choice between state intervention *or* community intervention. I argue that it needs to be both. However, I do call for fundamental changes to the current practices of state intervention (thus, a continued site for feminist work) and, more importantly, the displacement of the current system so that a restorative framework becomes the dominant paradigm (for a discussion of possible futures, see Schiff & Bazemore, 2001).

Throwing out the current criminal justice system in its entirety is neither realistic nor wise. The criminal justice system should become a “back-up”, used when offenders continue to harm others through violence and when communities remain unwilling and/or unable to develop appropriate resolutions. Various social control agents, particularly the police, will still be

required as resources to individuals and communities. Some may act as partners or even facilitators in restorative practices, as is the case in many programs that have been developed.⁸ As Stubbs (1995) cautions, criminal justice intervention “is likely to be varied, perhaps contradictory, and in part determined by context” and thus, not “necessarily, or always opposed to women’s interests” (p. 262).

Women, as victims and offenders, need to be treated as responsible agents – having a voice and choices as participants in that which deeply affects their lives. Mills (1999) concludes that women are most respected and safest when they are able to become willing partners with state actors (see also Erez & Belknap, 1998; Ford & Regoli, 1992).

The challenge is to engage the state as well as transform it and to develop appropriate partnerships for a creative synergy between the power of the state and the power of restorative justice (Braithwaite & Strang, 2002; Hudson, 1998). Thus feminist/critical engagement with the current retributive system has not been entirely misguided and some of the successes feminists have gained can now be utilized within a restorative justice framework. The point is that we can no longer continue to help re-entrench the punitive control model with its expansion of the prison-industrial complex. We must transform current approaches to crime and offer meaningful, empowering alternative choices.

Recognizing the failure of the punitive approach to violence and answering their own question of “What alternatives are possible ... where masculinity and masculinist structures are both the cause and the putative cure of violence?” Braithwaite and Daly (1995, p.189) developed a strategy within a communitarian framework. They propose a regulatory pyramid model whereby a violent man will face escalating levels of confrontation if he refuses to cease his abuse. At the base of the pyramid is self-control, followed by social disapproval, family disapproval, a police warrant with shelter involvement, then community conferences (three in

total with escalating sanctions), arrest and court ordered probation, and finally, at the peak of the pyramid is imprisonment.

Their specific model can be criticized. For example, I find it problematic to propose probation following the holding of three consecutive conferences when a man continues to be violent. Nonetheless, it invites dialogue and inspires us to begin to develop concrete alternatives. Importantly, the call for a “dynamic problem-solving model” is of great merit.

There are numerous challenges when moving from vision to practice. I was initially a critic of restorative justice, focusing on the problems of implementation given gender-race-class inequalities and gender-based harms within the justice system and within communities (Zellerer, 1999; 1996). For example, I pointed to specific cases such as a judge’s decision to hold a sentencing circle with no preparation of this Inuit community, in which the victim was a woman who had suffered long-term abuse at the hands of her husband and who virtually did not speak during the circle. The focus was on the offender, without appropriate attention and support given to the victim. The abuser was left in the community’s hands and apparently the woman was subsequently re-victimized (Crnkovich, 1993).

Such cases and stories must be heard and we must absolutely focus on how restorative justice is being implemented. Empirical research is a high priority.⁹ In this article I focus on the need to step back and focus on the vision of restorative justice. The above case illustrates that the restorative principles were not fulfilled; it does not diminish the restorative justice principles themselves. It is one thing to criticize the implementation of programs; it is another thing to dismiss restorative justice based on the difficulties of realizing its goals. I found that being a critic left me on the fringes with unresolved dilemmas and no viable path toward social justice; situating myself within the restorative justice paradigm brought resolution to the dilemmas and dichotomous thinking as well as concrete opportunities for creating a more just society.

An important demonstration project, coordinated by Gale Burford and Joan Pennell, reveals promising results (1995; Pennell & Burford, 2002). They implemented a feminist, restorative approach to family violence in an Inuit, rural, and urban community in the Canadian province of Newfoundland and Labrador. Their approach was sensitive to cultural diversity and called for the “interruption of assumptions” about gender and family violence, and the “fostering of links” between families, community members, non-governmental organizations, and government authorities. The project used conferences as a family-community-government partnership-building strategy to reduce violence, with an emphasis on empowering families. Extensive preparation over a two to four week period was done prior to the holding of a conference, which included safety assessments. We can learn about the strengths as well as challenges from such important restorative initiatives that tackle violence (see also Coker, 1999).

Feminists should engage with restorative advocates to co-create alternatives that are sensitive to gender-race-class realities and ensure that the necessary transformative work progresses. Restorative justice needs further development in terms of both theory and practice. It is very productive for feminist scholars who understand the paradigm to critique the restorative focus on such things as “forgiveness”, “apology”, and “repairing relationships” because these goals have troubling connotations for women who are abused by intimate partners (Stubbs, 2002; 1995; Daly, 2002; Busch, 2002; Presser & Gaarder, 2000; Hooper & Busch, 1996). A conference held in 2000 in Canberra, Australia, brought together feminists, restorative advocates, and Indigenous peoples to discuss family violence and restorative justice (Strang & Braithwaite, 2002). In my experience, restorative justice advocates are open to critique and more than willing to form partnerships.

Feminists offer insights surrounding a patriarchal society in which justice practices operate. In turn, restorative justice offers “a way to challenge the patriarchy without relying on the tools of patriarchy itself” (Pranis, 2002, p.40).

CONCLUSION

I have argued that we must avoid dichotomous thinking and, instead, consider the needs of victims and offenders, the experiences of girls/women and boys/men, as well as state intervention and community intervention. On the one hand, it is certainly insufficient to lament the criminalization of oppressed people without due regard to the impact their crimes have on their victims, for example violence against women (a historic problem in critical, left-wing perspectives); on the other hand, it is insufficient to focus on how to vindicate victims without consideration of what happens to offenders (a problem in conservative, punitive approaches). As Hampton (1989) points out, we live in a complex world “where those who need emancipating are not all oppressed in the same way, nor all innocent of oppressive strategies themselves” (p.34). In other words, what Harding (1989) calls a “single focus emancipatory agenda” will fail.

In providing an overview of feminist dilemmas and in advocating for restorative justice, I am aware that I have provided quick answers to questions that require multi-faceted solutions and the allocation of substantial human and financial resources. I agree with Hampton (1998) who points out that humility is required when facing such problems as outlined here – violence, victimization, offending, gender-race-class disparities, and justice. Unfortunately, there is no paradigm of justice that will resolve all issues immediately and perfectly. I agree though that, “some political courses of action are morally better than others. And they are morally better not only because they promise better consequences, but also because of what they express” (p.36).

Restorative justice provides a morally sound path toward a more just future. This paradigm enables us to incorporate denunciation of wrongdoing, accountability, compassion, problem solving, empowerment, healing, and safety. Victims, offenders, and communities are all placed in the center as participants and responsible actors, with the state offering resources, a legal framework in terms of law and the availability of official agents of social control. While restorative justice thus offers an important paradigm of justice for feminist/critical scholars, feminists, in turn, have much to offer in ensuring that the vision becomes further developed by raising gender-race-class issues and, importantly, that it becomes translated into the actual achievement of social justice for all.

It is imperative to step into the future to imagine what we kind of world we would like to live in. By dreaming the future, we can then work backwards to develop the structures, processes, and outcomes that will most likely lead us there.

The coming together of restorative justice advocates, feminists/critical thinkers, Indigenous leaders, spiritual teachers, prison activists, front-line workers, community members, justice practitioners, and state officials to envision and then actually implement a new penal system is certainly a challenging endeavor, yet one that is so vital.

We can draw inspiration from visionaries who dared dream of what many saw as impossible, or even couldn't see at all: those who dared ask for such enormous undertakings as the end to racial segregation in the United States; the end of Apartheid in South Africa; the end to foreign rule in homelands like Tibet; or peace in war-torn places like Northern Ireland. May we continue to reach out to one another to turn visions into reality.

Endnotes

¹ This composite is based on actual cases from my research in Inuit communities on Baffin Island, 1992-95. Zellerer, E. (1996) Violence Against Inuit Women in the Canadian Eastern Arctic. Ph.D. Dissertation. Simon Fraser University.

² Some scholars, such as Todd Clear, feel that restorative justice is a more limited term, applicable to responses to crimes, and thus prefer the term “community justice”. However, I feel that restorative justice can and should incorporate a comprehensive agenda of community development, crime prevention, and transformative work toward social justice.

³ My professional focus has been on violence against women, female offending/imprisonment, restorative justice, and Indigenous peoples’ struggles for self-determination. I do not report on any particular empirical study but draw upon insights from my research over the past fifteen years.

⁴ A vast body of literature has developed on this topic, far too extensive to list here. I acknowledge the many scholars who have written on the subject and draw upon my research and reading of innumerable articles, books, and reports over the last 15 years.

⁵ See the special issue of *Social Justice* (2000) vol.27 (3) for such statistics and an overview of “Critical Resistance”, a movement that began through a conference in 1998 to challenge the prison-industrial complex. See also Clear (1994).

⁶ Indigenous peoples, within their quest for self-determination, have also begun to develop and implement responses to contemporary crime problems in keeping with their traditions and spirituality. We must support the inherent right to self-determination and also support Indigenous women who have to negotiate difficult gendered-challenges within their communities (Zellerer

& Cunneen, 2001). It is a sad irony that after working so hard to destroy everything integral to Indigenous peoples and cultures, we should now consider the wisdom of their approaches.

⁷ See, for example, Hudson (2002) for a discussion of the arguments for and against the suitability of restorative justice for domestic violence and sexual assault. Hudson concludes that we need to consider both the range of cases and offenders and the need for safeguards and standards.

⁸ It is beyond the scope of this paper to discuss the many ways in which partnerships can and have been forged between justice officials and restorative justice programs and to discuss the myriad challenges these present. Suffice it to note that various schemes have emerged (for example, police facilitating conferences; individual offenders being sent to restorative programs by police, prosecutors, and judges; judges holding sentencing circles, etc.).

⁹ It is important for feminists to empirically analyze restorative justice. Kathleen Daly, for example, is one of the few feminist scholars who conducts research on restorative justice initiatives.

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