LIVING IN A "DIFFERENT WORLD":

Experiences of Racialized Women in the Criminal Justice System

By

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Abstract

The criminalization of women is an area of study that has intrigued many

researchers. Using critical race theory, multiracial feminist theory, and radical feminist

theory, this research attempts to explain this phenomenon. Through the use of personal

interviews with women who are currently reintegrating back into society after being

incarcerated, I attempt to uncover the factors which influence female criminality, and

analyze the experiences women encounter when confronted by the Canadian criminal

justice system. A key hypothesis that fuels this study is that discriminatory practices exist

within the Canadian criminal justice system which negatively impact women of colour

and Aboriginal women. I argue that the criminalization of women of colour and

Aboriginal women occurs as a result of failing to take into consideration the

intersectionality of race, class and gender in women who commit criminal acts. This

phenomenon occurs due to patriarchal and classist biases that seek to maintain current

power structures and relationships by continually oppressing those who do not fit within

their group. The findings that emerged from the interviews support my hypothesis and

confirm that changes within the criminal justice system are imperative in order to ensure

women are treated fairly.

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Chapter One: Introduction

The criminalization of women of colour and Aboriginal women is a feature of North American society, as exemplified by the numbers of incarcerated women. Criminalization refers to a process of socially constructing laws in order to regulate the behaviours and actions of members of society The process of criminalization, through the construction of labelling, targets activities of groups "that authorities deem it necessary to control" (Mirchandani and Chan 2002: 15). Sudbury (2005) examines this phenomenon with her research on federally sentenced women. Her research is primarily based in the USA but she has also researched federally sentenced women in Canada. She compares the construction of the five new federal prisons for women and the construction of what she terms "superjails" in the style of US facilities. She attributes the construction of these facilities to the rising number of federally sentenced women in Canada. Women of colour, and Black women in particular, are seven times more likely than white females to be sentenced to prison (Jiwani 2002). This is a phenomenon in society that has generated much research and concern by scholars (Comack and Balfour 2004, 2006; Dell 2001; Pollack 2003).[1] Controversy surrounds the growing phenomenon of the criminalization of women as many theorists struggle to identify and account for the reasons behind this criminal trend. My own research incorporates aspects of radical feminism, multiracial feminism and critical race theory to analyze women's experiences with the Canadian criminal justice system in order to determine what, if any, discriminatory practices exist that negatively impact racialized women.

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[1] For more readings see: Chesney-Lind 1997; Kline 1994; Slocum, Simpson and Smith 2005; Steffensmeier and Streifel 1992; and Sudbury 2005.

Prisons were originally established through the influence of the Quaker reformers during the 19th century in North America. They were called *penitentiaries* as the goal was for the prisoners to repent. This was achieved through religious teachings as well as through labour and discipline. *Reformatories* were also established by the Quaker reformers with the goal that the attitudes and habits of those who had committed crimes could be reformed. Women were generally sent to reformatories, rather than penitentiaries as they were viewed as being successful candidates for rehabilitation (Faith 1993). The goals of such prisons today are:

> (1) Specific deterrence, whereby the individual offender is temporarily incapacitated and expected to refrain from future crime as a result of the incarcerative experience; (2) general deterrence, whereby the threat of incarceration is intended to deter citizens at large from committing criminal offences; (3) crime prevention and/or public safety, which is to say that, at least for the period of incarceration, the guilty person is refrained from engagement in illegal and actual or potentially dangerous behaviours; and (4) finally, most problematically, the ideal of rehabilitation (Faith 1993: 125).

Criminalized women face numerous barriers to the fulfillment of these goals in their encounters with the justice system. Snider (2004) notes that "everywhere those most likely to be imprisoned are racial and ethnic minorities, especially people of colour" (cited in Comack and Balfour 2006: 72). This leads one to infer that there must be some form of discrimination which contributes to this development. There has been a discursive shift, for example, in the labelling of women who commit criminal acts (Pollack 2006). The label has shifted from 'women's criminality' or 'women offenders' to 'criminalized women.' This shift is significant as it demonstrates the social construction of crime. This also permits one to be able to understand how issues such as

racialization[2], gender, poverty, governance, violence, and globalization shape, as well as regulate, social marginality (Pollack 2006). In order to acknowledge that these processes are in effect and impact the criminality of women, my research embraces the term 'criminalized women.'

Law claims to be impartial, neutral and objective. These three characteristics are often referred to as the cornerstones of our legal system. This claim is symbolized by the image of the blindfolded maiden who holds the scales of justice. She is blindfolded to convey the notion that she is dispensing blind justice; she is not influenced by the characteristics of those presented before her. She is portrayed as a young woman who has not been corrupted (Comack and Balfour 2004). Despite this presentation of what is termed the Official Version of Law according to Comack and Balfour (2004), the symbolic intent of the principle often fails to reflect the corrupt reality of the legal situation, especially for racialized people. This will be demonstrated through the examination of marginalized women in Canada who have come into conflict with the criminal justice system.

MacKinnon (1989) posits that the state is maintained from a male perspective and the law follows the experiences of men (Belknap 2001). Criminal laws were primarily enacted to address the actions of men. Women were historically placed in reformatories or early prisons for women for morally incorrigible behaviours (Bosworth 1999). As such, these everyday laws that were originally intended to address the criminality of men have the potential to fail to meet the needs of women. This presents serious problems for women who find themselves in trouble with the law. Women's experiences are different than men's and their needs are also different. If the law is run from a male perspective

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[2] The concept of racialization and its definition is explored on page 7.

the needs of the women are not being met. There exists a lack of understanding which negatively impacts women's experiences with the criminal justice system. For example, one way in which women's needs are not being met is through failing to address childcare needs which are generally a responsibility that falls on women rather than men.

In 2006, 401 women were incarcerated at a federal level[3] and another 508 were on conditional release (Pollack 2007). This is an increase from previous years. For example, in 1999, 355 women were incarcerated in a federal institution and 470 were serving their sentence in the community. The numbers of federally sentenced Aboriginal women are also on the rise. In 1999, 71 Aboriginal women were incarcerated and 59 were serving a community sentence. By 2003, these numbers had increased to 104 incarcerated Aboriginal women and 72 who were serving their sentence in the community (CSC 2003). These numbers demonstrate that the criminalization of women is continuing and is an issue that needs to be addressed. Considering the fact that many of the incarcerated women are single mothers, these numbers are that much more astounding. The numbers not only represent the number of women who are incarcerated but also the large numbers of children that are left without their mothers to care for them while they are incarcerated. This leads one to ask the question, 'what about the children?' Although this study will be examining the experiences of women within the criminal justice system, the issue of children is intertwined in this. The fact that so many children are left without their mothers, it can be argued, demonstrates the lack of understanding the justice system has when dealing with women. The issue of childcare and the impacts of male

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[3] Individual's are either sentenced to a federal or provincial facility depending on the sentence they receive. A sentence of two years or more is federal. A sentence of less than two years is served in a provincial institution. Federal institutions are run by the Correctional Service of Canada (CSC) and provincial institutions in Ontario are run by the Ministry of Community Safety and Correctional Services.

incarceration do not play as pertinent of a role in decisions affecting men as women are usually the primary caregivers. As such, when women find themselves in trouble with the law, the justice system imposes male perspectives (MacKinnon 1989, cited in Belknap 2001: 13).

Patriarchy is linked to the male perspective of law. Patriarchy is argued to be a process which negatively impacts women's experiences with the Canadian criminal justice system. Carol Smart links the increasing number of criminalized women to the patriarchal character of the law (cited in Binion 1993). She finds that "as attempts to use law on behalf of women have failed, they have resulted in greater rights for men, for foetuses, and for the state, or have resulted in backlash. Structurally, she pinpoints the law's demand for 'grand theorizing' as a major factor rendering the law an inhospitable venue for women" (Smart, cited in Binion 1993: 143).

Patriarchy is a powerful process in society which subjugates women and allocates power to males.[4] The subordinate status that women have impacts the ways in which they experience the criminal justice system. Women's status also plays a role in their criminalization. Despite changes to roles and statuses (with the progress of women in the labour force and in post-secondary education) these advancements have not produced equal status and treatment. Poverty and unemployment, along with abuse are still factors that are prominent in the lives of many women in Canada (Adelberg and Currie 1993). This can be understood by the roles women play in the labour market. They have a higher percentage of part-time jobs and lower-paying occupations, often resulting in few or no benefits. This, it is argued, can all be linked to patriarchy.

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[4] An in-depth analysis of patriarchy is presented in the theory chapter.

> The lower socio-economic status of Canadian women can be traced to paternalism and gender-based roles through which women's participation in a wide range of economic activities is limited and their advances curtailed. Overt discrimination and more subtle gender biases, justified on the basis of women's maternal functions and long-standing expectations of their place in society, put them at a distinct disadvantage in all aspects of social and economic life (Adelberg and Currie 1993).

The fact that women face obstacles and barriers in the workforce negatively impacts choices they make and opportunities that are presented to them. This, in turn, impacts the criminalization of women. According to Johnson and Rodgers (1993), the prevalence of women committing property offences can be understood by comprehending "their traditional roles as consumers and, increasingly, as low-income, semi-skilled sole support providers for their families. In keeping with the rapid increase in female-headed households and the stresses associated with poverty, increasing numbers of women are being charged with shoplifting, cheque forgery, and welfare fraud" (cited in Comack 2006: 67). The majority of offences for which women are convicted are property offences (Faith 1993; Comack and Balfour 2004). This is directly linked to a woman's socioeconomic status.

The majority of women who are incarcerated are young, single mothers. They are often unemployed or underemployed at the time of their crime. They are also, for the most part, undereducated, with few having graduated from high school, and even fewer having completed any post-secondary education. A substantial number have experienced drug and/or alcohol addiction along with physical, sexual, and/or emotional abuse at the hands of family members or partners (Morris and Wilkinson 1995; Comack and Balfour 2004; Vir Tyagi 2006).

Many have observed that racism is a problem ingrained within the foundation of the criminal justice system despite its representation of the blindfolded maiden who dispenses fair justice (Comack and Balfour 2004). Racism has material and ideological effects and has permeated into the criminal justice system. It is a process of representation in that it provides a frame of reference and guide for the conduct of dominant groups. Through racist ideologies, dominant groups are able to act out in racist and oppressive ways in order to maintain the existing hierarchy of power. What this does is contribute to the rationalizing, naturalizing and legitimizing of oppressive behaviour in the criminal justice system as well as in society. Racist ideologies present oppressive behaviour and conditions as being natural. "Racism is the ugly and powerful process that contributes to the construction of relations of domination and subordination between racialized, ethnic, national and/or cultural groups in society" (Anthias and Yuval-Davis 1992, cited in Kline 1994: 451). Racism is concrete and it provides a guide of behaviour for racialized groups. This reinforces and legitimates oppression (Kline 1994). "Law provides one of the discourses in which racism is constructed, reproduced and reinforced. Law has been and continues to be implicated in racist processes in a variety of ways" (Kline 1994: 452).

"Race and crime are neither universal nor fixed" (Mirchandani and Chan 2002: 12). A result of the social construction of race leads to the issue of racialization, which, according to Miles (1989: 76) is "a process of categorization through which social relations between people [are] structured by the signification of human biological characteristics in such a way as to define and construct differentiated social collectivities" (cited in Mirchandani and Chan 2002: 12). These ideas of racialization can be applied to the study of crime. There exists a tendency to police racial minorities and the poor; they

are often over-policed[5] and the results of this are evident in the numbers of racialized

women[6] who are incarcerated. Black women, for example, are incarcerated at a rate of

seven times that of white women (Jiwani 2002). Racialization also has the potential to

influence jurors who may believe that certain groups tend to commit more crimes. Henry,

Hastings and Freer (1996) find that jurors in Toronto are predominantly white and the

chance of having biased jurors selected is present. They argue that the notion that blacks

commit more crimes than whites negatively impacts those accused of crimes.

It has been argued that systemic racism[7] is prevalent in the justice system.

Systemic racism can take the form of racial profiling, which is the process of using the

race of a person as a reason to suspect criminal activity. Racial profiling penalizes law-

abiding citizens of colour and it alienates the youth of minority groups (Aylward 1999).

Racial profiling has negatively impacted women of colour in their experiences with the

criminal justice system. It is argued that "if racial minorities are subject to much greater

levels of police surveillance, they are also much more likely to be caught when they break

the law than white people who engage in the same forms of criminal activity" (Wortley

2003: 105). This is posited as one explanation for the increasing numbers of women of

colour who are being incarcerated. Between 2001 and 2003, the percentage of federally

sentenced Aboriginal women grew from 23.5% of all federally sentenced women to

29.2%, and the percentage of black women grew from 6.7% to 7.3% (CSC 2003). These

women comprise the fastest growing incarceration rates in North America (Wortley

2003). These racially oppressed women are also viewed to be "one of the most

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[5] This is linked to racial profiling described in the next paragraph.
[6] I use the term 'racialized women' to include Black women and Aboriginal women.
[7] Systemic racism is unobtrusive and implicit in character. It reflects the normal functioning of the institutions in which the practices are free from bias but they exert a negative effect on vulnerable minorities.

vulnerable groups in Canadian society" (Dua 2007: 191) which is why it is important to strive to provide a solution to the criminalization of women.

The subtle forms of racism can be seen when examining how the structure of the criminal justice system often fails to take into account the intersectionality of a woman who is brought before it. This perspective on the intersectionality of a woman is clearly described and supported by Kimberlé Crenshaw using her metaphor of a traffic intersection.

> Race, gender, class and other forms of discrimination or subordination are the roads that structure social, economic or political terrain. It is through these thoroughfares that the dynamics of disempowerment travel. These roads are seen as separate and unconnected but in fact they meet, cross over and overlap, forming complex intersections. Women who are marginalized by their sex, race, ethnicity, or other factors are located at these intersections (Crenshaw 1991: 1241).

When discussing racism one must also discuss the idea of race. Race is a socially constructed notion[8] (von Linné 1997, Maynard 2001, Mirchandani and Chan 2002); it is only skin-deep. "Race...has long been recognized to be fiction" (Gates 1999). Race is established and scrutinized in order to maintain social privilege and power. It creates a hierarchy in society where white is dominant and non-white is subjugated. It has been ingrained in people's minds, which may make them believe that race and racial differences actually do exist; however they are socially constructed, powerful and dangerous stereotypes and mindsets made to subordinate those who are not the white majority (Hume 1997). By treating race as real, consequences are made real. If people

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[8] Carl von Linné introduced the term 'race' as a scientific term. He separated people into different categories: i.e. European: yellow hair, brown, flowing; blue eyes; gentle; acute; inventive; governed by laws. Black: black, frizzled hair; flat nose; silky skin; tumid lips; crafty, indolent, negligent; anoints himself with grease; governed by caprice.

believe race is real, then they also experience it as being real. The notion of race opens up the avenue for the possibility of racism to grow and manifest itself in society.

Gender is another category that is socially constructed (Belknap 2001). Joanne Belknap makes an important distinction between sex and gender differences; the differences between the sexes are biological, whereas the differences between the genders are attributed by society and identify the social roles that are expected. Gender is created and maintained through interactions. Gender, as well as race, is a visible marker of identity. "Racial and gendered identities are socially produced, and yet they are fundamental to our selves as knowing, feeling and acting subjects" (Martin Alcoff 2006: 126). Despite gender and race being socially constructed categories, by treating them as "real" categories, the consequences that can result from them are also experienced as being real and legitimate.

Interest in women's criminalization and the treatment they received during their periods of incarceration was advocated by Elizabeth Fry, a Quaker activist in the 19th century. She did work regarding the conditions women were subjected to in the Newgate Prison in London, England and is the founder of the Elizabeth Fry Society. When Elizabeth Fry visited the Newgate Prison she was appalled by the conditions to which the women and their children were subjected. She was determined to change the conditions and to make their periods of incarceration be beneficial and have them learn to move forward in life. As a result she strived to introduce a regime that would provide the women with proper nutrition, "healthful labour, daily scriptures and education, in largely favourable terms" (Snider 2003: 359).

One thing that Elizabeth Fry advocated for was the introduction of matrons and female wardens to the prisons. She felt that it was pertinent for women to be guarded by

fellow women, not men. The goal of this was to reinforce feminine and family values to the women who have 'strayed' from these ideals. She believed that matrons and female wardens would be able to teach the women to value hard work and help them to better take care of themselves by placing an emphasis on hygiene, religion and literacy. She also wanted them to learn to become proper wives and mothers to better be able to care for their families (Faith 1993).

Historically in Canada females were housed in sections of male prisons.[9] Advocates for separate institutes for men and women argued that it was not possible to control men and women together within the same institution and with the same personnel. 1879 marked the opening of the Andrew Mercer Reformatory for Females in Toronto, Canada. This institution was run by an all-female staff (Faith 1993). The Prison for Women (P4W) was a federal institution established in Kingston, Ontario in 1934 that was meant to house all female federal inmates in Canada. Within this institution the women were physically and psychologically constrained. Of the six wardens that were at the prison until 1993, four of them were male. This contradicts the idea of women being guarded by women that Elizabeth Fry advocated for. Many problems arose from the Prison for Women. All of the women were treated as maximum security prisoners regardless of their classification, and there were a limited number of programs available for the women to take advantage of. Because this was the only federal institution for women prisoners, it housed women from all across Canada (Faith 1993). This posed a problem for the families of the women and the support that the women themselves would fail to receive due to their distance from their families. It was often difficult, if not impossible, for family to visit. In 1990, the Task Force on Federally Sentenced Women

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[9] For example, at the Kingston Penitentiary the women were kept in the attics (Faith 1993).

issued their report, *Creating Choices*. In this report they put forth recommendations to close P4W and open regional facilities.

The Task Force on Federally Sentenced Women was comprised of government groups and voluntary organizations. The Task Force recommended that the new facilities would create cottage-style housing for the women. The report also suggests that the "unusual characteristics" of the circumstances surrounding the crimes and experiences of women and minorities be taken into account rather than using male models and applying them to women (Shaw 1999). The report states that a women-sensitive correction model is necessary and it should encompass five principles: "empowerment, meaningful and responsible choices, respect and dignity, supportive environment and shared responsibility" (Hannah-Moffat 1995: 138). These principles are important to women as they help address their differing needs from men. These principles also have the potential to help women address their situations and look for ways to improve and overcome obstacles which may have led to their criminalization. Through this research I examine whether these principles are achieved, particularly for racialized women.

This research will contribute to existing research on the criminalization of women. Despite Wortley's (2003) claim that little Canadian research has been completed on how minorities are treated in the justice system within the realm of criminology, particularly on how race intersects with what he terms "other identity markers" (105) and how they may impact the outcomes, there is a great deal of discussion in legal scholarship regarding discrimination, for example the work of Williams (1991) and the case of *R. v. R.D.S [1997]*. In this research, race is incorporated with the markers of gender and class in order to determine what, if any, discriminatory practices exist in the Canadian criminal justice system that negatively impact racialized women. It is not my position to identify

all of the change agents of the criminal justice system. What this thesis does is provide a snapshot of the experiences of a few women who are caught in it.

Chapter Two: Literature Review

The criminalization of women is a phenomenon in society that is continuing to grow. The number of women sentenced to provincial/territorial custody has increased from 5,861 in 2001/2002 to 6523 in 2006/2007. Female offender remand[10] rates have increased from 11,494 in 2001/2002 to 15,640 in 2006/2007 (Babooram 2008). The numbers of federally sentenced women have also significantly increased. From 1981 to 1998 the number of federally sentenced women increased by 62% from 200 to 321 (Dell et al. 2001). In order to address and identify solutions to this issue it is important that researchers, scholars, advocates and criminal justice workers understand how and why this is occurring. Historically the criminalization of women was viewed as something biological (Pollak 1961, Lombroso and Ferrero 1958). In his book, *Criminality of Women,* Otto Pollak conducts a study to determine what biological factors lead to female criminality such as the failure of women to have evolved to the same level as men. Lombroso and Ferrero, in their book *The Female Offender* also link female criminality to the biological traits of women. They explain female crime by relating it to the physical and psychological characteristics of the women offenders, failing to account for any societal pressures. They argue that women possess a number of biological traits such as piety, maternity and weakness and thus do not commit crime to the same extent as men. That being said however, they acknowledge that the women that do commit crimes fail to exemplify these traditional female traits and are labelled as "monsters" as a result. These women are seen to have gone outside of the boundaries of how traditional women behave and simply are deemed to not possess the "proper" biological traits with which women are born.

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[10] Remand is the detention of an offender while awaiting further court proceedings.

In more recent times Agnew and Broidy (1997) attempt to explain female criminality. They do so by expanding the General Strain Theory (GST).[11] Agnew and Broidy examine strains women experience that have the potential to influence criminal behaviour (Eitle 2002). Agnew and Broidy argue that many of the strains women face ultimately stem from the oppressions they experience as women. Gender discrimination can affect women in a number of ways: for example it can affect their socio-economic status and their experiences of abuse (physical, mental, emotional, and sexual). Agnew and Broidy conducted a study in which they found that women who involved themselves in criminal activity experienced more life events which they perceived to be negative than the women who did not commit any criminal acts. This finding is consistent with the General Strain Theory. They also found that the women who reported taking part in criminal activity also experienced discrimination based on their gender (Eitle 2002). This suggests that gender discrimination is a potential factor in a woman's decision to commit a criminal offence.

Gender-based discrimination can manifest itself in a number of ways. One way that can be identified is through women's socio-economic status. It is not a new finding that a woman's socio-economic status is often much lower than a man's. Women's earning potential is often much less than a man's, in what is often argued to be the result of a phenomenon termed the 'glass-ceiling' effect.[12] This negatively impacts women in terms of being able to adequately provide support for themselves, and often for their

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[11] Agnew's General Strain Theory focuses on the individual and his/her social environment. Strain theory is concerned with the negative relationships an individual experiences when interacting with others. According to GST, individuals are "pressured into delinquency by the negative affective states – most notably anger and related emotions that often result from negative relationships" (Agnew 1998: 178).

[12] The glass-ceiling is a barrier to a woman's earning potential. It is an invisible, unstated cap of a woman's earning ability. Once a woman reaches a certain level, she is unable to surpass this for further achievements.

families. The majority of women who come into conflict with the law have marginalized economic situations (Comack and Balfour 2004). This establishes a link between crime and poverty. It has been documented by Margaret Jackson (1999) that more than 80% of the women incarcerated in Canada have committed poverty related offences (cited in Comack and Balfour 2004).

Much evidence supports the fact that women often commit criminal acts because of their detrimental financial situations. According to Box and Hale (1983, 1984), female unemployment is positively related to female property offences as well as violent offences. In addition, Steffensmeier and Streifel (1992) found that households headed by females were positively related to arrests in property offences, burglary and prostitution, which leads to the conclusion that poverty is a strain that subsequently results in criminality. According to the Elizabeth Fry Society (2007), more than half of all women imprisoned in Canada are imprisoned for economically related crimes; the majority of females are arrested for theft or fraud under $5000 (Johnson and Rodgers 1993, cited in Comack and Balfour 2006). In fact, women are more likely to be charged and incarcerated for property offences rather than violent offences (Comack and Balfour 2006, Elizabeth Fry Society 2008, Pollack 2003), which indicates that women are being criminalized for behaving in unconventional ways to ensure their economic survival. This is especially the case as social assistance in Canada is becoming increasingly insufficient in supporting families (Elizabeth Fry Society 2008, Oakley 1998, Pollack 2003). Therefore, it is fair to argue that a linkage between the criminality of women and their socio-economic status exists.

The 'feminization of poverty' is a phenomenon that explains how women run a higher risk of being poor than men (Duffy and Mandell 2005). Single-parent families that

are headed by women are usually found on the bottom rung of the economic ladder. This is a key feature of women who find themselves in trouble with the criminal justice system. They are often single parents (Comack and Balfour 2004, Pollack 2003). It has been argued that one of the reasons for women's low socio-economic status is a result of stereotypical gender roles (Duffy and Mandell 2005). Women are traditionally expected to be the caregivers for their children, as well as take care of the household duties while their husband is the breadwinner. This is a hindrance to women when they do enter the workforce. Often they are unable to work full-time because of their responsibilities in the home and to their children. This limits their ability to bring home an adequate income for survival, especially if they are single, divorced or widowed. For example, in 2003, single-parent mothers had the highest rate of poverty, comprising 48.9% of the poor population. Single-parent mothers also comprise the largest percentage (28%) of family-types that rely on social assistance (National Council of Welfare 2006). Occupational segregation continues to be a prominent marker in the workforce. Women are often relegated to service jobs, the "pink" labour force that generally pays a lot less, with little to no benefits.

> The lower socio-economic status of Canadian women can be traced to paternalism and gender-based roles through which women's participation in a wide range of economic activities is limited and their advancement curtailed. Overt discrimination and more subtle gender biases, justified on the basis of women's maternal functions and long-standing expectations of their place in society, put them at a distinct disadvantage in all aspects of social and economic life (Adelberg and Currie 1993: 97).

The fact that women face obstacles and barriers in the workforce negatively impacts choices they make and opportunities that are presented to them. It also affects their criminalization. According to Johnson and Rodgers (1993) the prevalence of

women committing property offences can be understood by comprehending "their traditional roles as consumers and, increasingly, as low-income, semi-skilled sole support providers for their families. In keeping with the rapid increase in female-headed households and the stresses associated with poverty, increasing numbers of women are being charged with shoplifting, cheque forgery, and welfare fraud" (cited in Comack 2006: 67).

These issues of poverty impact the criminalization of women on a number of levels. Poor economic conditions have the potential to influence a woman's decision to commit criminal acts in order to help make ends meet. A woman may decide to commit a crime in order to compensate for her lack of available financial resources. Poor economic conditions also influence how a woman experiences the criminal justice system. Financial resources impact the type of representation a woman can hire to help her through the legal proceedings; financial stability can be the difference between having a court-appointed legal aid attorney or hiring an attorney from a prestigious law firm. This can ultimately impact upon the quality of representation a woman has, along with the amount of time the attorney has to spend with his/her client.[13]

A poor socio-economic status is a reality for many women, especially those who are visible minorities and Aboriginal. As documented by Carol LaPrairie (1987: 122), Aboriginal women are "among the most severely disadvantaged of all groups in Canadian society" (cited in Jackson 1999: 201). According to the Canadian census of 2006, Aboriginal people are less likely to be employed, have less income than other groups in society, are less likely to be educated or have completed formal education and are also

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[13] This is not to suggest that legal aid attorneys provide less than adequate legal representation. The argument being made here is that legal aid attorneys often have overwhelming caseloads and may have less time to spend on individual cases compared to lawyers personally hired and paid for by their clients.

more likely to come from single-parent homes (StatsCan).[14] Aboriginal women are more likely to be incarcerated for failing to pay fines, which is a direct result of their low socio-economic status (LaPrairie 1987). All of these factors negatively impact an Aboriginal woman's socio-economic status and her ability to adequately support herself and her family. This has led to an overrepresentation of Aboriginal women in the Canadian criminal justice system. For example, in Manitoba, Aboriginal women make up 14% of the population, yet they comprise almost 80% of the female prison population (Dell 2001). In 2001, Aboriginal women comprised 19% of the female prison population in Canada (CSC).[15] The overrepresentation is not only of Aboriginal women, but also of Black women (Pollack 2003, Comack and Balfour 2004).

Black women, like Aboriginal women, are financially disadvantaged members of Canadian society. Slightly more than one-third (34.5%) of Black women in families are poor. Single Black women are at even more of a disadvantage; 52.7% of them are poor (Canadian Association of Social Workers 2006). Black women who strive to fight against poverty through criminal acts such as welfare fraud and theft are punished by the criminal justice system (Pollack 2000). A poor socio-economic status is a contributing factor to the criminalization of women and the negative experiences they encounter with the criminal justice system. It is imperative that programs and support are in place for women who find themselves on the margins of financial stability in order to present them with options to move forward in a positive, successful and legitimate way.

Patriarchy is also linked to the phenomenon of gender oppression and a woman's poor socio-economic status. Chesney-Lind (2006) argues that an emphasis must be

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[14] Factors contributing to these issues stem from colonialism which will be discussed later in the chapter.
[15] In 2001, there were 182 Aboriginal female federal offenders out of 948 female offenders across Canada (CSC).

placed on how crime and criminal justice practices reflect patriarchy. Patriarchy, which is underlined by the theoretical frameworks utilized in this research, can be argued to be a key factor in the criminalization of women. Patriarchy manifests itself in the justice system through gender stereotypes and ideologies. For example, it is apparent in the available programs for incarcerated women as well as the lack of understanding that is demonstrated by the justice system. This is an issue that is widespread and is successful in achieving a hierarchy between men and women because "gender is a category one is not easily 'conscious' of because, as a normative category, it is rarely questioned" (Ludvig 2006: 252). Radical feminists argue that the law is permeated with masculine ideals which make it difficult to be able to understand and treat women equitably in the criminal justice system.

Gender stereotypes saturate the criminal justice system and ultimately impact the experiences of women. It has been argued by a number of scholars that a double standard exists within the justice system (Chesney-Lind 1997, Mirchandani and Chan 2002, Comack and Balfour 2004). Females are often judged based on their prescribed gender roles. In our patriarchal society, gender roles have been ascribed to men and women. Women are expected to be docile, gentle and nurturing; never aggressive, outspoken or defiant. Men, on the other hand, are expected to be more aggressive and dominant. Women who commit crimes are viewed as stepping out of their gender roles and failing to meet the standards of a proper woman (Chesney-Lind 1997, Comack and Balfour 2004). It can be argued that women are sanctioned not only for committing crimes as outlined by the Criminal Code of Canada, but also for violating prescribed gender roles. They have "stepped out" of the way in which gender protocol prescribes them to behave. When females commit criminal acts and are confronted by the criminal justice system

officials they seem to unknowingly throw a wrench in the judicial processes. As such, the justice system often does not know how to handle these women who have behaved uncharacteristically which results in a failure to meet their needs. This can pose a problem for the justice system and result in negative treatment for women as the justice system was created by males in order to address the criminality of men (Comack and Balfour 2004).

Stemming out of stereotypes, prisons have traditionally been created with the intention of housing men. Even the prisons that currently house women are designed following the concepts created by men (Martel 1999). This is a problematic issue for criminalized women. They are cast into a system that was not designed for them, presenting a problem for dealing with their issues. Many of their needs are not being met, which results in a failure to address and rehabilitate women and to provide them with alternative options in order to lead positive and successful lives.

Shoshana Pollack has conducted extensive research and theorizing on marginalized women and their encounters with the criminal justice system (Pollack 2006, 2004, 2003, 2000).[16] She has found that the decision-makers within the criminal justice system strive to punish different approaches that women have used in order to fight back against poverty. She has found throughout her research that women who do not wish to be taken care of by the system often take matters into their own hands. Pollack completed a study on incarcerated women to determine the effects that oppression and marginalization had on Black women's criminality in Canada. She examined the connections between a woman's socio-economic status and gender oppression to

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[16] I do not find that Shoshanna Pollack fits cleanly into just one of the theoretical frameworks I use in my research. As such, I do not attempt to classify her as a specific type of theorist. I find that she presents notions and arguments that fit into both critical race theory and multiracial feminism.

determine how a woman's resistance to these circumstances can lead to her criminalization. Her research was conducted during the second half of 1998 at a medium-sized federal prison for women in Canada. She found that the women had all experienced issues of racism and that the women stated their criminal behaviour was a direct result of wanting to be independent and move away from any financial reliance on the state (Pollack 2000). These choices the women make can be traced back to patriarchy and to the predominantly male justice system which has difficulty in handling women whom they view as not behaving as "proper" women should as well as to the racism they have experienced in their lives. From this, one can draw the conclusion that mechanisms need to be in place in society to help women to succeed on their own without reliance on public programs like social assistance and having to resort to criminal activity.

Race is a factor that continually surfaces when examining the criminalization of women. The overrepresentation of Aboriginal women suggests that bias exists within the Canadian criminal justice system. In certain areas, Aboriginal admissions to correctional facilities results in more than half of the admissions (Monture-Angus 2005). The criminalization of Aboriginal women began to increase during the 1920s-1950s (Comack and Balfour 2004). During this period Aboriginal women were arrested for prostitution-related offences, vagrancy and public drunkenness. In the 1950s, 72% of the charges against Aboriginal women were alcohol-related (Comack and Balfour 2004). This demonstrates how patriarchy and racism have the power to infiltrate into and be reinforced by the justice system. By focusing on these types of crimes, the justice system was able to validate the existing stereotypes against Aboriginal women.

The Correctional Service of Canada has identified a general profile of a female Aboriginal inmate. She is usually single with two or three children, is unemployed at the

time of her crime or is working as a prostitute, and experienced with drugs and/or alcohol at a young age. As a result, forms of discrimination that Aboriginal women experience as demonstrated from this profile such as trouble securing gainful employment increase her chances of coming into contact with the law. This further subjugates women in general and contributes to the validation of these detrimental ideologies.

Aboriginal women are severely disadvantaged in Canadian society. There are many factors which hinder their equality. Colonialism and patriarchy are key players in the subjugation of Aboriginal women and their increasing criminalization. Colonialism has played a significant role in the destruction of Aboriginal peoples and their culture. The aim of the colonizers was to eradicate Aboriginal history. The process of destroying Aboriginal culture, spirit, identity, and language was largely achieved by the creation and implementation of residential schools where Aboriginal children were forced to assimilate to European culture (Comeau and Santin 1995) as well as by colonial relations in general.

Culture is a significant factor of Aboriginal identity. During colonialism European settlers set about to criminalize the cultural practices of Aboriginals.[17] There were also legislative restrictions imposed on Aboriginals in terms of their rights and freedoms.[18] Most Aboriginal societies have well-developed rules with regard to 'deviant' behaviour within their community (Fleras 2001). Children were instructed in the customs and rules of their society and violations were dealt with in a manner that Aboriginal people felt was appropriate. Problems within the functioning of their system materialized when new settlers arrived and decided for them that the Aboriginal way was not an

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[17] For example, the potlatch was banned in 1885. The potlatch is a gathering held by Aboriginal peoples that involves a feast, the chief's distribution of gifts, and the establishment of social rank (Steckley and Cummins 2001).
[18] The *Indian Act* presents a paternalistic relationship between Aboriginals and the State.

effective source of law. The traditional life of Aboriginals was dismantled with colonization. Women's roles were drastically changed with the implementation of the *Indian Act*. Aboriginal women's independence was stripped from them and they were measured according to the standards of white, European women, thus never being able to measure up (Stevenson 1999). This cultural upheaval translates into the many obstacles Aboriginal women face within the criminal justice system today. The justice system fails to adequately address Aboriginal culture and traditions for the incarcerated women, who often also face language barriers. Their needs are far from being met.

Colonizers set out to eradicate the systems that Aboriginal communities already had in place. Along with colonialism came the destruction of the traditional roles of Aboriginal women (Frank 1992).[19] For example, the women carried on the customs within the family, but the arrival of European settlers and missionaries imposed a European, Christian lifestyle that exterminated the customs and traditional role of Aboriginal women. The women were stripped of their lifestyle and were displaced in religious, economic, social, and political structures of society (Hamilton and Murray Sinclair 1991). As a result, many Aboriginal women's roles succumbed to alcoholism, poverty and ultimately crime, because of the living conditions imposed on them by the colonizers.

Through colonization came the introduction of the criminal justice system that continues to penalize Aboriginal women in astronomical numbers. It is important for the justice system to understand the history of Aboriginal women in order to have a complete

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[19] Karen Anderson, in her book *Chain Her By One Foot, The Subjugation of Native Women in Seventeenth-Century New France* (1991) discusses the arrival of the Jesuits and how they set about to drastically alter the social structures of the Huron and Montagnais societies. Up until their [the Jesuits] arrival, the Huron and Montagnais led relatively egalitarian lives where women were not dominated by men. The Jesuits changed this (as they 'colonized' the Huron and Montagnais). Women were subjugated as Christian practices overtook their traditional culture that had previously prevailed.

picture of their identity and knowledge. Colonization, although it happened long ago, is a

process that still continues today. It has not ended for Aboriginal women. Sherene

Razack (2000: 102) argues that colonization is present and evident in today's society and

that there are "...no better indicators...than the policing and incarceration of urban

Aboriginal peoples..." This continual process of colonization racializes and criminalizes

Aboriginals. By placing them on reserves they are being kept on the outskirts of society,

in what Razack terms 'degenerate' places. There is a spatial divide. Racialized spaces,

such as areas where people of colour and Aboriginals predominantly make up the

majority of residents (often referred to as 'ghettos'), are more heavily policed, patrolled,

and targeted for criminal behaviour and deviance. In these spaces crime is viewed as

commonplace and something to be expected. These areas are portrayed as being tainted

and kept far away, on the outskirts of "civilized" society where the white, middle-class

resides.

The notion of space is important to consider alongside racial profiling stereotypes

and other forms of racism. Sherene Razack (2000), in her article about the murder of

Pamela George, presents the notion of racialized space.[20] These are areas which are

racialized and thus, more prominently patrolled by law enforcement officers, often under

the guise of protecting the public. Often times, in these racialized spaces, the crimes that

occur are naturalized. Crime is seen as being a natural, everyday occurrence that one

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[20] Pamela George was an Aboriginal woman working as a prostitute. She was approached by two young white males and taken to the outskirts of town where she was brutally murdered. During the trial of these two young men it was presented that these men went 'outside' of their normal environment to the outskirts of their middle-class city to find an Aboriginal prostitute. At this trial, the judge failed to take into account the intersectionality of Pamela George's race and gender, her social and historical context and the circumstances that led her to be a prostitute. This led to the failure of justice she experienced as a result of omitting her intersectionality and history. Justice appeared to minimize her importance as a person and present her as being less of an individual than her murderers. It racialized her and used that to virtually justify her murder and naturalize it. This case is a clear demonstration of how the law is shaped by race and who is permitted access to justice.

should expect in spaces that are racialized. It is seen as something that should be expected and accepted as a defining feature of this space. Tropes of animalization are often used when describing Aboriginal women and Black women. They are seen as being barbaric and unmanageable, just like animals. They are seen as needing to be domesticated and trained the way one would housebreak a pet. This was an aim of colonization, to civilize Aboriginals, who were seen as being 'barbaric' and in need of civilization. The spaces of Aboriginal women and Black women are seen as degenerate and crime-laden as well as being far apart from the safe and civilized spaces of the white, middle-class. This racism is perpetuated within the Canadian justice system and exposed in the system's treatment of Aboriginal and Black women.

The permeation of racism into the law can be seen when examining Aboriginals and their experiences with the criminal justice system. "Certain ideological representations of First Nations are embedded in and expressed through judicial reasoning" (Kline 1994: 453). These ideologies include devaluing Aboriginals, homogenizing them and also viewing them as being static.[21] It has been documented by the Elizabeth Fry Society that the Correctional Service of Canada routinely classifies Aboriginal women as higher security risks than non-Aboriginal women. They are often released later in their sentences, are more likely to have a conditional release revoked as a result of technicalities, and often do not receive access in a timely manner to rehabilitative programs. This demonstrates an unequal treatment on the part of the

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[21] The devaluative ideology views Aboriginals as being different and inferior compared to the dominant group in society. The homogenizing ideology fails to acknowledge any diversity in Aboriginal culture; rather all Aboriginals are seen as belonging to one group. The static ideology does not recognize any change in Aboriginals since their contact with colonizers (Kline 1994).

Canadian criminal justice system decision-makers and policies that is unacceptable and must be amended immediately.

The criminalization of Black women, like Aboriginal women, is a prominent feature of the Canadian criminal justice system. The Black female federal offender population has continually been increasing (Dell et al. 2001). Black women in Canada, like Aboriginal women, are over-policed and over-incarcerated (Commission on Systemic Racism in the Ontario Criminal Justice System 1994, cited in Sudbury 2005). Black women account for the majority of the growth of incarcerated women in the eastern half of Canada (Canadian Association of Elizabeth Fry Societies (CAEFS) 2004). The over-policing of racialized women is a contributing factor to their increasing incarceration rates. As the police place more of an emphasis on racialized women, their actions are scrutinized to a greater level which ultimately leads to an increase in criminal charges being laid. This is a reflection of the social hierarchy present in society. Those that occupy the bottom rungs, which is made up of the racialized low-class citizens of the community, are believed to be the most prone to committing crimes (Jiwani 2002). This belief is used by the decision-makers within the criminal justice system in order to justify the over-policing of certain groups in society, those that are racialized to be non-white. The criminalization of racialized women has detrimental effects (CAEFS 2004).

Black women see the law not as a mechanism for maintaining control and justice but as a means of oppression. "Law has colluded – and continues to collude – with race in ways that accommodate and foster ongoing *Negrophobia, Afrophobia*, or *anti-Black racism*" (Thornhill 2008: 332). This reinforces the argument posited by critical race theorists that the law promotes racism and is also a product of racism (Aylward 1999).

Racism is not only perceived to be prevalent in the criminal justice system by theorists, but also by the general public. The Commission on Systemic Racism in the Ontario Criminal Justice System (2000) led a study on public perceptions of racism in the criminal justice system. The Commission used an independent research body, York University's Institute for Social Research, to conduct the study to determine how the general public views discrimination in the Ontario criminal justice system. The key finding of this study is that a significant proportion of the residents of the Greater Toronto Area (GTA) who participated in the study felt that discrimination based on race is a prominent feature of the Ontario justice system. The findings suggest that many of the respondents feel that Black people are perceived and treated negatively by the justice system. Black people who took part in the study also expressed a distrust of the Canadian justice system and its ability to meet their needs as well as protect their rights. An interesting, and perhaps not surprising result is that although some criminal justice professionals feel that individuals who are visible minorities are not treated the same, the majority of the justice professionals feel that there is no discrimination present. They fail to admit that there are any flaws within the criminal justice system. These findings suggest that the public lacks confidence in the justice system and its claims to be impartial and dispense justice in an unbiased fashion. Although much research has been conducted on race and racism in the justice system, the problem does not seem to have disappeared. To put an end to this discriminatory phenomenon further research is needed for solutions such as training programs and policies.

The staggering numbers of Aboriginal women and other women of colour that are criminalized are astonishing and suggest that there must be a problem within our criminal justice system that attributes to this phenomenon. This overrepresentation of Aboriginal

women and women of colour in female prisons is a demonstration of how "race has become an important marker or signifier in the characterization of ... crime" (Comack and Balfour 2004: 79).

Intersectionality is an important aspect of a woman's identity that ultimately guides her behaviour and treatment. It is argued that the authorities of the criminal justice system fail to take into account a woman's intersectionality. According to Razack (1998), "processes of racialization, economic inequality, gendering, and criminalization are fundamentally interlocked and inseparable" (cited in Mirchandani and Chan 2002). There are gender, race and class divisions that are manifested in our definitions of crime (Mirchandani and Chan 2002). These continue to reinforce stereotypes and oppressions that women experience.

Intersectionality is a concept that is taken up by Kimberlé Crenshaw. She argues that it is problematic to study the issues of a woman by looking at race or gender or class in isolation. According to Crenshaw, failing to take into account the intersectionality of a woman's identity further marginalizes and oppresses her (1989). Discrimination can be experienced by women of colour on more than one level; they not only experience gender discrimination but also racial discrimination, and this discrimination can, and often is experienced simultaneously. It is important that race and gender are not treated as being mutually exclusive categories.

Race, class and gender divisions create a process of "othering". The notion of the "other" is created through dichotomies that negatively affect women by situating them as inferior and insignificant in comparison to men. A few examples of dichotomies include masculine/feminine, aggressive/passive, public/private, and intellect/emotion. Dichotomies are never neutral; rather they are a means of attaching meaning as a way to

secure power relations. As such, identities are then constructed from the moment

individuals appeal to differences within classification systems (Ludvig 2006). The

creation of dichotomies has negatively impacted women, especially Black and Aboriginal

women. This can be seen in the sexist and racist ideologies that permeate throughout

society and consequently, permeates through the Canadian criminal justice system as

well.

The process of 'othering' exists with the dichotomous notion of white vs.

everyone else. This contributes to the racialization and criminalization of those

individuals who are not white. There exists a tendency to police the crimes that are

associated with poor people and people identified as racial minorities.

> The criminalization of racialized groups rests ultimately on
> the continued production and reproduction of particular
> groups as 'others.' It also rests on a fundamental denial of
> racism and of the import of 'race' as a sociological construct
> that is used for strategic ends. These ends include the
> continued affirmation of the superiority of the dominant
> white, heterosexual, middle-class, and largely male
> perspective. (Jiwani 2002: 82).

Elizabeth Comack has done extensive research on incarcerated women and has

interviewed them on a number of occasions. She has found that the majority of these

women have experienced either physical or sexual abuse in their past (1996, 2000).

Comack poses the question of whether incarceration is the appropriate measure for

women whom she terms to be "in trouble" (2000: 117) and whether incarceration is

meeting the needs of the women. Many of the women she interviewed felt that their

terms of incarceration are failing to meet their needs; Comack found that the women in

her study encounter many difficulties when trying to turn their lives around in prison.

"All they really do here is teach you how to be in jail. They don't teach you how to

survive on the outside once you get out," (Comack 2000: 121) states one respondent in Comack's study. This is where further research is needed in order to determine what women can use to positively benefit from during their periods of incarceration in order to have their needs be met. Failing to provide women with adequate programming has a negative effect on their incarceration.

Pollack, through her research studies with Black women in Canadian prisons also found that these women are generally convicted of nonviolent crimes. In her study Pollack utilized both personal life-history interviews and focus-group interviews. Like Comack, she too found that these women have usually experienced some form of abuse, whether physical or sexual in childhood, and that this abuse has often carried over into their adult relationships with their partners. Her findings show that the majority of these women have also encountered some form of an addiction with drugs and/or alcohol (Pollack 2003). Pollack discovered, in the focus-group interviews, that the participants found "clear connections between social exclusion and their lawbreaking" (Pollack 2003: 468). This social exclusion stems from systemic racism and its intersections with patriarchy.

The Elizabeth Fry Society works with incarcerated women. In 2001, the CAEFS (CAEFS), together with the Native Women's Association of Canada (NWAC) complained to the Canadian Human Rights Commission about the treatment women receive when serving federal sentences. They posit that discrimination is present in the justice system and that women are discriminated on the basis of their sex, race and disability (CAEFS 2003). They also call for the need to understand a woman's social context and the intersectionality of her identity. "The process of criminalization for women is indeed intricately connected to women's subordinate position in society where

victimization by violence coupled with economic marginality related to race, class and gender all too often blur the boundaries between victims and offenders" (Shaw et al. 1992: 19, cited in CAEFS 2003: 13). This idea of intersectionality has been repeated numerously by many researchers and theorists, and yet it is still an issue that requires addressing. This suggests that despite the recommendations on the importance of understanding a woman's history and the intersectionality of her identity, it is still not recognized.

The report issued by the CAEFS calls for a number of changes within the federal correctional system. One of the changes is the removal of discriminatory legislation that permits authorities to place federal sentenced women in men's penitentiaries.[22] Also, the classification of women prisoners as minimum, medium or maximum security must be amended so that it is applied equitably. There exists a tendency to classify Aboriginal women as in need of maximum security incarceration regardless of the crime for which they are sentenced. They also ask for the women to be treated more humanely, without the use of weapons, unnecessary strip searches and things of that nature that are demeaning to the women. There is a call for more accountability and the creation of an outside body that could oversee the criminal justice officials to ensure compliance.[23]

Prior to the publication of the CAEFS report, the Task Force on Federally Sentenced Women issued their report, *Creating Choices* (1990). Through *Creating Choices*, the Task Force put forth a number of recommendations regarding the treatment incarcerated women receive, the programs available to them, as well as the facilities within which they are incarcerated. *Creating Choices* proposed women-centred prisons

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[22] This is found in section 11 of the *Corrections Conditional Release Act* (*CCRA*).
[23] For a complete list of the recommendations please refer to the special report issued by the Canadian Association of Elizabeth Fry Societies (1990).

that provide cottage-style housing which would respond to the multiple needs of the incarcerated women as well as a Healing Lodge for Aboriginal women that would operate based on Aboriginal principles and culture. The Task Force also advocated for, and reiterated the calls from many observers, the need to take into account each woman's experiences and history as well as the intersectionality of their identity.

Gayle Horii speaks firsthand about her experiences with the Canadian criminal justice system. She is currently serving a life sentence for the second-degree murder of her step-mother. Horii criticizes the CSC for how women prisoners are treated. "Prisoners are automatically oppressed by the generic, absolute imbalance of power structured into prison systems" (Horii 2000: 105). She argues that incarcerated women are left without a voice and without a choice, having all freedom torn away from them. Reports such as *Creating Choices* fail to provide the impact intended. Horii argues that this is a direct result of the fact that those proposing the recommendations have a lack of power to enforce the recommendations they propose. This leads one to question why task forces are created. And why have them generate reports that will not be implemented? Among the many responses to such questions is that the reports are meant only to appease the incarcerated women in the short term and that there exists no intention to change the day-to-day administration of these women.

The criminalization of women is an important phenomenon in our society today that has been studied by many scholars, in particular many feminist scholars from many different theoretical frameworks. Despite being studied from numerous points of view it is still a prevalent aspect of Canadian society and is something that many women encounter now and will continue to do so in the future. For many women it is not a phenomenon to study, but is a reality that haunts them. Until the discriminatory criminal

practices that are imposed on women are eradicated, scholarly research needs to be

conducted in order to shed light on the injustices forced upon the racialized women.

Chapter Three: Theory

The increasing numbers of incarcerated women, along with the creation of more facilities to house them has sparked an interest among scholars and advocates alike. This growing trend towards the criminalization of women poses obstacles and challenges when one attempts to gain an understanding of the experiences these women encounter with the Canadian criminal justice system. By utilizing aspects of three theoretical frameworks, radical feminism, multiracial feminism and critical race theory, I analyze the experiences of women and the criminal justice system in order to determine if there is any discrimination present which negatively affects the women and their experiences. Although these theoretical frameworks are distinct, they do have similar themes of oppression and inequality that I use to guide my analysis.

There are many processes in play in today's society that all compound to increase the negative effects of the criminalization of women. Women are disadvantaged on a number of levels within our patriarchal society; gender is a prominent marker of this disadvantage. "It has long been argued that law in modern western societies reflects the subjectivity of the dominant, white, affluent, adult, male" (Hudson 2006:30). Patriarchy plays a key role in disadvantaging and criminalizing women. Patriarchy is a system in which men assume dominance in both public and private settings, whereas women assume subordinate status. Patriarchy places value on what is masculine and trivializes what is feminine. Patriarchy creates a stratification system whereby masculine power is reinforced and protected in order to perpetuate the subordination of women (Renzetti and Curran 1999, cited in Chesney-Lind 2006). Through it society is structured to be beneficial for men (Comack 1999). Feminist theories highlight the disempowerment of women as being the central experience that needs to be addressed. Feminist theory

strives to challenge the separation of the 'private' and 'public' spheres. Women are

consigned to the 'private' sphere and lack power in both spheres.

Radical feminism is one of the two feminist theoretical streams that are

incorporated into the study of women's experiences with the justice system; the other is

multiracial feminism. These two theories, along with critical race theory provide the

theoretical frameworks which guide the research and analysis described in this thesis.

Radical feminism is a stream of thought which emerged in the 1970s. This perspective

emerged primarily as a critique of liberal feminism (Comack 1999). Radical feminism is

a perspective that conceptualizes motherhood as a valuable way of thinking and behaving

(Lorber 2005). Radical feminists criticize the underlying notion of the traditional family,

in which the woman is viewed as a caregiver who is subordinate to the demands of her

husband. The traditional family is regarded as being a prime source of the patriarchal

oppression of women. Radical feminists condemn the traditional family for adding to the

violent aspects of heterosexuality, which provides an avenue for men to be controlling

over women (Lorber 2005).

Catherine MacKinnon[24] is a radical feminist who has theorized on the inequalities

women encounter. She purports that patriarchy and its historical significance has shaped

how power is held in society and how women experience society. "Society is male-

centred; the male perspective is systemic or hegemonic. Patriarchy has so intruded into

all aspects of women's lives that women must somehow break free" (cited in Comack

1999:49). To combat this dilemma and reclaim power, women need to become more

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[24] I classify Catherine MacKinnon as a radical feminist, as do Elizabeth Comack (1999) and Patricia Cain
(1993); however it must be noted that she may not be read as a radical feminist by everyone.

women-centred and see themselves through their own eyes, rather than the dominant male gaze (Comack 1999).

Theorists within this framework do not attempt to claim that men and women possess sameness. Rather, they acknowledge that there are innate differences between the sexes and that these differences need to be taken into account (Comack 1999). They also posit that these differences have been constructed to perpetuate inequality. While acknowledging differences between the sexes, radical feminists note that gender and gender differences are not innate, rather they are socially constructed (Cain 1993). Radical feminists look at the oppression of women and examine the structure of inequality. This theoretical framework theorizes on the different reasons for the phenomenon of gender inequality. Patriarchy, according to radical feminists, is a key reason for gender inequality. Radical feminists expand on the definition of patriarchy and state that patriarchy is a "worldwide system of subordination of women by men through violence and sexual and emotional exploitation" (Lorber 2005:118).

All of the attributes they identify as reasons for gender inequality inadvertently appear to stem out of patriarchy. Radical feminists explore the legitimizing of women's oppression and subordination in predominantly male-dominate fields such as medicine, religion, law, science and other social institutions (Lorber 2005). The law, according to MacKinnon, is male and justice is male-centred. MacKinnon (1983) states that "the law sees and treats women the way men see and treat women" (cited in Comack 1999:50). As a result, women are viewed as "others" in the eyes of the law.

Law is argued to be "a 'gendering strategy' that brings men and women into beings as legal subjects" (Smart 1995, cited in Comack and Balfour 2004:53). There is a certain ideology in place that reinforces specific notions of what is masculine. Masculine

behaviour is associated with aggression and being physically strong, whereas femininity is associated with being docile, gentle, weak, a caregiver and subservient. As such, it is argued that the law is infiltrated with these stereotypes. When a woman commits a criminal act, this throws a wrench into the justice process. For example, aggression is associated with masculinity, so when a woman is charged with a violent offence it appears as if she has stepped out of what femininity has prescribed as the proper way for her to conduct herself. Comack and Balfour title this as a woman "betraying her gender" (2004:61).

This masculine ideology negatively impacts women. The history and experiences of women are often not taken into account which can ultimately lead to further subjugation as more obstacles are imposed on them. Failing to address issues which have contributed to their criminalization such as a history of abuse and gender oppression, has the ability to re-victimize them and render them helpless. Incarceration can negatively impact their earning potential, which is already hindered by their gender, and often by their lack of education,[25] as well as their ability to care for their children.

Patriarchy benefits men in society. Even with the implementation of policies that are meant to protect women, such as mandatory charging policies, women are still disadvantaged. The mandatory charging policy, which has presented itself as a saving grace to women, has, in fact, negatively impacted them. With the mandatory charging policy, when police are dispatched to a domestic violence call they must lay charges if they see signs of an assault. Discretion has been removed from these officers which has had a negative impact on women. For example, if a woman is being battered and in self-

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[25] It has been documented that often, those women who are criminalized have little to no post-secondary education, and many have not completed high school (Comack and Balfour 2004).

defence she physically assaults her attacker, she too will be charged if there are marks to be found on the other party. This moves the woman from the category of 'victim' to 'perpetrator' and rather than protecting her, the policy penalizes her. Women are being inadvertently charged, both solely and dually with their partners in cases of domestic abuse, as a result of these policies and are finding themselves and their futures at the hands of a criminal justice system where the decision-makers do not seem to understand them (Chesney-Lind 2002). According to Laureen Snider (2003), the increase in female incarceration rates is a result of the implementation of policies, since there has been no increase in female crime rates. This serious consequence also affects the children of these women as the Children's Aid Society is often called in to investigate and the children are removed from their homes if the parents are incarcerated. This is an additional way in which women are penalized.

One way in which patriarchy provides an advantage to men is in their knowledge of the criminal justice system. It is not difficult for men to manipulate the justice system to their benefit if they are controlling and limit the knowledge to which their female partners are exposed to. Men who dominate women do what they can to treat them as inferior and limit their access to the world outside the domain of the home. Often through the use of tropes of infantalization, women's education, and understanding of the mechanisms and services available to aid them in society are limited. This has the potential to limit a woman's availability of resources when seeking help from a justice system official. In a study conducted by the Women Abuse Council of Toronto (WACT)[26] a woman respondent stated that:

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[26] WACT conducted a study in order to attempt to comprehend the context within which the women participants use force in domestic violence situations, as well as to envision recommendations for the

> I went to the police station to give my victim witness
> statement and video statement... and she [female police
> officer] said 'that won't be necessary, your husband's filed a
> complaint, and so we need to arrest you now...'... 'it's out of
> our hands, and you'll have to go to the Crown and you'll
> have to tell them, and they'll have to decide (2005:11).

This respondent had little understanding as to how the justice system operates. Her husband was able to use his knowledge of the justice system and file a complaint against her before she could file a complaint against him, knowing it would work to his benefit to be the first to approach the police. By failing to allow women to contextualize their abuse the women are disempowered. Many men are able to use the criminal justice system as a means of controlling their female partners (Bohmer et al 2002). By preventing women from speaking out and telling their stories, the criminal justice system further perpetuates the perceptions of patriarchy. The notions that are continually being reinforced are that women, for the most part, are not viewed, nor treated equally in society, nor do their opinions hold any significance. This is also the case with the criminal justice system and can be found in interactions with legal aid counsel, justice officials, police officers and jail guards, and also with the law itself (Commission on Systemic Racism in the Ontario Criminal Justice System 2000).

One significant finding that resulted from the study conducted by WACT is the underlying patriarchal tendencies that have permeated into the lives of the respondents. The majority of the female participants felt that within their personal relationships a traditional, stereotypical gendered order was present and strictly enforced. These female

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criminal justice system and its responses to women who have been abused. In this study, WACT interviewed Crown Attorneys in the Domestic Violence Courts along with women who were solely or dually-charged in domestic violence occurrences.

participants had to adhere to the stereotypical gender roles and were often prohibited from socializing with their family and friends (WACT 2005).

Radical feminists also claim that the centrality of male power is sexuality (Abbott et al. 2005). Through the sexual exploitation of women, men provide a means to criminalize them with prostitution. This is especially true for Aboriginal women. Aboriginal women are often stereotyped as prostitutes and are criminalized for it. Poor socio-economic circumstances can force Aboriginal women into prostitution as a means for survival. Aboriginal women are subsequently penalized for their poor socio-economic positions in society. They are often imprisoned for misdemeanours such as failing to pay fines which they cannot afford (Frideres 2001). To challenge the current dilemmas criminalized women face in today's justice system, and in particular the dilemmas faced by Aboriginal women and racialized women, radical feminists advocate for structural changes. They strive to promote a transformation of the current patriarchal justice system.

Multiracial feminism is the second feminist theory that is drawn upon in this study. This theoretical framework was born out of a response to early, mainstream feminist thought. Multiracial feminism originates from the 1960s United States civil rights and Black power movements along with the liberation movements of Chicanos, American Indians and Asian Americans (Lorber 2005). Early feminist theory was developed primarily by middle-class white women and it failed to acknowledge the differences which exist among women, such as socio-economic status, race, and ethnicity. Multiracial feminist theorists were concerned about the exclusion of racialized women from feminist theorizing as well as the exclusion of their experiences. "This perspective is an attempt to go beyond a mere recognition of diversity and difference among women

to examine structures of domination, specifically the importance of race in understanding the social construction of gender" (Ludvig 2006:321).

At a conference in 1984, Audre Lorde stated,

> If white American feminist theory need not deal with the differences between us, and the resulting difference in our oppressions, then how do you deal with the fact that the women who clean your houses and tend your children while you attend conferences on feminist theory are, for the most part, poor women and racialized women? What is the theory behind racist feminism? (Lorde 1984:112).

Mainstream feminism has predominantly excluded the issue of race within its discourse of the female gender. It has had the propensity to homogenize the term 'woman' and embed it with a "false universalism" (Zinn and Dill 1996:321). Mainstream feminism presents the struggles women face from the perspective of middle-class white women. Multiracial feminism challenges the mainstream perception of gender and the exclusive nature of mainstream feminist philosophies and theories. This theoretical framework posits the notion of focusing on the differences and inequalities which exist among women. There is a plurality among women as no one group is homogenous. There are intersectionality markers which help identify women; markers such as race, class, gender, ethnicity, sexuality, religion, and age (Ludvig 2006). These markers also impact how a woman experiences the criminal justice system. The treatment she receives and the resources available to her are often the result of her race, class and gender as is demonstrated by the responses of my participants.

Multiracial feminism presents new universal perceptions about women's equality (Zinn and Dill 1996). Multiracial feminists emphasize the importance of being inclusive of differences when analyzing inequalities of minority groups (Ludvig 2006). Sandra

Harding[27] argues that the intersectionalities of race, class, and culture inform the definitions of gender (Zinn and Dill 1996). These markers help to define women; they present different and complex definitions and variations of the term 'woman' rather than positing one unifying definition. Multiracial feminists argue that one cannot look at a single social status (race, class, gender, ethnicity, etc.) in isolation; rather they need to be viewed simultaneously (Lorber 2005). It is only by looking at these characteristics simultaneously that one can comprehend the complexity with which one is defined. Failure to examine race, class and gender as being intersectional components of a woman's identity has led to the increased criminalization of racialized women who have marginal status, as can be seen in the research conducted by Comack, Balfour, Crenshaw and Pollack.

There is not one, single, unifying stream of thought within the multiracial feminist theoretical framework, but rather, it is a body of knowledge that situates women and men in "multiple systems of domination" (Collins 1990). This feminist framework treats race as a basic social division and a fundamental force in shaping the lives of women and men (Zinn and Dill 1996). Multiracial feminism presents an inclusive approach to the study of minority groups. It includes "difference in the analysis of power struggles and inequalities for minority groups" (Ludvig 2006:246). It takes the notions of standpoint theory one step further (Lorber 2005)[28] from analyzing difference from the point of view of one marginalized voice and experience to analyzing difference from the point of view of many different voices and experiences.

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[27] Here I am classifying Sandra Harding as a multiracial feminist. I would like to mention that her work also falls into the category of standpoint feminism.

[28] Standpoint theory is a theory which presents one's perspective from one's social location. It produces situated knowledge.

Zinn and Dill (1996) clarify the six basic tenets that comprise multiracial feminism. Firstly, multiracial feminism puts forth the notion that gender is constructed by interlocking inequalities. This is what Patricia Hill Collins[29] terms the "matrix of domination."

> The overarching matrix of domination houses multiple groups, each with varying experiences with penalty and privilege that produce corresponding partial perspectives [and] situated knowledges....No one group has a clear angle of vision. No one group possesses the theory or methodology that allows it to discover the absolute "truth" or, worse yet, proclaim its theories and methodologies as the universal norm evaluating other groups' experiences (1990: 234-35).

This concept explains that race, class, gender, and sexuality are experienced differently by individuals depending on their social location within the structures of race, class, gender, and sexuality. The term 'woman' is not a unifying category. Rather, there are many aspects which make up the definition of a woman. These include, but are not limited to: race, class, gender, sexuality, age, religion, (dis)ability, and ethnicity. Intersectionality is an important concept that is ignored within the criminal justice system when dealing with female offenders, which results in their unfair and negative treatment as well as their increased criminalization.

The second tenet of multiracial feminism emphasizes that all levels of social life are hierarchically intersected. This presents the notion that multiracial feminism applies to everyone, not only racialized women as it examines the intersections of race, class, gender, sex, disability etc. This is because multiracial feminism argues that class, race, gender, and sexuality are components of social structure and social interaction and that "intersecting forms of domination produce both oppression and opportunity" (Zinn and

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[29] Patricia Hill Collins is also classified as a standpoint feminist by some scholars.

Dill 1996: 325). In this sense, men, and in particular white, middle-class men, are presented with many opportunities that are created from the ways in which they oppress women. These men experience taken-for-granted privileges[30] that are often not discussed at the expense of disadvantaging women on the basis of race, class and gender. Therefore, these intersecting forms of domination simultaneously create oppression and opportunity for both racialized women and men. This theoretical framework can help members of society gain a better understanding of how society functions on a grand scale, and the role that they assume in the overall hierarchy that governs society. This also applies to the functioning of the criminal justice system. It is argued that a hierarchy exists within this system where racialized women and Aboriginal women make up the lowest level of this hierarchy. This translates into the increased numbers of obstacles these women experience when confronted by the criminal justice system. These women have less financial freedom to seek out paid legal representation, which often leaves them with no option but to accept legal aid attorneys. This may impact the quality of legal representation that has been previously mentioned.

Thirdly, this theoretical framework stresses the relation between dominance and subordination. In order for something to be viewed as dominant, it must have an opposite; subordinate. In our patriarchal society, men are traditionally considered as assuming a dominant position to women. However, this power dynamic also exists among women, as many women assume social roles that deem them to be superior to other members of their gender. For example, upper-middle class white women have more power and dominance in comparison to racialized women and women who have a lower

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[30] White privilege is defined as a privilege that is attributed to a person based on their white skin colour. Peggy McIntosh (1995) likens it to "an invisible package of unearned assets" (31).

socio-economic status. As such, power is seen as being the foundation of women's differences, and therefore women's differences are connected systematically (Zinn and Dill 1996). This idea can be applied to this study when examining issues of race and class. The class factor impacts the type of legal representation a woman can access, which in turn impacts the outcome of her experience with the criminal justice system. Class not only comes into play when obtaining legal representation, but also impacts a woman's decision to commit a criminal act. Women may often feel that they have no other choice but to steal, commit fraud or another poverty-related offence in order to provide themselves and their children with food and shelter.

The fourth tenet is that multiracial feminism examines how social structure and women's agency come together. Racial oppression has been a focus of racialized women. Within the limitations prescribed by race, class and gender oppressions, women create lives for themselves and their families. They work and manoeuvre within the oppressive boundaries created by the dominant members of society. Racialized women struggle against and resist the dominant powers who, in turn, strive to dominate and control them as well as place limitations upon their actions. Chandra Talpade Mohanty expresses this notion by stating, "it is the nature and organization of women's opposition which mediates and differentiates the impact of structures of domination" (cited in Zinn and Dill 1996: 327). Through other studies it has been demonstrated that some racialized women, fed up after being continually oppressed, will exercise their agency in whatever way necessary, whether legal or illegal, to ensure their financial survival (see Pollack 2003). This is often a direct result of limitations and oppressions they experience because of their race, class and gender.

The fifth characteristic of multiracial feminism can be seen in its methodological approaches. Multiracial feminism includes a wide range of methodological approaches. It also relies on a variety of theoretical tools. There are three basic principles which guide this type of inquiry, as posited by Ruth Frankenberg and Lata Mani: "building complex analyses, avoiding erasure, specifying location" (Frankenberg and Mani 1993, cited in Zinn and Dill 1996:327). The research that has been, and continues to be, conducted by marginalized women has threatened what was once viewed as the universal category of gender. For example, the work of Audre Lorde (1984) has challenged the notion of gender being universal. These lived experiences of marginalized women continually create different ways of viewing and comprehending the social world. These lived experiences are important to keep at the forefront of analyses in order to gain a comprehensive understanding of the criminalization of women. Not all women experience the criminal justice system in the same way. Their experiences are based on their own understandings of themselves in relation to others as well as their intersections of race, class and gender. Therefore, it is important to understand that there is not one universal experience from criminalized women, rather there exist multiple experiences.

The final principle of multiracial feminism stems from the fifth tenet. It is that multiracial feminism brings together knowledge that is derived from the lived experiences of diverse and ever-changing groups of women. This knowledge is derived from the first-hand experiences of racialized women. These women are theorizing from experiences which they have encountered and lived through. Multiracial feminists present ideas from particular points of view, while recognizing that there is not one view of women and women's experiences. As such, this is the reason why there is not one, single, unifying stream of thought within this theoretical framework. Instead, multiracial feminism brings

together a multitude of knowledge from the lived experiences of women under one giant umbrella.

There are various strengths to using multiracial feminism when analyzing issues. Primarily, multiracial feminism ensures that a voice is given to racialized women and other marginalized women who are not members of the middle-class white majority. By providing such women an avenue to speak about their experiences, this theoretical perspective takes these women from the periphery and brings them to the centre. This enables society to gain a better understanding of the issues facing these women as the diverse perspectives do not assume that all women experience things in the same way. It presents different ways of viewing and understanding phenomena. It allows for the painting of a broader and more detailed picture than that sketched by traditional feminism because it acknowledges and includes many different female experiences.

Multiracial feminism argues that differences can create positive insider perceptions and representations of the self (Ludvig 2006). By ensuring that the voices of racialized women are not silenced in peripheral status but brought to the forefront, multiracial feminism ensures that there is a broader understanding of issues when looking at things from different points of view. It also ensures that the voices of women who are labelled as the 'other' are not stifled and allows them the power to shape and influence their thoughts along with giving other women the opportunity to see their points of view. Through this, women can come together to speak and theorize about the negative experiences they have had during encounters with the criminal justice system. By allowing for this, discriminatory practices and other negative impacts of the justice system can be examined and addressed so that positive changes can be made.

An additional advantage is that multiracial feminism also avoids essentialism and fixed and homogenized assumptions of identities. It strives to reflect the notion of 'otherness.' Multiracial feminism attempts to demonstrate that there is not one set definition of 'woman'; 'woman' encompasses a multitude of characteristics. By striving to reflect the broadness of the term 'woman', multiracial feminists move away from the concept of the 'other.'[31] This stream of feminist thought asserts that there is not one dominant conception of the notion of 'woman' but rather that all women, with all of their different characteristics, comprise the category 'woman.' This enables racial minorities to reclaim a greater sense of themselves and avoid feeling like 'outsiders' who do not identify with or feel included in the 'whitewashed' gender philosophies perpetuated by traditional white feminists. In mainstream feminism, racialized women are often seen as 'outsiders' and within this framework they have come together to present their ideas in order to counter the homogenization of the concepts of 'woman' and 'gender'. They present their points of view not as 'outsiders' but as being important and integral contributors to feminist theory and theorizing.

This stream of feminist thought does not only focus on differences alone. Rather, it also focuses on ways in which differences and domination intersect and it places them in historical and social contexts. It examines how these differences and the notion of domination are historically and socially constituted. For example, multiracial feminists pose certain questions in order to provide an analytical framework that can be used by everyone, not just by marginalized women. These questions are: "How do the existences and experiences of all people – women and men, different racial-ethnic groups, and

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[31] This is one of the major forces that prompted the growth of multiracial feminism. Multiracial feminists attempt to present an encompassing definition of 'woman' rather than a view that reflects white, middle-class women and looks at all other women as 'other.'

different classes – shape the experiences of each other? How are those relationships

defined and enforced through social institutions that are the primary sites for negotiating

power within society? How do these differences contribute to the construction of both

individual and group identity?" (Zinn and Dill 1996:328). Multiracial feminists assert

that by answering these questions, a broader understanding of the experiences of all

women, not only racialized women, will be obtained. This is crucial to theorizing from a

multiracial feminist point of view.

Critical race theory is the third and final theoretical framework that helps to

structure this research. Critical race theory, like radical feminism, emerged in the 1970s

(Delgado and Stefancic 2001). It originated among Black and other scholars of colour.

"The Critical Race Theory (CRT) movement is a collection of activists and scholars

interested in studying and transforming the relationship among race, racism, and power"

(Delgado and Stefancic 2001:2). This framework questions the fundamentals of the

liberal order such as legal reasoning and Enlightenment rationalism. The theorists

associated with this framework are devoted to investigating alternatives to discriminatory

law and searching for solutions in order to expose the banality of racism. They strive to

explain how and why race matters and illustrate the effects of race on our lives (Delgado

and Stefancic 2001). Critical race theorists aim to change the existing relationship in

society of racial oppression and dominance by the white majority (Mutua 2006).

Canadian critical race theory began to grow during the 1980s (Aylward 1999). It

grew out of the dissatisfaction with legal discourse that began to arise. Critical race

theory examines how issues of race permeate into the legal system through both overt and

covert measures.

Many ethnic and racial groups in Canada have been victims of direct and explicit discrimination in the past. Today, discrimination persists in forms more difficult to discern such as stereotypes, assumptions and singular viewpoints. It manifests itself as systems, practices, policies and laws that appear neutral, but that, under close inspection, have serious detrimental consequences for members of ethnic and racial communities (Rosenthal 1989-90, cited in Aylward 1999: 39).

There are many dominant themes of the CRT: the need to move beyond existing rights analysis, an acknowledgement of the centrality of racism, including the universal and subtle forms that subordinate people of colour, and reconstruction (Mutua 2006). I believe that the notion of reconstruction is the most significant theme as it recognizes the 'duality' of law and its contribution to the subordination of people of colour and its power. Law is "both a product and a promoter of racism" (Aylward 1999:30). Law does this as a means of reinforcing the dominance of white authority (Mutua 2006). It is argued that racism has been present throughout the history of law and that "legal constructions of race have produced systemic economic, political, and social advantages for Whites" (Brewer and Heitzg 2008:626).

It is important to note that the theoretical framework of critical race theory is not a unified school of thought, but rather is continually growing and expanding. This theory represents a racial analysis, intervention and critique of traditional civil rights theory and critical legal studies (Mutua 2006). The basic premise of critical race theory is that race and racism are widespread phenomena in society that are also found in the justice system. As Clayton Ruby, an Ontario criminal law lawyer points out in an article by the *Globe and Mail*,

Young native Canadians are shot and killed by police in Winnipeg. Winnipeg's police are overwhelmingly white. Vancouver contains a large important Asian community.

> But Vancouver's police are overwhelmingly white. Black youths are shot and killed in Montreal. Montreal's police are overwhelmingly white. Black youths are shot and killed by Toronto's police in alarming numbers – eight in the past four years. Toronto's police are overwhelmingly white. Yet no police officer has been convicted of any offence in connection with these shootings....Three days ago in Toronto, a white undercover police officer shot and killed a 19-year-old black man armed with a knife...Metro Police Chief William McCormack and Police Services Board chairwoman Susan Eng appeal for calm. Who are they kidding? Every black and native person in this country knows that the justice system will not deliver justice for them...Again and again there is the laying of inadequate charges, the wrong charge or no charges at all. Prosecutors and police like each other...And so with the police and prosecution and courts, the message comes: white folks get justice, black folks get excuses (1992: A14, cited in Aylward 1999: 91)

This theoretical framework grew out of the civil rights movement and the themes from the critical legal studies movement. It also has some of its roots in feminism. Richard Delgado (2001:5) states that critical race theory builds on feminist "insights into the relationship between power and the construction of social roles, as well as the unseen, largely invisible collection of patterns and habits that make up patriarchy and other types of domination."

There are seven tenets that are laid out to which critical race theorists adhere.[32] These are:

1. Racism is pervasive and regarded as a norm in society.
2. CRT rejects the notion of colour-blindness and dominant claims of meritocracy, neutrality and objectivity.
3. An insistence of a contextual, historical analysis of law.
4. CRT challenges the legitimacy of social institutions.

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[32]Not all critical race theorists adhere to all seven tenets simultaneously. Not all critical race theorists adhere to all seven throughout their career. This list of seven is a list put forth by Athena Mutua after extensively examining the work of other theorists. It is important to note that this list is not something that is set in stone, nor is it required that all theorists within this framework exemplify all tenets within their theorizing.

5. An insistence on the recognition of experiential knowledge and critical consciousness of people of colour in understanding law and society.
6. An interdisciplinary approach; CRT claims that the intersection of race and the law overrides disciplinary boundaries;
7. CRT works towards the liberation of people of colour.

By continually growing and expanding, a new branch has emerged from critical race theory; critical race feminism. Critical race feminism builds on critical race theory but takes it a little bit further. It focuses on the intersectionality of race, ethnicity and/or colonialism and gender. Theorists within this theoretical framework (such as Adrien Wing and Kimberlé Crenshaw) examine gender oppressions and the multidimensional aspect of an individual's identity and how this negatively affects women in conflict with the law (Mutua 2006).

The work of Ann Scales[33] fits into the critical race framework. She criticizes the legal system in its unfair treatment of women. She argues that the legal system does not have the ability to adequately represent women, their needs, and their values. Scales purports that the law needs to transform from its traditional model and address the question posited by Catharine MacKinnon[34] (1979) of "whether the policy or practice in question integrally contributes to the maintenance of an underclass or a deprived position because of gender status" (cited in Binion 1993:143). Critical race theorists, and critical race feminists, examine the intersectionality of race, class and gender. The identity of a woman is multidimensional and intersectional. A woman is not defined merely by her gender, rather her identity is also encompassed her race, sexuality, class, ethnicity, and

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[33] Ann Scales is a feminist legal theoretician. Although some may not classify her as a critical race feminist, I place her within this theoretical framework as her view follows the principles of critical legal studies, which is the foundation from which critical race theory and critical race feminism formed.

[34] Although I have included this brief reference back to Catherine MacKinnon when describing critical race theory I am not proposing that she is a critical race theorist. I merely used her idea to better explain an idea of Ann Scales. I see MacKinnon as a radical feminist.

age, among other markers.[35] This intersectionality is an important notion that is often not taken into account when racialized and criminalized women find themselves at the mercy of the Canadian criminal justice system. Failing to take into account a woman's intersectionality results in a failure of justice to be achieved.

According to critical race theorists, the law is structurally racist. "The racialization of crime and the criminalization of race, and the discriminatory sentencing and lack of serious legal response to attacks on the persons and property of minority citizens, are structural rather than the product of individual jurists' racist beliefs" (Schur 2002, cited in Hudson 2006: 32).

Racist ideologies have permeated into the Canadian criminal justice system, which directly impacts the experiences racialized women have when confronted by this system. Discriminatory practices are apparent in the criminal justice system.[36] Systemic racism is a key feature and is defined as the failure to treat racialized peoples equally with white people in the routine processes of criminal justice. It entails patterns and practices that disadvantage people or permit discrimination to occur (Fleras 2001). Comack and Balfour (2004) have found numerous instances where Aboriginal women were treated unfairly within the criminal justice system. They present different cases that exemplify the racist undertones found within the criminal justice system, which are reinforced by the stereotypes prevalent in society and by the systematic racism against Aboriginal women.

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[35] The list of markers is seemingly endless as one can find more and more characteristics with which to identify.

[36] Discrimination, as defined by the United Nations Convention on the Elimination of All Forms of Racial Discrimination (ICERD) is

> ...any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.
> (Banda 2004:4)

Aboriginal women were not given the same consideration and treatment as white men in routine criminal justice processes. They were treated highly unfairly. For example, Comack and Balfour (2004) describe two cases that are similar but yet the outcomes were different. In one case a young Aboriginal woman was a complainant on a sexual assault charge. She did not appear at the preliminary hearing as she was unable to secure transportation. As a result of her failure to appear, a subpoena was issued for her. No consideration was given to the fact that she had no means of coming into the city for the hearing on that day. To contrast, in another instance, two white men were to appear in court to testify against two defendants who were Aboriginal. The two white men failed to appear, yet there was no repercussion for their lack of appearance. Their action was not seen as being deviant, rather an excuse was concocted to pardon their absence.

According to critical race theorists, understanding and 'situated' understanding are the keys to achieving equality (Aylward 1999). In order to provide women equal treatment before and under the law, the Canadian justice system needs to make clear and unmistakeable strides to understand them. A redistribution of power is necessary in order to eradicate the oppression of people of colour. In understanding an individual woman's culture, along with their social and economic status, among other markers of her identity, the justice system can attempt to place them on equal grounds with the men in society. This all stems back to the intersectionality of race, class and gender and the need to recognize this intersectionality.

A significant theme that surfaces throughout these theoretical frameworks is the notion of 'otherness'; both through gender and race. The notion of 'othering' asserted in this debate draws on the notion of 'othering' that was presented by Edward Said (1978) with his concept of 'Orientalism.' Edward Said's concept of 'Orientalism' presents the

'us' vs. 'them' dichotomy. It looks at the "west" vs. the "rest", where the west and all things associated with it are superior to all else. Racialized people are seen as being inferior, savages who are in need of colonizing and civilizing. The criminalization of women has the effect of depicting women as the 'other.' Criminalized women are viewed as behaving defiantly and unlike a 'woman.' These women are looked upon as being 'different' as they have stepped outside of their prescribed gender roles (Comack and Balfour 2004), and subsequently, appear to lose dignity and respect from the rest of society. This 'other' is a category that has taken shape as a result of creating the dominant power that is attributed to men. By ascribing the power to the hegemonic, white male, it automatically creates an 'other'; an opposite that has less power, a marginalized status, and is subordinate to the male and the power he wields; the (racialized) female. These characteristics are then reinforced in the definition of 'woman' and 'racialized woman' that feminists and critical race theorists are arguing against and attempting to change in order to expose this 'otherness' that is attributed to all women and challenge the subjugations they experience as a result. By challenging these subjugations the obstacles and oppressions racialized women and Aboriginal women face when confronted by the criminal justice system officials will be addressed and ultimately, their treatment will be positively altered.

Chapter Four: Method

A qualitative research approach is utilized in this study, with personal interviews being the general method employed. The information sought out with this research is the first-hand experiences of women of colour and Aboriginal women with the Canadian criminal justice system. The respondents of this research are women who have previously been incarcerated and are now reintegrating, or have already reintegrated back into society with the help of the Elizabeth Fry Society of Toronto.[37] The personal interviews are semi-structured in nature.[38] The interviews are comprised of both open-ended and close-ended questions, where the participants were asked to discuss their personal experiences with the Canadian criminal justice system and any issues they felt contributed to their participation in criminal activities. The semi-structured nature of the personal interviews allows for the greatest amount of data to be obtained from the respondents. This allowed the respondents to present their experiences, in their own words and at their own pace, as well as to discuss their thoughts and feelings about the Canadian criminal justice system. The interviews progressed in a fluid manner and at times the respondents were able to guide the interviews based on their responses and what they wished to reveal.

Another benefit resulting from using this type of personal interview is that it allowed me to engage with the respondents and move away from severe power imbalances during the interview process. This aids in the avoidance of objectifying the female participants, as stated by Ann Oakley (Finch 1984). This provided the respondents with an atmosphere where they felt more comfortable to divulge their

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[37] Please refer to the appendix for a complete description of the three participants.
[38] Please refer to the appendix for a list of the interview questions.

experiences regarding issues that have the potential to be highly sensitive and trigger a variety of emotions.

Throughout the research I also incorporate aspects of interpretive interactionism (Denzin 2001) as a sociological method for examining the relationship between personal troubles experienced by individuals, in particular females, and the public policies and public institutions created to address these troubles. This provides a reference point for addressing the Canadian criminal justice system and the policies in place for women who have committed crimes. This is also used to address whether there are policies and programs in place that can help women so that they do not turn to crime as a means of survival. The goal of interpretive interactionism is to represent the voices, emotions and actions of the participants who are being studied (Denzin 2001). Through this, one is able to see the relationship between the private lives of the criminalized women and the public responses to their personal troubles. Interpretive interactionism is critical in nature and is concerned with the social construction of gender, power, knowledge, history and emotion (Denzin 2001). This is an important notion that is also a common thread throughout the theoretical perspectives utilized in this study.

Participants

The sample that was recruited for this study comprised of women who identify themselves as being part of a racialized group or a member of an Aboriginal group. These women have also experienced the criminal justice system as offenders, and possibly also as victims. The participants are all clients of the Elizabeth Fry Society of Toronto, and were recruited to participate in the study through this organization.

Of the three participants in this study, all identified themselves as black women (100%) and all linked their ethnicity to places in the West Indies. All three women are also single mothers, which is a consistent demographic feature that has been found in a number of studies with incarcerated women (Pollack 2004, Comack 1999). Two of the three participants were not employed at the time of their offence and one was employed in a customer service position. Their ages ranged from 31-41 years of age. All of the women were incarcerated for their various crimes and are now going through the process of reintegrating themselves back into society with the help of the Elizabeth Fry Society of Toronto.

Recruitment

The participants were recruited through the Elizabeth Fry Society of Toronto. After initial contact with the Elizabeth Fry Society the administration was provided with information regarding the study and its goals, and asked to determine if any of their clients were potential candidates who met the requirements outlined. I anticipated that this would be a routine process but was met with bureaucratic obstacles. It took numerous attempts on my part to make contact with the administrator after initial contact only to be told that she did not feel that any of her clients would be interested. This delay significantly affected the time restraints of this research.

Upon further discussions with the Elizabeth Fry Society I was referred to their Residential Program Manager who felt that she would be able to recruit respondents for this study. She was able to successfully recruit three interested participants with whom I followed up in my research. I was provided with the contact information for the interested participants who were eager to meet with me once I contacted them. These

women all reside in a home run by the Elizabeth Fry Society of Toronto and have restrictions imposed on them during their day-to-day lives which they must adhere to. As a result of the sensitive nature and topics addressed in the research three participants are a reasonable number of respondents to expect although I had originally planned for ten. That number could not be attained because of the sensitive nature being discussed and because of the challenges faced in access to participants and communicating with supervisors. Many of the clients did not wish to discuss such personal and emotional experiences and have to relive their ordeals. Because many of the clients have recently been released from their incarceration, it was explained to me by the Elizabeth Fry Society personnel that the memories and experiences were too raw and fresh for these women to discuss.

The small number of respondents used directly impacts the limitations of this research. This research focuses on a small sample of criminalized women and it is important to take this into account when assessing the findings. The number of criminalized women used directly impacts the claims and conclusions generated from the data. The ability to apply these claims to the criminal justice system is limited to a degree by the number of respondents used.

Elizabeth Fry Society of Toronto

The Elizabeth Fry Society of Toronto is one branch of the Canadian Association of Elizabeth Fry Societies (CAEFS). The Elizabeth Fry Society of Toronto was established in 1952 and has since been helping criminalized women. It strives to help women reintegrate back into society as easily as possible. Their mission statement is

The Elizabeth Fry Society of Toronto is a non-profit organization dedicated to working with women who are, have been, or are at risk of being in conflict with the law. As a women-centred agency, our mission is to create a safe place for women to develop skills and build their capacity to make informed choices. We also foster the community's interest in and responsibility to the women we serve (Elizabeth Fry Society of Toronto 2008).

One of the services offered is the Residential Program, which allows women to live in the Elizabeth Fry halfway house as part of their parole. The residence offers 14 beds and houses approximately 111 women throughout the year (Elizabeth Fry Society of Toronto).[39] The profile of an Elizabeth Fry client is that she is "between the ages of 18 and 39, poor, unemployed, poorly trained for the job market, and lacking even grade 12 education" (Elizabeth Fry Society of Toronto). The majority of the women have committed property related offences or ones related to substance abuse issues and have experienced physical, mental and sexual abuse in their past which is consistent with the profiles of women in other research (Comack and Balfour 2004, Comack 1999, Pollack 2003).

The objectives of the Elizabeth Fry Society are to offer programs and services that help to empower women, to involve the community through awareness and involvement and to provide mutual respect to all individuals. These objectives have the potential to have a positive impact on criminalized women that are reintegrating into society but it must be noted that not all criminalized women see the benefits of this organization.

Procedures

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[39] The cost of housing a woman at Elizabeth Fry's residence is $34, 462 per year which is significantly cheaper than what it costs to keep the women incarcerated, which is $170, 684 per year (Elizabeth Fry Society of Toronto 2007).

Prior to joining the study, which was administered in Toronto, the participants were provided with a letter of information about the study and the objectives of it, and a consent form which outlined the details and goals of the research.[40] They were provided with additional contact information should they have any questions or concerns that were not addressed in the information provided to them. The participants were also informed that they could withdraw their participation at any time during the proceedings and that all information obtained to that point would be utilized in the study unless they requested otherwise. Remuneration of $20 was provided to the participants in appreciation of their time and willingness to share personal and potentially sensitive information.

The interviews took place at the Toronto Reference Library, which is part of the Toronto Public Libraries. This was a central location that was easily accessible to the participants. In order to ensure privacy and avoid having the interviews be heard by other patrons of the library, the interviews took place in private study rooms. This allowed for reassurance to the participants of the confidentiality of their responses. The interviews were approximately 1 ½ hours in length. The interviews took place between November 2008 and January 2009. The final interview took place after two months of miscommunication between myself and the respondent. Both of us were given incorrect telephone numbers. This resulted in much frustration and countless follow-ups with the Elizabeth Fry Society of Toronto who was finally able to provide me with the correct contact number of the final participant.

The personal interviews were audio-recorded after obtaining consent from the participants. None of the women voiced any concerns regarding this. The interviews were audio-recorded in order to ensure the accuracy of the responses during the

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[40] Please refer to the appendix for the letter of information and consent form provided to the participants.

transcribing period. Upon completion of the interviews, the data was uploaded to my

computer and immediately erased from the digital recording device. The respondents'

identities are kept confidential and the names used in this research are entirely fictional.

Ethical Considerations

There are ethical considerations that must be taken into account in this study.

Throughout the research I attempted to minimize any exploitation to the participants. The

participants were women of a racial minority group who were formerly incarcerated.

When conducting the interviews I continuously monitored the atmosphere in order to

ensure that the power dynamics were balanced. This was done so that the participants did

not feel powerless during the course of the interview. I did this by providing the

respondents with the opportunity to move away from the interview questions and speak

about other situations and experiences which they felt would be important to discuss.

This gave them power and control throughout the interview process.

Informed consent was formally obtained from the participants through a letter of

consent they were required to sign, of which they also received a copy for their own

records. One issue that I was cognizant about is the fact that the women being studied

have identified themselves as members of a racial minority group or Aboriginal group of

which I claim no membership.

The women were asked questions regarding personal and sensitive issues, and

there is a chance that they may have experienced some form of emotional upset, although

none of them mentioned any issues with responding to the questions. A potential risk for

the participants was that they may have felt uncomfortable speaking about certain

situations they have encountered and as a result there existed the potential that by

discussing it with me, they may have been re-living potentially traumatic experiences. The women were informed that if at any time they felt uncomfortable in answering a question, they could refrain from responding and could choose to end the interview. All of the women answered all questions asked without any hesitation. As a result of the sensitive nature of the questions I asked, I assured the women that if they needed to speak to anyone after participating in the research that they should contact the Elizabeth Fry Society to be referred to one of their counsellors.

Ethical approval was granted by the General Research Ethics Board of Queen's University.

Feminist Methodology

In order to label research as being feminist, one must recognize that there exist many differences among the term 'woman'. Interviewing is one method that is used in feminist qualitative research. The type of interviews incorporated in this research, open-ended and semi-structured, is one that is favoured by many feminist researchers (DeVault and Gross 2007). It allows for the respondents to speak freely about their experiences. Active listening is employed by feminist researchers which affects the data and knowledge that they produce. I also used active listening techniques during my research which minimizes the risks of producing knowledge that is colonizing and reproduces dominant perspectives (DeVault and Gross 2007).

Feminist researchers are cognizant of the fact that researchers, whether they are men or women, hold power. They argue that researchers exhibit power in three ways: they have more power over the research process than those being researched; they control how the data is interpreted; and they have more social power than those being researched

as a result of their privileged positions enabling them to conduct research. Feminist

researchers attempt to minimize the level of power imbalances present in research

(Sprague 2005). I attempted to do this with my research by allowing for flexibility during

the research process so that the respondents were given the opportunity to guide the

interviews when they chose to.

The three guiding principles of multiracial feminist methodology are: "building

complex analyses, avoiding erasure, specifying location" (Zinn and Dill 1996: 326).

Aside from this, there is no one methodological approach that is used in this theoretical

framework; rather, researchers rely on a variety of theoretical tools. This research

attempts to incorporate these principles during the data collection and analysis process.

Critical Race Methodology

The deconstruction of legal rules and principles is an important feature of critical

race methodology. The neutrality and objectivity that is portrayed by the legal system is

challenged to show the discrimination and oppression of people of colour and to

demonstrate how racism and discrimination are perpetuated by the justice system. This

research has consistently attempted to deconstruct the legal practices of the criminal

justice system in order to reveal how the law does in fact allow for discriminatory

practices to affect the treatment and experiences of racialized women.

Data Analysis

The recorded interviews were transcribed. I then relied on grounded theory for

providing the basis for the analysis. Grounded theory originates from Glaser and Strauss

(1967). Using grounded theory allows for the constructions of categories in order to

understand and analyze the data. The interviews were then coded using an open coding procedure. This permitted me to compare the experiences of the female respondents in order to observe any patterns / themes that emerged from their experiences with the Canadian criminal justice system. Many consistencies surfaced throughout the women's responses, such as a lack of respect on the part of the authorities and negative treatment as a result. Another theme that emerged is male domination and the effects of being guarded by male guards. These themes, as well as others which emerged, will be discussed further and in more detail in the analysis chapter of this research.

Dissemination of Work

The findings of this research have the possibility of influencing policies pertaining explicitly to the problems raised by these women regarding their treatment in the criminal justice system such as inadequate programs, lack of respect and understanding, failing to meet their needs, and failing to take into account the intersectionality of their identities (i.e. race, class and gender) when trying them in the court system and during sentencing procedures. There exists a potential for creating programs to address these concerns which are in existence and improve the treatment women receive at the hands of the criminal justice system officials.

The findings also have the potential to influence policies within the criminal justice system in order to increase the accountability of criminal justice workers to ensure fair and equitable treatment for all who find themselves confronted by the justice system. Policies can be implemented to dispose of any discriminatory practices that are currently in place such as lack of available programs in comparison to men and men guarding women, as indicated by my participants. New programs within the criminal justice

system that better address the needs of incarcerated women can also be generated from the findings of this research, as well as programs to aid with their reintegration into society. These programs have the potential to minimize traumatic experiences that women may encounter during their incarceration, as well as during their reintegration process.

Chapter Five: Analysis

The respondents of this research, at the time of this report, are all currently residing at the halfway house run by the Elizabeth Fry Society of Toronto. This is a transition home for women who have been released from a provincial or federal institution and have been ordered to finish their sentence with day parole. In this program women are supervised while they begin their process of reintegration into society. Two of the women served provincial sentences and one served a federal sentence. All of them discuss similar issues throughout their experiences with the Canadian criminal justice system and have suggestions for improvement. The women all come from a similar ethnic background (two identify as Jamaican, and one as Trinidadian) and all of their families come from the West Indies. All three of the women grew up in Toronto and the surrounding area; two were born in Canada; one was born in Jamaica. She came to Canada at the age of three and grew up in Toronto.

Many findings emerge from this research, much of which are consistent with other studies completed on incarcerated female populations. The demographic profile of the female participants is consistent with the demographic profiles that emerge in other studies. All of the women are single mothers and have experienced great financial difficulties in their lives. Having to be the sole financial providers for their children was a strain that was too much for them to bear alone so they turned to crime in order to help supplement their meagre incomes. This is linked to the feminization of poverty and having a poor socio-economic status that has been discussed in previous chapters. One of the respondents was employed at the time of her crime however she was employed in a customer service position which is consistent with the types of jobs women tend to hold; jobs that provide little to no benefits and that do not pay much compared to jobs that men

tend to dominate. A poor socio-economic status has a direct impact on how criminalized women experience the Canadian criminal justice system. The women voiced their concerns about this when discussing the quality of the legal representation they were able to obtain.

Lack of adequate accessibility in the criminal justice system was a theme that emerged from the data. Although the women were provided with a toll free number to contact legal aid attorneys they all felt that the representation they received was inadequate. One respondent sums this up by saying "*accessibility to a lawyer, yes. Is your lawyer accessible to you? No.*"[41] The women are all able to obtain legal representation through legal aid, however obtaining a lawyer does not necessarily make the criminal justice system accessible. There are many barriers that can exist which render the criminal justice system inaccessible to these women. All of the women found that the lawyers did not explain the proceedings and lack of understanding was a major issue. The lawyers failed to explain key aspects of the proceedings to the women which resulted in their having a lack of knowledge about their situations. All of the women expressed a distrust of legal aid attorneys. They felt as though they were being rushed and their issues were being brushed over by their attorneys. They all indicated concern over the quality of legal representation available to those on fixed incomes with little or no financial ability to pay for private representation. From the data it was suggested that lawyers who were paid with private funds would provide better legal representation. It was found that the women were all pressured by their attorneys to plead guilty to their charges and take the plea bargain so that their cases would be dealt with in a quick

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[41] All quotes are taken directly from the transcribed interview. The transcription did not alter the grammar or words of the respondents. As such, grammar errors are located throughout the quotes.

manner. Having to rely on legal aid attorneys as a result of their lack of financial stability is in direct relation to the lack of power and status that women hold in society. Women are relegated to the lower rungs of the success ladder which directly impacts their earning potential. Also, women are often responsible for taking care of the household as well as being the primary and often only caregivers to their children. This too negatively impacts their earning potential which directly reflects the type of legal representation they are able to obtain for their defence.

Different aspects of their trials were not explained to them and this leaves the women in the dark about what to expect and what the potential outcomes may be. One respondent was misled by her attorney into thinking she would be receiving a fairly short sentence which she had finally accepted she would serve. However, just the opposite occurred during her trial proceedings and she was given a significantly harsher sentence than she was prepared for. Her biggest concern about this was the lack of communication between herself and her attorney. She stated that he would avoid meeting with her and explaining the situation that was unfolding before them. This is an important aspect that needs to be addressed so that women go into their proceedings fully armed with knowledge so that they may get the best representation possible to help them through their ordeals. Failing to do so results in unfair treatment by the criminal justice system officials for the women such as those interviewed for this study.

This raises the concern about the fairness of representation and the sentences these women have received. This is a direct reflection of the inadequacies present in the criminal justice system and the treatment these women receive. *"When you are dealing with legal aid you are not even a person to them, you are just a number to them and they treat you like that. You're just in and out, it's like, um, plead guilty, get it over and done*

with" states one respondent. This obviously affects the outcomes of the criminal

proceedings and the sentences the women are given as a result. It also leaves open the

question of whether the outcomes would have been the same if their legal representation

had been different and more attuned to their needs or whether the outcomes would have

been more satisfactory to the women. This area needs to be further explored by scholars

and legal personnel alike in order to prevent any failures of the criminal trial process.

Another area of concern that emerged from the data is the issue of women being

guarded by men. One of the recommendations Elizabeth Fry, a Quaker activist, had

advocated for during her work with incarcerated women was to have women be guarded

by women. She argued that women would respond positively to being guarded by other

women rather than reinforcing the patriarchal notions of women being guarded by men.

This is a recommendation that has not been carried out despite the advocacy for it. A

great deal of feelings of discomfort arose from the findings. One respondent felt that her

greatest obstacle during her period of incarceration was issues with the guards. Having

male guards reinforces the patriarchal structure of society where men hold the power and

wield their control over women. Issues of privacy and comfort arise from the situation of

having men guarding women. A male guard is supposed to announce that he is entering

the cottage-style housing of the federal institution or that he is walking down the corridor

of the provincial facilities. Often times though this does not happen. *"I think it should be*

women guarding women" stated one respondent. She describes incidents of male guards

failing to announce their arrival on the corridor.

> *And they're walking down, they're not announcing man*
> *coming down the hallway, so you're in the middle of*
> *changing, taking off your bra, putting on your whatever,*
> *and there's a man there, and then they love to tell you, and*
> *this is what really pisses me off, they love to tell you, 'oh*

> *they're professionals. They're not seeing anything.' He's*
> *got a penis, he's looking, it's just human nature.*

By allowing incarcerated women to be guarded by male guards, it condones a form of domination on the part of the male guards. These men hold a power over these women whose ability to stand up for themselves and fight against this domination is taken from them because of their incarceration. The women are rendered powerless and are subjected to a male-female hierarchy which leaves them vulnerable at the hands of these men. This provides an avenue for the perpetuation of the patriarchal hierarchy that exists in society to filter into the criminal justice system at a time when women have no choice but to be subjected to this domination. The women are resigned to accept it and are left without the ability and tools to be able to combat it. This leads directly into the argument that the criminal justice system is gendered and presents a male perspective.

The guarding of women by men can be linked to gender roles in another sense also. One of the respondents described the types of male guards that are sent to guard the women.

> *Most of the male guards we have are all out of shape,*
> *they're all ugly...they all can't keep up on the male side so*
> *we get the rejects on the female side. Honestly that's how it*
> *is. If you were to go to Unit 3 and ask to see and just sit and*
> *watch, they've all got bellies out to here...Then you go over*
> *to Maplehurst side and they've got all those buff, good-*
> *looking guards.*

This statement insinuates that women are weaker and not as fast as men, therefore the guards that are physically fit would be more beneficial guarding the strong and faster men rather than having their abilities be wasted on the poor, weak and defenceless women.

One interesting finding that arose from the data was the issue of the race of the guard. It was found that often the guards that treat inmates the hardest are those from

their own racial group. The women speculated about this phenomenon and came to the conclusion that often they felt as though the guards looked upon these women as being a negative representation of their racial group. Often times the guards would make comments along the lines of the women should be behaving in a more appropriate manner and do better for themselves. I found this interesting as I would have thought that the harsher treatment would be the result of guards of a different race that subscribe to racist or discriminatory ideologies.

Two of the three respondents feel that they are members of a marginalized group and only one feels that she is not part of a marginalized group. However, her responses are consistent with the idea that she does feel that she is a member of a marginalized group. These women feel that their status of being a member of a marginalized group is not only perceived in society but that their marginal status is also relevant in the prison system. They all agree that the guards treat the incarcerated women based on the groups they belong to in the prison system, which are usually divided by race. All of the women are subsequently labelled based on their group membership.

The lack of respect by the guards is perpetuated by an abuse of power they seem to exhibit to the incarcerated women. This was a theme that surfaced in all of the interviews. All of the women felt that the guards were exhibiting controlling behaviour and would treat them as being far below them. This hierarchical feature correlates to the hierarchy that is present in society whereby dominant groups hold a power over other groups in society and use different measures to maintain their power. These measures include racist and classist ideologies used to naturalize the domination of one group over others.

The male perspective of the law is another theme that emerged through all of the interviews, which is consistent with Carol Smart's argument (Binion 1993). All of the women find that the law is not responsive to women. It has been created from a male perspective and the women are judged according to male standards. The decision-makers of the criminal justice system fail to address the individual needs of women and treats them in the same manner as men. Despite this criticism it is important to note that one woman was quick to say she feels the justice system is more lenient towards women, while at the same time measuring them against male standards. *"I think they would probably give, depending on what the woman's crime was, she'd probably get bail depending on her crime versus a guy with the same charge, so. But that's my opinion, so I don't know"* says one respondent. This too presents an issue about chivalry. While leniency may not treat women in the same manner as men it leads to the issue of viewing women as being lesser than men. Are women treated more leniently because they are seen as not being as capable as men? Treating women more leniently than men can translate into a hierarchy that demonstrates a woman's perceived weaker nature and inability to handle oppressive situations that would not pose an issue to men. Although it can be argued that this is a positive feature for women as they can sometimes expect to receive lighter sentences than men, this also has the potential of denying women agency in being able to make choices for themselves and fails to acknowledge that they can commit criminal acts without being coerced by a man. The implications of this are that women are viewed as being inferior to men. There exists a hierarchy of the sexes where men are dominant over women.

Another respondent discusses the problems associated with judging women by a male measuring stick. "*...they try to judge women by the same books that they judge a*

man. And I find that to be unfair because we're women first and foremost, and then some of the crimes that we do, some of the crimes that we do is a lot less um, violent." This presents a dilemma because on the one hand it is argued that the law judges women according to male standards, while at the same time exhibiting a sense of leniency towards the women. I find that the former is more consistent with the responses of the female participants and reflects more of what they are trying to argue over the latter. The law fails on many accounts to adequately treat the women before it fairly. Failing to account for a woman's intersectionality and history, along with judging her crime through the lens of a male perspective fails to provide her with fair treatment. As it has been documented by Comack and Balfour (2004) when a woman commits a criminal offence it tends to "shock" the criminal justice system officials and the justice system ends up at a loss with how to treat the situation at hand. These criminalized women are stigmatized as women that have failed to act out in their prescribed gender roles and seem to add confusion to the criminal justice system.

This issue of treating men and women differently does not only occur during the process of a trial. Differential treatment carries over into the prisons. Incarcerated women are treated differently than incarcerated men. There is more respect given to men than women on the part of criminal justice officials and guards in order to avoid confrontation. *"They get treated with a little bit more respect than we do because they know the men will tear the jail upside down because men, that's how they deal with situations. They deal with situation with confrontation and anger. Women are more, women are more tacit, they won't deal with it in that way."* This is a personal belief of one of the respondents and I find it particularly interesting. It demonstrates how the social construction of prescribed gender roles is prevalent in the thinking of many

individuals and this is how it is continually reinforced from one generation to the next. Men are also provided with more activities than women and it was stated that their physical fitness (gym) facilities are far superior to what is made available to women.

One issue that negatively impacts criminalized women who have committed drug importing offences is the failure to look at the bigger picture of the crime. Often criminalized women feel pressured into committing these crimes for financial gain in order to provide for themselves and their children. It has been suggested that the police should look at the bigger picture and rather than zeroing in on these women, take their prosecution one step further and follow the women to identify the men for whom they are importing drugs. Stopping and arresting the women who are importing the drugs fails to address the drug problem and fails to stop drugs from continually being brought into Canada. These men who proposition the women merely go out and find other women to do their dirty work for them. They are able to continually entice women to participate in this criminal underworld by tempting them with money (or threatening them with violence). Financial trouble is something that all of the respondents stated they faced and was a factor in their decisions to commit crimes. One respondent talks about experiencing great financial hardship.

> *Sometimes I feel that it's like, it's either rent or bills, bills or food...Which one do you pay first? And with kids, I mean, there's certain things I think you need to have. You need to have shelter, you need to have food, and I think you need a landline in the house. Um, things cost money. So, you know, I find with women of colour, you know, we're, we may not have fully finished school, getting jobs that are just getting you from paycheque to paycheque.*

Failing to account for this and criminalizing these women while disregarding the men who are abusing them discriminates against financially-burdened women.

By failing to judge women accordingly, it perpetuates unfairness and discrimination and fails to uphold the impartial, neutral and objective characteristics the law claims to be. The histories of women along with the intersectionality of their identities (i.e. race, class, gender, (dis)ability etc.) need to be taken into account in order to treat them in a fair manner. This was a theme that was recurrent throughout the interviews. The failure to take into account the intersectionality of a woman is a problem that needs to be addressed. In order to provide women with an outcome/sentence that is fair and that can help women to move forward positively it is imperative that their intersectionality is taken into account. Women experience a number of barriers as a result of their race, class and gender and these barriers need to be addressed and accounted for when treating women in the criminal justice system.

Women experience numerous situations that can affect their actions and be factors in their choice to commit a criminal offence. These situations need to be taken into account so that sufficient programs and counselling are then made available to the incarcerated women. These programs and counselling services have the potential to help women work through their situations and overcome them in order to take a positive step during their reintegration process to minimize the chance of recidivism. For example, one respondent stated that although the first time she committed her drug importing crime she did it for financial reasons, the second time was the direct result of an abusive relationship and a threat by her then-boyfriend.

> *The second time it was more of you better do it or you're not gonna live to see tomorrow sort of thing. Like he pulled out a gun, he put in a bullet, spin the revolver, said that he's playing Russian roulette, put the gun in my mouth and did all that so that now I'm over it to a degree....the second time was out of a threat you know. If I didn't do it I wouldn't live.*

Domestic abuse is a prevalent feature of society and in many relationships. It is a way in which insecure men show their domination and control over women.

This is a theme that arose when the respondents described the types of considerations they would like to see for women in conflict with the law. Two of the three respondents felt that women's cases should be dealt with on a case-to-case individual basis and examined through the history the woman had experienced such as poverty and abuse rather than clumping groups of criminalized women together. "*Everybody has different circumstances"* stated one respondent and what works for one individual does not necessarily work for another. Therefore in order for criminalized women to benefit from the criminal justice system and have positive experiences that can set them on the right track when it comes time for reintegration, the individual characteristics of the women need to be taken into account as well as their experiences.

Another aspect of a woman's identity is motherhood. It emerged from the data that motherhood is currently used as a stigma for criminalized women and that these women are perceived to be bad mothers who do not care for their children or else they would not have committed any crimes. It often goes unmentioned that these women often commit their crimes in order to be able to financial provide for their children.

> *God forbid you're a mother and even say you're a mother.*
> *Because I remember in court a judge saying to me 'well if*
> *your kids meant that much to you then you wouldn't have*
> *done what you did.' So um, if a man goes out there and tries*
> *to make his rent, it's just a macho thing, but if a woman*
> *does it, you know, you're not thinking about your kids, your*
> *kids are not your main focus, so why are you talking about*
> *them now. They weren't your main focus then.*

The traditional view of mothers is that they are kind, caring, homemakers that send their children off to school and are ready with fresh-baked cookies when the children get home

from school. This is reflected by the character of "June Cleaver" and is an expectation that mothers are held up to and judged against. Criminalized women are viewed as bad mothers who deviate from this traditional view, and subsequently are punished for deviating from this ideal.

Through this it seems as though criminalized women are further punished if they are mothers. This is quite appalling as it has been made evident by the respondents that they experience turmoil and pain at having to already be separated from their children during their periods of incarceration. Further penalizing them, either through harsh words or harsher punishments, fails to have the intended effect. Reprimanding women who are already being separated from their children fails to have a positive effect, rather it tears at their morale and self-esteem. It also demonstrates a double standard between mothers and fathers, further reinforcing the inconsistencies and inadequacies of the policies of the criminal justice system. A suggestion that emerged regarding considerations women would like to see is that all mothers should be granted bail. This would help to minimize the stress and emotional turmoil the situation would have on the children and would help to not divide families.

Stereotypical gender roles emerged many times from the data. Often times I felt that the women did not even realize that they, themselves, were reinforcing socially constructed gender roles that I have argued through this research are socially constructed. The jobs that women could take part in during their incarceration period were laundry, housekeeping, hairdressing and grounds. Grounds was the only job that transcended a traditional female role; however, it was discussed that many women are deterred from joining this job force because every day the women are strip-searched when re-entering

the facility. This is something they did not want to subject themselves to unnecessarily and so many refrained from doing grounds.

Another theme that emerged from the data is the notion of a lack of respect. Incarcerated women feel that there is a lack of respect shown to them by criminal justice officials. The women all state that the guards call the women by their last names rather than their first names, although there was one exception explained by a respondent. She stated that there were some guards who were respectful to her and did call her by her first name rather than her last. She justified this by discussing her demeanour while incarcerated and attributed her good behaviour to her age and maturity. She felt that she did not make trouble for the guards like many of the other inmates did and spoke to them with respect, thus giving the guards reason to show her respect in return. She was quick to mention though that this is not the case with all of the guards and especially for all of the women. She also felt that depending on the situation the guards were able to demonstrate compassion as they did when her youngest child unexpectedly passed away during her incarceration. *They showed signs of compassion and humanity that I'll never forget. And they were absolutely amazing with me.* However this was an isolated incident and she was extremely surprised by the treatment of the guards. For the most part the women stated that the treatment received by the guards is far from ideal.

According to the data, guards are known for issuing threats to incarcerated women, ranging from sending them to other, more structured units on the range, sending them into isolation, removing privileges such as television time and physical assault. One respondent described a situation where she placed her head outside of her cell in order to be able to see the time. A guard saw her and told her to stick her head out further. She asked him about his command and he stated so that he could hit her with a roll of toilet

paper. She responded that she would pursue the case if that was to happen, and according to her his response was " *'get back in your cell and if you don't get back in there right now you won't be coming out for the rest of the night' and um, it's, like that's, that's the kind of styles that they have in there.*"

Such threats affect incarcerated women's visitation with their children. Guards use their power to cancel visitation, especially on important days such as Mother's Day. This example provided by one of the respondents again makes reference to the double standard that exists between the treatment of criminalized women and men.

> *I remember Mother's Day in 2007. All the mothers were all excited because our kids were coming, our family was coming, and then at 8:00am that morning, um, we got, we were told that visits were cancelled that day because um, they were short of staff. Now there's no way in God's name they could do that to the men on Father's Day, cancel their visits 'cause they'd have hell to pay. But the women, they do that to us on a regular, cancel our visits because other staff want to be home with their husbands and kids. Well that's not my problem, I wanna be with my fiancé and kids too but I don't have an option right. But you guys are scheduled to work, you guys should be in to work, and they do that all the time. We're on lockdown more than we are out...So if they're short of staff you're screwed, you're in your cell for all day.*

This has the potential to negatively affect the women's psyches. This also works against the principles outlined in *Creating Choices*. Treating incarcerated women with such a lack of dignity and respect fails to give them the support and ability to empower themselves. These women need a supportive environment where they can make the meaningful and responsible choices the Task Force on Federally Sentenced Women believes they should be able to make through the utilization of a women-sensitive correction model.

Despite the lack of respect, one issue that arose from this was the notion of blaming one's self for the predicament. The respondent who had the altercation described above felt that she is the one who put herself in this situation and that as such she must just accept and take what is meted out to her and overcome it. This affects a woman's self-esteem and self-worth which can lead to the creation of more problems for the woman to deal with.

A major concern that was voiced by the women was in regards to the variety and quality of programs made available to incarcerated women. They felt that the programs available fail to achieve their intended goals. It was argued that the only sufficient program that was available was for women who had not completed their high school education. These women are offered programs to allow them to work on their high school diploma. The other programs were found to fail to meet the needs of the incarcerated women. Some of the programs offered are Mothers Who Care, substance abuse programs, as well as social skills programs. Unfortunately, these programs sound better in name and theory than in practice. A lot of the programs are for a short duration and fail to adequately delve into the material that has the potential to help incarcerated women turn their lives around. *"Did I take anything away from it with me? No. Could I have taught the course better than the teachers? Yeah. Um, they're not, what they teach there, there's nothing in my mind that you could put towards life skills that are gonna make you a better person once you walk out of those doors."* This is a genuine concern that leads to the question of how to better help these women if the current programs that are in place are failing to provide them with skills they can utilize upon their release back into society.

Another theme that emerged was regarding the medical treatment that is made available to the incarcerated women. They felt that their medical concerns were being

trivialized and their individual circumstances neglected. This is an important issue as women's health should not be compromised as a result of their incarceration. The treatment they receive from the medical personnel of the criminal justice system does not match their expectations of what it should be. The demeanours of the medical personnel are harsh and being sick in jail is something that every inmate dreads.

There are many problems that emerge with the parole board that the women voiced their concerns about. The respondents find that the decisions of the parole boards are getting harsher as time goes by. They liken the parole boards in Canada to those in the United States. *"The parole board is messed up, you know what I mean. Um, the parole board, they need to get people that are younger on that. They're getting some old people that are into this World War One kind of bull crap where 'oh um, I don't see why she should have so much time on her hands, um, I'm giving her a curfew of 11:00 pm across the board.'"* The women feel that the parole boards place too many restrictions on adult women that are often seen to be unreasonable. There is no doubt that restrictions must be placed on these women in order to provide parameters to remain within during their periods of reintegration, however a solution may be to enact restrictions that address the women individually and that can be modified as time goes on. For example, if one of the goals of a woman is to secure employment and she does so in a factory setting that requires her to work the midnight shift, how would this be possible if she has been given an 11:00 pm curfew? She would have to pass up this employment opportunity. But, if considerations are made on an individual basis, allowance for this work shift could be stipulated. Further research is required into this area to help ease the transition back into society for racialized, criminalized women.

Women experience many barriers when reintegrated back into society after their period of incarceration. One of the biggest obstacles they face is the stigmatization of having been incarcerated. All of the respondents reported negative treatment by others once they had been informed of their incarceration. This stigma has the potential to negatively affect the woman's self-esteem and have her return to a life of crime rather than move forward in a positive way as a law-abiding member of society. The stigma of incarceration also permeates into the criminalized women's job search. Women are often denied jobs because of their criminal record. The Elizabeth Fry Society of Toronto helps women in their job search but does not secure employment for them. One suggestion made by a respondent was to have a program in place that provided employment to formerly incarcerated women upon their return to society.

> *I was told there was a program where, 'cause my understanding with integration, I thought they had let's say five companies that they are joined with, like I don't know, Old Navy, Loblaws, whoever, that were willing to offer one or two jobs at each of these companies to women that are coming out that had qualifications. ...I mean, like I have a resume, I have experience. Like, get me in touch with an employer that you know, is willing to take me in knowing that I have a criminal record. And I am a single mother...Apparently they did have something like that...long time ago and the cut, um, Mike Harris cut that out.*

Reintegration is a difficult process, and failing to have programs and support in place for criminalized women makes reintegration that much more difficult. The Elizabeth Fry Society is an organization that helps women through their reintegration process. The reaction of the respondents towards the Elizabeth Fry Society of Toronto is mixed. Two of the respondents find that it does a good job of trying to help women reintegrate back into society, although not always successfully, and the other respondent was disappointed with the Elizabeth Fry Society of Toronto and felt that the help and

support she has received is inadequate. *"The perception of the organization is beautiful, but the actual theory an it being done, it gets lost in the big picture. Like I don't think Elizabeth Fry does enough for women that are in the transition there right now...It's not enough to help us get out and just have us there...If you want a job, you look for it yourself. Um, if you want housing, you'll look for it yourself."* This respondent felt that the Elizabeth Fry Society does not meet the needs of what she terms to be "independent, self-sufficient" women. It is only beneficial to those who are more susceptible to the pressures of society, that is those that are incapable of helping themselves and do not know how to access resources for employment, housing, education or training. Unanimously it was found that the women all believe that more programs are needed to help with their transition back into society so that their criminalization and the stigma associated with it does not continue to be with them and negatively impact them day in and day out. More help is needed to get women back onto the right track once they have been released from prison. Also, more changes are required to help minimize the negative experiences and discriminatory practices that currently comprise our criminal justice system.

The data that has emerged from this research indicates that there are discriminatory practices that occur in the Canadian criminal justice system and that the criminalization of racialized women is a prominent feature of our society. The negative and discriminatory ways in which racialized women are treated by the justice system indicates that the principles outlined in *Creating Choices* are not being implemented. Racialized women are not being provided with a supportive environment that treats them with dignity and respect. By continually being subjected to negative and often hostile treatment, these women are not given the opportunity to make meaningful and

responsible choices for themselves nor are they given the chance to empower themselves to change their circumstances as well as their futures.

Chapter Six: Conclusion

The criminalization of marginalized women is the result of failing to take into consideration the intersectionality of race, class and gender in women who are involved with the Canadian criminal justice system. This problem arises from patriarchal notions and classist biases that seek to maintain current power structures and relationships by continually oppressing those who are not members of the dominant group. Patriarchy and the poor socio-economic status of many women directly impacts how women are treated in the Canadian criminal justice system. Through the use of in-depth personal interviews and drawing on critical race theory, multiracial feminism, and radical feminism, this research has found that discriminatory practices do exist in the criminal justice system.

Despite the very small sample in this study, one can observe the many barriers and negative treatment that criminalized women face in all aspects of the Canadian criminal justice system. This research, confirming others', has revealed that a number of discriminatory practices do exist, such as the masculine nature of the law, the failure to account for the intersectionality of a woman`s identity and her history, the differential treatment by the guards that are based on the prescribed gender roles by the institution, and the lack of appropriate programming.

The masculine nature of the law must be addressed and steps made to alter the way the law is viewed and applied in order to adequately address female criminality and the needs of criminalized women. The law is created by men from a male perspective (Binion 1993, MacKinnon 1989). Measuring women and the crimes they commit against the same scale as men fails to provide fair treatment. This attacks the cornerstones of our legal system which are impartiality, objectivity and neutrality. It is difficult to compare the crimes that women commit – and the reasons for their crimes – to those that men

commit. The needs and experiences of women differ in comparison to those of men; a male-oriented legal system fails to account for and address these differences.

Differential treatment of criminalized women indicates the existence of a discriminatory practice within the criminal justice system. Incarcerated women are treated with a lack of respect which leads to altercations and has the potential to affect their feelings of self-worth. It was explained by the respondents that men are treated with more respect for the simple fact that they are men, and their prescribed gender roles increase the likelihood that they will possibly react with violence, creating more problems for the guards. It is assumed that incarcerated women are more docile and mild-mannered and will put up with greater amounts of disrespect than men without reacting negatively and in potentially dangerous ways. It is interesting that during different periods of their experience with the criminal justice system women are labelled in different ways. During the trial process these criminalized women are seeing as acting out in manners that are inconsistent with their prescribed gender roles. They are seen as violating their traditional roles and thus are seen as a challenge for the justice system. However, once they are incarcerated, these same women are viewed as possessing those very same traditional gender norms and traits such as passivity and the inability to stand up against mistreatment. These two views are in direct contradiction to each other and yet they are presented in the same criminal justice system.

Failing to take into account the intersectionality of a criminalized woman's identity and her history trivializes her experiences and denounces them as being unimportant and as having no impact on her choices. It also fails to acknowledge how she will experience the criminal justice system. Failing to account for the intersectionality of the woman's identity discriminates against her race, class, and gender neglects how they

factor into her choices or lack of choices. Justice is not served if the intersectionality of a woman is not taken into account along with their social and historical background (Razack 2000).

Several recommendations arise from this research project. First of all, the law needs to be written and interpreted not solely from a male perspective, but from one that incorporates women into its definitions, analyses and interpretations. One of the ways this can be done is through the consideration of a woman's intersectionality in each phase of the criminal justice process: during her trial as well as during her period of incarceration, and programming for reintegration. One example of the latter was noted above: the fitness facilities of men are far superior to those of women, which can be seen as a direct result of the view that women do not need to, nor have the desire to, work out at the same level as incarcerated men.

Another way this can be done is by eradicating the stereotypes that exist regarding the roles of men and women. Stereotypical gender roles negatively impact criminalized women as they are often viewed as being "abnormal" and "deviant." By removing the gender expectations that currently exist, the needs of the individual women can be addressed. Rather than being subjugated by the decision-makers and policies of the criminal justice system, the women can be empowered and take steps towards working at improving their situations and making changes to benefit themselves, their lives and the lives of their families.

Programs that are available for incarcerated women should be reflective of issues that are important to them and that impact their daily lives. Throughout this research it was found that the programs provided to incarcerated women are inadequate and fail to provide any guidance or skills that the women can utilize upon their return to society.

The women felt that the programs were not useful and were seen to be a waste of time. More energy and resources should be put into the creation of programs that can help women positively with skills that they can incorporate when reintegrating back into society that can also reduce the possibility of recidivism. These programs also have the possibility of reinforcing the principles of providing a supportive environment that helps empower criminalized women into making meaningful and responsible choices, accept a shared responsibility for their rehabilitation and be treated with respect and dignity.

One interesting item that emerged from the data is that the respondent who was sentenced to a federal institution was housed in a cottage-style house recommended by the Task Force on Federally Sentenced Women (1990). She found that the treatment she received in the federal institution was far superior to that which she received when in the provincial institution. More respect was given to the federal inmates by the guards. They also enjoyed more freedom in the form of fewer lockdowns and the ability to be mobile within the house and come and go during prescribed hours. This reform to housing for federally sentenced women demonstrates that the Task Force not only placated women but also has efficacy in ensuring women are treated in a way that is consistent with the five principles of a women-sensitive correction model which, as mentioned before, are "empowerment, meaningful and responsible choices, respect and dignity, supportive environment and shared responsibility" (Hannah-Moffat 1995: 138).

Changes to available programs should not end only with those that are in the prison facilities. Changes also need to be made to programs that help women with their reintegration process. One suggestion made by a respondent was to have employment secured for women once they are released from prison. Rather than only helping women seek employment, which is often futile as many employers fail to accept persons that

have a criminal record, having employment already lined up would help women in a number of ways. Firstly, a woman's financial situation will be improved by having a steady income. She will be able to support herself and her children without having to worry about where their next meal will come from or how rent will be paid. This can help to reduce the rate of recidivism as a woman would not have to resort to criminal measures to make ends meet. By having secured employment a criminalized woman's feelings of self-worth can be bolstered and the principles outlined by the Task Force can also be applied during the reintegration process and do not have to end when incarceration does.

Changes with the reintegration process also need to translate into changes with the parole board. One of the concerns expressed in the data was the parole board's inability to understand women, their needs and the level of freedom that is needed in order to be able to live their everyday lives. The restrictions placed on women, such as curfews, often fail to account for changes over time as well as different employment schedules such as working a midnight shift.

The issue of dignity and respect is one that also leads to a recommendation that guards and other personnel should be trained to properly respond to incarcerated women with positive reinforcement rather than negative treatment. Training, including sensitivity training, would be beneficial to all workers, not only the guards but also wardens, medical personnel and other members of the criminal justice system. Dignity and respect can also be translated into the sex of the guards who preside over the women. By having men guard incarcerated women it reinforces issues of patriarchy and the subjugation of women by men. Women can be re-victimized by having to subject themselves to the power and control of men, reinforcing patriarchal ideologies that permeate throughout society. The

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incorporation of having women guard women, which was a recommendation that was originally put forth by Elizabeth Fry, an advocate for the better treatment of incarcerated women, has the potential to benefit the experiences of criminalized women while incorporating the principles of a women-sensitive correction model.

Changes in terms of accessibility to justice are necessary in order to arm criminalized women with knowledge. It was expressed numerous times during the data collection process that improved accessibility is necessary. The criminalized women interviewed found that proceedings were inadequately explained to them and they often felt unsure of what was to happen next. Although it would pose great difficulty to regulate all legal aid attorneys, perhaps there could be some stipulations in place to outline the quality of representation and attention spent on criminalized women. Some of the principles outlined by the Task Force can be implemented from this process, early on in a criminalized woman's experience with the justice system rather than waiting until she has been incarcerated. By showing criminalized women respect and dignity and providing them with support during their early encounters with the criminal justice system the women can be empowered with knowledge to be able to make responsible, meaningful and knowledgeable choices regarding their defence.

All of the findings from this research suggest that more emphasis must be placed on the way in which women are treated within the criminal justice system. Measures must be taken in order to minimize the discriminatory practices that are currently in place and to prevent further discriminatory practices from manifesting themselves. Further research is needed to examine the prevalence of these discriminatory practices in order to determine the appropriate measures that can be implemented to combat the problem of the discrimination of racialized women in the criminal justice system. The conditions of

incarcerated women must be improved in order to improve, if not change completely, this

"different world" to which they are subjected.

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Appendix

<u>Participant Profiles</u>

<u>Joanne</u>[42]

Joanne is a 40 year old woman who was born in Jamaica. Her family came to Canada when she was 3 years old and she grew up in Toronto. She is the divorced mother of four children, one who passed away at the age of 13 while she was incarcerated. Her other three children are 23, 21 and 16 years old. The two youngest were in the care of their father while the older two were away at university during the period of her incarceration. At the time of her crime Joanne was unemployed. She was charged with fifteen counts of fraud and received a sentence of 23 months and 29 days, one day short of receiving a federal sentence. She has a prior criminal record. Since her release from prison in January 2008 she has been at the Elizabeth Fry Society of Toronto's halfway house where she is scheduled to be until February 2009.

<u>Eliza</u>

Eliza is a 30 year old woman who was born and raised in Toronto. Her family is from Trinidad. She is a single mother with an 8 year old son. At the time of her incarceration he was in the care of her mother. At the time of her crime Eliza was working in a customer service position. She has no prior criminal record. She was convicted of importing drugs and received a sentence of four years. Her sentence was served in a cottage-style federal facility, as outlined by the Task Force on Federally Sentenced Women. She is currently residing at the Elizabeth Fry Society of Toronto's halfway house where she is to remain on day parole for 2 years.

<u>Carol</u>

Carol is a 34 year old woman who was born and raised in Toronto. She self-identifies her ethnic background as Jamaican. She is a single mother with an 18 year old son. At the time of her incarceration he was taken care of by her grandmother. At the time of her crime Carol was unemployed. This is her second conviction for the charge of drug trafficking. She also has a prior criminal record of minor charges, such as assaults, as a young offender. The first time she was charged with drug trafficking, she pled guilty and received a sentence of 12 months with 18 months of probation. The second time Carol was given a sentence of 15 months without being present. She was on the run and turned herself in. She served 5 months and has been at the Elizabeth Fry Society of Toronto's halfway house for another 5 months. She must remain at the halfway house for another 5 months until her day parole is completed.

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[42]All names used are fictional in order to protect the identity of the participants.

Interview Guide

1. What is your year of birth?
2. Where were you born?
    a. Where did you grow up?
3. Do you have any children?
    a. If so, how many?
    b. And who took care of them during your incarceration?
4. What is your marital status?
5. What is the highest level of education you have completed?
6. Were you employed at the time of your crime?
    a. If so, what type of work did you do?
7. How would you describe your financial situation at the time of your crime?
    a. Would you consider it a factor in your decision to do what you did?
8. What is your (ethnic) background?
    a. Do you see yourself as a member of a First Nation's group/community?
    b. If so, which group?
9. Do you feel that you are a member of a marginalized group?
10. How do you feel that women are treated in society?
    a. And women of your ethnic group?
    b. How do you feel that they are treated in the criminal justice system?
11. Do you feel that you are treated negatively because of your gender?
    a. And your ethnicity?
    b. Please describe.
    c. Do you feel that you are treated with respect?
12. What factors do you feel contributed to your crime?
    a. What do you feel influenced you, if anything, to commit the crime?
13. Is this the first offence you have been charged and convicted of?
14. What is the sentence you were given?
15. Was the criminal justice system accessible to you?
    a. i.e. in terms of accessing a lawyer, funding your defence, understanding the justice system and the processes associated with it.
16. Could you please describe your experience with the justice system?
    a. Please describe your feelings during this process.
    b. Can you describe how you were treated?
17. Did you face any obstacles in achieving things while you were involved in the criminal justice system?
    a. How did you overcome these obstacles?
18. What problems, if any, do you feel you faced during this process?
    a. And while incarcerated?
    b. How did you handle these problems and overcome them?
19. Do you think that your being a woman contributed to how you experienced the criminal justice system?
    a. If so, how?
20. Do you feel that your race/ethnicity played a factor in your experiences?
    a. If so, how?

21. Did your socio-economic status play a factor in your experiences with the criminal justice system?
    a. Please describe in what way.
22. Do you feel your age impacted your experiences?
    a. How?
23. What, if any, forms of discrimination have you encountered in the criminal justice system?
    a. Were you treated any differently than other women?
        i. If so, how?
24. Have you ever been the victim of threats and/or harassment while in the criminal justice system?
    a. If so, how did this/these situation(s) make you feel?
    b. How did you handle the situation(s)?
25. How do you think you were perceived during your reintegration into society?
    a. When it comes to the reintegration process, what, if anything, would you like to see change?
26. Should there be any special considerations for women who commit crimes?
    a. What about for women of your race and/or ethnicity?
    b. What types of considerations would you like to see?

Letter of Information
The Experiences of Women in the Canadian Criminal Justice System

Dear Participant,

For my Masters Thesis in Sociology at Queens University I am conducting a study on the experiences of women who identify themselves as members of a racial or ethnic minority group in the Canadian criminal justice system. The purpose of this study is to determine what, if any, discriminatory behaviour occurs in the criminal justice system.

I seek your voluntary participation in this research project. Your participation will entail taking part in a personal interview to discuss your experiences. The interview will be audio-recorded and should take 1-2 hours. You are free to withdraw your participation in this research at any time. If you choose to withdraw, all information and data provided until that point will be used in the study unless you decide to withdraw it. If you choose to allow the information to be used you will be provided the opportunity to review your responses and revise them if necessary. Please be assured that your responses will be used only for the purpose of this study and your identity will be kept absolutely confidential. Participants will receive compensation for their voluntary participation in this study. Participants will be paid $20, and will be compensated even if they choose to withdraw from the study.

It is important to note that there will be some risks involved by participating in this study. You may feel uncomfortable speaking about certain situations that you have encountered and may feel as though you are re-living some difficult moments in your life by speaking about them again. I am aware of this, and for that reason you have the right to refrain from answering any questions you do not feel comfortable answering. If you need someone to talk to about any issues arising as a result of your participation you may contact the counsellors at the Elizabeth Fry Society of Toronto.

The data obtained from this study will be used for my Masters thesis in Sociology. This data will be accessed only by myself and my supervisor, and will be securely stored. The data will then be disposed of in a secure manner that does not compromise its confidential nature; erased, deleted and shredded. Prior to submitting my study all participants will be given the opportunity to review their responses and the findings generated from this research.

If you have any questions, concerns or complaints about the research process you can contact me, Jennifer Tasevski, at 647-294-5572 or at 6jt32@queensu.ca. You can also contact Cynthia Levine-Rasky at 613-533-6000 x74485 or clr@queensu.ca, the Chair of the General Research Ethics Board, Dr. Joan Stevenson at 613-533-6081 or at chair.GREB@queensu.ca, or the head of the Sociology Department, Rob Beamish at 613-533-2163 or beamishr@post.queensu.ca.

Thank you,
Jennifer Tasevski

Letter of Consent
The Experiences of Women in the Canadian Criminal Justice System

I, _____, have read the letter of information regarding the study on
The
   (participant's name)
Experiences of Women in the Canadian Criminal Justice System and am interested in

contributing my knowledge to this research.

- Any/all questions and concerns I had have been answered.

- I have been informed my participation will entail taking part in a personal
  interview which will be audio-recorded.

- I understand the purpose of this study is to examine the discriminatory practices
  that can be found within the Canadian criminal justice system

- I am aware that if I have any questions, concerns or complaints I can contact
  Jennifer Tasevski, Cynthia Levine-Rasky, the Chair of the General Research
  Ethics Board, Dr. Joan Stevenson, or the head of the Sociology Department, Rob
  Beamish.

- I understand that my participation is **voluntary** and that I can withdraw my
  participation at any time during these proceedings. The information obtained until
  this point can still be used in the study unless otherwise specified by myself.

- I have been assured that my privacy will be respected and that my participation
  will be handled with confidentiality.

Name: _____

Signature: _____

Date: _____

By initialling the box below I am granting permission to the researcher to audio-record
my participation.

[ ]

Contact Information:

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