

The concept of justice in the context of decisions about imprisoning women

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The concept of justice is an integral part of political life as it helps measuring the effect of different policies (Walby, 2012).

The purpose of this essay is to look at some theories of justice in terms of sending women to prison. There are three main theories which had the biggest impact on the concept of justice – Rawls, Sen and Nussbaum. Rawls looks at equality between citizens (Bien-Aime, 1990), but when considering imprisonment, treating men and women the same might not mean being equal (Mason & Stubbs, 2010). Sen's theory of justice is based on the notion of capacity and how enabled people are to entitlements (Sen, 2010). However, most women offenders are deprived of entitlements and sentencing women to prison leads to more social problems (Brown et al., 2012). Moreover, Nussbaum lists distinct categories of capabilities, which are goals for achieving full well-being (Walby, 2012) though well-being in prisons is compromised in many cases by mental health problems, self-harm and suicidal attempts (Hutson & Myers, 2012).

One of the most influential theories in modern philosophy is Rawls' 'justice as fairness' (Sen, 2010, p.59). Rawls states that justice should come from the idea of fairness, which calls for unbiased evaluations (Sen, 2010). Rawls' idea is that everyone in a society is equal; equal citizenship (Bien-Aime, 1990). He believes that liberties and opportunities throughout the society should be equal to everyone, the state being responsible for their distribution from one generation to the next, but citizens should be interested in accessing different opportunities on their own (Hunt, 2013). The rise in the number of women in prison can be contributed to a shift towards treating men and women

equally, which resulted in new sentencing patterns, longer prison sentences and changing the nature and seriousness of women's crimes (Gelsthorpe & Morris, 2002). The feminist – inspired approach is that people should be equal, but that does not mean treating men and women the same way (Corcoran, 2010).

This is one of the criticisms of Rawls' idea - he fails to acknowledge the differences between men and women and the specific role women have in the society (Bien-Aime, 1990). The needs of men and women are different and women's needs go beyond material issues of housing, employment and substance abuse; women are primary caregivers, many are victims themselves, addicts or unemployed (Mason and Stubbs, 2010). However, because the female offenders are significantly fewer than male offenders, sentencing laws are focused on male crimes and male characteristics which distance them from the different needs, roles or characteristics of females (Covington & Bloom, 2003).

Mason & Stubbs (2010) state that there is a need for more gender-responsive policies, programs and research. Researchers also make note of the distinction between sex specific characteristics and socially constructed gender roles that women have within society (Covington & Bloom, 2003).

Although there is a group of researchers who believe that equality under the law is required in order for women to be treated equally in economic and social realms, there is a mutual agreement that women are being victimised by laws which are there to protect them (Covington & Bloom, 2003).

Moreover, the gender-neutral sentencing reforms are being pushed broadly in the USA, but many see the term 'gender-neutral' as utilising the male standard (Covington & Bloom, 2003).

In the UK, the Equality Act 2006 calls for 'gender-specific' services and obliges criminal justice agencies to take the gender differences into account. In order to be objective, criminal justice have to acknowledge the differences and treat men and women differently (Corcoran, 2010). Rawls' work on the concept of justice had a great influence on Sen's idea (Sen, 2010), which has been taken by many and has been recognised as one the most accurate ways to describe justice (Walby, 2012).

Several key points focused by his theory are functioning, achievement or outcome, and capabilities; the capacity to achieve the outcome (Walby, 2012). Sen argues that capabilities are more important than functioning in his approach to justice (Walby, 2012). His capability theory is linked to a number of human needs which helps individuals to flourish (Holmwood, 2013). These needs are universal, inseparable and have to be looked at from multiple dimensions. Sen argues that the recognition and acceptance of the individual flourishing have to be the main question (Holmwood, 2013).

When talking about women in prison, statistics show that the majority of female crimes are ones of the powerless, where women are deficient in capabilities (Brown et al., 2012). Research found that most female offenders experienced a wide range of social problems (Rumgay cited in Gelsthorpe & Morris, 2002). Female prisoners come mostly from ethnic minority backgrounds, with the majority living in poverty. Some might even have a history of discrimination, neglect, abuse, violence or social marginalisation (Brown et al., 2012), out of which the most often stated reasons for offending being financial difficulties and pressure from the responsibilities of caring for a child. Additionally, achieving good outcomes is often obstructed by chronic victimisation since childhood or domestic abuse (Gelsthorpe & Morris, 2002).

Moreover, custodial sentencing of women has a profound impact on family life (Prison Reform Trust, 2011). The primary role often ascribed to Mothers is often one of caregiver, female inmates who would like to maintain contact with their family are often unable to as the number of female prisons is low, so mothers could be sent further away, which may result in them seeing their children rarely (Silvestri, 2012). The consequences on the family life are damaging.

Sentencing women to prison has a great impact on children as well. Many issues have been identified with parental imprisonment such as substance abuse and some mental health issues. Research also shows that maternal incarceration, more specifically, can cause greater disruptions than that of paternal incarceration, leading to greater risk of insecure attachment and psychopathology (Epstein, 2014). There were also different behavioural problems displayed by children whose mothers were imprisoned, such as sleeping and eating disorders, becoming withdrawn and hardships in developing social skills (Caddle and Crisp cited in Silvestri, 2012). Justice can be achieved when there are good social outcomes for each individual or for each group of individuals (Sen, 2010). However, research shows that female imprisonment harms those around them, as well as the women's individual lives. (Silvestri, 2012).

Finally, Sen looks at the idea of well-being (Sen, 2010). The well-being is characterised by freedom of functioning, so that people could find valuable goals to achieve (Drydyk, 2012). It is freedom to achieve something, which shows more a? positive attitude than a freedom from something (Kremakova, 2013). Drydyk (2012) notes that one of the goals in achieving justice would be the increasing of the individual's well-being. Although Sen does not define separate capabilities because he believes this concept should reserve a high level of abstraction, Nussbaum lists 10 categories of capabilities, many of which include more than one capability (Walby, 2012). It includes life, being

able to live to the end of one's life expectancy, body health, emotions, affiliation etc. (Stein, 2009).

Nussbaum believes in a justice that is allowing people to fully reach all those capabilities, in order to increase their well-being (Stein, 2009).

However, when talking about justice in the female prison system, research shows that prisons dehumanise and infantilise women through inappropriate treatment, proved to be harmful (Segrave and Carlton, 2011). Carlen (1994) criticises the existing literature for not looking at the notion that prisons inflict 'state-legitimated pain' deliberately (p.136). She believes that the pains are well-known, but they are considered inevitable in order to maintain organisational control. A report from the Prison Reform Trust (2011) states that sentencing women to prison is more traumatic for women and there is a higher incidence of self-harm than for men. For instance, in 2009 43% of all incidents of self-harm in prison are accounted to women, even though they represent only 5% of the whole penal population. Moreover, statistics show that the majority of female inmates suffer from mental health issues and more than a half have personality disorders (Hutson & Myers, 2012).

These problems together with depression, anger at themselves and the wish to die are regularly cited to be reasons why women turn to self-harm and suicidal attempts while in prison (Byrne and Howells, 2002). Self-harm, mental issues, suicides, etc. are disproportionate to Nussbaum's list of capabilities, which are understood to be goals for the concept of justice (Drydyk, 2012).

In conclusion, there are three main theories of justice, juxtaposed to the decision of sending women to prison, considered in this essay. These are Rawls' theory of justice as fairness and Sen's and Nussbaum's theories of capabilities and well-being (Walby, 2012). Women in prison suffer from a deficiency of capabilities to achieve their role in society (Silvestri, 2012), their well-being is compromised because of the different issues and problems they have (Byrne and Howells, 2002) and

there are different points of view whether women should be treated the same way as men, even though it victimises them (Covington & Bloom, 2003).

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