Sarah Turnbull

PAROLE in CANADA

Gender and Diversity in the Federal System

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Introduction

On January 17, 2012, several Canadian news outlets reported on an upcoming parole hearing for Gregory Bromby, a "Haitian-born" Canadian man convicted in 1997 of the rape and murder of a fifteen-year-old girl (CBC News 2012a; Hopper and Wilton 2012). A central focus of the news stories was that Bromby had been granted an elder-assisted hearing, a special type of parole hearing typically reserved for Aboriginal prisoners. The media coverage highlighted the fact that Bromby was Haitian-born, not Aboriginal, yet was permitted to have an Aboriginal hearing. Two days later, on January 19, 2012, the same news outlets reported that Bromby had been denied parole, while also highlighting the victim's father's view that Bromby's access to an elder-assisted hearing was disrespectful to Indigenous peoples in Canada (CBC News 2012b; Giroday 2012). One article cited an e-mail statement by the press secretary for then minister of public safety Vic Toews, which said that the parole system had been left "in a state of disarray" by the previous government because now "any inmate, regardless of heritage, [could] claim that they [were] aboriginal and receive *benefits*" (Giroday and Wilton 2012, n.pag; emphasis added).

This example raises a number of questions about penality in contemporary Canada, pointing to the intersection of concerns around identity, rights, and entitlements in the context of how we punish those who transgress the law. Within a society characterized by growing racial, cultural, and ethnic "diversity,"[1] greater attention to women's rights, and attempts to make (post)colonial

reparations with Aboriginal peoples, notions of "fair" and "appropriate" punishment are changing. In Canada's penal system, it is not "business as usual." Using the federal parole system as a case study, I explore this shifting penal landscape. More specifically, I examine how concerns about Aboriginality, gender, and the multicultural ideal of diversity are interpreted and used to alter parole (conditional release) policy and practice. Of particular interest are how offender "diversities" are identified, understood, and incorporated into the policies and practices governing parole at the national level. I trace how certain "differences," and categories of offenders, are constituted as targets for "accommodation" or as having "special needs." I consider how penal institutions like the Parole Board of Canada (PBC) frame "culturally relevant" and "gender-responsive" policy and, in the process, constitute the identities of particular groups of offenders. Importantly, I demonstrate the limitations inherent in approaches that fail to challenge the underlying fabric of a penal system in which ideas around gender, race, and Aboriginality are interwoven, producing exclusion, discrimination, and differential outcomes.

Penal Reform and the Turn to Diversity

The scholarship on penal reform over the past twenty years has produced a large body of literature theorizing and otherwise accounting for the various ways that punishment has changed since the early 1970s. Although there is overwhelming agreement in the literature that most western countries' penal systems have shifted, the underlying reasons – and scope – of these reforms are debated among scholars. Extant literature focuses on the punitive nature of contemporary penal policy, including debates about the emergence of a "new" penal order and the "death" of rehabilitation as a central feature of modern punishment (e.g., Garland 1990, 1996, 2001, 2003a; Feeley and Simon 1992, 1994; O'Malley 1999; Pratt 2000; Simon and Feeley 2003; Sparks 2003; Tonry 2004; Brown 2005; Hallsworth 2005; Pratt et al. 2005; Simon 2007; Harcourt 2007). Other scholars consider the rise of risk-based penalities and associated reforms to penal policy based on the logics of risk and "what works" (e.g., Feeley and Simon 1992, 1994; Ericson and Haggerty 1997; Hannah-Moffat 1999, 2005; Garland 2003b; Hudson 2003; Kemshall 2003; O'Malley 2004; Maurutto and Hannah-Moffat 2006; Carlen 2008). A large body of scholarship examines the implications of the so-called "punitive turn," including mass incarceration (e.g., Caplow and Simon 1999; Tonry and Petersilia 1999; Blumstein 2003; Petersilia 2003; Haney 2004; Tonry 2004) and its gendered, racialized, and classed character (e.g., Kruttschnitt and Gartner 2003, 2005; Tonry 2004; Wacquant 2003, 2005; Sudbury 2005).

Within this broader context, a small but growing body of literature is examining penal change in relation to issues of diversity within penal populations, including various approaches taken by penal systems to help ameliorate gender discrimination and historical legacies of discrimination against Indigenous peoples (e.g., Cunneen 2006; Murdocca 2007, 2009, 2013; Spivakovsky 2008, 2013; Hannah-Moffat and Maurutto 2010; Martel et al. 2011). Although the literature on reforms to the punishment of women is well developed and covers several jurisdictions, including Canada (e.g., Hannah-Moffat 2001; Hannah-Moffat and Shaw 2000; Hayman 2006), the United Kingdom (e.g., Carlen 2002a; Corcoran 2010; Hedderman 2010), and the United States (e.g., Kruttschnitt and Gartner 2005; Shaylor 2009), fewer studies have considered questions of racial, ethnic, or cultural diversity in relation to penal change or how specific diversity initiatives, such as legal requirements or policy changes designed to ameliorate formal and systemic discrimination in penal policy and practices, has affected these regimes (although see Russell and Carlton 2013). This may be because not many jurisdictions undertake diversity initiatives – for example, because of funding issues or punitive sentiments (Zellerer 2003) – and/or because the initiatives that do exist are relatively new and not yet the subject of much academic research. The research that does exist shows a number of unintended consequences resulting from efforts to address systemic discrimination through institutional reforms that involve adding diversity initiatives to existing processes and structures (e.g., Hannah-Moffat 2001, 2004a; Carlen and Tombs 2006; Hayman 2006; Martel and Brassard 2008; Schoenfeld 2010; Martel et al. 2011; Pollack 2011; Russell and Carlton 2013). More specifically, there is a possibility that recent initiatives to make incarceration and parole sensitive and responsive to notions of gender, race, ethnicity, and/or culture will reaffirm these structures as necessary or suitable for managing deviance, thereby strengthening the "carceral pull" of these institutions (Carlen and Tombs 2006, 339; see also Shaylor 2009; Russell and Carlton 2013), particularly as they appear responsive to various groups of offenders and their needs.

In the Canadian context, federal penal institutions in recent years have placed greater emphasis on the need to recognize diversity and to respond to differences in the offender population. These changes can be situated within a broader context whereby organizations – from government institutions to corporations – have faced increasing pressure to accept and promote gender, racial, and cultural diversity from various sources, including human rights, employment equity, and multiculturalism law. Yet, as I discuss throughout *Parole in Canada*, diversity is not formally defined by government officials or within government texts but, rather, emerges as a fluid term that, most

commonly, is used to signal non-whiteness and sometimes non-maleness. Herring (2009, 209) notes that "generally, 'diversity' refers to policies and practices that seek to include people who are considered, in some way, different from traditional members." Within the literature, diversity is also linked to groups that are typically covered under human rights, affirmative action, or equal employment opportunity legislation or policy (Edelman et al. 2001; Ahmed et al. 2006; Kalev et al. 2006; Herring 2009; Dobbin et al. 2011). In this book, I use the term "diversity" as a construct that includes racialized and/or culturalized difference, as constituted in relation to white Anglo- and Franco-Canadian norms that remain dominant in the white settler nation-state known as Canada.

At the federal level in Canada, diversity within the offender population has, for the most part, been identified as belonging to three groups: Aboriginal, women, and so-called "ethnocultural" offenders.[2] These groups are constituted as "different" in relation to the normative white male offender. The historical and systemic ways that ideas about gender and race are entwined into the penal system have produced certain forms of exclusion and discrimination. Aboriginal, women, and ethnocultural offenders are thus seen as other, as having special needs that cannot be met through the status quo and that, consequently, require certain accommodations, which range from the development of new programs to the creation or alteration of physical structures (e.g., healing lodges and special ranges within penitentiaries) to special formats for parole hearings (e.g., elder-assisted hearings).

As I illustrate in *Parole in Canada*, key legislative changes, such as the 1992 *Corrections and Conditional Release Act* (*CCRA*), and developments in case law have mandated that federal penal institutions be responsive to specific differences. For instance, the Supreme Court of Canada's decision in *R. v. Gladue* [1999], an important court case that I discuss in more detail in Chapter 2 and throughout, specified a different approach for sentencing Aboriginal offenders and has been used by the penal system to guide its policies and practices. In addition to legal stipulations requiring institutions to take into account cultural differences – or perhaps because of them – there is increasing recognition that the "success" of penal responses (e.g., in the rehabilitation and reintegration of offenders) is based on their ability to be responsive to issues of diversity. It is therefore important to consider how current penal systems and practices of punishment – which are based on and have "privileged white male nativist norms" (Flavin and Bosworth 2007, 218) – respond to what they perceive to be, and constitute as, the concerns or needs of those who are not white or male.

The institutionalization of diversity mandates and subsequent changes in penal policy and practice raise interesting questions for scholars of punishment,

particularly given that much of the mainstream theorizing focuses on transformations that are highly punitive in nature and preoccupied with the management of risk. Although often occurring in tandem with well-documented punitive and risk-based policies, diversity-related reforms that accommodate gender, ethnic, and cultural diversity are shaping the punishment of offenders in the pursuit of a variety of penal goals, such as the (post)colonial amelioration of racial injustice through reductions in the incarceration rates of Indigenous peoples and the creation of gender-responsive models of justice. Such changes are very much specific to certain jurisdictions based on their unique historical, social, and political contexts; issues of injustice and discrimination are different across borders. It is therefore worthwhile to study the implications and outcomes of local initiatives.

Parole in Canada is a qualitative study of how concerns about gender and diversity are historically and politically constituted as problems that mandate changes to existing penal policy and practice. I examine the various meanings, impacts, and implications of penal transformations that aim to construct what appear to be fair, culturally appropriate, and/or gender-responsive penal policies and practices. My central focus is on how the ideal of diversity is interpreted and used to alter parole policy and practice. I draw on the ground-breaking work of Sara Ahmed and others who have critically examined the uptake of diversity in institutions and the ways in which the diversity framework reinforces, rather than challenges, racism and other forms of inequality. The research I present in *Parole in Canada* provides a nuanced understanding of how well-meaning penal reforms are institutionalized and the nature of their outcomes. I document some of the complexities of operationalizing abstract ideals of substantive equality and the amelioration of discriminatory practices that have yet to be sufficiently examined in the literature on punishment and society. I explore the following questions: How are certain differences and categories of offenders constituted as targets for "accommodation" or as having "special needs"? And, more broadly, how do penal institutions frame culturally relevant or gender-responsive policy and, in so doing, use normative ideals and selective knowledge of gender, race, culture, ethnicity, and other social relations to constitute the identities of particular groups of offenders?

I consider these questions by tracing the history of policy discussions about gender and facets of diversity within legislation and penal and parole policies and practices as well as the current approaches to managing offender differences used by the PBC. I argue that the incorporation of diversity into the federal parole system fulfills several organizational objectives. These include: satisfying the legislative mandate of the *CCRA* to recognize and respond to diversity;

meeting expectations of fairness; observing human rights ideals and, increasingly, the interests of victims; managing reputational risk to protect the organization from legal challenges and/or negative public opinion; conforming to managerial logics as a means of measuring and tracking diversity and showing that it is being done at the organization level; instituting "effective" correctional practice in order to reduce risk and to increase public safety; and addressing issues of representation in such a way that board members and staff reflect the diversity of the Canadian population.

I argue that the accommodation of gender and diversity provides a narrative of parole and an institutional framework that positions the PBC as responsive to the diverse needs and/or experiences of non-white and non-male offenders. In the (post)colonial Canadian context,[3] the penal system strives to deliver fair punishment through the selective inclusion of difference and without altering or reconsidering fundamental structures, practices, and power arrangements. Diversity and difference are instead added onto and/or incorporated into pre-existing penal policy and logics, including risk management and managerialism. The organizational approach to difference is focused on the production of knowledge about the other in an attempt to be culturally (or gender) sensitive. In addition, the rhetoric of diversity does work for the PBC as such initiatives become auditable products that demonstrate diversity is being practised within the organization. In this way, racism, neocolonialism, and sexism remain unrecognized and unaddressed.

Some Background

For federally sentenced offenders, parole and conditional release are the last stage of the penal system in Canada. The *CCRA* requires that all federally sentenced offenders be considered for some type of conditional release during their sentence. There are four types of release: temporary absence, day parole, full parole, and statutory release (PBC 2010a). This system has been largely rationalized as a means of enabling gradual release so that prisoners may return to their communities under the supervision of parole officers to serve the remainder of their sentence. Gradual and supervised release are viewed as promoting public safety by allowing for the monitoring of released offenders as they attempt to (re)establish themselves in their communities, thereby by permitting corrective actions (e.g., parole suspensions or revocations) if their behaviours become "risky" to the public. As a penal practice, parole is one strategy for managing the transition from the highly regulated environment of the federal penitentiary to the comparably "free" space of the community. The application

of conditions to release facilitate this re-entry by targeting the behaviours, activities, and associations connected to the risk to reoffend (see Turnbull and Hannah-Moffat 2009).

The PBC is an independent administrative tribunal that has, under the *CCRA*, exclusive decision-making power to grant or deny release (with the exception of statutory release, which is set by law), apply conditions, suspend and revoke release, detain offenders until the completion of their sentence, and consider appeals of its decisions (PBC 2011a).[4] Established in 1959 through the *Parole Act*, the organization makes conditional release decisions for all federally sentenced offenders in Canada as well as for prisoners in the provinces and territories that do not have parole boards.[5] The PBC is also responsible for making decisions related to pardons and clemency; however, its program of conditional release accounts for most of its work. Board members are the individuals responsible for conditional release decision making.[6] The PBC headquarters are located in Ottawa and there are offices located in the five regions: Pacific, Prairies, Ontario/Nunavut, Quebec, and Atlantic. The organization is part of the Public Safety Canada portfolio and is headed by a chairperson who reports to Parliament through the minister of public safety (PBC 2011a).

The *CCRA* and its *Regulations* comprise the legislative framework for the PBC's policies, operations, training, and decision making (PBC 2011a). The *CCRA* outlines the principles guiding the PBC and the criteria for conditional release decision making. As per the *Act*, the protection of society is the paramount principle guiding the work of the organization. The assessment of whether an offender, if s/he reoffends, poses an "undue risk" to society is the primary focus of release decision making, along with the belief that her or his gradual release would contribute to public safety (PBC 2011a). The *CCRA* also mandates the organization to adopt policies to guide decision making, which the PBC has done through its Policy Manual (see PBC 2015). The Policy Manual, in turn, reflects the prescriptive elements of the *CCRA* that guide decision making, such as the stipulation in section 151(3) of the *CCRA* that these policies respect "gender, ethnic, cultural and linguistic differences and be responsive to the special needs of women and aboriginal peoples, as well as to the needs of other groups of offenders with special requirements."

The PBC has several partners that assist it in carrying out its mandate. These include law enforcement, the courts, provincial and territorial corrections, community groups, and non-governmental agencies. The PBC's primary partner is the Correctional Service of Canada (CSC), "which is responsible for the custody, programming, and case management of offenders serving two years or more and for their supervision in the community on conditional release, and

for case preparation and parole supervision in provinces/territories without their own parole boards" (PBC 2010b, n.pag). According to the PBC (2000a), its ability to make "quality decisions" rests on the information provided to the organization by the CSC. More recently, this includes the provision of "cultural information" to the PBC regarding Aboriginal offenders, including assessments by elders, offenders' progress in Aboriginal programs, and/or institutional behaviour within Aboriginal-specific ranges or institutions (PBC n.d.-a).

As I demonstrate, issues of diversity are taken up within the PBC in a variety of different contexts. Diversity – that is, Aboriginal, ethnocultural, and female difference – is understood to be relevant to formal policies and practices, including those relating to decision making, hearing formats, and risk assessment. Diversity issues also emerge in relation to the training of board members and staff so as to improve communications and information gathering during hearings, thereby contributing to more "appropriate" decision making. Another way that diversity is taken up relates to the membership of the PBC and the extent to which board members are representative of the community. Diversity issues are also tracked in relation to the organization's corporate performance monitoring and reporting activities (e.g., how it implements the *Canadian Multiculturalism Act*). Other organizational practices, like community consultations, outreach activities, and research agendas, also reflect the uptake of diversity issues.

Simon (1993, 11) aptly characterizes parole as "a unique enterprise," one that "must provide an account of how dangerous people can be secured in the community, and thus of the relationship among criminal dangerousness, penal technologies, and public safety." As a decision-making body with a prescriptive mandate under the *CCRA*, the PBC is required to navigate this terrain and do its work in a social and political context that is increasingly risk averse. Yet, exactly how the PBC carries out its mandate is largely unknown. Indeed, the literature on parole in Canada is sparse, particularly in relation to the creation of the *CCRA*, the development of the conditional release system over time, and the establishment of the PBC as the federal decision-making body. Although a few Canadian studies consider the gendered and racialized nature of conditional release decision making (e.g., Hannah-Moffat 2004a; Silverstein 2005; Turnbull and Hannah-Moffat 2009) and the reintegration of female offenders on parole (e.g., Maidment 2006; Pollack 2007, 2008, 2009, 2011), to my knowledge no study examines how the PBC as a penal institution has responded to and managed diversity over time. In *Parole in Canada*, I bring together Foucauldian, anti-racist feminist, and critical organizational literatures to help advance our

understanding of penal change and the consequences of institutional responses to difference in the context of Canadian penality.

Organization

I draw on a multi-method approach involving the analysis of interview data, documents acquired through public channels (e.g., libraries, the internet, etc.), and documents obtained through the filing of requests to the PBC under the *Access to Information Act* (*ATIA*). Access to the PBC was limited, therefore the use of publicly available and institutionally held documents helped fill in some gaps undoubtedly left by the small number of interviews and vice versa. This triangulated approach aims to provide a rich account based on the best available data. I conducted semi-structured interviews with a total of thirteen individuals – twelve public servants and one member of the voluntary sector – before my research access was halted by the PBC by denials of my requests for further interviews with staff, including parole board members. These individuals can be classified as belonging to two groups: (1) key informants, who provided background and contextual information on the development of legislation as well as various policies and practices, and (2) practical informants, who provided information on the day-to-day operation of the PBC as well as its institutional history.

I gained access to unreleased and/or unpublished documents produced by the PBC through sixteen formal requests made under the *ATIA*.[7] These requests were filed in 2009 and 2010. Using the *ATIA* allowed me to go beyond the surface of the organization to gain access to documents that are not publicly available and thus fall outside the ways in which the PBC imagines and portrays itself as an organization through its website.[8] These requests allow researchers to get at what Walby and Larsen (2011, 625) term the "live archive" – the multitude of texts produced within governments on a daily basis. Written documents produced by the PBC thus comprise a significant portion of the data analyzed in this study. These documents include mission and vision statements, policy manuals, training manuals and workbooks, newsletters, assessment reports, institutional performance reports, corporate strategies and analyses, and pamphlets and descriptive materials. Some of these documents are specifically related to diversity, including policies, commitment statements, newsletters, assessment reports, and explanatory materials, while others were more general in nature (e.g., performance reports, annual reports, corporate strategies, policy manuals, etc.). I use these documents to fashion a historical record (in the absence of any

other) and to consider how the organization constitutes and responds to the problem of diversity. The focus of my analysis is the institutional representations, narratives, and discourses within institutionally produced documents that speak to notions of gender and diversity.

In Chapter 1, I trace the previously undocumented historical moments of recognition, articulation, and development of responses to gender and diversity within Canadian conditional release since the 1970s. In undertaking this project, I found that my research was restricted by the absence of a formal institutional history of parole in Canada. I therefore offer a contribution to the field by documenting changes to conditional release over the past four decades. To do this, I examine various government and non-government reports, key pieces of legislation, and case law that provide insight into how issues of difference were constituted, which problems were identified and how they were framed, and the types of solutions that were imagined. I explore how gender and diversity emerge as institutionally important in the current context, including how diversity is constituted through various forms of knowledge that frame the problem of difference as manifested in certain penal populations and as related to particular policies and practices. I aim to provide a historical context for the institutional responses to diversity at the PBC by tracing the emergence of diversity as an object of penal concern. I argue that the initial framings of diversity within legislation and policy debates, and the constitution of the "problems" facing certain offender populations, shape the types of legislative and organizational solutions that are imaginable and practicable.

In Chapter 2, I focus more directly on the PBC and trace its organizational approaches to gender and diversity. I use anti-racist feminist, sociology of organizations, and management studies literatures to position the PBC's own "diversity work" (Ahmed 2007a, 237) within a broader context within which organizations are increasingly required to respond to gender and diversity issues. I discuss the creation of the PBC's Aboriginal and Diversity Initiatives section and the types of diversity work it carries out. I suggest that how diversity is constituted within the PBC shapes its diversity work. The organizational policies and initiatives that respond to, or attempt to accommodate, diversity can be seen as technologies of power for organizing difference and producing knowledge about those defined as different. Organizational attempts to be culturally, racially, and/or gender sensitive may work to reproduce institutional whiteness and maleness and dominant conditional release approaches based on white male offenders as the standard.

In Chapter 3, I focus on three organizational knowledge practices designed to produce to "appropriate" conditional release decisions for offenders who have

been identified as different along lines of gender, race, and culture: (1) diversity training, (2) the interpretation of *R. v. Gladue*, and (3) attempts to "Indigenize" risk. I suggest that these knowledge practices can be understood as organizational attempts to "know" certain populations and the ways in which difference is applicable to issues of risk assessment in the context of decision making. The cultural and gendered knowledges of offenders circulated through these practices reveal the complexities of accommodating difference in the pursuit of appropriate decisions.

In Chapter 4, I examine the PBC's diversity work specifically in relation to Aboriginal offenders. I explore the genesis of the elder-assisted hearing (EAH) and community-assisted hearing (CAH) approaches and their contemporary manifestations as well as the implications of how "Aboriginality" and the role of the elder are constituted vis-à-vis these practices. I also consider how the *R. v. Gladue* decision was implemented within the organization. I contend that EAHs and CAHs are two instances of a reconfigured contemporary penality in which standard practices (i.e., parole hearings) are "Aboriginalized" in order for hearings, and the parole process more generally, to be perceived and experienced as fair, effective, and culturally appropriate. In addition, the PBC's implementation of the *R. v. Gladue* decision illustrates how the organization is grappling with issues of Aboriginal difference. I argue that Aboriginal offenders are confined to the realm of culture, with EAHs and CAHs remaining exceptional and peripheral to the normal program of conditional release.

In Chapter 5, I look at diversity work in relation to those offenders defined as "ethnocultural." I show how notions of difference within the context of institutionalized multiculturalism have shaped the development of responses to non-white, non-Aboriginal offenders. I consider various institutional documents that attempt to define, understand, and rationalize this population as targets of ethnicized parole policies and practices. By analyzing four institutional practices – (1) the adaptation of hearing models originally designed for Aboriginal offenders, (2) the refocused efforts on interpretation services for offenders who do not speak English or French, (3) a regional project developed specifically for African Canadian offenders, and (4) the production of cultural fact sheets to advise decision makers – I show how the PBC has grappled with issues of ethnocultural difference. I argue that organizational responses to ethnocultural offenders works to maintain institutional whiteness and masculinity through the attribution of diversity to those who are non-white. I also reveal the lack of consideration given to gender issues.

In Chapter 6, I focus on the organizational responses to female offenders. I examine the attempts to create a corporate strategy for this group as well as one

regional initiative designed to better familiarize female offenders with the hearing process. Although the PBC recognizes that gender influences criminal offending and parole outcomes and that female offenders are different from male offenders, it struggles with the practical application of exactly how gender (or, perhaps more accurately, femininity) figures into conditional release decision making. I argue that organizational responses to diversity are unable to consider gender as one intersecting aspect of difference. Gender issues are also translated as being solely applicable to female offenders. Moreover, the partitioning of racial and/or cultural difference from gender has resulted in the constitution of female offenders as a largely homogeneous group, whereby Aboriginal women and racialized women exist as afterthoughts or appendages to dominant approaches to this offender population.

I conclude with some reflections on the limitations of the politics of inclusion and the framework of diversity in the federal parole system, including the potential for "inclusive" measures to reinforce the same systems of inequality connected to the criminalization and punishment of Indigenous, racialized, and other marginalized people. I suggest that the analysis presented in *Parole in Canada* supports a more critical engagement with the ideals of diversity, cultural appropriateness, and gender responsiveness in the development and implementation of penal policies and practices.