

A Better Justice?

*Community Programs for
Criminalized Women*

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Introduction

IN TWENTY MINUTES, you can drive past all six of the community agencies in Winnipeg that offer justice services to criminalized women. The agencies – Onashowewin, Mediation Services, the Salvation Army, the Elizabeth Fry Society of Manitoba, the Native Women’s Transition Centre, and New Directions – are located in the downtown and North End of Winnipeg. They are housed in nondescript buildings. Their foyers are similar: posters advertise legal aid and pardon services, positive parenting programs, public health announcements about being “With Child, Without Alcohol,” and community events. Many have Indigenous art hanging on the walls, and at two of the sites the smell of sweetgrass is strong as they are spaces in which smudging takes place. I visited these agencies to learn about alternative justice: justice programs and practices that exist outside the formal structure of the criminal justice system. What kinds of justice practices are available for criminalized women in the community? What kind of work is done in these community spaces? What alternative to the formal justice system do they offer to criminalized women?

A Better Justice? explores the possibility of doing justice differently. It provides a close examination of alternative justice programs for criminalized women. I detail the types of programs available for criminalized women in Winnipeg, Manitoba, a mid-size city in the Canadian Prairies, and analyze the kinds of work done by the agencies’ programs as well as how staff think about the women with whom they work. The analysis focuses on the

discourse constructed by alternative program staff and is accomplished through a detailed study of interview transcripts and program documents. I focus on the potential and the risks that lay in alternative forms of/approaches to justice. The decision to examine both the possibility and the danger of alternative justice comes from my bridging of two bodies of literature: feminist and criminological. Feminist criminologists have clearly detailed the need for alternative justice practices for criminalized women. It is from their critique of the justice system that I derived a sense of urgent need when visiting the community-based justice agencies. Critical criminological scholars, however, remind us that imagining and practising alternatives is not an easy task, and it is due to their literature that I retained a sense of scepticism as I sat in agency lobbies. Critiques of alternative justice complicate any straightforward claims that community alternatives are perfect solutions to criminal justice problems. This book begins by outlining both the feminist literature and the criminological literature that inspired the mixed hope with which I began this project. Feminist critiques of imprisonment makes clear the need for imagining and practising justice in new ways, while criminological critiques outline serious cautions that should be heeded with regard to alternatives. Throughout, I explore what is currently being done in the community for criminalized women and how alternative programs may do justice differently.

Women and the Formal Criminal Justice System

In 1990, the Task Force on Federally Sentenced Women released its report, *Creating Choices*, which included envisioning a “time when harm done to people will be repaired in creative, supportive, non-incarcerative ways” (TFFSW 1990, 104). The decades since have seen feminist scholars and advocates work tirelessly to critique the use of prison for women and to get women out of carceral institutions. Yet today women are the fastest-growing incarcerated population in Canada. Between 2005 and 2015, the federal prisoner population grew by 10 percent overall, while

during that same period the number of women in federal custody increased by over 50 percent (Office of the Correctional Investigator 2015). Since 1995, the number of women in remand has doubled (Kong and AuCoin 2008). Indigenous and other racialized women have even higher rates of incarceration;¹ the number of Indigenous women in federal custody has gone up from 159 in 2006–07 to 251 in 2015–16 (Public Safety Canada 2017). Indigenous women make up over one-third of federally sentenced women, and yet Indigenous people comprise only 4 percent of the general Canadian population (Office of the Correctional Investigator 2015). This trend fits into a larger global pattern that sees women, particularly women occupying positions of complex social marginalization, incarcerated in growing numbers (Sudbury 2005).

Feminists have revealed the myriad ways that the formal justice system, particularly in the form of jail or prison, harms women. While prisons are inherently violent institutions, they have many unique impacts on women. Strip searches, while intrusive for anyone, take on a more violent meaning for women who have been sexually assaulted (Kilty 2014; Loucks 2004). As they are often sole caretakers of children, women risk losing custody when incarcerated (see the contributors to Minaker and Hogeveen [2015b] for more on criminalized mothers). Women prisoners spend more time in segregation than men (Balfour and Comack 2014), despite the fact that segregation has been shown to increase instances of self-harming behaviour (Kilty 2012, 2006; Martel 2000) and has been condemned by the Office of the Correctional Investigator (2017, 63) as “not an appropriate environment for women who are under observation for mental health problems, especially suicidal or self-harming ideations.” Prison staff and policy often frame mental health needs and the “disruptive” behaviour that follows, such as self-harm and security issues, and respond to it with different forms, and higher levels, of penal control (Hannah-Moffat and Klassen 2015). Chartrand (2015) details the various forms of violence women encounter in prison and argues that the institution itself creates the conditions for violence and conceals the violence it produces.

Not only have feminists been critical of the harms women suffer while in prison, they also argue at a more fundamental level that prison is an inappropriate response to most women who commit crime. Feminists point to the social marginalization of female offenders and the causal role that this marginalization plays in their criminal offending. Most women are incarcerated for non-violent property offences. Criminalized women are generally young, poor, and under-educated (Comack 2014; Johnson and Rodgers 1993). Feminist research into the pathways to crime and prison for women shows the impact of addiction and poverty (Balfour 2014; Comack 2014; Johnson and Rodgers 1993). Prison is not, according to feminist analyses, the way we should be responding to criminalized women. Their criminal behaviour is merely a symptom of their social marginalization. It is their marginalization that is the problem, and that is not something that prison can address; rather, it is something that prison often exacerbates.

Furthermore, many feminists have stressed the victimization history of female offenders. The 2014–15 report from the Office of the Correctional Investigator found that, of all federally sentenced women, 68 percent report being sexually abused and 86 percent report a history of physical abuse (Office of the Correctional Investigator 2016). This history can show up in women's subsequent incarceration, as years of feminist criminology has made apparent. Faith (1993, 106) names this phenomenon the "victimization-criminalization continuum." Comack (1996) illuminated the clear connections between criminalized women's histories of abuse and their criminal behaviour through her interviews with twenty-four women incarcerated in Manitoba's provincial jail for women. She concluded that, "once the connections are drawn between women's abuse histories and their troubles with the law, then it would seem relevant to query whether their incarceration serves any *benefit* – to the women themselves, to their families, to their communities or to the larger society" (126, emphasis in original). In her latest research, Comack (2018) returns to the provincial jail in Manitoba to explore whether the connections she saw in the mid-1990s are still apparent. For *Coming Back to Jail*,

Comack interviewed forty-two women and found that the experience of violence is still a key aspect of criminalized women's lives. In some cases, victimization has direct ties to offending behaviour, for example, in cases of self-defence; in others, it may be that alcohol and other drugs are used to cope with the victimization, and the use of these (often illegal) substances leads to criminalization. Faith (1993) emphasizes that there is not a deterministic relationship between victimization and criminalization but, rather, that social inequality creates groups that are harmed and that become the targets of selective criminal justice practices. It is often the case that both victimization and criminalization are outcomes of inequality.

Women's marginalization and victimization based on gender is, of course, complicated and compounded by other markers of difference. A feminist perspective that considers gender alone risks obscuring the unique experience of many women, but of particular relevance here is the experience of Indigenous women. The Canadian criminal justice system often responds disproportionately severely to Indigenous women. In 2014–15, Indigenous women made up 31 percent of federally incarcerated women and 38 percent of women sentenced to provincial and territorial custody. This overrepresentation is even more pronounced in the Prairie provinces. In 2008–09, Indigenous women made up 12 percent of the general Manitoban population but accounted for 85 percent of women sentenced to provincial corrections (Mahony 2011). The number of Indigenous women in prison in Canada has more than doubled since 2004 (Office of the Correctional Investigator 2014). Indigenous women (and men) are disproportionality placed in the maximum-security designation (Wesley 2012). Colonization and the patriarchal relations that structure colonial discourses and practices have created a situation of complex marginalization for Indigenous women, and it is within this context that their criminalization occurs (Fontaine 2014; Monture-Angus 1999). For Indigenous prisoners, prison in many ways mirrors the racist social context of the outside world. A Public Safety Canada report looking specifically at the

conditions of prison and release for Aboriginal women offers this conclusion:

To date, the experience of Aboriginal women in Federal penitentiaries has been a continuation of the marginalization experienced by generations of Aboriginal women. Issues of isolation and dislocation are commonplace for Aboriginal women across the continuum of Federal Corrections. Aboriginal women find themselves overrepresented in higher security classifications; overrepresented in Management Protocol status; they are frequently denied access to culturally and gender appropriate programming and as a group they are underrepresented in terms of parole eligibility. (Wesley 2012, 46)

For Indigenous women, all aspects of the prison experience are racialized.

In order to understand the justice system's treatment of Indigenous women it is imperative to understand Canada as a settler colonial nation. Settler colonial theory argues that settler colonialism is not a past event but, rather, an enduring and contemporary structure (Wolfe 1999). It is a structure in which Indigenous populations are removed from the land through a wide variety of discursive, practical, and violent moves (Veracini 2010). While it is not my intent to focus on settler colonial history, I highlight two manifestations of colonialism in Canada. These are practices that have clear gendered implications, and it is nearly impossible to think about the criminalization of and justice for Indigenous women without considering the concrete practices of settler colonialism. One of these practices is the apprehension of Indigenous children from their families and communities throughout history; the other is the victimization of Indigenous women, most dramatically seen in the number of women and girls who are missing and/or have been murdered.

One way in which settler colonialism has consistently attempted to extinguish Indigenous people has been through removing children from their families. This was done historically through the

Indian residential school system. This system, which operated from the early 1880s to the late 1990s,² saw over 150,000 Indigenous children taken from their families and communities and placed in schools that strove to assimilate them. Children at the schools were not allowed to speak their languages; they were taught that their cultures were inferior, and they suffered physical and sexual abuse. Although these schools no longer exist and the Indian Residential Schools Settlement Agreement was reached in 2006, the legacy of residential schools continues to affect individuals, families, and Canadian society in general. The “Sixties Scoop” was another widespread incident of child apprehension that occurred in Canada. This phenomenon is only beginning to be brought to the general public’s attention, with class action lawsuits launched in several provinces. The term “Sixties Scoop” refers to a period from approximately 1960 to the 1980s in which Indigenous children were removed in large numbers from their families and placed in predominantly non-Indigenous foster and adopted homes. Many advocates and scholars frame the contemporary situation in Canada as a continuation of residential schools and the Sixties Scoop. Currently, in Manitoba, the majority of children in Child and Family Services (CFS) care are Indigenous (Hughes 2013). There are more Indigenous children in care now than at any point in history (Blackstock 2007, 2011). Indigenous children are removed from their families at higher rates than non-Indigenous children; they are more often removed for reasons related to poverty than to abuse; and child welfare services for Indigenous families are funded at a much lower level than those for non-Indigenous families (Blackstock 2011). These child removal practices are but a part of the larger settler colonial project in Canada.

Another way that settler colonialism operates in Canada is through violence against Indigenous women and girls. Somewhere between five hundred (NWAC 2010) and over eleven hundred (RCMP 2014) Indigenous women and girls have been killed or have gone missing in the last thirty years. Research conducted by the Native Women’s Association of Canada (NWAC)

documents many of the factors that place Indigenous women and girls in situations where their risk of victimization rises, including poverty, addiction, and survival sex work. The research carried out by NWAC also found, however, that simply being Indigenous is a dangerous situation for women in Canada. In a settler colonial state, Indigenous women are less valued than non-Indigenous women, thus violent men see them as easier targets and their cases are often treated less seriously by law enforcement and the courts than those involving non-Indigenous women. Families and advocates have been demanding the public's and government's attention to this issue for years. Over the past several years, all of the provincial governments in Canada, along with national organizations such as NWAC and the Assembly of First Nations as well as international organizations including Amnesty International and the UN Special Rapporteur on the Rights of Indigenous People, have called for a national inquiry into the issue. In 2016, the federal government of Canada set up an independent inquiry, the National Inquiry into Missing and Murdered Indigenous Women and Girls, to study and provide recommendations on the issue. At the time of writing, the inquiry is still doing its work and is not without criticism (see, for example, the Open Letter to Chief Commissioner Marion Buller 2017). My description of these practices is brief. I discuss them here in order to provide some context for the issues the participants in this study raise, and I encourage interested readers to look at the growing literature on all of these topics.

Child apprehension, violent victimization, and the myriad other practices and events that make up settler colonialism in Canada have led to high levels of social marginalization for Indigenous people. The colonial impacts on Indigenous people can be seen in stark relief in the Prairie provinces. Winnipeg has the largest Indigenous population of any major Canadian city. When compared to the non-Indigenous population in Winnipeg, Indigenous people are less likely to have completed post-secondary education and to have both lower incomes and higher unemployment rates (Urban Aboriginal Peoples Study 2011). In 2005, in Winnipeg

over 40 percent of Indigenous people lived under Statistics Canada's low-income cut-off compared to 16 percent of non-Indigenous residents. This disparity is even higher for Indigenous children, 57 percent of whom lived under the low-income line compared to 20 percent of non-Indigenous children (Statistics Canada 2010). Brandon and Peters (2014) found that a number of factors, including legacies of colonialism, discrimination, and poverty, led to the high levels of homelessness experienced by Indigenous people in Winnipeg. The settler colonial context of Canada is crucial to understanding the criminal justice response to Indigenous men and women (see AJIC 1999). If we are serious about doing justice differently, then Indigenous women and settler colonialism must be at the core of our thinking.

Alternative Justice

When thinking about doing justice differently, of programming outside of the formal criminal justice system, it is tempting to frame these alternatives as “informal.” Indeed, this is one of several different terms used to think about justice alternatives. Feenan (2002) begins his discussion of informal justice by emphasizing how hard it is to define; nevertheless, he goes on to define it as a non-state justice, based in the community. This is the way in which I framed the programs in Winnipeg as I began this research. One of my primary analytic tasks was to assess the degree to which alternative justice programs are informal or formal and to explore the meaning of this for staff. To that end, the project got off to an inauspicious start when, before the tape recorder had even been turned on, the first interviewee said, “I wouldn’t call what we do here informal” (Hannah). In [Chapter 1](#), I describe the various formal and informal elements of the programs. I want to note here that there are enough formal elements to the programs – formal relationships, goals, and practices – that labelling the work the agencies do as “informal justice” quickly begins to feel inaccurate. While no other participant challenged my use of the phrase “informal justice” as did Hannah, neither did any of them use it.

That being said, they did feel like they were providing something that differed from the formal justice system. So, unless referring specifically to the informal components of the programs, I use “alternative justice” rather than “informal justice” to describe these programs. I do so while acknowledging that this, too, is an imperfect label as it is clear at several points in the analysis that the community-based programs are very similar, in some ways, to what is offered in the criminal justice system.

The decision to use the phrase “alternative justice” is a theoretically important one. There is discursive power in the framing of something as “alternative,” as Pavlich (2005) clearly demonstrates. He highlights the ways in which restorative justice has relied on contrasting itself clearly and forcefully to the criminal justice system. Advocates use a variety of themes “to distinguish themselves from criminal justice agencies by claiming unique objects, subjects, agents and processes to deal with criminal events” (13). Using the word “alternative” evokes a binary: it sets up the discussion as one that is naturally dealing with two opposing entities. Pavlich problematizes this binary theoretically by tracing the ways in which restorative justice relies on foundational criminal justice concepts even as it posits itself as an alternative to traditional criminal justice. In her study of what goes on at restorative justice conferences, Daly (2002) problematizes this binary empirically by showing the practical linkages between various “types” of justice. I try to avoid setting up this alternative justice versus criminal justice binary; however, I do use the term “alternative justice” as it reflects the participants’ understanding of their work. Practically, I define alternative justice programs as those that are operated by a non-profit, social service agency and that provide any sort of direct services to criminalized women.

Restorative justice (RJ) is a particularly well studied and practised form of alternative justice, and it, too, has a variety of definitions. One of the most often cited comes from Tony Marshall (1999, 5), who defines restorative justice as “a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future.”

Although this definition gives a good description of the process of RJ, it implies that restorative justice is *only* a process. With this definition, restorative justice is being successfully practised if one is engaged in the correct form of mediation or conferencing. This is an inadequate conceptualization of RJ; indeed, there are a number of theories that animate and inspire the particular processes of RJ. Jennifer Llewellyn (2012) offers some of the most robust theorizing on restorative justice. She argues that it should work from a relational theory of justice. Restorative justice for Llewellyn is “concerned with responding to harms to relationships that flow from wrongdoing or that mark the existing structure of relationships” (104). While there may be disagreement about definitions, it is generally granted that RJ is a participatory, contextual, healing approach to justice (Woolford and Nelund 2019).

There are good reasons to believe that restorative justice and other alternative justice forms could be useful for criminalized women. Restorative justice has been described as a form of justice that gives conflict back to communities. This is typically done by drawing on the work of Nils Christie (1977), who argues that the state “steals” conflict from the direct “owners” or stakeholders and, in so doing, denies them the ability to participate and gain from conflict resolution. RJ becomes a way to empower communities to creatively solve their own problems. Others focus on the ability of RJ to inspire empathy and change in those who break the law (Braithwaite 1996; Sullivan and Tifft 2005). Victims, too, are seen to benefit as RJ may provide them with the space to forgive and to heal (Elliott 2011). In contrast to the formal system, wherein justice is delivered by professionals and punishments administered to little or no effect, restorative justice promises to engage those affected by crime, to build relationships, and to make lasting change.

I began my research by wondering if the community agencies in Winnipeg were fulfilling these goals for criminalized women. Perhaps, in their community offices, away from the justice system, alternative justice agencies are engaging in practices that create this type of justice – empowering, participatory, and community

building. We can imagine that these non-profit social agencies are empowering individual women and creating supportive alternative communities. Perhaps they are centring women's voices and allowing them to narrate their own experiences and lives.

Any optimism I may have had that restorative justice, and other forms of alternative justice, could bring real change and justice to criminalized women was tempered when I examined non-feminist critical scholarly work. Critical criminologists are sceptical of the degree to which RJ and other alternative justice forms represent real alternatives. Stanley Cohen's (1985) classic book, *Visions of Social Control*, remains one of the most influential studies of alternative justice. Cohen argues that the effect of the psychiatric deinstitutionalization movement and the appearance of community control or community alternatives has not been to diminish the reach of the formal criminal justice system; rather, these alternatives have increased the number of people processed by the criminal justice system, increased the level of intervention, and supplemented rather than replaced the formal institutions. Social control, Cohen argues, is rendered invisible by, and stretches further into society through the use of, alternative programs.

Other scholars, coming from a different critical perspective, have reached similar conclusions. Restorative justice theory and programs have been critiqued for overemphasizing their difference from the criminal justice system. RJ programs are often "evaluated, vetted, approved, funded (wholly or mainly) and even initiated by state officials" (Pavlich 2005, 19). They receive participants via referral from the criminal justice system (Woolford and Ratner 2008). They are not discrete, separate spaces (which is how restorative justice theory often portrays them). Beyond these practical linkages, Pavlich (2005, 14) shows a deeper theoretical connection between restorative justice and the criminal justice system, arguing that "it is presented as a separate and autonomous entity; yet its foundational concepts derive from the very system it claims to substitute." These critics are pessimistic about the potential for restorative and other alternative justice programs.

Similar features have been identified by scholars who use the concept “penal voluntary sector.” This work comes, primarily, out of the UK and examines the formalization of non-profit work and relationships with the state through changes to policy. Corcoran (2011) observes the ways in which non-profit organizations have been incorporated into the state and argues that this has meant that they begin to mirror the organizational structure of government and/or business. Tomczak (2017, 164) argues that voluntary sector involvement in policy reform was instrumental in creating a broader carceral reach as voluntary organizations’ involvement “enabled and justified the further marketization and decentralization of penal services.” The particular policy frameworks that Corcoran and others identify in the UK are not present in Canada; however, there are clear links between community agencies and the state.

There are not only practical and structural linkages between alternative and dominant justice work. One aspect of alternative, or voluntary, spaces that these literatures all identify is the potential for alternative spaces to reproduce dominant discourses. The potential for alternative justice to simply replicate, and in so doing to bolster, dominant discourses about criminalized women is a serious concern as feminist scholars have identified a variety of oppressive discourses in the criminal justice system. The predominant early mentality was one of paternalism/maternalism, according to which notions of ideal femininity, motherhood, and domesticity included the idea that women were naturally morally superior to men (Boritch 1997). This was reflected in the response of police, judges, magistrates, and other justice officials to women (Sangster 2001). These ideals also translated into middle-class female reformers arguing that, “if given a chance to bring their feminine influence to bear, they could redeem the fallen woman and make her into a ‘true woman’” (Hannah-Moffat 2001, 29). Strategies of helping and protecting “fallen” women, including providing moral and religious teaching to female prisoners as well as training them to be good mothers, were put into practice. Indigenous women who were criminalized were seen as being in

need of the same moral uplift as other criminalized women. This was seen as a necessary assimilative practice; however, it was also considered unlikely to succeed due to the “cultural inferiority” of Indigenous women (Sangster 1999). All criminalized women were incarcerated and supervised under the language of protection and assistance.

The criminal justice system has long responded to women based on social norms around gender, race, and class (Faith 1993; Minaker 2014; Sangster 2001), but the current strategies of neo-liberal governance actually decontextualize criminalized women from their social context. Although neoliberalism, both in its general mode of governance and in its specific application to criminalized women, is explored more fully in the following chapters, I here provide a brief introduction for readers unfamiliar with the concept.

Neoliberalism is a ubiquitous concept that is defined and interpreted in many different ways (Larner 2000). Here it is examined primarily as a mode of governmentality rather than as a macro-economic ideology or system, although these two understandings of neoliberalism are connected. In my usage, neoliberalism is a way of thinking about and enacting governance that centres on an active, responsible citizen and his/her ability to make good choices (Rose and Miller 1992). In the context of criminalized women, this has meant a significant shift from earlier maternalistic/feminist ideas that the state had a responsibility to rehabilitate or support women to the contemporary idea that “the offender is responsible for her own self-governance and for minimizing and managing her own needs and the risk she poses to both the public and herself” (Hannah-Moffat 2001, 172). When inequality is recognized as contributing to women’s offending, the criminal justice system response emphasizes “the need for prisoners to rectify perceived defects within themselves” (Hayman 2006, 239). Although the response to criminalized women in Canada and in many other Western nations uses “gender-responsive” language, gender is seen as an individual trait, and there is a “slippage from gender oppression as a political and socio-economic structural force to

one that is psychological” (Pollack 2013, 105). The responsibility lies with the individual woman to change her behaviour and make better choices (Hannah-Moffat 2001; Kemshall 2004).

In light of these serious problems, and others, feminist researchers and advocates have called for decreasing the use of incarceration for women. The feminist argument against the formal justice system is twofold: (1) a criminal justice response is unnecessary, in most cases, as feminist research shows women’s criminal behaviour is a manifestation of their social marginalization, and (2) prison mirrors and compounds this marginalization. Feminist researchers argue that criminalized women must be situated and understood within their social context, that women’s criminal behaviour can only be understood by confronting hetero-patriarchal, colonial, capitalist structures and discourses. As a corrective to the use of incarceration, many feminist scholars end their critiques of the formal system by calling for alternative justice programs.

Despite this recognized need for community alternatives, there is very little feminist research that looks at existing alternatives. *A Better Justice?* represents one of the few sustained analyses of alternative justice from a feminist perspective. We must know what is happening in the community in order to think and practise justice differently. On an empirical level, this book contributes to feminist criminology by outlining what justice programs exist for criminalized women. The main analytic focus is, however, on discourse. I examine how the programs think about criminalized women and alternative justice. I ask: Can alternative spaces of justice provide a way of thinking about and responding to criminalized women that is substantially different from that offered by the formal system justice? Do these spaces resist that system and broader discourses and practices of inequality? This is especially crucial in light of feminist analyses that demonstrate how the justice system can absorb feminist discourse and in light of critical analyses that demonstrate how alternative discourse can also be co-opted. I examine community programs for women but do so with some reservations about their potential. Critical criminologists have examined alternative justice and have shown the variety

of ways that seemingly alternative programs reproduce and support the formal criminal justice system. In this book, I grapple with the clear necessity of providing alternative justice for criminalized women and the seeming impossibility of doing so.

A Foucauldian Feminist Analysis

I use the work of French poststructural philosopher Michel Foucault; however, I read his work through a feminist lens. Feminism is my primary epistemological, theoretical, and political commitment. As a feminist project, my research is motivated by an overarching commitment to end social injustice and oppression based on gender, race, class, sexuality, and other markers of difference. Prefacing “feminism” with “poststructural” or “Foucauldian” assists in locating my work within the wide and varied field that is contemporary feminism.

As mentioned above, my object of study is discourse, specifically the discourse created by community program staff. For Foucault, and poststructuralists generally, language is not simply a representation of reality; rather, it is the site of the construction of reality (Weedon 1997). Flax (1992, 453) argues: “to the degree that thought depends on and is articulated (to ourselves and others) in language, thought and the ‘mind’ itself will be socially and historically constituted.” The knowledge we create is in turn constructed through language. The goal is not to get as close to reality as we can, not to uncover the *real* experiences or *real* people in our data, because we are unable to gain access to these in an unmediated way. Instead, the goal is to identify the ways in which social reality is constructed and experienced through discourse and associated practices.

Discourses are neither stable nor only produced as dominant: “discourse transmits and produces power; it reinforces it, but also undermines and exposes it, renders it fragile and makes it possible to thwart it” (Foucault 1978, 101). This is not to say that there is one dominant discourse and one resistant discourse; rather, we must view discourses as tactical elements that can be deployed in

any number of ways. In analyzing the data used in this book, I pay heed to the multiplicity of discourses and their uses.

A key point of any feminist poststructural epistemology is that language is the site of both the construction of and resistance to social inequality. Weedon (1997, 40) defines poststructural feminism as “a mode of knowledge production which uses poststructural theories of language, subjectivity, social processes and institutions to understand existing power relations and to identify areas and strategies for change.” A main tenet of this approach is that gendered identities are constructed in discourse. Those working from a feminist poststructural position argue that “it is language in the form of conflicting discourses which *constitutes us* as conscious thinking subjects and enables us to give meaning to the world and to act to transform it” (Weedon 1997, 31, emphasis added). This perspective focuses on how discourse is structured and on what power relations and subjectivities are produced and reproduced in the process. Throughout this book, I use a number of Foucault’s concepts to analyze the power relations constituted through alternative justice discourse.

I begin from the feminist commitment to identifying, analyzing, and ending social inequality based on gender and intersecting power relations. I find Foucault’s work, and the work of those feminists who have used it, to be indispensable. I utilize a governmentality framework to analyze alternative justice programs. In particular, I structure this book by using Foucault’s concepts of power ([Chapter 1](#)), subject ([Chapter 2](#)), governance ([Chapters 1 and 3](#)), and resistance ([Chapter 4](#)). Foucault’s ideas, however, are not unproblematic for feminists. One criticism that is shared by feminists who use his work (and by those who reject it) is that Foucault does not address gender, despite its seemingly clear relevance to his work, especially his work on sexuality and the body (Foucault 1978). This is not reason enough to dispense with his work entirely, but it does mean that, though I acknowledge the influence of Foucault’s work, I often rely more heavily on feminist interpretations of it.

In examining the alternative justice discourse I ask of it the following questions: How do alternative justice staff position themselves in relation to the criminal justice system? How do they construct the criminalized woman? With what mentalities of governance do they respond to her? These are not questions of how they are *really* positioned, what they *really* do, or who the woman with whom they *really* work actually is. Instead, my concern is how all of these things are constituted in the discourses used by staff. This is important as it affects the ways they practise justice, seek and mobilize funding, and navigate relationships. So, while I do not study material practices and relationships, it is understood that these are not totally separate from discourse: they depend on each other.

A Note on the Research³

In order to gain access to alternative justice discourses, I interviewed staff at community-based social service agencies in Winnipeg, Manitoba, and collected a number of program documents. Six agencies were included in the research: Onashowewin, Mediation Services, the Salvation Army, the Elizabeth Fry Society, the Native Women's Transition Centre, and New Directions, all of which run a variety of programs for criminalized women.

The agencies range in terms of size and the scope of their program offerings. Some are local chapters of national organizations, while others are specific to Winnipeg. Both Elizabeth Fry and the Salvation Army are well-known Canadian organizations. The Elizabeth Fry Society is composed of local societies that “work with and for women and girls in the justice system, particularly those who are, or may be, criminalized” (see Canadian Association of Elizabeth Fry Societies at <http://www.caefs.ca/>). It has been doing advocacy and service-provision work for criminalized women since the first society was formed in 1939, and it has been a national organization since 1969. The Manitoba society is unique in that it describes itself as an Aboriginal organization. It runs a variety of different programs for all criminalized women in

Winnipeg. The Salvation Army is also a local chapter of a national organization. The Salvation Army is a Christian organization in Canada that works in a variety of ways to realize its mission to “share the love of Jesus Christ, meet human needs and be a transforming influence in the communities of our world” (Salvation Army website at <https://salvationarmy.ca>). It is within this context that the chapter in Winnipeg offers programming to women who work in the sex trade and men who avail themselves of that trade, and it runs a diversionary program for low-level offences.

The remaining agencies are local. New Directions is a large social service organization, and it offers a variety of programs that are categorized as counselling, education and training, or residential and support. The particular program that was included in this study is its Transition Education and Resource for Females (TERF), a program for women involved in the sex trade. Onashowewin is another local agency that self-describes as Winnipeg’s only Aboriginal restorative justice agency. Unlike New Directions or the Salvation Army, Onashowewin is specifically focused on criminal justice services and provides restorative justice programming. Mediation Services is a Winnipeg organization that offers conflict resolution programs. My focus is on its Restorative Action Centre, wherein it provides restorative justice processes for crimes (however, it also offers non-criminal mediation). The final agency is the Native Women’s Transition Centre, which has historically worked with women who are victims of violence. It offers first- and second-stage transitional housing and services. In 2011, it opened Kihwi Iskewock (Eagle Women) Lodge, a residential facility for criminalized women. In all of its residential sites and programming, the Native Women’s Transition Centre strives to provide safe and supportive housing for Native women and children.

In order to study community alternatives, I conducted interviews with staff at the above-mentioned community agencies. Fifteen staff members, employed in various positions at these agencies, sat with me for in-depth, semi-structured interviews. These interviews constituted the bulk of the data for my book. I also gathered information ranging from internal program documents to website material and

media reports. These data provided me with a wealth of in-depth, primarily descriptive information about the work being done in the community with criminalized women. My criteria demanded only that the agencies work with women, not that they work *exclusively* with women. Elizabeth Fry, Kihwi Iskewock's Lodge, and TERF work only with women, while the other organizations work with both women and men. All of the participants, however, made gender-based distinctions in their discussions with me.

Although I did not ask it of the participants, the majority, ten out of fifteen, self-identified as Indigenous. This is a demographic detail that must be mentioned in relation to the interview context as I am non-Indigenous, white, and Canadian, and feminist researchers are rightly concerned about how their social positioning, power, and privilege affect their research. In particular, feminists are sensitive to questions of identity and difference between themselves and their research participants. Much feminist research begins with a statement pertaining to the researcher's positionality. This is a laudable exercise in so far as it recognizes the social embeddedness of the researcher. It aligns very closely with poststructural arguments about power/knowledge and can allow researchers to reflect on how their power has shaped their research. However, even upon reflection, it is not always clear how the researcher's identity has affected her/his research. In her ethnographic research, Haney (1996) argues that this task was nearly impossible due to the multiple and sometimes shifting identity positions she occupied through the course of her fieldwork. Haney outlines the conflicting ways that her role as academic and, in turn, her age, gender, and class positioned her as a powerful outsider and an insider. She urges researchers to adopt an "understanding of reflexivity that recognizes the power dynamics of particular research settings" (776). As both researcher and participants hold a variety of identities, the impact of the various aspects of difference can change throughout any given interview.

Feminist researchers often position themselves by speaking to their power and the ways in which this may potentially constrain their data. The most striking impact of my identity was not how

it silenced participants but, rather, the particular ways in which it incited them to speak. My identity as a settler Canadian led participants to offer information that they would not have offered had I been Indigenous. Hesse-Biber (2014) notes that being an outsider can mean the researcher asks questions that may have been taken for granted by an insider. During my interviews, without my asking, participants spoke to things that an insider would have taken for granted. They clearly articulated Indigenous issues in ways I do not think they would have done had I been Indigenous. They made sure to clearly connect the lives of the women with whom they work to colonialism. They did so in a spirit, I think, of teaching someone who does not have lived experience of colonial disadvantage or oppression and who has little knowledge of such. This assumption of my having no prior knowledge of the colonial context of Canada is not one they would have made of an Indigenous researcher. One participant went so far as to say: “I’ll give you an example of what life can be like for a First Nations person ...” This is the clearest example of how the majority of the participants went to great pains to make race, colonialism, and their ongoing impacts on Indigenous peoples clear to me. The interviews are replete with this type of information. Perhaps these same participants would have spoken differently about these issues to an Indigenous researcher. It may be that they would have been able to speak in more complex ways to a researcher whom they felt shared their experience. But then again, perhaps they would not have spoken of these issues at all. This type of data may have gone unshared because there would have been no perceived need to teach an Indigenous researcher about the facts of colonialism. This dynamic helped to ensure that the analysis presented in this book keeps the experience of Indigenous women firmly in view.

Structure of the Book

A Better Justice? is animated by a desire to imagine justice differently. One step towards this is to assess the different ways that we currently practise justice. Throughout the book I examine

alternative justice discourses in order to find promising directions for doing justice differently.

Chapter 1 focuses on the question: What alternative justice options exist in the community for criminalized women? I outline the various programs offered by community agencies in Winnipeg and argue that not only do these programs engage in alternative justice work, they also offer care, advocacy, and culture services to criminalized women. By examining the types of work the programs do, their various features, and their goals, I argue that they are neither entirely informal nor entirely formal; instead, they have elements of each type of justice. Using a governmentality framework and related literature, this chapter analyzes how the programs are being articulated into neoliberal government at a distance. Here we see both the potential for alternative justice to offer alternatives to criminalized women and the risk that these alternatives only amount to different ways of doing the work of the formal justice system.

Chapter 2 focuses on the subject of governance, and it looks at how staff and program documents constitute the criminalized woman. I outline the three main subjectivities found in formal correctional discourse: the neoliberal subject,⁴ the psychologized woman, and the victimized (or what I prefer to call the marginalized) woman. Turning to the alternative justice discourse, I argue that the dominant subject positions are reconstituted with slight modifications. However, the dominant way in which the participants constitute the criminalized woman is different enough from how the criminal justice system constitutes her to allow the programs space to think about justice differently.

Chapter 3 analyzes the mentalities of governance present in the data. How do staff think about the work they do with criminalized women? Embedded in their description of their work is a strong neoliberal discourse on knowing and changing the self. Staff engage in a variety of practices that encourage criminalized women to become experts on themselves and to work to change themselves. Alongside this, however, is a clear ethic of care. In this chapter I argue that these two governing mentalities interact

in a contradictory manner, in some ways reinforcing neoliberal discourses and in other ways challenging them. The primary challenge I identify is the deployment and analysis of the techniques of the self that are offered to criminalized women as techniques of self-care. I argue that they fulfill many self-defined needs of criminalized women and assist in building capacity in women.

Chapter 4 brings my analyses together and assesses the degree to which the programs resist dominant neoliberal criminal justice discourses. I argue that there are a variety of strategies of resistance present in the programs that allows them to be spaces within which staff and criminalized women can resist. This resistance is both constrained and enabled by the programs' placement in the justice complex and their role as spaces within which women's lives and selves are governed.

The concluding chapter grapples with the questions addressed in this book and the questions that remain. I offer suggestions on how alternative justice can be practised so as to maximize its social justice potential. I also reflect on the role of critical scholars in assisting this endeavour. I summarize my analysis, speak to some of its limitations, and discuss its implications for both scholars and practitioners.

While feminist criminologists and socio-legal scholars have studied the law and corrections as spaces of governance for women, it is rare that they have looked outside of formal criminal justice institutions. Studies that have looked to community programs have tended to use theoretical perspectives that lead them to see the criminal justice system and neoliberalism as totalizing and as always co-opting any difference or resistance that may reside in the community. In *A Better Justice?* I analyze alternative justice programs to chart both dominant and resistant discourses in order to assist in conceptualizing how it is we may do justice differently with and for criminalized women.

I argue that the programs under study are not wholly alternative, that we must think of them as spaces of governance, which, in many instances, contain dominant criminal justice discourses. This is not to belittle the work that is being done by staff. Importantly,

some of these programs are doing something radically different for some women: they are getting them out of carceral institutions. Elizabeth Fry's bail supervision program allows women to avoid being remanded into provincial custody. If not for this program, the women with whom staff work would be sitting in the Women's Correctional Centre waiting for their case to come before the court. Kihiw Iskewock Lodge allows women to serve a portion of their sentence in the community and, in doing so, helps them to come out of provincial jails and federal prisons. Though I argue that the distinction between informal and formal is nuanced, complex, and often overstated, for criminalized women this distinction can be stark. As Caitlin described it, it is a difference "in terms of custody and freedom," and, by participating in the program, "they can walk outside and breathe the fresh air." As someone who has always been able to walk outside, in my analysis I do not want to minimize the difference that the ability to do this can make to someone's life.

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