

# Response

## **This Women's Perspective on Justice. Restorative? Retributive? How about Redistributive?**

*Kim Pate*

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I want to start by situating myself for you. I am the proud mother of a 3 1/2 year old budding pro-feminist prison abolitionist. Michael teaches me much about fairness, personal integrity and justice. Not a sexist, racist, non-respectful or jail-oriented mutterance or image seems to escape his ears, eyes or fails to elicit comment. He constantly reinforces my hope for our future.

My paid work is with an organization known as CAEFS. The Canadian Association of Elizabeth Fry Societies is a national voluntary women's organization whose focus is women who come into conflict with the law. The twenty-one autonomous members of our association provide a variety of services and programs with and for people, particularly women, who have been or are identified as at risk of being in conflict with the law.

Some of us know each other from one of my former lives, when I worked with the John Howard Society. After more than a decade now of working with youth, men, and now women, my perspective on justice has certainly evolved. Increasingly I have concerns about some of the tinkering and tampering that has been attempted - indeed, parts of which I have been very much involved with - in the name of justice.

I am writing this, as a consequence of having been asked to speak about feminism and restorative justice. As I thought about how I would frame my comments, I first struggled with what each of those words means. What is feminism? What is restorative? What is justice? Some likely regard the concepts as consistent, whilst others might regard them as mutually exclusive.

How we interpret these notions, how effective we see the current criminal and social justice mechanisms as being, how we approach the work we do, both waged and unwaged, depends upon the lens through which we view the world. That lens is shaped by our life experience and learning. One of the single most significant factors in the framing of such learning has to do with where we are situated vis-a-vis the dominant values, morals and understandings of our society.

To my mind, it is vitally important that we recognize that involvement in the criminal justice system is more indicative of the extent to which one is marginalized than it is of one's criminality. This is no accident. Let us recall for and by whom our laws have been (and I would argue continue to be) developed and enforced. It should come as no surprise that laws developed by white, relatively well-off men, serve to preserve the dominance of that sector of our communities.

We must be careful not to merely repackage and recreate the inequities of our current systems. Even the use of such terms as "restorative" may need to be re-examined through others' lenses. Restore to what, pre-existing inequities? Hopefully not. Similarly, when we speak about justice, what do we mean? Tritely, many will proclaim that they want "justice for all"! When discussions turn to redistribution of privilege and power, too often that stance begins to waiver and reframe itself into one best described as "my justice for all".

By continuing to accept notions such as 'victims' and 'offenders', as well as by continuing to focus on "the crime", whether we use a new term such as "harm done" or any other for that matter, we continue to reinforce the status quo. We still are tending to take what are predominantly white, male and middle class mores and values, and imposing them upon other members of our community.

Similarly, when we start to utilize such phrases as "protection of the public", we feed in to the double speak which condones and encourages the legal violence that characterizes our punitive criminal justice system. Many well intentioned organizations have fed into this and other seemingly victim-oriented approaches and have been woefully co-opted into what is fundamentally a punitive political "law and order" agenda, rather than focusing upon not creating more 'victims'. I speak now most particularly of the victim-oriented assistance bureaucracies that have been built primarily on the pain of the most marginalized, and mostly these are our women and children.

The current criminal justice system and most alternatives are built upon male-based norms and rules which ignore women's realities. Instead, they tend to systemically reinforce women's dependence on and subjugation by men. By and large, men encourage and support the development of detached, autonomous and individualized conceptions of justice. This has led to a perception of rights and morality as geared to arriving at rational, objectively fair or just resolutions of moral dilemmas. Women on the other hand, as well as many marginalized men witness the rising up and challenging of our First Nations people who tend to view morality and moral problems somewhat differently. It is posited that women tend to start from a more contextual and holistic understanding of moral dilemmas and search more consistently for inclusive and non-violent means of addressing social problems - an ethic of care and support, as opposed to one of judgement and control.

Even as nongovernmental groups, we in the "criminal justice sector" - if I may describe it as that - have not done well in these respects. Rhetoric and tokenism abound, socially responsible approaches to redistributing justice, premised upon inclusive, non-violent and non-discriminatory means are noticeably lacking however. Lip service is paid to what is termed "political correctness". Whatever happened to respect and dignity? I get very frustrated when I hear people - often those men

or women of relative privilege - bemoan the fact that they must be careful about what they say and to whom they say it.

I reject the notion that the problem rests anywhere but within themselves. Comments, actions or images that do not respect and honour the dignity of any person are generally reflective of both the individual as well as systemic biases of their communities.

To characterize them as otherwise or to attempt to attack the person impacted as being too sensitive or someone who misunderstands, problematizes the wrong behaviour and deflects responsibility onto the recipient of the disrespectful action, rather than situating it with the transmitter.

So, how does this relate to feminism and what feminists have been doing about criminal injustice? "Feminist" still seems to be regarded as akin to other "f" words. However, I know that the criminal justice sector has much to learn from, indeed daily benefits as a result of the work of feminism, particularly the work of community-based women in the grassroots independent women's movement.

How many of you work with or represent community-based criminal or social justice groups? How many of those groups support the abolition of prisons? CAEFS is one of, if not the only, criminal justice oriented group to have taken a clear and comprehensive stance against the continued use of incarceration. It may surprise you to learn that last year many of the national women's groups with whom we work passed resolutions in support of the use of alternatives to incarceration. These are the same groups who publicly argue the need for "zero violence". The absolute travesty is that while criminal justice groups have not tended to support the efforts of women's groups, women's groups have done a great deal to counter the increased use of violent and ineffective interventions.

Unfortunately, too many individual men, as well as groups that support the status quo regardless of their claims-makings, are so busy campaigning for parity with privileged men that they have forgotten and further alienated women. I have yet to hear of men campaigning for parity with women. The irony is that most activities, such as affirmative action programs for women and/or racial minority men and women, have been shown to disproportionately benefit poor, white men.

I mention all of this in order to put in context the increasingly strident demands of women's groups that men also take responsibility for and own male violence as well as the perpetuation of other forms of patriarchy and oppression. Feminists expect non-violent men to start doing their share to stop violent and/or controlling men. They also expect men to be accountable to women and women's groups.

For the last 2 1/2 years I have repeatedly faced the seemingly insurmountable roadblocks and inequities of systems, communities and individual men and women for whom it is easier to be silent and witness abuse than to bravely challenge the status quo and risk one's own safety.

I have come to ever more seriously question the validity of merely removing our current criminal justice system, only to replace it with other models, particularly models that do not address the sorts of systemic biases highlighted earlier. New models with old philosophical roots will not a just society create, nor justice restore.

Now, I issue the challenge to each and every one of you to join our efforts. Let's examine how we might apply all of this to the notion of community safety. People do indeed feel unsafe, women are especially fearful. Their fear is not unwarranted. All research and experience shows that women and children are most at risk, not out in their communities, but in their homes. The greatest risk of harm is from those closest to them.

What does this mean for those of us who have devoted much time and energy to the promotion of alternatives to what we know is an ineffective and unjust system; for those of us who have looked to "restorative justice" in the hopes of finding a better way to address the harm or crime in our communities? I believe we all have to approach this in two ways: namely, on a personal as well as on a professional, or more analytical level.

For a new form of justice - whether we call it restorative, transformative or some other name - to be able to "make things right" we must first do our own work. Each of us must identify, acknowledge and address our own biases. Men must promote non-violence and model anti-racist and non-sexist behaviour. They must also confront and call to account other men's sexism and violence. Women must also unfortunately continue to challenge men, whilst simultaneously supporting and affirming the rights of women and children not to be abused. White people must challenge racism and other forms of discrimination every time they witness it. The list goes on. These are the first and very personal steps that we must take to redistribute existing bases of power and control.

In addition to challenging our own values and standards of behaviour, we must ensure that any new model of justice does not merely recreate or reinforce some of the most ingrained and systemic biases of the existing system. If we merely impose our values and expectations on others, we run the risk of imposing, albeit unintentionally or out of ignorance, further punitive approaches.

Many of us have attempted to implement restorative justice approaches in our communities, such prototypes as victim-offender mediation, circle sentencing or community justice panels. However, these are not always seen by the participants as more restorative and less punitive than standard court-type procedures. This is particularly true if the participants differ in gender, race, class or ethnicity from those who run or administer the programs.

This does not mean we should abandon the approaches, but nor should we stubbornly cling to our own notions of what should be done. Some

of the most effective approaches are those that are designed with, by and for the participants. It is far harder to perpetuate biases, intentionally or unintentionally, if you strive to include all stakeholders and actually redistribute the power and the control by ensuring that all who may be impacted, most particularly those with the least power, are full and equal participants in the process.

First we must achieve justice, then when things disrupt it, we may better be able to restore it. So, my challenge to myself as well as to you is that we continue to move forward, questioning and testing our own values and beliefs in addition to those around us. In order to truly develop a more just and peaceful community, we must open our minds and extend our experiences to include the breadth and richness of the diversity around us. Let us all work toward more creative solutions.

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Kim Pate applies her degree in law and her innate humanity throughout her work in organizations such as CAEFS. She has singularly accomplished what no other woman I know of, who works in and among bureaucracies, has done - she speaks and writes openly about the causes of violence and champions the sovereignty of each individual inherent in the Canadian Charter of Rights and Freedoms in an unwaveringly courageous and eloquent manner.

-Gayle K.Horii