... the proposition between the penalty and the quality of the offence is determined by the influence that the violation of the pact has on the social order (Foucault 1979).

**TODAY, THE GREATER SOCIETY’S OUTRAGE AT A PARTICULAR BEHAVIOUR, THE greater the penalty: the function of the penalty being punishment for the offence itself and as a deterrent both to the person concerned and to future imitators.**

It appears that for more than a century, for convicted women—particularly prisoner-mothers—the perceived 'violation of the pact' is all the greater. In 'Women, Crime and Punishment', Windshuttle (1981) notes an article in the *Cornhill Magazine* of 1866.

... It is notorious that a bad man—we mean one whose ... training has led him into crime—is not so vile as a bad woman. If we take a man and woman guilty of a similar offence in the eye of the law, we shall invariably find that there is more hope of influencing the former than the latter ... Women of this stamp are generally so bold and unblushing in crime, so indifferent to right and wrong, so lost in all sense of shame, so destitute of womanhood, that they may be justly compared to wild beasts.

... If women deserted their roles this threatened the family and thus the fabric of society ... The female deviant, whether she be a prostitute, alcoholic, vagrant, murderer or thief, doubly threatened the social order, first by sinning and second by removing the moral constraints she held on the rest of society. Also, if a woman sinned, then, through her influence as a wife and mother, she spawned other sinners. Thus women were judged more harshly than men and a great social stigma was attached to their misdemeanours ... If women committed crime, they were destroyed utterly. They were irreclaimable. (Windshuttle 1981)

These views still prevail. However, there is a sharp contrast with convicted women of the 19th century and those of today. It was then customary for convict women to have their children with them in prison, yet in the 20th century, that practice is now seen as either undesirable for the children or as a privilege to be applied for and won by the mother, rather than accepted as appropriate and natural for the families concerned.

Compare the story (Robinson 1988) of Catherine Elliot—who in the 1820s was found guilty of shoplifting from the Sydney shop of Charles Pickering—with the reported
sentencing of Anne in the Melbourne County Court 1989. Catherine Elliot was sentenced to the Factory (Female Factory at Parramatta) for three months: her four small children were allowed to accompany her.

The report in the newspaper (The Age, 6 March 1989) detailed the sentencing judge's comments to a 30-year-old mother of three children. The convicted woman had pleaded guilty to several offences including theft and forgery. The judge said Anne had limited education, and had used cannabis, heroin and alcohol. He urged Anne to rehabilitate herself for her children, if not for herself. The mother was admitted to Fairlea, the children to care. The judge's remarks took no account of her disadvantaged status, they had little insight, nor did they suggest a mechanism through which she could change her life and the lifestyle of her children. She had violated the social order; it was Anne's fault and, of course, her responsibility to rehabilitate herself.

These comments are symptomatic of the 19th century attitudes towards women prisoners criticised by Martineau (cited in Windshuttle 1981), who in 1865 pointed out that women had been forced into antisocial behaviour by the ravages of their environment: '... Most miserable they are: for the most part prostitutes, or ruined by betrayal and poverty'.

In November 1988, Andrew Stephens, The Age Community Affairs reporter, observed that '... Single mothers forced by poverty to earn extra money above their income-support levels face unfair imprisonment and victimisation according to welfare rights groups'. The groups said women often committed fraud to try to get out of poverty, or simply through ignorance of regulations, and often received gaol sentences more severe than other individuals convicted of similar crimes.

So it is apparent that in the 20th century, women in Australia are punished not only for the offence, but also for betraying their children and their womanhood. They effectively receive a double sentence; the first of imprisonment and the second in separation from their children.

True, there are some programs in some prisons allowing children to stay with their mothers, but all are for infants and all places have to be applied for and won by the mother. There is no automatic right of mother and child, even of breast-feeding mothers and babies, to stay together. This applies equally to women on remand, for unconvicted women are also separated from their children for prolonged periods of time.

Fairlea prisoner, Angie, 24, who has two children, aged seven and 13 months, was jailed eight months ago and is still on remand. 'My kids have been wards... It took them (Community Services Victoria) five months to get into contact with me.'

'... I'm in a cottage. You think he'd be better off in here with me. I breastfed him for 14 months. I haven't seen him for four weeks. He's in Bendigo (in foster care). He's at the age when he's learning everything. Everything's been taken off me and now my baby has. My baby shouldn't have to suffer', said Vicky (Cafarella 1989).

Opening his comprehensive and detailed discussion on prisoner mothers, Challinger observed in 1982 '... there can be few more emotional issues in penology than female prisoners' relationships with their children'. Reviewing Australian and overseas literature on the topic, Challinger clearly and precisely describes the problems and issues confronting both the families and the prison authorities focusing his attention on the Victorian prison system and Fairlea prison in particular.

Two years later, a Fairlea prisoner wrote her own moving account of being the first and, to date, the only woman to have her child with her in Fairlea for four years. The woman entered the prison in 1980 to commence her sentence of 15 years with a 12-year minimum. Her daughter Alice, then eight months of age, entered the prison only to leave four months later when she turned one year in 1981; a year which proved to be a significant one for a change in policy in Victoria. In September of that year, the report of the
(interdepartmental) Committee to Consider the Admission of Infants to Prison was presented to the then Minister for Community Welfare Services and paved the way for substantial change in the Department's thinking and later in legislation for the children of imprisoned parents.

In 1982, Alice rejoined her mother and stayed with her until she was four. And, although they were separated once again when Alice went to live with her uncle, her mother wrote:

I think it imperative that Alice spent the first four years of her life in here with me. Had we not been able to share that time together and thus form the necessary bond between mother and child, then I feel that it would have made it far more difficult for Alice and me to adjust to our life together after my release from Fairlea.

Both commentaries raise matters of the trauma of separation; the difficulties created by the prison environment; the importance of the mother maintaining her prison duties and not being seen as privileged; the difficulties of institutional pressures in having 24-hour responsibility of child care such as problems of general child care facilities and nutrition.

When Tarrengower prison, near Maldon in country Victoria, opened in December 1987—just seven months after plans for the new women's prison were approved—it was the first Victorian prison to include a bunkhouse for children. The bunkhouse, funded by VACRO (Victorian Association for the Care and Resettlement of Offenders), was purpose-built for children to spend weekends with their mothers.

Tarrengower was designed for the possibility of children living-in, but since the first prisoners entered the prison on 5 January 1988, few have actually done so. It took two years for a child-care course to be developed and this is limited to one day a week for four weeks. The prison social worker, who is enthusiastic and eager, will require additional support; for example, a multidisciplinary advisory committee to develop a pro-active, comprehensive program that will better equip mothers for their release from custody.

Release from prison, rejoining with family and rejoining the greater community are the last stages of the trauma experienced by separated families before the difficulties of coping with the future begins. In exercising the power of the state, many judges and magistrates acknowledge concern for the children of female offenders. Convicted males are assumed to have wives, de facto wives, mothers or sisters to raise their children. Sentencing judges rarely, if ever, refer to paternal responsibilities. Nevertheless, it goes without saying that the problems under discussion affect all imprisoned parents, particularly single parents.

A sentencing judge or magistrate can, in some matters—and within the parameters of the legislation appropriate to the offence—sentence the convicted person to a community corrections program. The first Australian legislation to provide for this was in Tasmania in 1972. But the first Australian settlement was, by its very nature, also the nation's first community-based corrections program.

The history of community-based punishment can probably be traced to the medieval practice of placing offenders in village stocks and later to the Insolvent Debtors Relief Act of 1696 which provided that fine defaulters could be released from prison on condition they enlisted in the army or navy; to slavery, chain gangs and the like.

Contemporary emphasis on community corrections comes not only from change in corrections philosophy, but also through disillusionment with prison as a place of reform or rehabilitation. A dramatic escalation in the costs of building and running such establishments adds to the current interest in alternatives to imprisonment.

Community corrections must be consistent with public safety plus provide for the assessed needs and risks posed by the offender. The Victorian Community Service Order Scheme Manual September 1982 stated that the development of additional non-custodial measures including CSOs, arose from:
the consideration that existing non-custodial measures, for example, fine, probation, were no longer thought appropriate for every situation in which a non-custodial option might be contemplated;

the demand for sterner non-custodial measures (arising from the view that too little attention was being paid to deterrence and protection of the public, with some resentment that offenders were getting off too lightly);

the concern that certain offenders should be compelled to make amends by some form of reparation to the victim; and

that the community should be involved on rehabilitative effort. A re-integrative penal model involves the restoration of the offender to a position of worth in society by the involvement in the community and the community's involvement with him.

Community corrections must not be seen as a soft option for an offender with children. It should be viewed as an appropriate alternative to imprisonment by providing a sufficiently severe punishment while allowing the breadwinner to remain in the family unit. For whilst other factors may outweigh it ‘... a growing stability in family and work is the very best evidence of a tendency to turn from crime’ (Johnston 1976). Community corrections should enable a family to stay together and provide a convicted parent with an opportunity to work and to gain additional insights into personal relationships and skills for effective child rearing.

In Victoria, there is a policy of addressing the needs of parents sentenced to community based orders. Mark Filan, Assistant Director Community Based Corrections, conducted a survey of programs and the provisions made for single parents (unpublished). In summary the results were:

<table>
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<th>Programs</th>
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<td>Q. Estimate of number of offenders (include parolees) who could benefit from Life Skills/Parenting programs.</td>
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<td>A. Here the responses were the most varied, from approximately 40 estimated in the southern region, to four to five per month in Gippsland where a comment was added 'almost any parent'.</td>
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<td>Q. Specific arrangements for single parents with community work conditions.</td>
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<tr>
<td>A. Provided a range of opportunities for child placements.</td>
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| Q. Community-based programs (external) to which offenders may be referred (include also referral mechanisms and usage rates). |
| A. An impressive list of community health centres and family support homes resulted. However, this is in sharp contrast to the perception of the CBO women who declare ‘... that women serving community-based orders have a right to free, adequate childcare and are in no way penalised for breaches of such conditions'. |
orders because of childcare difficulties'. (Wring Out Fairlea' pamphlet advertising Fairlea demonstration, Sunday, 25 March 1990).

It appears that no community based correction facility has a permanent, well promoted, high profile program available. As with most merchandising processes, to be in demand an item needs to be advertised as attractive and useful. It is all very well to offer job skill opportunities to fill an eight-hour day, but it is doubly important to have a content and effective human person 24 hours a day. Additionally, the latter as a job applicant is more likely to achieve success. A community-treatment alternative which keeps mothers of young children out of the prison environment altogether, is possibly the best alternative for the majority of cases.

Undoubtedly, ultimate responsibility for sentencing offender-mothers lies with the court; however, there are two important issues that will influence that decision-making process:

- community attitudes of the time; and
- permanent, structured, effective programs.

Scutt (1981) commented that any assessment of where women stand in relation to the criminal law '. . . must take into account the manner in which that law has been designed. The law that is in force in Australia has been built up over many years by judges—all male until recently—and by legislators—predominantly male'. Add to this the community perception, described by Windshuttle (1981), of female deviants doubly threatening the social order, and powerful pressures to imprison women become apparent. The impact of this was graphically illustrated by remarks from the Bench in the matter of Tippett and Ball, Supreme Court of Victoria 1989, when the presiding judge referred to the female accused as ‘the dregs of society’ and although concerned at her being separated from her children, felt that they may be ‘better off without her influence’. Thus women were/are judged more harshly than men and a great social stigma was/is attached to their criminal activity. There is absolutely no research material to support a label of bad woman, bad mother. It is the labelling of a vengeful society.

The second factor that may encourage greater use of community corrections for this particular group of offenders is the structuring and expansion of programs specific to their needs. But here an important word of caution is needed. The term encouragement most certainly is not meant to imply influencing magistrates or judges to use community corrections because they have programs for disadvantaged families; to do that would be an unconscionable use of social control. Community corrections should only ever be used because they are an appropriate and credible alternative to the last resort—imprisonment. Society must always be aware that the diversionary techniques that will protect offenders from the greater rigours of imprisonment, may lead to a substantial extension of social control by official state processes rather than to a reduction (Morris 1974). Having absolutely, and with vehemence, discarded the over-use of social control in these matters, it is necessary to carefully consider appropriate program designs.

Ample research and anecdotal material describes the personal/social disadvantage of the corrections populations placed either within the community or the prison system. The issues are, of course, much broader than child-rearing and involve all levels of human relationships, from the most basic to the most complex; from understanding and expressing affection and respect, to managing anger and rejection. Appropriate responses to challenging emotions are learnt from effective role models together with the more general matters of values and standards of behaviour. A child, striving to be similar to its parents will absorb parental moral standards, behaviours, and prohibitions in the same way that it adopts other parental behaviours (Conger, Mussen & Kagan 1974).
Satisfactory and satisfying interpersonal relationships provide a background of strength to coping with life experiences. It is, therefore, important for disadvantaged sections of the community—in particular those undergoing corrections, who are individuals seen to be a community responsibility—to have access to programs addressing these issues. Such programs should be routinely available, run continuously—not ad hoc as they have appeared to be in the past—and part of a policy range included with such things as education and Alchoholics Anonymous. The programs need to be attractively designed and supervised by a multidisciplinary team and be enthusiastically promoted as a life skills opportunity. Although based in the prison system, models for design can be found in some states of Australia, USA, Sweden, Germany and some other jurisdictions and are noted by both staff and inmates as effective.

Programs of this nature have a logical extension into good and satisfying child rearing practices and are particularly appropriate to the age range of the corrections population. The period of time that they spend in custody presents a unique opportunity to offer important learning experiences to women and men, parents or not.

There is little, if any, evidence to support the suggestion that some mothers view their period of incarceration as an opportunity for time out and, therefore, have no wish to have their children with them. Mother and Child Live-In Programs should be available but not compulsory, for if the latter applied it too would lead to Morris' substantial extension of social control by official state processes (Morris 1974).

The proposition is for the establishment of a high profile, permanent, formal and structured Mother and Child Live-In Program at Fairlea Women's Prison—not ad hoc and occasional as previously provided. In effecting such an important, creative change within the correctional system, the Office of Corrections has within its grasp a unique opportunity to provide an avenue of positive rehabilitation for all individuals involved. Further than that, it also has the opportunity to improve the parenting of some possibly disadvantaged children and thus ensure they do not enter the correctional system at a later date.

The Program

The Mother and Child Live-In Program is seen as part of the total prison program regime. All participating women will be required to fulfill normal prison duties as prescribed. Mothers entering the prison system with their children must not be seen as privileged by other members of the prison population.

After an appropriate assessment/reception scheme, the program should be available to all women with children, and be immediately accessible for women with infants under three years. Courts and police will need to be advised so that the present process of wrenching mother and infant apart ceases at the earliest opportunity.

A multidisciplinary committee will be required, initially tasked to advise on program design options, and later to take responsibility for consultation and supervision. The Committee will include: Governor of Fairlea, Fairlea Social Worker, Fairlea Education, two representatives from the Office of Corrections (one of which to be Programs Officer), Child Psychologist, Family Therapist and representatives from the Nursing Mothers Association and Institute of Early Childhood Development.

The Mother and Child Live-In Program, comprising three independent units, will be available from January 1991. A team of three child-care and parent-aide officers will be on a 24-hour roster (see Unit 3 below—Children in Residence). An outline of the proposed Program follows.
A suggested option

Unit 1  Child Care/life Skills Education to be available for all prison population

- Dynamics of interpersonal relationships
- perceptions of parenting experience and parent models
- parenting needs of child—long-term psychological impact
- pre and post-natal development
- physical child care—bathing, feeding
- developmental milestones; for example, coping with fear, discipline

A certificate would be presented on completion of the program. This may be of assistance at a later date when reclaiming children from foster care.

Unit 2  Overnight Stays For Children Of Imprisoned Mothers

- Preference to be given to children who visit mothers infrequently due to distance
- cottages near Administration block are ideally situated

Unit 3  Children In Residence

- The children to be housed in a unit attached to the outside perimeter wall of Fairlea Women's Prison. Access to the unit to be through a security doorway from the prison.

- Children's residential unit (bedrooms, playrooms, bathroom, kitchen and staff rooms—possibly built in a square with courtyard garden) to be developed on a kibbutz model with 24-hour professional child-care supervision. (Consideration could be given to children sleeping in the mother's cottage).

- Mothers—including breastfeeding mothers—to participate in general prison duties.

- Mothers to attend to child's daily needs and to be rostered for general child-care tasks. Pre-school and school-aged children to be sent by bus to and from local school (as in Odyssey program). Consideration to be given to kindergarten on premises.

This proposition is introduced for the following reasons:

- The philosophy behind the imposition of custodial sentences in Victoria is that they are a punishment of last resort. To increase the severity of a prison sentence on a woman because she is a mother, by separating her from her child, is to be deplored.
There is total powerlessness and continuing anguish for imprisoned mothers who have a label of 'bad woman, bad mother' thrust upon them. No research data exists supporting such a claim. It reflects an attitude of discrimination by a vengeful section of society and must not be supported by the administration of a concerned and responsible custodial system.

The immorality of punishing the children for the sins of the mother must also be deplored.

- The age range of women in prison indicates the continuing nature of the problem. The problem/s will not disappear but can, if sensitively handled, be turned to the creative advantage of the families concerned, the management of prisons, and the enrichment of the community at large.

- A period of imprisonment has potential to be the time when in a controlled, monitored environment, women can be offered education, understanding, and skills to better equip them for the important responsibilities of motherhood.

- For these mothers to have 'hands on' experience with their children in the prison will enable the practice of skills and the consolidation of knowledge within the carefully monitored environment.

- Presently, both mother and child experience grave trauma in the initial shock of separation. The trauma is later exacerbated by difficulties with meaningful relationships and communication during the mother's imprisonment. The mothering experience may be lost for months or years. It will never be recaptured. The trauma may later be compounded by a rapid rejoining when the mother is released from custody, the lost months and years then creating insurmountable barriers.

- Visits are frequently fragmentary treats for both child and mother. Such visits do not provide the solid foundation for child-rearing at a later date.

- Additionally, it must be emphasised that some families are never reunited. When this occurs, the mothers have little or no focus to their lives, may reoffend and be returned to gaol (case of Chrissy returned to Fairlea 1988). Many children of women in these circumstances then wander through a process of repeated foster care experiences, to homelessness, and then later into correctional and prison systems, as was illustrated in the sentencing of Anne mentioned earlier.

- There is ample research and anecdotal information demonstrating the failure of alternative systems of caring for children who are separated from their mothers. Comments in the 1989 Burdekin paper on Homeless Children in Australia highlighted the issue of disadvantaged children being caught up in a world of homelessness, hopelessness, and helplessness. This matter was also raised by Jane Cafarella in her article 'When Mummy Goes To Jail', The Age, 10 February 1989, which focused on the anxieties of mothers in Fairlea.

- The (United Nations Declaration of the Rights of the Child November 1959) Principle 6 states . . . a child of tender years shall not, save in exceptional circumstances, be separated from his mother. The circumstances of imprisonment are not necessarily exceptional, unless created so by the
administration of that prison system. Examples in Sweden and Italy of mothers and children remaining together during the mother's term of imprisonment illustrate that such schemes conditions can prove successful.

This proposition is not a new one. Many individuals have worked towards similar goals but with as yet no positive and lasting outcome.

Opportunities have been taken to canvas these concerns at considerable length. The compassionate and informed responses from many members of the Victorian prison staff have been notable. Their interest, and the warm support they offer to the mothers and their children, demonstrate a rewarding awareness of humane and progressive professionals. Such staff provide the essential background for a creative opportunity towards positive life goals for sentenced women in correctional services.

The above is in marked contrast to the change in policy of Minister Michael Yabsley, Corrective Services, New South Wales as observed by Peter Roberts, *Australian Financial Review*, 14 March 1990: ‘... New South Wales seems determined to turn back the clock to the good old days when it was a colony for the punishment of a supposed criminal class'.

And here we seem to have come the full circle in the philosophy of keeping people out of prison—there are most certainly creative and positive possibilities within the largest power that the state exercises, be it inside or outside the prison walls. The key to these opportunities lies in the climate of attitudes of the communities concerned.

Imprisonment must be the punishment of last resort. But inside or outside the prison walls, effective programs can be developed to prevent the sins of the fathers/mothers being visited upon their children.

**References**


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Keeping People out of Prison


