

Towards an Understanding of Carceral Feminism as Neoliberal Biopower¹

by
Sune Sandbeck

York University
sandbeck@yorku.ca

Abstract

The current paper aims to problematize the signifier ‘carceral feminism’, which has come to designate those varieties of theory and praxis that seek to address feminist goals through juridical means and, more crucially, the threat of incarceration (cf. Bernstein 2007; Halley 2008). I begin by surveying some of the recent literature that has identified carceral feminism as a distinct logic within a broader set of liberal feminist strategies focusing on a law and order agenda. My primary contention is that this literature has largely failed to conceptualize carcerality in its two-sidedness as both a technology of discipline and a mode of social production; consequently, the carceral approach must be framed as a feminist strategy that is itself embedded within the ascendancy of a unique mode of *neoliberal biopower*. The latter has served to mark racialized, feminized and impoverished bodies as abject and remove them from the public sphere, while simultaneously incorporating them forcibly into a distinct strategy of capital accumulation within the prison industrial complex. I conclude by troubling the deployment of the signifier ‘carceral feminism’ and suggest that its contents are strictly filled by a discursively constituted Other, undermining any claims to an actually-existing project of carceral feminism as such and evoking, instead, the spectre of an *anti-* or *post-carceral* feminism.

Recent literature has claimed to identify a stream of feminism that aims to enforce feminist goals via a law and order agenda, and which specifically relies on incarceration both as punishment and deterrent (Bernstein 2007, 2010; Halley 2008). This ‘carceral’ feminism has been critically appraised as placing the responsibility of the individual at the forefront of its worldview and contributing to the further production of racialized and feminized bodies as abject through its legitimization of the prison industrial complex and other carceral regimes. While accepting some of the extant critiques of feminists who rely on such approaches, the present paper aims to trouble the signifier ‘carceral feminism’ and locate the deployment of carceral strategies within the broader trajectory of neoliberalism as a distinct mode of biopower that is rooted in particular material conditions of accumulation and rule. With Foucault (1978; 2003), I argue that carcerality is part and parcel of a broader set of technologies of power and its uses are circumscribed by the fundamental historical shift towards the biopolitical regulation of the species-body rather than the mere disciplining of the individual body; however, these developments are tied to a material substratum that grounds carcerality as one element within a broader repertoire of apparatuses and technologies employed under neoliberal conditions of capitalist accumulation. What this suggests is that feminists employing carceral strategies are

¹ Paper presented at the 2012 Annual Conference of the Canadian Political Science Association, University of Alberta. Please do not cite until a final version has been uploaded.

participating in a particular mode of neoliberal biopower that forms the very condition of possibility for engaging in praxes that rely upon the law for the fulfillment of certain aims, and this implicates a much broader array of feminist strategies and practices. Accordingly, I question whether a carceral feminism can be delineated in actuality, and propose that it might be more productive to think of a ‘post-carceral’ feminism. But before these arguments can be expanded upon, it is necessary to examine in greater detail what the signifier ‘carceral feminism’ attempts to designate.

Defining Carceral Feminism(s)

What is ‘carceral feminism’? Upon first glance, the answer appears to be simple: the term designates those varieties of feminist theory and praxis that seek to address women’s issues through juridical means and (the threat of) incarceration. For Bernstein (2007), carceral feminism describes “the commitment of abolitionist feminist activists to a law and order agenda and...a drift from the welfare state to the carceral state as the enforcement apparatus for feminist goals” (143). Thus, within the context of recent anti-trafficking campaigns in the United States, which have seen a convergence in the ideological compasses of certain Christian evangelical groups and liberal feminists, the term is meant to mark a shift in strategy towards using the threat of incarceration as a tool for achieving justice and for liberating victims of human trafficking from their perceived ‘slavery’; hence the ‘new’ abolitionism within which carceral feminism is asserted to play a key role.

Borrowing from Bernstein (2007), Halley (2008) employs the term similarly to describe a certain mode of feminist justice-seeking within international humanitarian law (IHL) and international criminal law (ICL), which aims to elevate and particularize crimes of sexual violence through both vertical and horizontal juridical reform. Here, the goal of carceral feminism is to move sexual violence up the ladder of criminality and impose tougher sentences on perpetrators, while separating sex crimes out from among other crimes in order to make it possible for indictment on charges of sexual violence and rape alone. Although Halley is not entirely clear on this point, it would appear that carceral feminism is to be regarded as a subset of what she calls ‘governance feminism’, i.e. “feminism grown up, professionalized, and adept at wielding power for the good of women globally and locally” (79).

However, is it, in fact, theoretically tenable to posit carceral feminism as simply another facet of a broader feminist current that seeks to employ juridical strategies and a (human) rights discourse to obtain social justice for women? To secure a right means to obtain the juridical guarantees of a particular freedom, whether in positive or negative form. And, particularly in terms of the latter, this inevitably means that those who violate one’s rights should be subject to penalties and sanctions, as an intrinsic form of punishment in response to the violation itself and as a deterrent to others. As such, participating in a praxis that actively demands and secures social and individual rights necessarily entails one’s implication within a certain carceral mode of justice-seeking. However, we might draw here a distinction based purely on intentionality; perhaps there is a difference to be found between carcerality as an afterthought to a rights-based feminist project of social justice, and a carceral feminism that consciously aims to maximize the punishing and deterring effects of carcerality as the primary means of obtaining some given end. In this sense, there is typically an important *formal* distinction to be drawn between a feminism that agitates for the expansion of women’s rights by engaging in a politics of demand versus one that seeks to leverage the repressive apparatuses of the state in order to alter or eliminate the kind of behavior that disproportionately harms the interests of women (whether these happen to be

men or women themselves). Thus, the former aims primarily to increase and enhance positive liberties for women while the latter acts to secure the sanctity of a certain set of negative liberties that are regarded as foundational to the sovereignty of the individual.

Both Bernstein (2007; 2010) and Halley (2008) adopt a critical perspective of the carceral feminist approach and detail its contradictions. For Bernstein – whose rich ethnographic account of recent anti-trafficking campaigns in the U.S. reveals a disturbing synergy in the goals and activities of mainstream ‘carceral’ feminists, Christian evangelicals and neoconservative politicians – the commitment to carcerality as a legitimate tactic to abolish the ‘slavery’ inherent to sex trafficking has the real (and sadly ironic) effect of landing a disproportionately high number of racialized women and men behind bars. The result should not be surprising; as Bernstein (2010) shows, the activists within these anti-trafficking campaigns are beholden their primarily white and middle-class upbringings, and consequently subscribe to an individualist and socially conservative ethic of justice-seeking – one that avoids questions surrounding the gender politics of the family and instead projects its focus towards the behavior of aberrant and abject (read: racialized and poor) individuals in the public sphere.

However, for Halley’s (2008) case study of the carceral approach wielded by those feminists agitating for reform of IHL and ICL, the basis for critique is more complex. Certainly, the subjects engaged in this struggle on the legal front carry certain classed and racialized backgrounds that inform their belief in the effectiveness of a juridical and carceral approach to gender justice. Yet, this should also hardly be surprising given the arena within which they are engaged politically. Halley sees more fundamental pitfalls that tie into the potential for a carceral approach to unwittingly serve as a detriment to the designated ‘victims’ of wartime sexual violence. While some of the hypothesized ‘side-effects’ of enhancing the carceral consequences of sex crimes are not presented with sufficient theoretical or empirical rigour (e.g. that elevating and particularizing the status of a crime makes the transgression inherent to it more powerful and potentially more desirable), the core assertion – that carcerality relies on a codified description of the unwanted behaviour or act, necessarily dissimulating its existence as a complex *ideological discourse* in the world ‘out-there’ and creating a rigidity that will inevitably harm as ‘collateral damage’ some of the very people the law aims to protect – is a cogent one. No matter how complex, a juridical regulation cannot possibly encompass all the discursive and ideological nuances of a targeted behaviour, interaction or event, and in the case of a carceral approach in which the ends being sought are punitive in nature, the glossing over of important contextual considerations can result in particularly egregious outcomes, particularly for women whose lived realities tend to depart significantly from the idealized ‘legal’ subject upon whose behalf the law purports to operate.

Bernstein and Halley present to us, then, a convincing elucidation of the deficiencies in both content and form that are inherent to carceral feminism. However, what is lacking in their critique is a coherent formulation of how exactly carcerality came to constitute the primary logic of this particular current of feminism. There is an undeniable recognition of the fact that we are speaking of a variant of *liberal* feminism that places the sovereignty and responsibility of the individual at the fore, and posits an idealized feminine subjectivity that is white, heterosexual, middle-class and monogamous, against which all other female bodies are to be seen as criminally aberrant. Nevertheless, there remains a broader contextual void that requires filling; one that places the rise of carceral feminism within the larger movement of history and locates the coordinates of its underlying logic vis-à-vis the dominant technologies of governance and discipline in the current era. The next section traces the conditions of possibility for a carceral

feminism to take hold and allow us to locate the latter within the hegemonic regime of what transnational feminists such as Julia Sudbury (2005) have referred to as a ‘global lockdown’.

Unearthing the Logic of Carcerality

Sudbury (2002; 2005) reveals the intimate connections between global lockdown and the rise of neoliberal globalization. With the scaling back of the welfare state during the 1970s and 1980s, the expansion of privatization, and the ascendancy of a state ethos of individual culpability, social conditions – particularly in the U.S., but also increasingly elsewhere around the world – were ripe for the creation of an expansive prison industrial complex (PIC) that both fed off of and contributed to the establishment of a new carceral regime. Spurred on by the spurious ‘war on drugs’ and the promise of novel sources of lucrative profit², the PIC would extend its reach into marginalized communities across the globe and ensure that a steady stream of bodies would be on hand to fill its newly constructed and privately-funded superprisons. And as the decline of social welfare eliminated state alleviation of the ‘double-shift’ syndrome, many women found themselves having to take on precarious labour, often in the informal sector, where many would inevitably find themselves within the purview of the PIC and, for some, physically confined behind its walls. Thus, in addition to being predominantly racialized and poor, the bodies filling up the private superprisons have become increasingly feminized, and as Agathangelou, Bassichis and Spira (2008) note, it is precisely these abject subjectivities that are part of the human surplus upon which neoliberalism projects its technologies of carcerality and lockdown.

LeBaron and Roberts (2010) expand our conception of the neoliberal logic of carcerality by illustrating that it is neither restricted to the physical space of prisons nor to those subjectivities that are disciplined within the broader domain of the PIC proper (i.e. those under surveillance, on probation, under house arrest, etc.). Individuals and families are ever more subject to carceral debt relations that are designed to lock borrowers into an inescapable market dependency and which reinforce gender and racial hierarchies given their disproportionate impact on women and people of colour. Moreover, the neoliberal-induced shift towards commodified social reproduction has introduced an entire class of domestic migrant workers to the carceral confines of global North households, predominantly racialized women that are routinely subject to abusive and precarious working conditions. Kempadoo (2005) has tied these processes together and revealed how this carceral logic of neoliberalism has manifested itself as an abiding juridical concern with anti-trafficking that has at its core the intent to control migratory and work patterns through law enforcement and imprisonment. And like others, she has identified an overarching tendency to conflate trafficking with prostitution, which has mobilized anti-prostitution support for carceral approaches to the sex trade under the aforementioned ‘new abolitionism,’ and which, as the above authors point out, has drawn carceral feminists into a new moral alliance that tends to regard the criminalization of the sex trade as a top priority. The result has been to elide the fact that, as she puts it, “migrant women, defined as ‘trafficked victims,’ are more often than not treated as illegal immigrants...and arrested, detained, and deported” (40); to shift public attention away from the largely white, male clientele of the sex trade towards the ‘criminal menace’ posed by a racialized strata of middle-people; and to ultimately sustain the illusion that trafficking serves mainly the underground sex

² In response to the question, “what is the political economy of the prison based on?” Haney (2010) answers succinctly: “profit” (77). She goes on to discuss the expansive revitalization of prison work programs in the U.S. under the era of neoliberalism, unfettered by the usual restrictions of minimum wage and benefits.

trade rather than precarious forms of labour attached more directly to the formal economy. The new carceral discourse of anti-trafficking thus serves to conceal the intimate connection between the migratory pressures imposed by neoliberalism and the criminalization of both migrant and sex workers, and is itself symptomatic of the segmented ways in which racialized and feminized subjectivities are produced as object under the regime of neoliberal carcerality.

Carcerality as a Form of (Neoliberal) Biopower

Neoliberal carcerality thus serves not only as a technology of discipline, but as Agathangelou et al. (2008) point out, as a logic that is foundational to our current mode of social production, and within which the individual places significant libidinal or affective investments. The authors note,

...global lockdown not only naturalizes but also *produces* capitalist, racial, gender, national, and sexual social formations. In this way, global lockdown and its technologies function as central sites for ontological production, for *making* subjects on all sides of prison walls: those who can and must be killed, warehoused, and watched, and those whose civic duty requires their complicity in the killing. (Agathangelou et al. 2008, 134)

However, while one can wholeheartedly agree with the notion that carcerality has become a primary site of social production under neoliberalism, and while the insight generated by this assertion proves edifying if we consider its ‘ontological’ project as one in which carceral feminists have deposited significant libidinal and political investments, the authors’ emphasis on ‘killing’ must be disavowed. As Foucault (1978) has emphasized, the move to modern technologies of discipline and governmentality was marked by a shift away from the sovereign’s right to kill or inflict death towards the administration of *life*. Thus, “the ancient right to *take* life or *let* live was replaced by a power to *foster* life or *disallow* it to the point of death” (138). In concrete terms, this power manifests itself in two forms: first, as a power over the individual body-as-machine, i.e. as an *anatomo-politics* of the human body; and secondly, as a power regulating the species body, or as Foucault famously termed it, a *bio-politics* of the population. Combined, these techniques of disciplining, subjugating, regulating and controlling both bodies and populations constitute a *bio-power* that signals the end of a sovereignty based on the power of death, and the transition towards a liberal art of government that has as its primary end the management of life.

The move away from a preoccupation with disciplinary power to bio-power thus marks a historical moment where mastery over living things is split, in the one realm abstracted from the individual body and extended to life in general as embodied in the idea of the population. Life and its mechanisms are subject to explicit calculations that render the couplet knowledge-power capable of transforming life in general rather than the mere disciplinary imposition of the spectre of death upon the individual body by some sovereign power. Within the new economy of biopower, the role of the law fundamentally alters and becomes inscribed within a series of normalizing apparatuses that have as their primary goal the correction and regulation of life rather than the meting out of discipline and punishment; consequently, the law increasingly becomes a normalizing mechanism itself under the aegis of a technology of power that is centred on life rather than death (Foucault 1978, 144). Sexuality becomes a central object or target of these normalizing mechanisms since it lies at the intersection of the disciplining of the body and the regulation of populations, serving as a “means of access both to the life of the body and the

life of the species” (146). Yet, the impetus to discipline and kill remains, but must find new avenues to function. For Foucault, it is here that racism intervenes into political systems centred on biopower in order to introduce cleavages into the biological continuum that is the domain of life, dividing what should live from what should die (Foucault 2003, 254). The murderous function of the State is thus justified through a division of the human species into subcategories that designate certain groups as a (biological) threat; racism thereby becomes the precondition for exercising the function of death within a regime of biopower, which need not constitute killing as such, but can encompass “the fact of exposing someone to death, increasing the risk of death for some people, or, quite simply, political death, expulsion, rejection, and so on” (256).

Foucault’s account of the movement towards a society of control founded on biopower is central to Hardt and Negri’s (2000) conceptualization of Empire as a new world order constituted juridically, but grounded in a continuing transformation of the *material* conditions of rule. Thus, the historical shift from a disciplinary society to a society of control, which introduces a paradigm of power that is “defined by the technologies that recognize society as the realm of biopower” (24), is in their account posited as a realization of the tendencies of capitalist accumulation to explode the mediations of state and civil society and to foster a proliferation of subjectivities and potential fields of resistances. While Hardt and Negri tend to focus on the purely liberatory aspects of these developments, their analysis allows us to ground the biopolitical in the material conditions of late capitalist accumulation, particularly in its neoliberal form. Within this framework, the move towards a society of control that continues to employ carceral strategies even as it relies on particular forms of power to regulate, correct, and reform aberrant behaviour should be related internally to the historical trajectory of capitalist development, which attempts to produce subjectivities adequate to a particular strategy of accumulation under changing conditions of rule and to suppress those ‘difficult’ subjects that pose a potential threat to the viability of its economy of biopower. As Hardt and Negri point out, the Foucauldian passage from society of discipline to control parallels the Marxian passage from the *formal* to *real* subsumption of labour, provided that the latter is “understood as investing not only the economic or only the cultural dimension of society but rather the social *bios* itself” (25). It is in this sense that we can think of the emergence of a distinct *neoliberal biopower* that is grounded in the material conditions of accumulation and rule, but which is perpetually in excess of those grounds in its functioning as a mode of social (re)production.

Consequently, we can regard carcerality – in its twofold guise as a technology of discipline and a mode of social production – as a distinct facet of modern bio-power deployed to disallow life among those surplus subjects that cannot be successfully incorporated into formal regimes of labour under neoliberalism – often, *to the point of death*. Carcerality, as bio-power, aims to produce these racialized, feminized and impoverished bodies as abject and remove them from the public sphere, whilst simultaneously incorporating them forcibly into an alternative strategy of neoliberal accumulation within the prison industrial complex. This, then, allows us to locate carceral feminism as a particular strategy of neoliberal bio-power in operation. Under the ‘new’ abolitionism described by Bernstein (2007; 2010), the ‘enslaved victim’ of sex trafficking is presented an ultimatum: finding liberation through formal avenues of commodified labour in the marketplace, or being subjected to forced liberation through carceral techniques of discipline and rehabilitation. In either case, the carceral ideal is to foster the production of a living subject that conforms to the juridical and ethical imperatives of neoliberalism³, whether expressed

³ Haney’s (2010) excellent comparison of a women’s prison in Hungary (KFB) and a new-age correctional facility for mothers in California (Visions) reveals the extent to which the institutional discourses of rehabilitation under

through the discourse of human rights, citizenship, or the economy. In practice, however, the carceral feminist project is deeply embedded within a framework of biopower structured by what Sudbury (2002) has identified as an intersection between neoliberal regimes of accumulation and racist/patriarchal exploitation; accordingly, a familiar outcome is to lock poor racialized women (and men) into one of the many kinds of carcerality described above.

Conclusion: Towards Post-Carceral Feminism(s)?

In attempting to define carceral feminism, we have looked at the nominal definitions provided by the likes of Halley and Bernstein, as well as the historical trajectory under which the logic of carcerality has served as a foundational element of neoliberal biopower. Still, an important caveat to take note of is the fact that the signifier ‘carceral feminist’ is strictly filled by the Other and constitutes an interpellation used by those who are primarily critical of the carceral logic as applied to gender justice – one would be hardpressed to find an activist that identifies themselves as a ‘carceral feminist’ in the same manner that the self-identifying ‘neoliberal economist’ is in short supply. In this sense, the project of carceral feminism does not actually exist as such, and can only be said to constitute a floating signifier that aims to capture the contingent synergistic development of a set of practices and goals pursued by certain feminists in tandem with legal reformists, Christian evangelicals, and neoconservatives. In fact, the manner in which the signifier ‘carceral feminism’ has been created and deployed points to the spectre of an *anti-* or *post-carceral* feminism, defined as those feminists who reject to the carceral logic of neoliberal biopower and seek to transcend the inherent limitations of a juridical approach to gender justice. Ultimately, it is the post-carceral signifier that might be most fruitfully utilized to link together the diverse approaches that are concerned with the deployment of carcerality as a strategy for the attainment of feminist ends and that seek to uncover new avenues of liberatory praxes.

neoliberalism create a climate of individual culpability and personal responsibility for the work of recovery. This is typically accomplished through the language of addiction: “At Visions, the diagnosis of addiction led the staff to find ways to shut down any talk of poverty, social inequality, or economic marginalization. Whenever the inmates raised them, they were accused of avoiding their deeper problems and sidestepping the real work of recovery” (90). Haney’s critical analysis of the feminist ideals and ‘promise’ of the Visions correctional facility bears important insights for an institutional account of carceral feminism in practice.

Works Cited

- Agathangelou, Anna M., Daniel M. Bassichis, and Tamara L. Spira. 2008. "Intimate Investments: Homonormativity, Global Lockdown, and the Seductions of Empire." *Radical History Review* (100): 120-143.
- Bernstein, Elizabeth. 2010. "Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Antitrafficking Campaigns." *Signs: Journal of Women in Culture and Society* 36 (1): 45-71.
- . 2007. "The Sexual Politics of the 'New Abolitionism'." *Differences: A Journal of Feminist Cultural Studies* 18 (5): 128-151.
- Foucault, Michel. 1978. *The History of Sexuality, Volume 1: An Introduction*. New York: Random House.
- . 2003. *Society Must Be Defended: Lectures at the Collège de France, 1975-1976*. New York: Picador.
- Halley, Janet. 2008. "Rape in Berlin: Reconsidering the Criminalisation of Rape in the International Law of Armed Conflict." *Melbourne Journal of International Law* 9: 78-124.
- Haney, Lynne A. 2010. "Working through Mass Incarceration: Gender and the Politics of Prison Labor from East to West." *Signs: Journal of Women in Culture and Society* 36 (1): 73-97.
- Hardt, Michael and Antonio Negri. 2000. *Empire*. Cambridge, MA: Harvard University Press.
- Kempadoo, Kamala. 2005. "Victims and Agents of Crime: The New Crusade Against Trafficking." In *Global Lockdown: Race, Gender, and the Prison-Industrial Complex*, edited by Julia Sudbury, 35-55. New York: Routledge.
- LeBaron, Genevieve and Adrienne Roberts. 2010. "Toward a Feminist Political Economy of Capitalism and Carcerality." *Signs: Journal of Women in Culture and Society* 36 (1): 19-44.
- Sudbury, Julia. 2005. "Introduction: Feminist Critiques, Transnational Landscapes, Abolitionist Visions." In *Global Lockdown: Race, Gender, and the Prison-Industrial Complex*, edited by Julia Sudbury, xi-xxviii. New York: Routledge.
- . 2002. "Celling Black Bodies: Black Women in the Global Prison Industrial Complex." *Feminist Review* 70: 57-74.