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Transwomen and the Prison Industrial Complex

NACIZA MASIKINI

Abstract

As one of the fastest growing populations in the prison system, transwomen have a unique relationship with the prison system and the Prison Industrial Complex. These systems work to further the marginalization of transwomen by subjecting them to psychological and sexual violence. Transwomen's bodies are criminalized in ways that naturalizes the violence they experience both in the prisons and in the court systems. This paper aims to provide an overview of the ways in which transwomen are dehumanized in their encounters with the criminal justice system (i.e. mis-gendering, the physical and sexual abuse they experience) by contextualizing their experiences. Through contextualization, I aim to illustrate the interlocking systems of oppression that construct transwomen as socially deviant bodies, that leads to their encounters with the Prison Industrial Complex. Additionally, I explore how these interlocking systems of oppression continue to function within the context of the Prison Industrial Complex and how that reduces transwomen to Agamben's conceptualization of bare life and as 'non-citizens' within the carceral state.

Introduction¹

Nearly one in six transwomen have been incarcerated at least once in their lives (NCTE, 2015). Transwomen are one of the fastest growing population within the Prison Industrial Complex (PIC), which is a transnational multibillion dollar industry that began in the United States. According to Angela Davis (1997), the PIC represents the symbiotic relationship between state criminal punishment, corporations and other interest groups (Sudbury, 2008, pg.347). It is the site that turns the prisoners into profit (Sudbury, 2008, pg.347). Furthermore, the PIC functions to criminalize marginalised bodies through the operationalization of interlocking systems of oppression² resulting primarily, but not exclusively, from

¹ Note: In my paper, I will not be using gendered pronouns 'she and her' when referencing a transwoman generally, as not all transwomen identify with these pronouns. I will only use she and her when the transwoman being discussed has identified themselves with these pronouns.

² Interlocking systems of oppression is the concept that structures of oppression do not exist in isolation and were co-constructed and co-dependant. It is meant to describe the ways in which all systems of oppression function

sexism, racism, heterosexism and ableism. This criminalization naturalizes the (disproportionally) high incarceration rates for socially constructed deviant bodies (i.e. racialized, gender variant, and queer bodies). The disproportionate criminalization of these particular groups is rooted in the ways that white supremacist hetero-patriarchal practices, normalize the structural violence, to which these groups are subjected. The structural violence that these groups experience criminalizes them in ways that position their presence within the PIC as a natural and logical outcome of their existence. This is evidenced by the criminal 'justice' systems' vested interest in imprisoning these populations (e.g. Black men in America, who receive severe sentences for low level crimes, when compared to their white counterparts (American Civil Liberties Union, 2014, pg. 2)). It is further evidenced by the violence of imprisonment that these groups endure³.

These interlocking systems of oppression informs the positionality of transwomen within the PIC. Transwomen, as with other marginalised groups, experience disproportionate rates of incarceration within the PIC. Transwomen, who are viewed as transgressing social norms about femininity and gender identity, are subjected to unique forms of criminalization, which lead to their incarceration. While there are some overarching themes for transwomen's subjugation in the PIC, their varying intersectionalities⁴⁵ function in particular ways that determine the kinds of systemic violence, abuses and indignities they experience. Therefore, transwomen are affected by the PIC in several areas that are intersecting and are co-operationalized⁶ and that reinforce their marginalization. In this paper, I will focus on the ways in which transwomen are mis-gendered in the PIC and the health implications that it entails, as well as the

symbiotically with one another, you cannot have racism without sexism, heterosexism, ableism, etc. (Collins, 2000, pg.246)

³ This will be explored in the following sections

⁴ That is to say a white, able bodied transwoman would have a different experience than an Indigenous disabled bodied transwoman.

⁵ A term coined by Kimberle Crenshaw to explain that how various aspects of one's identity intersect to locate you at a particular intersection, which informs the way you experience the worlds and how the world interacts with you. It was primarily introduced to underscore that you can experience multiple forms of oppression because of your intersection. E.g. Black women experience both sexism and racism. (Crenshaw, 1989).

⁶ This co-operationalization will be explored in further detail in the following sections

violence they experience (i.e. emotional, sexual, physical and epistemic) in the court system and within the prisons. As such, this paper seeks to specifically address the causes of transwomen's oppressions in the two aforementioned arenas, within the trans-national PIC.

Prison Industrial Complex: An Overview

The term PIC was coined in 1997 by Angela Y. Davis (Sudbury, 2008, pg.347). The prison system and thus the PIC was originally designed for cisgender men, which is why it is a cis-male-centric institution. The prisons themselves are sites of patriarchal power and this became further evident when cisgender women were introduced to the PIC. Cis-women's presence within the PIC illuminated the flaws⁷ within the PIC (re: Collins 1998). Although these women prisoners were incarcerated and effectively segregated from society, they still found themselves subject to patriarchal practices in prison. The PIC, a site of patriarchal power, regulated femininity by subjugating women to the Cult of Domesticity (Nagel, 2011, pg.305). The Cult of Domesticity held women to the standards of passivity, domesticity and Christian virtues (Nagel, 2011, pg. 305). The Cult of Domesticity is held as a universal standard for all women, despite the fact that the standards articulated a particular kind of womanhood; cis-gendered, heterosexual, able-bodied white femininity. This standard functioned to exclude racialized, dis-abled bodied and LGBTQ+ women, as they are constructed in opposition to these values and as a result they will never be able to achieve the standards of the Cult of Domesticity. In this way the Cult of Domesticity demarcates the kind of women and the type of womanhood that is allowed to be expressed, in order to be able to claim the category of woman, within the context of the PIC. Thus, failing to meet these standards make these women both 'deviant' prisoners and women. These standards are also used at the level of the criminal justice in order to delineate which transwomen's bodies are able to be considered women within the judicial system.

⁷ Their presence did not change the foundations of the PIC.

Transwomen's positionality within the PIC is a unique one, as they are held both to standards of masculinity and femininity. Transwomen have to meet judicial⁸ designated criteria in order to be deemed eligible to be legally treated as women, even if the state recognizes them as women, the judicial system is able to determine if these women 'deserve' to be treated as women⁹. They are regarded to be failing to be women or men. They are often too masculine to be able to achieve the standards within the Cult of Domesticity, even when they are placed within female prisons. Similarly, they are failing standards of masculinity and deemed too feminine. They are oppressed in the PIC, at the level of the courts, and within the prisons through mis-gendering. Imprisonment often leads to the termination of hormone therapy treatments, limited access to transition surgery, abuse (physical and emotional) by guards and other inmates, and sexual violence by both guards and inmates. Whereas the introduction of women delineated the flaws inherent to the PIC, the introduction of transgender inmates demonstrates the fundamental flaws in the PIC. The PIC is a *cis-gendered* male-centric institution that is not designed for trans* bodies. Since the PIC was not designed for trans* bodies, trans* bodies are not considered citizens within the carceral state.

Citizenship politics plays a vital role in the (mis)treatment of the transwoman in the PIC. Since these women are not regarded as being a part of the carceral state and thus are not viewed as entitled to the protection of citizenship rights, their (mis)treatment is justifiable by the carceral state. Transwomen then become located, in the carceral state, within Agamben's conceptualization of the state of exception, which is when the sovereign state suspends the law in order to reduce a body to bare life (Thobani, 2012, pg. 5). This bare life reduces transwomen to having "a life stripped of all of its rights...that lies in the heart of the sovereign power" (Thobani, 2012, pg.7). By revoking the rights of transwomen in the PIC, these women lose the right to self-identify and express their chosen gender identities. The carceral state then has

⁸ Here I refer to the state as both a political and legal actor

⁹ Re: Avery Eison, UK transwoman who was recognized as a woman but sent to a men's facility in Canada (Pearson and Rempel, 2014)

complete control over transwomen's bodies because it has reduced them to a state of bare life. This is due to the fact that they both fail to meet the standards within the Cult of Domesticity (and thus fail femininity) and fail to meet standards of masculinity.

Where do We Begin Stories of Violence?

Transwomen's location within the PIC is a result of interlocking oppressions that demarcate their bodies as more susceptible to epistemic and physical violence. Transwomen experience the intersections of heterosexism, sexism and transphobia; if they are racialized, they contend with racism as well. Although these interlocking systems of oppression are pervasive within the PIC and have profound impact on transwomen's lives, these systems of oppressions affect transwomen before their introduction to the PIC. Within the criminal justice system, the stories of marginalized women often begin and end with the actions that brought them to the courts, without attention to the structures of violence that have affected these women throughout their lives (Razack 1998; Comack 1999). Razack discusses ways in which interlocking systems of oppression evoke pity for women with disabilities so that we are unable to move from pity to respect. Although she focuses on women with intellectual disabilities, Razack's central question 'where do we begin stories of violence?' can be used as a starting point for understanding transwomen's location within the PIC. Transwomen's experiences within the PIC cannot be properly addressed without consideration of the structures and practices that facilitated their violent encounters with and in the PIC. These interlocking systems of oppressions are what function to facilitate the presence of transwomen to the PIC and naturalize their criminalization and the violence enacted upon their bodies both within and outside of the PIC. This is done in a way that makes the PIC and violence (of all forms) enacted on the bodies of transwomen the only logical outcome. This is because transwomen's gender identities and expressions transcend binaric understanding of gender and sex, as a result this delineates transwomen as deviant bodies. Transwomen are the most vulnerable to incarceration (Prison Industrial

Complex- Trans Views, 2012). They are often criminalized as a result of their precarious socio-economic status. They lack access to economic security because they are transwomen.

“If you’re trans*, no one wants you to be the face of their business. So what are you going to do? You’re only option is to sell your body; to become a prostitute” (Prison Industrial Complex- Trans Views, 2012)

“When I came out as trans* and started to "transition" in 2012, I was working as a freelance wedding photographer. My income dropped by 90 percent my first year out as a transwoman. Having trouble finding work as I went through "transition," I dabbled in survival sex work in order to pay rent, eat, and afford my medications. I am pro-sex work and feel no shame about having done it, but I want to be clear: it was transphobia and discrimination that cost me my business and made it difficult to find other work. Systemic transphobic discrimination placed me in a situation where I risked being arrested and detained in a men's prison.”- Sophia Banks (2015).

In 2011, “Trans PULSE reported that 20% of trans* people in Ontario were unemployed, this high unemployment rate for a minority population, often leads to them engaging in criminal activities to survive” (Banks, 2015). The threat of extreme poverty is salient in many transwomen’s lives, as they may not have access to state financial support¹⁰. Therefore, transwomen are forced into sex work because that is often the only kind of work that is accessible to them. As Banks poignantly states, this *survival* sex work is often the only way many transwomen can afford to feed, clothe and shelter themselves. Survival sex work is often the only way these women can afford to live¹¹. Transwomen’s stories cannot begin with the actions that introduce them to the criminal justice system, their stories must begin with the structures that oppress them that then lead them to their ‘criminal’ actions. Their actions and lives must be contextualized.

¹⁰ Access to state federal support is different requirements, so sometimes they do not qualify or it is because applying to qualify them could out them as trans, these are two potential explanations but a full examination of transwomen’s access to resources is outside of the scope of this paper.

¹¹ A discussion of the transwomen who are incarcerated for acts of self-defence in response to violence, while important is outside of the scope of this paper.

Real Women, Fake Men: Mis-gendering within the PIC

Due to the binaric understanding of gender within the legal system, the judicial systems and prison/detention centers do not have established protocol for dealing with trans* bodies. As a result, the court systems rely on their gender assigned at birth to determine, whether they are sent to a men's or women's correctional facility (Prison Industrial Complex- Trans Views, 2012). This leads to the mass incarceration of transwomen in men's facilities. Even if these women have physically transitioned (i.e. hormone therapy, feminization surgeries, etc.), or are living their lives as women; the court systems will still place them in male facilities. This gross mis-gendering on the part of the judicial system is a site of violence for these women. For trans* bodies social understandings of their gender identity and expression are often incongruent with their self-identification. Through placement in male facilities, the transwoman's gender identity is being invalidated.

Once incarcerated, transwomen are often denied access to hormone therapy and other medical assistance that help them to transition or to maintain their transition. This denial often has no correlation to the amount of time they have spent receiving hormone therapy. Oftentimes, it is a decision that corresponds to the state's mis-gendering of these bodies that demarcates them as men and not women and thus not 'deserving' of transitioning. Furthermore, these women are often denied access because their hormone therapy is not viewed as medically necessary, even if the transwoman fits the medical model of trans*-hood (i.e. body dysmorphia or the 'wrong body narrative'). Ashley Diamond, a Georgia transwoman, experienced this during her 2012 incarceration (Abeni, 2015). Upon imprisonment, Diamond lost access to hormone therapy, despite receiving treatment for twenty years (Abeni, 2015). This denial is a direct result of transwomen's *citizenship status* within the carceral state. Within the carceral state transwomen are not conceptualized as citizens, more accurately, they are not the right kind of citizen. As a result, they do not qualify to have their rights guaranteed and to receive the minimum standard of care. Since trans* bodies and thus transwomen are not deemed to be citizens both within the

carceral and nation state, the PIC can justify not maintaining minimum standard of care because these bodies are outside of the state's purview. Thus, these bodies exist within the state of exception and are reduced to bare life. Within this bare life, transwomen are then forced to return to their 'natural, biological' state of maleness, through the state's gendering of their bodies and by their denial of hormone therapy or feminization based medical intervention. By reducing transwomen to this kind of bare life, the PIC forces the transwoman's body to physically embody the state's binaric understanding of gender¹².

For the Greater Good: An analysis of the Violence inflicted on Transwomen

As previously stated, many transwomen are forced to engage in survival sex-work due to their economic precarity. As a result, transwomen are often assumed to be sex workers, this assumption aids their criminalization. It also positions them within the "virgin/whore" dichotomy, which causes sex workers to be constructed as having an inherent sexual availability and thus are not viewed as able to be raped. This dichotomy is intensified for transwomen because they are not viewed as being 'real women' and like the sex worker, they are deemed rapeable¹³. This dichotomy is further complicated for transwomen of colour, who are the 'other' for being transwomen and are more so 'the other' for being *racialized* transwomen. Since racialized transwomen are socially constructed within both historical and contemporary frameworks that demarcates their body as being inherently hypersexual, they contend with the challenges of being positioned outside of the realm of 'normative' femininity and sexuality. This is due to their racialization and their status as trans* bodies. Their rapeability is exaggerated in the PIC, as

¹² Note: there are some cases where they are allowed to continue hormone therapy this is beyond the scope of this paper, as I choose to focus on the women who have been denied.

¹³ Rapeable demarcates the ability to be raped based on metrics of sexual availability. Certain bodies are rapeable because they have an inherent sexual availability others are not because they are not inherently sexually available, thus when they are raped it is named as such. In contrast, when a rapeable body is raped it is not called such because the rape is not viewed as a 'true violation'.

they are reduced to a state of bare life, which results in the carceral state making decisions, which concern their bodies.

Transwomen are extremely susceptible to rape and sexual violence, both by their fellow prisoners and prison guards. Transwomen's gender non conformity makes them more susceptible to be targeted and/or be targets for sexual violence. In instances where the transwoman has received feminization surgeries, prison guards use their bodies to "relieve the sexual tensions of the heterosexual male prisoners" (nemec, 2011, pg.218). Nastasia Laura Bilyk, a Vancouver inmate was repeatedly raped while incarcerated in the federal Ferndale institution (Lupick, 2015). Similarly, Kim Love an American transwoman was incarcerated in late 1999, was raped by the sheriff, while she was in the custody of the local police (nemec, 2011, pg. 218). Once she was in prison, the guards allowed other prisoners to rape her (pg.219). The guards would often describe this process as 'picking a husband' (pg.222).

"[correctional officers-] they're basically pimpin'. If you look like a female, they'll put you in a cell. I've had them put me in a shock holdin' cell, and I told them I did not want to be there. They told me that's gonna be your husband, and that's where you're going to be and you're going to love him. And I did my time with him. [...] Without the sexual tension being brought down, the prisoners would probably overturn that place. Because there's more prisoners than there is COs. They use us."-Kim Love (pg.222)

Kim Love's experiences demonstrates the extreme ways in which the transwoman's body is reduced to bare life. The PIC uses the transwoman's bodies, which are already objectified and dehumanized, to pacify male inmates (pg.229). Sometimes to ensure their complicity, the prisons guards offer transwomen an exchange of goods (e.g. toiletries, medical favours, access to hormone therapy, etc.) for their sexual abuse (pg.229). Since the male inmates are closer to the right type of citizens¹⁴, in the

¹⁴ The concept of citizenship within the carceral state is extremely complex and nuanced and accounts for racialization, sexual orientation, gender identity, socio-economic status, able-bodiedness and other factors. While it is outside of the scope of the paper to unpack the complexity of citizenship. I hope to underscore that certain bodies are deemed as being more of citizens than others specifically within the carceral state.

carceral state, than the transwomen inmates; the carceral state is willing to ensure their rights and needs are met. The carceral states ensures these rights at the expense of the non-citizen transwoman.

If a transwoman reports being raped in the prison, the prison may decide to place them in solitary confinement. Solitary confinement is often used as punishment for inmates due to the adverse physical and mental effects. One study, performed by Stuart Grassian, found that “roughly one third of solitary inmates were actively psychotic and/or acutely suicidal” (Breslow, 2014). Solitary confinement is found to cause hallucinations, panic attacks, paranoia, reduced impulse control, attention, memory and thinking deficit, and loss in awareness (Breslow, 2014). These effects are used to justify the use of solitary confinement as a punitive measure. This rhetoric of solitary confinement as a punishment, changes when transwomen are placed in solitary confinement. Instead of being a punishment; it is a means of protection. Johanna, an El Salvadorian transwoman, was placed in solitary confinement for 7 months in the U.S. out of ‘safety concerns’, she spent 23 hours per day in a 6x13 ft. cell for seven months (Garcia-Vargas, 2014). Similarly, Avery Eison a UK transwoman was placed in solitary confinement, when she arrived in Maple Hurst (a medium security men’s detention centre) for overstaying her student visa (Pearson & Rempel, 2014). These women like several others were placed in solitary confinement ‘for safety’ reasons. However, this safety practice places these women in extreme isolation and puts them at risk for experiencing the adverse effects of solitary confinement. Transwomen are once again reduced to bare life in the carceral state, as they are forced into isolation and deprived of human interaction.

Conclusion

Transwomen’s location in the PIC is the result of the interlocking oppressions, they experience. This oppression functions to criminalize transwomen and place them in the PIC. Once in the PIC, transwomen are often mis-gendered and subjected to violence, as they lose access to citizenship within the carceral state. No longer a citizen, transwomen are then subjected to bare life, as the carceral state strips them of

all their rights. Their loss of rights justifies the rapes of transwomen, their exploitation and the violence they experience. The PIC is a site of epistemic, physical, sexual and emotional violence for transwomen. The PIC function to further operationalize transwomen's subjugation. The cycle of violence within the PIC needs to end. There is a need for a system that does not function to operationalize transwomen's oppression. This is not a call to action to create new prisons that are better equipped to treat transwomen as citizens in the carceral state and ensure that they have a minimum standard of care. It is a call for an abolitionist approach to the PIC. The aim of an abolitionist approach is to reduce the strength of the PIC (Lambel, 2011, pg.239). The ideal outcome would be the complete deconstruction of the PIC, while this may not currently be possible I offer the following recommendations that aim to provide transwomen with better treatment in prisons. These suggestions are by no means to suggest that transwomen's oppression is a flaw in the system rather than intrinsic to the PIC (Lambel, 2011, pg.239). I base these recommendations off of the need of a queer/trans* PIC analysis.

Recommendations

1. Respect Transwomen's gender identity
 - a. Create policies that rely on the individual's self-gender assessment rather than the state. This also requires the court system to place these individuals in the correctly gendered correctional facilities
2. Stop placing transwomen in Solitary Confinement
 - a. Prisons need to develop better systems for ensuring transwomen's safety that is not solely dependent on solitary confinement, as it has several adverse psychological effects. This may include implementing a trans* only level within prisons.
3. Adopt a Holistic View to Prosecution

- a. More rehabilitative and restorative justice approaches must be taken in cases where transwomen are convicted of crimes of poverty. Instead of incarcerating these women for engaging in activities for economic survival, there needs to be more of a restorative approach to justice that focuses on giving them access to resources and education¹⁵. The time, money and energy that is used to incarcerate them must be used to ensure that transwomen have access to economic support, these supports must be created in conjunction with trans* advocacy groups.
4. Implement a Prison Moratorium
 - a. More prisons do not address the structures that lead to the mass incarceration of transwomen, by halting prison expansion, the time and money used to incarcerate can be used to create new rehabilitative infrastructure.

This list of recommendations is not meant to be a comprehensive nor exhaustive list on the steps that can help to abolish the PIC and stagnate the growth of the PIC for transwomen globally.

¹⁵ This is crime severity dependent.

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