

# Native Women, Mean-Spirited Drugs, and Punishing Policies

Luana Ross

## My Family

**T**HE AMOUNT OF VIOLENCE I WITNESS WHEN I GO HOME TO THE FLATHEAD INDIAN Reservation is staggering. I am particularly concerned with the young people on my reservation who are on mean-spirited drugs, namely, methamphetamines. As well, it was recently reported that the Flathead Reservation is the drug capital of Western Montana (*Missoulian*, 2004).

The reality is that many members of my family are addicted to drugs — mostly methamphetamines, OxyContin, and methadone (prescribed by doctors to those trying to get off OxyContin). My extended family is in chaos.

I have a niece who was convicted of a drug-related crime and was released from prison in the fall of 2003. While she was imprisoned, my mother and youngest sister shared child-care duties for her daughter. When her nine-year-old first heard that her mother was sentenced to prison, she told me that she “cried until her eyeballs fell out.” To ensure a smooth transition to the outside world when my niece was discharged, my aging mother traveled to the off-reservation town she had selected to settle in and stayed for several weeks. My niece’s mother (my elder sister) could not provide this assistance because she is severely mentally ill and is incarcerated in a state mental institution.

Despite my honest belief that my niece would never stop using drugs, with the help of her extended family she is drug-free and doing well emotionally and spiritually. How she is faring financially is another story. She currently works as a waitress and tries to support her family on less than \$900 a month. Her punishments are severe as a convicted drug felon. She served time in prison, is ineligible for post-secondary financial aid or subsidized housing, and is banned for life from welfare assistance. Additionally, a felon is deemed unacceptable to serve on our tribal council.

I have another niece who was convicted of a drug-related crime and was discharged from prison last year. Several months after her release, she was arrested

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**LUANA ROSS** (Salish) was raised on the Flathead Indian Reservation in Montana and is an enrolled member of the Confederated Salish and Kootenai tribes. She has a Ph.D. in sociology and is associate professor of Women Studies and co-director of Native Voices at the University of Washington (e-mail: luana@u.washington.edu). Dr. Ross has several publications from her research on imprisoned Native women, including her book, *Inventing the Savage: The Social Construction of Native American Criminality*. Copyright © 2004 by Luana Ross.

on a DUI (driving under the influence) charge. We were certain that she would return to prison. Nonetheless, after much help from her mother, she entered a court ordered, yearlong drug treatment center in Seattle.

After only a few months in treatment, my niece called me on a cold and rainy Seattle night: "Auntie, you need to come and pick me up — I can't stand this place." I say, "If you leave there, you are headed back to prison." She responded that she didn't care. My reply, which I have never said to a relative, was: "I'm sorry, but I cannot help you." This tough-love approach doesn't settle well; I actually feel sick to my stomach and weep. To make a long story short, she caught a ride back to Flathead, got high, was arrested, and is now in jail awaiting transport to prison. Sadly, this will be her third time in prison and she is not yet 30 years old. Her mother (my sister) cares for her children. Needless to say, drugs have heavily affected the women and children in my family.

### Traumatic Stressors and Substance Use

Stress begins early in the lives of Native people. Female adolescents are more likely than males are to have significant depression and/or anxiety disorders; they are also more likely to have three or more disorders (Duclos et al., 1998). Native youth begin using drugs at a younger age than do other racial groups, then move on to more lethal drugs, and tend to use alcohol and drugs together (Novins et al., 1996). It is not surprising that Native adolescents are overrepresented in the juvenile justice system (Armstrong et al., 1996; Poupart, 1995).

The prevalence of drug abuse treatment among Native Americans, age 12 and older, is estimated at 7.8% (NCADI, 2003). African Americans are in a distant second place at 3.9%. These figures can be compared to Euroamericans at 2.5%. Moreover, a website on substance abuse informs us that Native women have higher rates of substance abuse than do Native men, and are the only racial/ethnic group in the U.S. in which this is the case (Join Together, 2003).

According to Karina Walters and Jane Simoni (2002), in Native communities depression is one of the most reported psychiatric disorders and is associated with substance abuse. The rates of mental health problems in conjunction with substance abuse are as high as 80% among Natives (*Ibid.*). Concerning Native women and traumatic life stressors that may lead to substance abuse,

Native women are disproportionately affected by violence at a rate almost 50% higher than that reported for African American males. In addition, the violent crime rate among Native women (98 per 1000) is higher than that among women of any other ethnic group.... It has been shown that Native women are at increased risk of experiencing physical and sexual assault as well as child abuse and neglect (*Ibid.*: 522).

There is a relationship between trauma and health outcomes. The combination of chronic stress and oppression leads to physical and health problems among

people of color (*Ibid.*). Regarding women of color, research indicates that racism and sexism are related to various psychological and physical ailments (*Ibid.*).

It is vital to examine violence and social ills in Native communities in the context of colonialism. According to Walters and Simoni:

The high rates of posttraumatic stress disorder (PTSD) and other psychological distress experienced by Natives may be due to elevated rates of violence. However, historical traumas (e.g., boarding school exposure, coercive migration, and non-Native custodial care placements) must also be considered (2002: 522–523).

Moreover, specific trauma and historical trauma — the cumulative effects of the injustices of colonialism — are important variables in the high rates of substance abuse, depression, and post-traumatic stress disorder among Natives (*Ibid.*).

### **The War on Drugs**

Ronald Reagan initiated the War on Drugs in the early 1980s and the Anti-Drug Abuse Act was passed in 1986 (Sudbury, 2004). Many scholars believe that the growth in the female prisoner population is directly related to the war on drugs and the subsequent drug act (Allard, 2002; Owen, 2004; Paltrow, 2004; Sudbury, 2004). Between 1990 and 1999, 34% of women were incarcerated in state prisons for drug charges, compared to 20% of men (Allard, 2002). Furthermore, people of color are more likely to be incarcerated than Euroamericans are for drug offenses (Paltrow, 2004), and Native Americans are 10 times more likely than Euroamericans are to be imprisoned (Sudbury, 2004). Hence, the war on drugs is recognized as a mechanism for controlling and punishing subgroups, namely people of color and women.

The situation in Montana mirrors the national trend. Joe Williams, head of the Corrections Department's Centralized Services Division in Montana, said that since 2002 the number of female prisoners has more than doubled (*Great Falls Tribune*, 2003). Williams stated that methamphetamine is a primary reason for the increase, and that many enter prison as addicts who committed crimes to support their habit. Williams also said that over 80% of the female prisoner population are nonviolent offenders, and his department is currently seeking alternatives to imprisonment. According to Attorney General Mike McGrath, methamphetamine is difficult to treat and the state lacks both a quality treatment program and the available funds to implement one (*Great Falls Tribune*, 2003).

Lynn Paltrow (2004) believes that many judges assume that drug use is a matter of "choice," hence self-control, and that drug addicts must be punished. Citing the American Medical Association, she states that:

it is clear that addiction is not simply the product of a failure of individual willpower. Instead, dependency is the product of complex hereditary and

environmental factors. It is properly viewed as a disease, and one that physicians can help many individuals control and overcome (Paltrow, 2004: 175).

Paltrow believes that it is a myth that drug addicts “choose” to use drugs. Regarding the term “choose,” she says that:

it is a term that obscures the lack of choice that many people have and the larger economic and institutional barriers that deny people, and disproportionately deny people of color, particularly low-income women of color, the ability to make consumer-like choices (2004: 174).

Paltrow suggests that rather than focus on individual immorality as the problem, we should examine structural problems that lead to individual problems. This must include the current drug laws.

Therefore, female drug addiction must be considered in the context of socially structured inequality (Owen, 2004). For instance, prior to incarceration, most women were addicted to drugs and unemployed. Accordingly, it is imperative to examine drug use and female criminality in its complexity. As suggested by Julia Sudbury,

an intersectional approach to explain women’s criminalization therefore requires us to pay as much attention to racial profiling and racialized discrepancies within the criminal justice system as we do to gender disparities. It also requires us to examine the feminization of poverty, the impoverishment and surveillance of communities of color, and global inequalities between third- and first-world nations as causal factors behind the growing criminalization of women (2004: 222).

Paltrow (2004) asserts that current drug laws destroy the lives of those convicted. These laws do not reduce drug use and imprison far too many nonviolent drug offenders, which disconnects families. Keep in mind that two-thirds of women in prison are mothers with children under the age of 18 (Paltrow, 2004).

According to Barbara Owen (2004), because prison is seen as the solution to the drug problem, drug-addicted women are looked upon as dangerous criminals. We obviously need alternatives to incarceration. In Seattle, Washington, where there is a sizable Native population, King County’s drug court is an example of an alternative to imprisonment for addicts.

These courts offer addicts an option: they can take the charge and do the time — typically 20 days on a first-time possession — or sign up for the court’s rugged yearlong regime of counseling, therapy sessions, weekly court sessions and self-support meetings, and random U.A. [urine analysis] checks. To graduate from the court, offenders must have completed the yearlong program with a minimum of six continuous months of clean U.A.s. They must also pay \$627, show proof of

employment and high school diploma or GED, and have a sponsor and a home group (Lyke, 2003: A8).

However, given the lack of available resources, and the stigma of being an addict, these women may have difficulty complying with the rules of drug court.

### **Welfare Reform**

In conjunction with the current drug policy are the equally devastating consequences of welfare reform, implemented in 1996. A report written by Patricia Allard (2002) details the impact of the federal government's welfare reform. Under the new act, Aid to Families with Dependent Children (AFDC) was replaced with Temporary Assistance for Needy Families (TANF). A provision of TANF decreed that, "persons convicted of state or federal felony offenses involving the use or sale of drugs are subject to a lifetime ban on receiving cash assistance and food stamps" (*Ibid.*: 1). The author makes the point that this is applicable only to those convicted of drug offenses. Therefore, shockingly, someone convicted of murder is eligible for assistance.

Forty-two states enforce the ban in its entirety or partially (*Ibid.*). Several states with large populations of Native people implement the ban entirely: Montana, South Dakota, North Dakota, California, Arizona, New Mexico, and Alaska. The ban affects approximately 92,000 women and over 135,000 children. In 1992, 146 women in Montana were affected by the welfare ban.

According to the report, TANF disproportionately affects women of color. This is because drug policies and the enforcement of drug laws are racially biased, which partially explains the rapid growth of women of color in the criminal justice system. Also, because of institutionalized systems of oppression (race, class, and gender), women of color are already vulnerable to poverty and disproportionately represented in the welfare system (*Ibid.*).

Regarding the impact of the ban on welfare assistance, Allard asserts that:

The lifetime welfare ban will have a serious effect on women's ability to overcome addiction, to raise their children, find work, and access drug treatment services. The combined effect of the ban and other recent social policies — public housing and post-secondary financial aid restrictions — will also diminish women's ability to access education opportunities and housing. Women recovering from addiction require time and support as they rebuild their lives — to house and feed themselves and their children while they successfully recover from addiction, gain marketable skills, and find stable and sustainable employment (2002: 8).

A stated purpose of TANF was to keep families together (Allard, 2002). It is easy to see why the opposite is happening. Women who are convicted of drug-related offenses simply do not have the resources to care for themselves, let alone their

children. Consequently, for example, some may feel pushed to put their children in foster or adoptive care placements. This will affect unenrolled Natives because the Indian Child Welfare Act will not apply to them. Furthermore, common sense dictates that those who have more resources when they are released from prison will fare better than those who do not have assets.

Allard (2002) offers a number of recommendations to TANF, including the idea that Congress should repeal the lifetime welfare ban. She also proposes that state governments opt out of the ban or modify it and suggests that state welfare agencies devise plans to ensure access for convicted drug offenders to public housing and employment opportunities. Finally, she recommends that states increase the availability of quality drug treatment programs to these women.

A telephone call to my tribe's Human Services Development office reveals that they do not enforce the lifetime ban on welfare assistance (Swaney, 2004). In the fall of 2003, the tribal council issued a directive to Human Services to ban all felons convicted of drug-related offenses. However, because the Human Services office did not receive the tribal council minutes in which the council agreed to the ban, they did not enforce it. Hence, as of June 18, 2004, tribal members convicted of drug-related offenses could receive welfare assistance from the Confederated Salish and Kootenai Tribes.

In fact, all tribes should exert their sovereign powers and refuse to ban convicted drug felons from their welfare programs. At the very least, Native Nations could devise their own rules for dealing with convicted drug addicts.

### **The Lummi Nation, Drug Use, and Banishment**

Similar to my reservation, the Lummi Nation in Northwest Washington is experiencing hideous drug abuse. John Jefferson, in his early forties, was sentenced to two years in a federal prison for dealing drugs on the reservation (Shukovsky, 2003). The Lummi Tribal Police and Council believe that because he was a drug dealer, he is personally responsible for the addiction of many other tribal members. When his prison time is up, he will then be subjected to punishment Lummi-style: he will be exiled from the reservation and stripped of his tribal membership. Lummi leaders are so distressed with drug use that they now wish to banish these offenders. They are fed up with the dozen babies born addicted to drugs, the suicide of an addict, and the reality of the 14-month-old child who ate a narcotic pill, thinking it was candy, and died from an overdose (*Ibid.*).

Additionally, the tribe has suffered drive-by shootings and the arrest of 33 tribal members, who were trying to smuggle drugs into the U.S. from Canada (Mapes, 2003). Out of the 4,026 members, approximately 1,833 need drug treatment, which includes 500 addicted to prescription drugs and 200 heroin addicts (*Ibid.*). One of the biggest problems at Lummi is abuse of OxyContin (*Ibid.*).

If the tribe's General Council (all tribal members) decides to strip Jefferson and his female co-defendant of their tribal memberships, the case will proceed to tribal

court for confirmation of banishment. Banishment in this case is defined as the relocation from the reservation and loss of all tribal benefits (for example, hunting, fishing, health, and education). Banished persons can only return to the reservation to attend funerals. After five years, one can apply for reinstatement. Jefferson is very upset at the prospect of being banished: "It would break my spirit.... Like I was not an Indian. Deep down it would hurt" (Shukovsky, 2003: A7).

Jefferson has been drug-free and involved in drug rehabilitation since his arrest in October 2002. Nevertheless, Tribal Councilman Jewel Praying Wolf James, who is also his cousin, said that cleaning up one's act is not enough (*Ibid.*). James stated that banishment is an act of traditional justice. The tribal archives contain an account of a man exiled in 1860 for being involved in a knife fight. As recently as a decade ago, several members were banished for dealing drugs. In the past 70 years, the Lummi have used banishment of tribal members five times (Mapes, 2003). One tribal member who was banished in 1992 is Kay Commodore, age 67. She was convicted of drug trafficking and was also disenrolled (Ruble, 2004).

Jewel James recalls a time when no one locked their door in case a relative needed to get a drink of water or something to eat (Mapes, 2003). With the coming of drugs, that has changed. James says: "Now you lock your doors because you are afraid that same cousin would rob you blind. It's changing the culture. They either want to rob you or sell you stolen goods, and it's all going into the drug trade" (*Ibid.*: A16). James believes that drug dealers are enemies of the people. Hence, the tribe will now banish them. He said: "We know it's harsh.... When they're disenrolled, they have surrendered their right to be a tribal Indian" (Shukovsky, 2003: A7).

The Lummi tribal members are split on how banishment should be implemented, or if it should be an option at all (Mapes, 2003). Some tribal members do not see banishment as healing and are intensely against the policy. Others support banishment, but not disenrollment. Another debated issue is whether someone should be banished if they did not commit the crime on the reservation. The banishment policy must take into consideration a variety of complex issues, and there are no easy answers.

According to the National Tribal Justice Resource Center, the number of tribes using this method of punishment is unknown (Ruble, 2004). However, banishment is on the increase and is usually used by tribes as a way to deal with gangs and drugs. One reason tribes employ the ultimate punishment, banishment, is because federal law regarding felony charges restricts tribal courts; thus, the courts can only impose sentences of up to one year (*Ibid.*).

Those to be banished are addicted. They are afflicted with a disease. One user from a tribe that uses banishment remarked to me that addiction is like a cancer and she did not know how to stop using. Furthermore, banishment will break up families in the same way methamphetamines and OxyContin break up families. Although this is clearly a picture of a tribe ravaged by drug abuse, banishment of tribal members may not be an effective solution.

### How Can We Survive the Chaos?

Many Native women cope with specific trauma and historical trauma by self-medicating. The kind of violence that these women find themselves immersed in springs from many sources, including poverty, racism, sexism, and abuse as children. However, are drug-addicted women so dangerous that they deserve to be locked up, banished from their reservations, disenrolled, and banned for life from welfare assistance?

Is drug use a choice? Not according to the experts, who argue that addiction is a desire beyond will (see, for example, Jay and Jay, 2000). It is a genetic-based disease, not a disease of choice. For instance, not everyone who takes a pill becomes an addict. The body has a predisposition to become addicted; the body neutralizes the drug differently in different people (*Ibid.*). Overcoming an addiction is the most difficult thing the addict will ever do.

This information clearly supports the idea of rehabilitation, not punishment. The prison-based policy is not effective and, once incarcerated, women are subjected to brutal punishment (see, for example, Ross, 1998). Banishment of tribal members may not be effective either. White racism is punishing and life will be extraordinarily difficult for those banished from their reservations. Those banished will not be welcome in Euroamerican society or Native Nations.

Native Nations are aware that alcoholism is a disease; now they need to acknowledge that being addicted to drugs is a disease. However, as Jewel James frames the problem, how do we function as families and tribal communities while we are protecting ourselves from family and community members? What can tribal communities do to recover those addicted? How can we survive the chaos of these mean-spirited drugs?

There are many ways to survive oppression. One is to assert our sovereign rights as nations. Native Nations must refuse to enforce the lifetime ban on welfare assistance, as well as other punishing policies, for those convicted of drug-related crimes. It is imperative that Native Nations use culturally based justice systems and treatment programs for the punishment and restoration of Native people. Most important, we need to reclaim respect for each other and ourselves.

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