Over the past decade, Aboriginal women’s conflicts with the law and their plight within the penal and child welfare systems have received increasing media and government attention. Framed by the political demands of Native communities for self-government, and fuelled by disillusionment with a criminal justice system that has consistently failed Native peoples — both as victims of violence and as defendants in the courts — government studies and royal commissions have documented the shocking overincarceration of Native women. At once marginalized, yet simultaneously the focus of intense government interest, Native women have struggled to make their own voices heard in these inquiries. Their testimony often speaks to their profound alienation from Canadian society and its justice system, an estrangement so intense that it is couched in despair. “How can we be healed by those who symbolize the worst experiences of our past?” asked one inmate before the 1990 Task Force on federally sentenced women. Her query invokes current Native exhortations for a reinvention of Aboriginal traditions of justice and healing; it also speaks directly to the injuries of colonialism experienced by Aboriginal peoples.

Although we lack statistics on Native imprisonment before the 1970s, overincarceration may well be a “tragedy of recent vintage.” This article explores the roots of this tragedy, asking when and why overincarceration emerged in twentieth-century Ontario; how legal and penal authorities interpreted Aboriginal women’s conflicts with the law; and in what ways Native women and their communities reacted to women’s incarceration. Drawing primarily on case files from the Mercer Reformatory for Women, the only such provincial institution at the time, I investigate the process of legal and moral regulation that led to Native women’s
incarceration from 1920 to 1960. Admittedly, such sources are skewed towards the views of those in authority: inmate case files are incomplete and partisan, strongly shaped by the recorder’s reactions to the woman's narrative. Arrest and incarceration statistics are also problematic: they homogenize all Native and Métis nations under the designation ‘Indian,’ and they predominantly reflect the policing of Aboriginal peoples and the changing definitions of crime. However partial, these sources reveal patterns of, and explanations for, increasing incarceration; women’s own voices, however fragmented, are also apparent in these records, offering some clues to women’s reactions to incarceration.

Native women’s criminalization bore important similarities to that of other women, who were also arrested primarily for crimes of public order and morality, who often came from impoverished and insecure backgrounds, and whose sexual morality was a key concern for the courts. The convictions of Aboriginal women are thus part of a broader web of gendered moral regulation articulated through the law — the disciplining of women whose behaviour was considered unfeminine, unacceptable, abnormal, or threatening to society. This ‘censuring’ process of distinguishing the immoral from the moral woman was also sustained by the medical and social work discourses used within the penal system; these attitudes constituted and reproduced relations of power based on gender, race, and economic marginality. Granted, the law was one of many forms of regulation — accomplished also through the church, the school, and the family — but it remained an important one. As the “cutting edge of colonialism,” the law could enact the ‘final lesson’ and perhaps the most alienating one for Aboriginal women: incarceration.

The experiences of Native women were also profoundly different from those of other women: they were shaped by racist state policies of ‘over-regulation’ linked to the federal Indian Act, by the racialized constructions of Native women by court and prison personnel, and by the cultural chasm separating Native from non-Native in this time period. In short, the legal regulation of these women was an integral component of the material, social, and cultural dimensions of colonialism.

Native women’s increasing conflicts with the law thus reflect overlapping relations of power, based on gender, class, and race. Masculinist and class-biased definitions of crime, already inherent in the criminal justice
system, were further complicated by the relations of colonialism and race. As Colin Sumner argues, colonialism often sparks the clash of two cultures and legal regimes, with unequal power relations operating within as well as between those cultures. The supposedly ‘modern’ Western legal regime often dominates, displacing older modes of regulating behaviour, and converting “attempts to preserve the old ways, resist the new order and accommodate to its hardships . . . into criminal behaviour.”

Arguing for a separate Aboriginal justice system, activists and scholars have recently stressed the fundamental, perhaps unbridgeable, differences between Euro-Canadian and Aboriginal value systems. While I have found evidence of culturally distinct notions of wrongdoing, justice, and sanction, my conclusions also highlight some complications in this picture. Though certainly alienated from the dominant criminal justice system, some Native families, leaders, and communities also used this system to address social problems and effect social controls in desperately difficult times. As a result, they also participated in the incarceration of their own wives, daughters, and mothers.

As the only provincial reformatory for women, the Mercer, located in Toronto, took in women from across the province who received sentences varying from three months to two years. Although extreme caution should be exercised in using the Mercer numbers, they do suggest patterns of emerging overincarceration. The most striking fact of Native women’s imprisonment at the Mercer was its increase over time. In the 1920s, few Native women appear in the prison registers; three decades later, Native women were listed on virtually every page. Of overall “intakes” (women admitted, repeaters or not) in the 1920s, only thirty-nine were Native women, or about 2 percent of the prison population. Every decade thereafter, the number of Native women taken in not only doubled but increased as a proportion of admissions — from 4 percent in the 1930s to 7 percent in the 1940s to just over 10 percent in the 1950s. Yet over these years, the Native population remained constant at about 1 percent of the general population. The turning point clearly came after World War II when the number of Native women admitted increased substantially. A survey of minor charges in Kenora supports this pattern; by the 1950s the number of Native women incarcerated in the local jail was increasing rapidly, with the vast majority of repeaters charged with alcohol offences.
Although the patterns were amplified in certain areas, Aboriginal women’s incarceration followed the trends of sentencing for all women at the Mercer. There were increasing numbers of women sentenced over time, more and more liquor offences by the 1950s, and a larger number of recidivists with shorter, definite sentences. Younger women, particularly those in their twenties, dominated at the Mercer in the interwar period; in the 1940s and 1950s, women from twenty to forty were still the majority, though slightly more women over forty were being sentenced. Most offenders were listed as housewives or domestic workers, or gave no occupation, and they were primarily sentenced for crimes of public order and morality. By the 1950s, however, Native women were overrepresented in liquor charges. Overall, alcohol offences represented about 50 percent of the admissions, but for Native women they were as high as 70 percent.17

For Native women, crimes of public poverty and moral transgression always dominated over crimes against private property or the person. Vagrancy, an elastic offence that included everything from prostitution to drunkenness to wandering the streets, dominated as the most significant charge for Native women in the 1920s (50%) and 1930s (31%). In both these decades, prostitution and bawdy house charges came second, and, by the 1930s, breach of the Liquor Control Act (BLCA), especially the clause prohibiting drunkenness in a public place, was assuming equal importance. In the next two decades, alcohol-related charges came to dominate as the reason for incarceration (32% in the 1940s, and 72% in the 1950s), with vagrancy and prostitution convictions ranking second. Theft, receiving stolen goods, and break and enters comprised only 6 percent of the convictions in the 1940s and 1950s, while violence against the person represented only 2 percent of the charges in these years. That issues of sexual morality and public propriety were central to Native incarceration can be seen in the increasing use of the Female Refuges Act (FRA), which sanctioned the incarceration of women aged sixteen to thirty-five, sentenced, or even “liable to be sentenced,” under any Criminal Code or bylaw infractions for “idle and dissolute” behaviour. While this draconian law was used most in Ontario the 1930s and 1940s, for Native women it was increasingly applied in the 1940s and 1950s.18

A higher proportion of charges was levelled against women for neglecting, abandoning, or “corrupting” their children (5% and 9% in the
latter two decades) than for assaults against adults. Prosecutions under this charge point to a crucial theme found within the case files: even if the official charge was not alcohol-related, the crime was often attributed to alcohol consumption. One woman charged with both assault and contributing to juvenile delinquency, for instance, had struck another woman on the street while intoxicated, and in the presence of her own fourteen-year-old daughter. Women often lost custody of their children when both alcohol problems and poverty indicated neglect to the authorities; sometimes the children were deserted; sometimes they were left in the hands of relatives who, poor themselves, could not cope easily. One poverty-stricken woman left her children aged three to nine in a tent, and they were later found looking for food in garbage cans. Incarcerated for intoxication, she immediately lost her children to the Children’s Aid Society (CAS).

Theft charges were also linked to poverty and alcohol consumption. Two Native women found themselves severely punished when they “destroyed private property”; after drinking in a bar in a northern mining town, they asked two men for a ride home. Refused, they threw matches into the car and destroyed it. In another case, a woman “helped herself to $19.00 from the wallet of an intoxicated bushworker drinking with her.” As she was five months pregnant, she reasoned that “she needed it more than him.” The link between prostitution charges and women’s poverty was also clear; despite the fact that a woman might be literally “malnourished and destitute,” incarceration was deemed the appropriate response. Even the few violent crimes were often explained in the files by alcohol problems; in one tragic case, a woman who was drunk unknowingly assaulted her sister with a beer bottle and killed her. She served less than two years for manslaughter, the judge noting her lack of murderous intent and her own mental anguish. Other women attacked family members in anger or frustration, or attempted suicide; their violence was often unsuccessful or half-hearted, desperate but not calculated.

One reason that liquor charges dominated at the Mercer by the late 1950s was overcrowding in women’s cells at the local Don Jail. The crush was relieved by sending some women to the Mercer. This explanation also may account for the increasing number of recidivists: by the 1950s, at least 50 percent of all the Native women admitted had already been
in the Mercer before. A few women, often homeless and sometimes with alcohol problems, were being admitted twenty or thirty times. One recidivist case was typical: in the late 1930s, Susan, a seventeen-year-old, was brought up before a small-town magistrate on a charge of “corrupting children.” An orphaned foster child now working as a domestic, she was arrested for engaging in sex with a local man at his family home in front of children. The initial report also claimed she had no occupation, “has been mixed up in other immorality and was correspondent in a divorce case.” After serving her term, and giving birth to a child in prison, Susan stayed in Toronto, but she had few skills and little education. Two years later, she was incarcerated under the Venereal Diseases Act, perhaps a sign that she had turned to prostitution to support herself. Struggling with alcohol problems, she went back and forth between her home town and Toronto, trying with little success to collect enough relief to survive. When relief officials tried to force her into the local refuge, she went to live in her brother’s abandoned henhouse. Eventually she was sent back to Mercer for two years, convicted under the FRA as an “idle and dissolute” woman. She remained in Toronto and, over the next fifteen years, was jailed repeatedly under BLCA charges: by 1959 she had thirty-six admissions. Often convicted on the standard thirty days or a $25 fine penalty, she — like many Native women — could not afford the fine, so spent time in the Mercer.

Many women at the Mercer came from families that had suffered significant losses; a parent or siblings had died of pneumonia, gangrene, an accident, or alcoholism. Tuberculosis claimed many lives on reserves, even after it was declining within the general population. When a middle-aged woman who lost all her eight siblings to disease and her father to alcoholism told the Mercer doctor that her own drinking was “unfortunate but unchangeable,” one can perhaps understand her tone of resignation. Family dissolution, domestic violence, intense poverty, low levels of education, the likelihood of foster care, or CAS intervention in the family were also evident in many women’s backgrounds. Despite family dissolution, women struggled, sometimes against great odds, to sustain family ties even when illness, transience, or removal of children made it difficult. “She never knew her parents but she has five younger siblings [spread over residential schools and cas care] . . . whom she writes
to try and keep the family together,” noted the reformatory psychiatrist in one instance. 26

Women’s geographical origins and the location of their convictions are significant, indicating one of the major causes of overincarceration: the spiralling effects of economic deprivation and social dislocation. In the interwar period, the majority of women were convicted in southern Ontario, especially Toronto and Hamilton, or in Sarnia, Sault Ste. Marie, or Sudbury — cities close to many reserves. 27 Following World War II, more Native women originally came from more remote areas further north. By the 1950s, even though the majority of convictions were in southern Ontario, the place of origin, in over a third of these cases, was Manitoulin, North Bay, Thunder Bay, or other northern places. 28 This moving “frontier of incarceration” suggests the importance of urbanization and/or deteriorating economic and social circumstances as the stimulus for women’s conflicts with the law. 29

In the interwar period, Natives living on many reserves were finding themselves in difficult economic straits. No efforts were made to encourage new economic development, a reform desperately needed because many reserves had a fixed resource base and a growing population. The Depression accentuated subsistence problems, reducing some Aboriginal communities to relief far below the already pitiful levels in the cities. 30 Similar dilemmas increasingly plagued more isolated reserves after the war, when corporate resource development, the decline of fur prices, and new transportation routes began to have a dramatic impact on northern communities. As the effect of colonization permeated further north, the consequences were increased social dislocation and conflict, and more intervention by Euro-Canadian police forces, especially when Aboriginal peoples were off their reserves. 31 Indeed, women who fled to cities in search of jobs and social services often found little material aid, but faced the complicating, intensifying pressure of racism. 32 One of the most dramatic examples of the colonial “penetration” of the North was that of Grassy Narrows. When this isolated community was relocated closer to Kenora, the community’s sense of spatial organization, family structure, and productive relations were all undermined. Proximity to the city brought increased access to alcohol and the malignancy of racism; “the final nail in the coffin” was mercury poisoning of their water and their fish supply. 33
The stresses experienced by Native families in this time period were never simply material. For example, official federal policies of acculturation, though increasingly viewed as unsuccessful, persisted in projects such as residential schools, which were experienced by as many as one third of Native youth in the early decades of the twentieth century. While some historians argue that girls may have acquired a few useful skills in the schools, almost all accounts agree that the isolation of children from their communities, the denigration of their culture and language, and the emotional and physical abuse left many women scarred for life.³⁴ It is impossible to ascertain exactly how many Mercer inmates came through residential schools, but it is clear that when residential school inmates appeared in court, magistrates and judges claimed bluntly that they should know “the difference between right [and] wrong.”³⁵ Although the legal authorities assumed the moral superiority of the Euro-Canadian, religious instruction of residential schools, Aboriginal leaders now argue that violence, alcoholism, and alienation were actually the direct results of such schooling.³⁶

Because alcohol charges were the primary cause of incarceration, it is worth examining them in greater depth: these cases demonstrate how social dislocation interacted with cultural alienation and racism to prompt overincarceration. Despite evidence that prison was no solution to “alcoholism”³⁷ and may have worsened the problem, penal punishment continued to be the response of the authorities. One important reason for the high numbers of alcohol arrests, especially for women, was their poverty and thus their inability to pay fines. At the same time, the public character of Native drinking made it particularly distasteful to the dominant classes and culture. It was sometimes linked to sexual ‘misbehaviour,’ including miscegenation, and, given the image of Native women as weak and corruptible, authorities believed that alcoholism would spread easily by example. Native drinking had for some time been feared as a precursor to alcoholism, and, although consumption of alcohol was increasingly seen as an addiction rather than as evidence of weakness of character, the latter characterization never entirely vanished from the judgments of the legal and medical authorities.

Not a crime as long as it is hidden from view, alcohol-induced behaviour by the well-heeled drinker was easier to ignore than that by the
impoverished one. Moreover, the means of consuming alcohol and the way in which the effects of alcohol are exhibited are socially and culturally specific. By the late 1960s, critics of existing theories of alcoholism among Native peoples argued that there was no direct evidence that “Indians were more susceptible” to alcoholism and that the precise forms that “out-of-control” behaviour took had more to do with culture than biology. Since that time, the dominant interpretations of alcoholism have stressed the social and economic context of colonialism and oppression giving rise to alcohol consumption, some even seeing it as a muted form of “protest.” Perceptions of alcoholism as a disease that Natives are especially vulnerable to have not totally disappeared, however, even within Aboriginal testimonies.

Alcoholism may have existed as a problem for some Native women, but magistrates failed to see it as an outcome of systemic social problems. While many regretted the unfortunate background of women brought before the court, pointing to family breakups or alcoholic parents, their laments were specific rather than structural. They were insensitive to the assaults on Native culture, traditional economic production, and family and community organization that were occurring in the twentieth century. Court pronouncements also divulged a fatalistic equation of Natives and alcohol: “She is an Indian girl and probably will never stay away from the drink,” noted one magistrate in 1945. A decade later the same complaint was advanced: “They spend up to 8 months in jail and are the biggest problem I have . . . I do not know any remedy for this type of person.”

The authorities were especially concerned with the links between visible sexual behaviour and alcohol consumption. Native women suspected of prostitution, or who engaged in sex for no money and with no obvious moral regret, were especially vulnerable to incarceration, as were non-Aboriginal women who engaged in “casual” sex and rejected the ritual of confession and moral guilt. Women accused of having sex in public or with multiple partners were targeted by police, who described them in terms tinged with moral outrage: “She is known as a prostitute and often intoxicated . . . her conduct is disgraceful to say the least, one night she hung around the naval barracks, took off her clothes and jumped in the creek.” Alcohol and sexual misbehaviour became so linked in the mind
of the police that the mere fact of Aboriginal men and women drinking together suggested sexual immorality; when two women were found in a cabin, drinking with some men, the arresting officer noted “there was no evidence of sex but the proximity of the sexes with intoxicants can have undesirable results.” These descriptions were fuelled by the racist stereotype of the Indian woman easily debauched by alcohol and lacking the sexual restraint of white women. By the late nineteenth century, political and media controversies had created an image of Native women in the public mind: supposedly “bought and sold” by their own people as “commodities,” they were easily “demoralized” sexually, and a threat to both public “morality and health.” While the Native was essentialized in the dominant cultural discourse, Aboriginal women did not assume the (male) role of the “noble savage” or the “lazy ingrate,” but rather of the licentious “wild woman” symbolizing sexual excess and the need for conquest or control. In one sense, there was less moral panic about Aboriginal women engaging in interracial sex than there was for white women; the latter might even be incarcerated for sexual liaisons with non-white men. This lack of concern with miscegenation, however, emanated from a racist stereotype that saw Native women as less “pure to begin with.”

Incarceration was also justified for paternalistic motives: magistrates claimed that, by incarcerating Native women, they were protecting them from becoming an “easy target for the avaricious” or the “victim of unprincipled Indian and white men.” A similar rationale of protecting the weak underlay some of the prohibitions against prostitution in the Indian Act. This paternalism was evident in the trial of a young Aboriginal woman from southern Ontario who was sent to the Mercer for two years on FRA charges of being “idle and dissolute.” The arresting RCMP officer insisted she was “transient, with no work and has been convicted on many alcohol charges over the past few years.” She had been caught “brawling with white men,” he continued, “and has been found wandering, her mind blank after drinking.” Moreover, it was believed that she was a “bad influence on a fifteen year old who has also been led astray.” The magistrate lectured the woman: “My girl, I hope that by removing you from unscrupulous white men and Indian soldiers and alcohol that you will start a new life. It is too bad that such a good looking Indian like
you should throw your life away. Other men buy the liquor for you, then you suffer, and they escape.”

This example also points to another precipitating factor in many arrests: the public nature of the woman’s alcohol consumption. In large cities, Native women who were jailed were not always recidivists, but simply those targeted by police because of loud, disruptive behaviour or inability to find their way home. One such woman calmly told the psychiatrist that she was not an alcoholic and “only drinks heavily on occasion.” He was forced to admit she was right.49 It is difficult to escape the conclusion that these women were simply more heavily policed because they were poor and Native.50

The complaint that women who drank heavily would easily corrupt others was also common. In some cases, it was Native families who feared this prospect: “She should serve her whole term; she is better in there,” wrote one father, fearing that his daughter, if released, would be influenced by her mother, who also drank. Often, it was the Indian agent or the police who advocated removing the offender so she would not lead others astray. Sentencing one woman to a term in Mercer, a magistrate noted that the woman must be kept away because she was “a bad influence on the girls on the island”; when she was released, he urged that she be sent “away from the Island.” Women whose children had been removed because of their mother’s drinking were seen as a special burden on the state, and, therefore, candidates for incarceration. “She has had four children with the CAS,” noted one magistrate, “she has chosen the wrong path, now her children are a public charge.” Such women were also portrayed as poor material for rehabilitation. As one magistrate noted of a deaf woman charged under the Indian Act: “There is no doubt that children will continue to the end of her reproductive age, or until a pathological process renders her sterile. She is also likely to drink steadily. The prospect of improvement is remote. Institutionalization, if available, is suitable.”51

Incarceration was thus used as punishment, as banishment from public view, and as an attempt to protect women from further alcoholism or immorality. Declarations of “protection,” however, were clearly inscribed with both gender and race paternalism, for they presumed an image of proper feminine behaviour, stressing sexual purity and passivity within
the private nuclear family, and the need for Native women to absorb these “higher” Euro-Canadian standards. Similarly, teachers in the residential schools often claimed that Native girls were easily sexually exploited, prone to returning “to the blanket.”52 Aboriginal women were thus both infantilized as vulnerable and weak, and also feared as more overtly and actually sexual.

Unfortunately, a gulf of considerable magnitude divided Native women from those convicting them and from the penal authorities in the Mercer. Indeed, the interpretation of Native crime offered by the legal and penal “experts” contributed to the process of overincarceration by legitimizing an image of Native women as morally weak and easily corrupted. Even after incarceration, these attitudes were significant because they shaped possibilities of parole, alcohol treatment, and rehabilitation; convinced that Native women would be recidivists, authorities did little to discern their needs. Not surprisingly, many women became even more alienated within the reformatory.

Like other women, First Nations women were separated from prison personnel by class and cultural differences. Inmates encountered revulsion, antipathy, resignation, and sometimes sympathy from the experts whose “scientific” language of clinical analysis and case work often masked subjective, moral judgments. Native women, however, were also seen through the particular lens of race paternalism. For example, the very word ‘reserve’ had a different meaning from words like ‘poor or bad neighbourhood’ used between the 1930s and 1950s to describe the backgrounds of white women: reserves were associated with degeneracy, backwardness, and filth. One ‘progressive’ social worker, writing about Indian juveniles in the 1940s, decried racial prejudice and the poverty on reserves, but at the same time reiterated many racist images, describing Indians as “savage, childish, primitive and ignorant.”53

A picture of Aboriginal women as weak and lacking in moral fibre followed them through the court and penal systems. Magistrates would comment, “We can’t expect miracles from this home,” while the presiding prison psychiatrist would often conclude, “It is doubtful if successful rehabilitation could be achieved.”54 The image of the reserve as a place of hopelessness was especially evident in probation reports. Native families sometimes offered probationers accommodation, even when houses were
crowded, yet officials equated such offers with a lack of awareness about the need for basic moral and social standards. They were especially critical of congested conditions, likely seeing proximity of the sexes as encouraging immorality. They were also suspicious of those living a transient life, “in the Indian mode,” who might easily succumb to alcohol use, unemployment, and poverty. “Home conditions primitive . . . the home is a disreputable filthy shack on the reserve,” were typical observations. Aboriginal people who did not fit this stereotype were then portrayed as unusual: “Above average Indian home which is adequately furnished, clean and tidy,” noted one probation report, while another officer claimed a father was “one of few Indians in the area who does not drink.”

Not all these Native women came directly from reserves, but the stigma of primitiveness was carried with them into the city, resulting in overzealous policing and victimization. One older woman was arrested, along with an intoxicated friend, for “indecent exposure”; her crime was simply swimming nude at a lake where nude boys were also swimming. Her claim that she was in prison “unjustly” seemed to be shared by the psychiatrist, but he did not advocate release. A young woman who had stolen a purse she found in a store change room became distraught at the “humiliation” her possible incarceration would cause her siblings, so tried to return some of the money. Her honesty cost her a prison term. Again, the Mercer psychiatrist’s report noted she was a “bright, alert, pleasing” woman with a good employment history. She had been incarcerated, however, on the basis of reports from CAS and school officials in Sault Ste. Marie that portrayed her as a “typical” problem Native: she was an orphan, had one illegitimate child, and a “poor” attitude — in their view, she was destined for trouble.

Probation reports also revealed a Catch-22 that Native women faced in terms of rehabilitation. Social workers debated whether reserve or city life would be more corrupting for released women, but they often recommended removing women from their original home or reserve. However well-intentioned the effort to isolate her from past problems, this strategy left women in foreign surroundings, alienated by language and cultural differences, and often directly faced with racism. This situation was well-captured in a parole report that claimed one woman was now “an outlaw on the Reserve” because of her promiscuity, and her parents there
were heavy drinkers who lived in a “small, filthy home.” It was unwise to return her there, the officer noted, but added: “We realize the extreme difficulty in placing an Indian girl in some other centre, where society is loath in accepting her.” Grandmothers often tried to care for children left behind or born in jail, but families were frank about the lack of economic resources and employment available for the released women, and they agonized over the prospects of help with alcohol problems. One mother pointed out that she also drank and that if her adult daughter returned home, “she would lose her mother’s allowance and so they would have no money.” “The mother really does not want her home,” observed the agent, “but she would not say [the daughter] could not return.”

If a woman came from a reserve, her incarceration might be the product of the Indian agent’s powers to charge her with crimes such as drinking, prostitution, or immorality. Agents were endowed with the powers of justices of the peace under the Indian Act, thus creating an extra layer of oppressive legal regulation for Native women. The level of surveillance of the economic, social, and moral lives of Native families by the agent was astounding. When called on to assess parole, his report might comment on the family’s church attendance, the marital status, education, employment, and social lives of siblings and parents, his judgment of their moral standards, and intimate details of the woman’s life. The agent could initiate the proceedings sending a woman to the Mercer, or assist police efforts to incarcerate her. He had the power to make or break a case for parole, and might exile her to another area. Moreover, the evidence presented by the agent could be little more than hearsay. “There are complaints that she is hanging around the hotel, going into rooms with men . . . we hear that she is in the family way,” testified the police chief in one case. The Indian agent supported him, claiming he had spoken with her doctor and discovered she was pregnant.

While the agent’s power was never absolute, and might be opposed by band members, the mere awareness of his ability to survey and penalize wrongdoers buttressed his authority. His surveillance was also patriarchal in character, for federal Indian policy to “assimilate and civilize” was developed with the specific image of a downtrodden, sexually loose woman in need of domestic education and moral guidance in mind. Criminal charges provided one means for agents to enforce moral standards, and
both alcohol consumption and sexual immorality were policed this way.\textsuperscript{61} In 1930, for instance, a woman spent a month in a northern Ontario jail after the agent, the RCMP, and the chief charged her with “act[ing] in a profligate manner.” Women were the special focus of control, but men could be targeted as well. In one case a woman charged with sexual immorality was given a suspended sentence because she was ill and had a child, while her male “accomplice” in immorality spent a month in jail.\textsuperscript{62}

State policies encouraging regulation were buttressed by both social-work and psychiatric discourses that claimed to offer expert knowledge of the Native woman’s psyche and character. Inclined to see Natives as weak, impassive, and possibly immoral, social workers and psychiatrists by the 1940s were beginning to attribute such weaknesses to environmental or social conditioning rather than racial traits.\textsuperscript{63} Ironically, women sometimes found more sympathy from the magistrates who sentenced them than from the psychiatrists who became increasingly influential after World War II: “She has no one to look after her, is badly in need of care and treatment for alcoholism,” pleaded one magistrate in his sentencing report.\textsuperscript{64} Psychiatrists who examined women’s suitability for “clinic” (alcohol) treatment were seldom so supportive. Repeatedly, a woman’s silence, a means of coping with alien surroundings (and, in some cases, related to language differences), was read negatively as evidence of a passive personality. It is also revealing that a psychiatrist’s assessment denoting “low intelligence” often came immediately after a statement describing the woman as Native, a psychological slip of some consequence.\textsuperscript{65}

These doctors “saw” only one Native personality type: “taciturn”; “the usual Indian reserve”; “finds it difficult to verbalize as do most of our Indians”; “incoherent and withdrawn” were opinions frequently stated.\textsuperscript{66}

There is no evidence that these experts read any of the contemporary anthropological literature, especially on the Ojibwa women who dominated at the Mercer. Irving Hallowell, for instance, argued in the 1940s that culture shaped personality structure and that the Ojibwa were highly reserved emotionally, avoiding direct confrontation or anger with others; this restraint, he argued, was a product of their hunting and gathering way of life, their spiritual beliefs, and their social organization.\textsuperscript{67} Contemporary participant observation has suggested similar conclusions. In both Ojibwa and Iroquois cultures, it is often considered wrong to “speak of
your hurts and angers . . . to indulge your private emotions.” Once past, the past should “be buried and forgotten”; moreover, faced with the unfamiliar, “conservation withdrawal” is the best survival tactic: you must “step back into yourself and conserve your physical and psychic energy.”

Medical and social work experts at the Mercer had a different measuring stick. What was crucial in their world view, especially by the 1950s, was an embrace of the “confessional” mode, introspection, a critical understanding of one’s family background as the “cause” of addiction, and a professed desire to change one’s inner self. Native women in the Mercer almost invariably refused to embrace this therapeutic model. Furthermore, their honesty about their drinking simply confounded the psychiatrist. A woman who had both her children taken away because of her drinking and “had never coped with this” spoke doubtfully about whether she could change. “She might use antabuse,” he noted, but then was shocked by her final admission: “but she still laughs and says she will go on a big spree when she gets out of here.” “She regards her drinking as a feature of her personality which is unfortunate but unchangeable . . . not motivated to improve, nothing to do to help her when she is discharged,” he concluded, as fatalistic as he claimed the women were.

This cultural gap was conversely apparent in Native women’s reactions to their incarcerations. Women’s silences — perhaps a form of resistance — make it difficult to judge their responses to incarceration. Displaying a level of realism, honesty, acceptance, and stoicism that the authorities interpreted as passive fatalism, Native women often openly admitted to the charge against them, making no excuses. “She freely admits neglect of [her children] and does not make any further comment,” a psychiatrist mused; he was even more baffled by a woman’s “extraordinary honesty about her unwillingness to work.” Several contemporary legal workers noted that honesty about the “crime” and guilty pleas, rather than any demand for the system to prove one guilty, distinguished the Ojibwa value system.

Not all women accepted their fate easily; the removal of children was agonizing for some, and a minority sent to the Mercer objected to their punishment. Most commonly it was younger women who tried to run away, or who argued or fought with the matrons. When one “fractious” young woman, already a fugitive from an industrial school and a training
school, ended up at the Mercer, she attempted a third escape to her home near Fort William. The more rebellious Aboriginal women sometimes came to the Mercer because they had caused trouble elsewhere, as with the teen accused of trying to “start a riot” at the Galt Training School for Girls. There were women who ‘denied everything” and argued with the psychiatrist that they did not belong in a reformatory. More often, they resisted by resorting to silence, by answering ‘no’ to every question posed by the psychiatrist, or rejecting the “help” they proffered: “on the whole seems to be able to run her own show the way she wants it,” the doctor commented on a Mohawk woman in the Mercer for one month for alcohol problems. She did not want his advice or any contact with the other Native women, whom she disdainfully dismissed as “primitive Ojibwas.”

Families also had mixed responses to women’s sentences, but there were some clear distinctions between what families and the authorities condemned as wrong. In contrast to the authorities, many Native families rejected the idea that behaviour caused by alcohol was a crime, a perception that remains strong in many Aboriginal communities today. “I do not believe that my wife should be punished for drinking,” wrote one distressed husband; “some soldiers bought the whisky to our reserve and I thought they were our friends.” A father and daughter from southern Ontario appeared one day at the Mercer office, asking for the release of the mother. They appealed to the authorities by saying she could get employment in the tobacco fields, and added that there was no reason to keep someone just because of occasional disturbances while drunk: “She is fine unless under the influence of alcohol,” they implored, to no effect. Like some white working-class families, relatives also demanded the woman’s release so she could resume her familial duties: “We are old and can’t look after [our daughter’s] two children, as well as her sister’s 15 year old,” one elderly couple pleaded.

Most Native families and communities failed to see drinking as a crime, and they also had difficulty understanding why incarceration was the punishment. In more isolated Ojibwa communities, the chief and council, or sometimes elders, had imposed different sanctions for wrongdoing than those imposed by the Euro-Canadian justice system. Social control was effected through elders’ lectures about good behaviour, connected to spiritual instruction, or through fear of gossip or of the
“bad medicine” of supernatural retribution. If a person broke communal codes, shaming and confession were crucial to rehabilitation; indeed, when the confession was public, the “transgression” was washed away.\textsuperscript{74} Only in extreme cases was banishment of the individual considered the answer.\textsuperscript{75} Similarly, in Iroquois societies, ostracism, ridicule, or prohibitions on becoming a future leader were all used to control behaviour, admittedly an easier prospect in smaller, tightly knit communities in which the clan system also discouraged conflicts.\textsuperscript{76}

Many observers claimed that these traditional mechanisms of social control were breaking down in Aboriginal communities at this time owing to the social stresses on reserve life and the debilitating effects of colonialism. Moreover, there is little historical evidence of the gendered applications of sanction,\textsuperscript{77} punishment, and social control, or on the way in which traditional values did, or did not, follow women and men into the city. While recognizing the dangers of essentializing or romanticizing “traditional” Aboriginal social control, the cultural gaps between Aboriginal and Euro-Canadian notions of wrongdoing and sanction still remain clear.

On some occasions, local attempts by the families or communities to alter women’s behaviour were combined with the strategies of the Euro-Canadian justice system. Maria’s case is a good example. Charged repeatedly with intoxication and with neglect of her children, Maria lost them to various institutions: three children were sent to a residential school, one was in CAS care, and one was in the sanatorium. The Indian agent complained to the crown attorney that she resumed drinking as soon as she was released. The chief on the reserve wanted to help her and tried to work out a plan for her rehabilitation, promising the return of her children and a house on the reserve if she could refrain from drinking for two months. Her failure to meet his conditions may speak not only to her addiction but to the desolation she still felt about losing her children.\textsuperscript{78}

Seldom did the women, their families, or the communities offer a straightforward political critique of the discriminatory nature of the justice system: that is, Natives’ lack of access to legal counsel; their limited cultural understanding of the courts’ alien legal concepts and rituals; language and translation difficulties; and racist treatment by police or legal officials. Nonetheless, a pattern of estrangement was visible. In a rare
case, one mother articulated her anger against what she justly perceived to be overly harsh treatment of her daughter: “I dearly love my daughter, I want my grandson to come home here. This is our country, especially Canada, and there is a lot more I could say. [If a] woman anywhere in this country committed murder they would get out free, but my daughter gets two years for less crime [a drunk charge].”

There is also some evidence of Native support for the incarceration of women. Histories of juvenile delinquency have indicated similar patterns of working-class parents seeking state help for their unmanageable daughters. But given the evidence of Native alienation from the criminal justice system, how do we explain the fact that some families and communities accepted its premises and punishments, even encouraging the removal of relatives or acquaintances by the authorities? A few women claimed they “wanted to go to the reformatory,” as they were overwhelmed by addiction problems, venereal disease, or were pregnant and had nowhere to go. As one pregnant twenty-two-year-old convicted of prostitution discovered, her stepmother had informed the authorities that she “wishes her daughter to stay in for a full term as she will not listen to advice.” “I believe she pleaded guilty just to have a place to go during her confinement,” concluded the magistrate. The most common pattern was one of family and community pressure to incarcerate the woman. In one southern Ontario community, a woman called the Indian agent to tell where her sister had hidden stolen goods, thus incriminating her. The sister responded by “threatening to burn her house down,” which did not do her case any good. In other cases, parents participated in the criminalization of daughters for immorality or incorrigibility: in one urbanized family, the father “said he wanted [his daughter] sent to Training School as he could do nothing with her.”

Families sometimes felt a sense of shame at a woman’s conflicts with the law — this was all the more difficult on reserves where each family’s history was well known — and thus encouraged her removal. One Ojibwa woman on a reserve told the CAS that “she did not want anything to do with her sister, as she [engages in prostitution] and sends men to her sister who does not want this kind of life.” “She has been refused care by the people of her own community, so we had to take the children,” a social worker’s report concluded. Some relatives indicated to probation
officers that they would not take the women back into the family after incarceration. One trapper from the North wrote a letter to the Mercer, relaying similar sentiments: he “did not want his [wife] to return,” as he could not deal with her drinking and would rather “support his children on his own.”

Reserve communities sometimes discussed these problems together, with or without the Indian agent, then asked for legal intervention. More than one community signed letters or petitions about moral problems they perceived in their midst. One petition included signatures from the woman’s grandparents, cousins, aunts, and uncles, who said, “in the interests of morality on the Reserve and of the accused, she should be sent to the Mercer Reformatory.” The fact that an uncle stood with her in court “as a Friend,” as well as the wording of the petition, suggests that the Indian agent had a role in the petition, and that her relatives had been persuaded that this “banishment” would help her and restore peace on the Reserve.

In cases like this one, customary community controls and Euro-Canadian law are intertwined, though the latter clearly assumed more power. Why, then, was Euro-Canadian legal regulation accepted, perhaps increasingly so, during this time period? First, not all these women were reserve and/or treaty Indians. Many had become urban dwellers; some were of mixed-race descent. Moreover, not all women came from reserves where traditional forms of justice were fully preserved; the continuance of customary controls depended on the power of the Indian agent and local police, the geographical isolation and economic and social equilibrium of the reserve, and the political will of its occupants to vigorously defend their right to rule themselves. Second, Christian schools and missions had made substantial inroads in Native communities and, along with the agents, were trying to use their power to alter social and sexual relations and impose “superior” Anglo/white values. As communities were increasingly influenced by the Euro-Canadian justice system and by attempts to acculturate them, they may have acquiesced to some of the premises of this governing system. However dissociating the influence of the Euro-Canadian criminal justice system was, it came to exert some ideological sway over communities, a process of hegemony that was unavoidable given the colonial imbalance of power and the ongoing assault on Native societies by those claiming cultural superiority.
Furthermore, by the twentieth century, not all the suppositions of Canadian law, such as the condemnation of certain behaviours, were unfamiliar to Native value systems. The censure of violence, the fear of disruptive alcoholic behaviour, and the “promiscuity” of women (and sometimes men) could be viewed negatively by Aboriginal communities — even if their notions of sanction were different. Domestic violence, according to some anthropologists, was absent in many Native cultures until the influence of European contact, but it was condemned after that. Even though alcohol “abuse” was not seen as criminal, it was seen as a problem; overwhelmed by the tragic toll it was taking on sisters, daughters, and mothers, families might agree to banish the person, perhaps hoping that the reformatory would actually reform. Faced with few options, families and communities used legal options to deal with problems undermining their communities, and their efforts must be seen in the context of the colonial marginality and social dislocation creating these social strains.

In many cases of internal condemnation and control, crimes of sexual immorality occasioned the most concerted opposition from the community. Historians and anthropologists agree that, at first contact, there was more sexual autonomy for Native women, more egalitarian practices of marriage and divorce, and more acceptance of illegitimate children within many Aboriginal cultures. But these traditions were challenged by European values, and, by the early twentieth century, observers in both Iroquois and Ojibwa communities stressed the great importance placed on lifelong marriage, as well as disapproval of some kinds of sexual behaviour. Ethnographic texts written from the 1930s to the 1950s pointed to the “mixture of conflicting beliefs,” both European and Native, in Aboriginal cultures, especially in relation to marital and sexual norms, and in views of chastity and adultery. One highly controversial text claimed that northern Ojibwa women were increasingly subject to violence as their social importance and sexual autonomy were undermined within the community.

Anthropological reports and oral traditions in the mid-twentieth century also indicate that chiefs acted as custodians of morality, discouraging women from leaving their husbands for new partners, and deterring the practice of serial monogamy if they felt it undermined the stability of the community. “Yes, the Indian Agent on the reserve did try to make people
stick to their marriages, [but] so did the chief and council,” remembers one northern Ojibwa woman. Although her observation referred to the sexual regulation of men and women, other evidence suggests that sexual/social control was likely to focus more stringently on women: the political and social effects of colonialism on gender relations had provided male leaders with access to such power and furnished ideological encouragement for the patriarchal control of women’s sexuality.

All this evidence points to a complicated situation in which dominant culture, bent on “civilizing” Aboriginal peoples with the two-headed bludgeon of religion and the law, undermined older patterns of community social control. In this process, some overlapping proscribed behaviours became easier for the Canadian authorities to punish, for they could co-opt Native concerns and customary practices, drawing on the support of Native leaders. Customary law in Aboriginal communities was a dynamic ‘process,’ shaped by the political, economic, and cultural influences and conflicts upon and within Aboriginal life. And the latter cannot be ignored: as Tina Loo has argued, “some native peoples also brokered” the extension of Euro-Canadian law, using both the Indian Act and the Criminal Code as means of asserting or reasserting power and control within their own communities, or sometimes as means of coping with the effects of colonialism.

This complicated process of domination, conflict, and overlap in notions of crime and justice was bound to work itself out in both racialized and gendered ways, to the detriment of Native women. Whatever the overlap in values, the ongoing process of colonialism — encompassing the loss of economic security, increased familial instability, and the denigration of Native culture as inferior — meant that the Euro-Canadian “solution,” incarceration, triumphed over more traditional Native community controls. Moreover, the Euro-Canadian standards applied by the Indian agent were decidedly patriarchal, propping up an image of the ideal family that was far from the Native reality of life, condemning women for sexual behaviour that was more acceptable for men, and marginalizing women who could lose their Indian status and who had fewer economic resources outside the family and community to support themselves.

In the mid-twentieth century, particularly after 1945, contemporary patterns of overincarceration of Native women became apparent at the
Ontario Reformatory for Women. The majority of First Nations women sent to the Mercer were criminalized on the premise of moral and public order infractions linked to alcohol, or for prostitution, venereal disease, or child neglect charges. Like other women sent to the reformatory, the lives of these Aboriginal women were framed by economic marginality, family dissolution, violence, and sometimes previous institutionalization. The background of Aboriginal women, however, was also marked by high levels of ill health and intense poverty, and their experience of the criminal justice system was profoundly shaped by their own cultural alienation and by the authorities’ perceptions of their cultural and racial deficiencies. Three crucial, interconnected factors shaped the emerging process of overincarceration: the material and social dislocation precipitated by colonialism, the gender and race paternalism of court and penal personnel, and the related cultural gap between Native and Euro-Canadian value systems, articulating very different notions of crime and punishment.

Unlike the women housed in local jails who were seen as hopeless repeaters, women sent to the Mercer were supposedly targeted for rehabilitation. Yet before they even entered the Mercer’s towered gate, Aboriginal women were exposed to extra layers of surveillance and suspicion, and their reformation was presumed to be unlikely. Women who came from reserves were subject to the authoritarian powers of the Indian agent and the Indian Act, designed to assimilate Native peoples to the more “progressive” patriarchal, Christian, Euro-Canadian culture. If the Aboriginal woman could not be remade in a new image, she would be chastised, hidden, or punished. The process of censuring Native women demarcated colonial and racial power as well as gender hierarchies; legal and moral regulation through incarceration was in turn an integral component of colonialism.97

Before World War II, Native women were assessed within legal, medical, and social work discourses that assumed that the environmental, even hereditary legacy of their “primitive” origins ran deep. As psychiatry became more influential in the 1950s, Native women were no less disadvantaged: the silences that doctors faulted them for became part of the ongoing racist construction of Native women as lower in moral stature and insight than white women. In neither era did the sentencing or the “helping” authorities really see the structural crises faced by
Native women and communities; alcoholism, for example, was still interpreted as a loss of self-control, rather than as a “symptom of cultural devastation, powerlessness, marginality, [also acting] to precipitate those conditions.”

The experiences of these women, incarcerated for moral or public-order crimes involving alcohol, indicates the extent to which the very definition of crime is a contested question of political consequence: even the statistics showing the increasing incarceration of Native women reflected interpretations of what the dominant social groups thought was a crime, not what Aboriginal groups believed was wrong. This cultural gap underscores the extent to which the moral regulation of First Nations women through incarceration was first and foremost a “legitimated practice of moral-political control, linked to conflicts and power relations, based on class, gender and race.”

While women’s actual voices, feelings, and responses are difficult to locate within this regulatory process, the general pattern of Aboriginal alienation from Euro-Canadian justice — particularly for more isolated communities unused to Canadian policing — is a repeated theme in women’s stories. However, customary Aboriginal practices could be refashioned and used by Canadian authorities, so much so that Native communities and families might also use the legal system to discipline their own. Native acceptance of Canadian law was one consequence of ongoing attempts to assimilate Aboriginal people, but it was not a simple reflection of European dominance. It also revealed attempts to cope with the negative effects of social change that were devastating individuals and families: in the process of struggling to adjust to the dislocations of colonialism, communities sometimes abetted the incarceration of Native women.

Native women seldom found solace or aid in the reformatory and, tragically, many returned to prison repeatedly. First Nations women often responded to their estrangement from the law and the reformatory with silence and stoicism — perhaps in itself a subtle form of noncompliance — though a very few, along with their families, voiced unequivocal renunciations of this system, their voices a preview to the current sustained critique of the inadequacy of Euro-Canadian ‘justice’ for Aboriginal peoples.
Notes

I want to thank Peter Kulchyski, Bryan Palmer, and Jean Manore for their comments on an earlier version of this paper.

1 Native women are disproportionately represented in federal prisons — an area not dealt with in this article. There are also considerable regional variations in overincarceration. In Ontario, 1980s' statistics showed Native people to be about 2 percent of the population, while Native women comprised 16 percent of provincial admission to correctional institutions; in the North, local arrest rates were far higher. See Ontario, Ontario Advisory Council on Women's Issues, Native Women and the Law (Toronto, 1989); Carol LaPrairie, “Selected Criminal Justice and Socio-Economic Data on Native Women,” Canadian Journal of Criminology 26, no. 4 (1984): 161–69; Canada, Royal Commission on Aboriginal Peoples, Aboriginal Peoples and the Justice System: Report of the National Round Table on Aboriginal Justice (Ottawa, 1993); Canada, Law Reform Commission, Report on Aboriginal Peoples and Criminal Justice (Ottawa, 1991); Manitoba, Report of the Aboriginal Justice Inquiry of Manitoba (Winnipeg, 1991).


4 The Mercer Reformatory for Women was used because it drew inmates from across the province for a variety of common ‘female’ crimes. Few women at this time were sent to the federal penitentiary. City and county jail registers sometimes noted race, but a statistical study of all Ontario’s city and county registers has yet to be undertaken.

5 Under “complexion,” the Mercer register noted if an inmate was “Indian” or “negress.” The designation Indian included Indian and Métis, treaty and non-treaty women. Statistics taken from the Mercer register are also problematic because women might be charged with one crime but incarcerated for other reasons as well. Women sometimes gave different names and altered their ages. Because of the various problems with statistics, the registers are used primarily to suggest some overall trends.


Some women came in with sentences of less than three months.

I examined 598 files for basic information on the charge, conviction, age, and place of birth, but many files were incomplete beyond this point, so I concentrated on a core of 300 files as the basis of my analysis.

The numbers for the decades are as follows: 39 in the 1920s, 80 in the 1930s, 109 in the 1940s, and 370 in the 1950s. Population statistics taken from Census of Canada, 1931, vol. 2, table 31, show Ontario Indians as 0.9 percent of the total population; Census of Canada, 1941, vol. 1, table 11, lists Indians as 0.8 percent of the total; Census of Canada, 1951, vol. 2, table 32, also shows 0.8 percent.

A similar trend took place at the Ontario Training School for Girls: in the 1930s, seven “Indian” admissions; in the 1940s, eight admissions, and in the 1950s, fifty-eight admissions. These statistics are drawn from Ontario, Annual Report of the Ontario Training Schools, 1933–59.

This statement is based on an analysis of the Kenora jail registers, 1920–59. In the 1920s, Indian and half-breed women were about 13 percent of all admissions; in the 1930s, 16 percent; in the 1940s, 50 percent (with the last three years of the decade the most crucial for increases); and in the 1950s, 76 percent. While most liquor charges at the Mercer came under the Liquor Control Act, the Kenora arrests showed a greater number of women arrested for breach of the Indian Act.


Although FRA convictions for Native women remained a small proportion (about 5%) of overall incarcerations from 1920 to 1960, the act was used more in the later period. On the FRA, see Joan Sangster, “Incarcerating ‘Bad Girls’: Sexual Regulation Through the Female Refuges Act in Ontario, 1920–1945,” Journal of the History of Sexuality 7, no. 2 (1996): 239–75.

By “corrupting,” I’m referring to charges of contributing to juvenile delinquency.

In the interwar period, recidivists were sent to local jails, and those considered “reformable” to the Mercer, but by the late 1940s this distinction was breaking down, especially for Native offenders. See Wendy Ruemper, “Formal and Informal Social Control of Incarcerated Women in Ontario, 1857–31” (Ph.D. diss., University of Toronto, 1994), 219–20.
23 Changes to the Indian Act in 1951 allowed provinces to legalize the sale and possession of intoxicants (previously illegal) to Indians off the reserve: Sharon Venne, ed., *Indian Acts and Amendments, 1865–75* (Saskatoon: University of Saskatchewan Native Law Centre, 1981), 344–45. However, this change made little difference to Native women in the Mercer, who were usually charged, throughout this whole period, under the provincial liquor laws. Local law enforcement may have used the Indian Act more. See Ontario, *Annual Report of the Inspector of Prisons and Public Charities*, 1920–60.

24 OA Mercer case file 12128, 1940s (the first charge was in the late 1930s). For the initial charge, the man was convicted of selling liquor and received a jail sentence.


26 OA, Mercer case file 15510, 1950s; case file 16665, 1950s.

27 I recognize that these women came from different First Nations, but the records do not reveal their specific Aboriginal identity. Authorities claimed that women from Ojibwa groups dominated, though there were clearly some Iroquois and Cree women as well.

28 In other cases, the conviction takes place in a northern city — for example, Kenora or Thunder Bay — but the place of origin is a more isolated reserve or town.


OA, Mercer case file 9332, 1930s.


The term ‘alcoholism’ was used at the time in connection with these women, but we don’t really know if they were alcoholics, or simply being policed for alcohol use.


Some family members testified that the women charged were extremely susceptible to alcohol and became “another person” when intoxicated. OA, Mercer case file 11002. For a more recent book including this view, see Brian Maracle, *Crazywater: Native Voices on Addiction and Recovery* (Toronto: Viking, 1993).

OA, Mercer case file 9955, 1940s; and case file 13139, 1950s.


OA, Mercer case file 9955, 1940s; case file 12081, 1950s.


OA, Mercer case file 10978, 1940s; and case file 7393, 1930s.
48 Clauses on prostitution in the Indian Act of 1880 placed more onus on the men encouraging the “use” of Native women in brothels; after 1884, the clauses were more punitive towards Aboriginal women: Constance Backhouse, “Nineteenth-Century Prostitution Law: Reflection of a Discriminatory Society,” Social History/Histoire sociale 18, no. 36 (1985): 387–423.

49 OA, Mercer case file 9004, 1940s; case file 15489, 1950s.


51 OA, Mercer case file 7644, 1930s; case file 11419, 1950s; case file 8646, 1940s; case file 16461, 1950s.

52 That is, Native unions unsanctified by the church: Miller, Shingwauk’s Vision, 227.


54 OA, Mercer case file 14413, 1950s.

55 For example, those living in a tent in the summer when the family was trapping: OA, Mercer case file 15034, 1950s.

56 OA, Mercer case file 14305, 1950s; case file 14768, 1950s; case file 12984, 1950s.

57 OA, Mercer case file 15455, 1950s; case file 16665, 1950s.

58 OA, Mercer case file 14413, 1950s; case file 14305, 1950s.

59 OA, Mercer case file 9332, 1940s. In this case the magistrate corrected police for offering hearsay evidence, but this criticism was rare.

60 White, “Restructuring the Domestic Sphere,” chap. 4.

61 Policies on “immorality” on reserves varied over this period and were not uniformly applied. Agents, however, were supposed to discourage adultery, illegitimacy, and sexual “promiscuity.” On the local enforcement of Indian policy in general, see Ken Coates, Best Left as Indians: Native-White Relations in the Yukon Territory, 1840–1973 (Montreal and Kingston: McGill-Queen’s University Press, 1991); Sarah Carter, Lost Harvests: Prairie Indian Reserve Farmers and Government Policy (Montreal and Kingston: McGill-Queen’s University Press, 1990). On the reservation system, see Brian Titley, A Narrow Vision: Duncan Campbell Scott and the Administration of Indian Affairs in Canada (Vancouver: University of British Columbia Press, 1986), and J.R. Miller, Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada (Toronto: University of Toronto Press, 1989).

63 “They are backward, but it is more background than Native intelligence to blame”: Woodward, “Juvenile Delinquency among Indian Girls,” 18.

64 OA, Mercer case file 14176, 1950s. One 1967 inquiry (which included Native members) claimed that some judges were “in general lenient and compassionate,” at least more so than the police. See Canadian Corrections Association, *Indians and the Law* (Ottawa, 1967).

65 The comment, “Bright alert and pleasing. Looking only slightly Indian,” is yet another example: OA, Mercer case file 16665, 1950s.

66 OA, Mercer case file 14154, 1950s.

67 Irving Hallowell, *Culture and Experience* (Philadelphia: University of Pennsylvania Press, 1955). This collection included earlier articles, published in major psychiatric, sociological, and anthropological journals in the 1940s, such as “Some Psychological Characteristics of the Northeastern Indians” (1946), “Aggression in Saulteaux Society” (1940), and “The Social Function of Anxiety in a Primitive Society” (1941).


69 OA, Mercer case files 15214, 15510, 15505, 1950s.

70 OA, Mercer case file 16664, 1950s.

71 This attitude was partly due to a language difference, but she may also have seen her Iroquois heritage as somewhat superior: OA, Mercer case file 16669, 1950s. For other cases cited in this paragraph, see case file 6369, 1920s; case file 8082, 1930s; case files 9161 and 10396, 1940s.


73 OA, Mercer case file 8681, 1940s; case file 11096, 1940s; case file 10328, 1940s.

Hallowell, Culture and Experience; Shkilnyk, A Poison Stronger than Love; Edward Rogers, The Round Lake Ojibwa (Toronto: University of Toronto Press, 1962).


OA, Mercer case file 11232, 1950s.

OA, Mercer case file 15182, 1950s.


OA, Mercer case file 7715, 1930s; case file 7989, 1930s; case file 8957, 1940s; case file 8480, 1940s.

OA, Mercer case file 9318, 1940s; case file 7609, 1930s.

It was clear they did not accept her behaviour, which was claimed to be “promiscuous”: OA, Mercer case file 7057, 1930s.

The relationship between customary law and Euro-Canadian law with regard to sexuality is discussed in Joan Sangster, “Regulation and Resistance: Native Women, Sexuality and the Law, 1920–60,” paper presented to the International Development Institute, Dalhousie University, April 1997.

Given the paucity of historical studies, it is difficult to ascertain if this practice was increasing, decreasing, or stable. A period characterized by intense social dislocation and/or increased federal regulation might have led to increased use of the Euro-Canadian laws.

Some communities, even less isolated ones in the south, had a stronger history of rejecting Euro-Canadian “rule” and maintaining their own sovereignty. A case in point is that of the Six Nations Reserve.


This was true of some elected chiefs who came to ally themselves politically and ideologically with the Indian agent.


Monture-Angus uses the concept of Aboriginal justice as a “process” in *Thunder in My Soul*.


Women’s loss of status because of the Indian Act contributed to their further marginalization: OA, Mercer case files 1432 and 15032, 1950s.

