Unsettling Colonialism in the Canadian Criminal Justice System

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UNSETTLING COLONIALISM IN THE CANADIAN CRIMINAL JUSTICE SYSTEM

Edited by Vicki Chartrand and Josephine Savarese

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Introduction

On the evening on 28 June 2017, as Canada prepared to celebrate its 150th anniversary, members of the Bawaating Water Protectors, an Indigenous environmental group based in Sault St. Marie, Ontario, attempted to set up a tipi on Parliament Hill—situated, as it is, on the unceded territory of the Algonquin people. The police intervened, arresting nine people, who were released several hours later. The group was then permitted to erect the tipi, but not on Parliament Hill itself: they were obliged to locate it near one of the entrances. As the festivities unfolded, the now dislocated and spatially marginalized tipi stood as a stark reminder that not all is settled and celebrated in the land now known as Canada. "We're here to make people aware of the genocide that went on, the assimilations that went on. That is also a part of the history and that is the truth of Canada, unfortunately," said Brendon Nahwegezhic, spokesperson for the group (Rabson 2017). Like other settler colonial nation-states, Canada was born from the violent displacement of Indigenous peoples from their lands, the denial of their sovereignty, systemic racism, and policies of forced assimilation—all legitimated through an intricate framework of European laws, a system of justice that was imposed to enable the policing, segregation, and containment of Indigenous bodies.

This colonial violence continues today, through, among other things, widespread boil-water advisories that remain in effect across reserves in Canada (Arsenault et al. 2018), the hardship and grief that has arisen from the discovery of mass unmarked graves of Indigenous children who were forced into residential schools (Martens 2021), the exponentially high rates of Indigenous children in the child welfare systems (Blackstock 2019), the thousands of missing and murdered Indigenous women, girls, and Two-Spirit+ people (National Inquiry into Missing and Murdered Indigenous Women and Girls 2019), the economically starved communities that continue to exist in

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Canada (Leonard et al. 2020), or the effects of "poverty by design" (Brittain and Blackstock 2015). Such colonial practices similarly take shape in varied criminal justice arrangements and are made evident in the death of Neil Stonechild and the many other the Starlight Tours where police leave Indigenous people at the outskirts of town to die of exposure (Green 2009; Rymhs 2018; Savarese, this volume); the sexualized violence and exploitation of Indigenous women by police (Viens 2019; Rhoad 2013; 2017); the high levels of Indigenous and Black incarceration across every penal jurisdiction in Canada (Marques and Monchalin 2020; Reece 2020); and many more as the contributors of this volume highlight. These conditions of injustice include higher security classifications (Cardoso 2020), longer stays in solitary confinement (Parkes 2015), higher rates of dangerous offender designations (Milward 2013), and more deaths in custody (Razack 2015).

Despite colonialism's pervasive and violent reordering and the role of justice in its wake, it is often minimized in the public eye and current mainstream thought. Like the tipi erected on Parliament Hill—a symbol of a time passed, but still present—this ongoing colonial violence continues to be filtered and hidden. This book is a collection of essays that centre and disrupt settler colonial logics and practices, thus making visible and elucidating the many ways that the criminal justice system continues to colonize the people of the land and allowing readers to understand these processes better. By centring and making colonialism visible, this edited collection also seeks to unsettle the belief that colonialism and its attending logics and practices of segregation, assimilation, and elimination are historic or that they exert a neutral, inconsequential influence on the present.

To unsettle the Canadian criminal justice system is to first think about the specific characteristics of settler colonialism, whereby the "colonizers stay" (see Veracini 2013; Wolf 2006). Settler-colonial studies have been particularly useful, albeit not without criticism (see Shoemaker 2015), in thinking about the historical and contemporary context of settlement; or as Wolf (2006, 402) famously notes, to recognize that "invasion is a structure, not an event." Settler colonialism is not just something of the past, but a persistent societal structure and an ongoing force in the pursuit of land and resources (Rowe and Tuck 2017; Stoler 2008). To unsettle, as is the aim of this text, then requires us to analyze and expose the settler colonial logics, practices, and structures that are historically and currently at play, including a criminal justice system that, as these chapters show, is directly and deeply implicated in ongoing

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patterns of cultural dispossession and land displacement. It is no coincidence such criminal justice trends are also well documented in other settler countries like Australia (Thalia and Blagg 2019), New Zealand (McIntosh and Workman 2017; Tauri and Deckert 2014), and the United States (Ross 2016). While acknowledging historic atrocities, this edited collection adds to the growing body of scholarly literature that is witnessing, documenting, problematizing, and making more visible the ongoing recursions of Canadian (in)justice and the ensuing historical amnesia of the state and much of its citizenry.

Perhaps most importantly, part of unsettling and moving past colonial structures is prioritizing and centring the insights and knowledge of those with the lived expertise of its practices, operations, and arrangements. As such, this collection also incorporates writing by Indigenous people who were sentenced to federal penitentiaries across Canada. In their vibrant texts, these authors highlight and outline the histories of colonial abuse and current penal and carceral arrangements for Indigenous people. They further illuminate a colonial project as directly experienced by those who are most impacted and targeted in the Canadian criminal justice system. This includes personal impacts from residential schools and state foster and child welfare systems, the experiences and treatment of Elders in prison, the appropriation of Indigenous spirituality in prison programs, and an account of the Supreme Court of Canada case with respect to the problematic use of risk assessment tools on Indigenous people (*Ewert v. Canada*, 2018). These invaluable insights are not only unsettling, but also serve as important and vital voices to counter the repressive colonial tides.

The edited collection is divided into four parts; each chapter collectively provides broad insights into different areas of the Canadian criminal justice system and the multiple ways that colonialism takes shape throughout settler justice. The collection begins with a poem written by New Brunswick-based poet, Chevelle Malcolm, in tribute to Pamela George, an Indigenous woman whose life was violently taken by two white men and then undermined and trivialized by the criminal justice system. The poem acknowledges the ongoing violence experienced by Indigenous communities through the murders and disappearing of Indigenous women and men. Part I, "Settler Colonialism and Canadian Criminal Justice in Context," provides both historical and socio-political context of colonialism in the Canadian criminal justice system and its impacts on Indigenous and Black people. While most chapters explicitly focus on forms of colonization that affect Indigenous People, the first

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chapter by Viviane Saleh-Hanna considers the effect of colonization on Black people in the settler country. Although the chapter is unique, it also sets the stage for the book by exposing the reality and erasure of Canada's practices of enslaving Black people and demystifying and challenging the notion of Canada as the "truth north strong and free." With a focus on enslavement, this chapter highlights the many violent underpinnings of colonial logics and the settler nation-state's erasure of colonial wrongdoings. Andrew Woolford also explores Canada's colonial histories of the present through an investigation of Canadian Indian residential schools that were adapted from the penal colony in Mettray, France; a colony that Foucault (1977, 416) himself identified as signalling the shift to the carceral. Through a process of refamalialization, intervention not only disconnected Indigenous children from families, but also forced new associations to staff, school, and nation, thus targeting the Indigenous family as a site for group destruction. Clint Augustine McIntosh highlights this targeted destruction and reveals the everyday and ongoing violence of colonialism through a compelling account of his trajectory from childhood to his eventual incarceration. The author tells his story to document the carceral obscenities endured by Indigenous people. It is also a story he tells out of love for his children so that they may one day understand the road he traveled. Kevin Walby and Justin Piché discuss the Canadian state's current practices of colonial erasure by examining the nation's mythical colonial histories produced in Canadian police museums. The authors argue that the museums position the police as ideal members of a benevolent settler state. Like the "true-north-strong-and-free" trope that circulates in Canada, the representations in these museum sites misconstrue colonial relations as one of benevolence, while maligning Indigenous people. The authors reflect on how the curation and representational work within such cultural spaces could be done differently to better align with the Truth and Reconciliation Commission (2015) Calls to Action. Stands with the Wolves (Nolan Turcotte), who is currently incarcerated in a medium-security prison in Alberta, challenges us to rethink our ideas of civility and progress through a poem. The author exposes the hypocrisy of colonialism by turning the gaze and scrutiny back onto white colonizers and their practices of savagery, recently demonstrated through the acquittal of Gerald Stanley.

Building on this context of settler colonialism in the Canadian state, Part II, "The Colonial Violence of Criminal Justice Operations," considers the blatant colonial violence that continues through contemporary criminal

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justice practices and is often ignored or legitimated by the public and state. Where the institutions and language may have changed over time, passing from the Indian agent to departments of justice, public safety, child welfare, and other newly developed departments, the logics, practices, and impacts continue to reflect ongoing colonial structures and relations. One obvious colonial violence has been the exposure of police sexualized violence against Indigenous women. Carmela Murdocca explores such police violence against Indigenous women in Val-d'Or, Québec. Murdocca considers how media testimony by Indigenous women offer accounts of the violence state officials in white settler Canada engage in while policing and which also calls the state to account in a culture of redress. David MacDonald unpacks some of the public reactions to the trial and acquittal of Gerald Stanley for the murder of Colten Boushie, a 22-year-old Nehiyaw (Cree) man. The author analyzes the trial against a backdrop of settler colonialism, racism, and genocide in the Canadian state to contextualize some of the fallout from the acquittal, the reactions to an article he published on the case, and the continued divide between many settlers and Indigenous people over what constitutes justice and dignity. In a similar vein of exposing the blatant but often ignored colonial violence, Jeff Shantz investigates public and media accounts of police use of lethal force or, as the author more aptly denotes, police killings of Indigenous people. Highlighting the historic role of the police in "clearing the plains" in the Canadian state (see Daschuk 2013), the author exposes the ongoing heightened states of violence and death that exist for Indigenous people at the hands of police, as well as the ensuing lack of police accountability for these acts. Shifting our attention toward life in prison, Paul Hachey reminds us of the significance and importance of Elders in the teachings of traditional medicines and spiritual practice and guidance in the lives of Indigenous people. When coupled within a prison environment, the Elders delivering those ceremonies and protocols are often the targets of institutional abuse, subsuming any meaningful spiritual practices within punitive carceral arrangements or abandoning such practices altogether. In looking at incarcerated Indigenous women, Pam Palmater also reveals the racialized, gendered, and patriarchal ordering of the prison. Constrained by the ongoing socio-economic deprivations created through settler colonialism, Indigenous women are made more vulnerable to violence, especially incarceration. As the author argues, this ongoing dispossession of women through violence and imprisonment continues to attack the heart of Indigenous nations. While these chapters

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highlight the persistence of settler colonial violence throughout the Canadian criminal justice system, the next section is particularly telling in how it is made possible and invisible.

Part III, "The Bureaucratic Trappings of Colonial Justice," exposes the more hidden forms of violence created through the everyday practices and operations of policy frameworks, legislative imperatives, and bureaucratic norms. This kind of bureaucratic violence is evident in Gillian Balfour's chapter in discussing two court cases *R. v. Moostoos* and *R. v. Ipeelee*. Through these case studies, the author reveals how the tropes of addiction and alcoholism remain at the centre of what the law constitutes as Indigenous people's risk to reoffend. When these tropes dominate discourses in the courts and disproportionately impact Indigenous women, incarceration emerges as a legitimate response while obfuscating the gendered violence the women experience. Jeff Ewert discusses his own Supreme Court of Canada case (*Ewert v. Canada*, 2018) on the problematic and discriminatory use of risk assessment instruments found in the prison. The author outlines the trajectory and details of his case, challenging correctional risk assessment tools and showing how they discriminate against Indigenous people, resulting in higher prison security classifications and subsequently lower parole eligibility. Kim Pate shares her oral and written submission made to the Liberal Senate Forum on Women in Prison which took place on 18 April 2018, in Ottawa, Ontario. Focusing on the now published interim report on the Human Rights of Federally Sentenced Persons (Bernard 2018), the author discusses the many social, economic, gendered, and political disadvantages of incarcerated peoples and the impacts prisons has on their rights. Charles Jamieson outlines how Correctional Service Canada has appropriated Indigenous spiritual traditions and ceremony to suit a more insidious form of assimilation through correctional programming. The author aptly points out that healing cannot and does not happen in a place of "correction." El Jones is a poet, journalist, teacher, and activist living in Halifax, who wrote "Shit: A Poem Dedicated to All Incarcerated Sisters" in solidarity with those who stand against the system by virtue of their confinement or dispossession. The poem reminds us of how resistance often comes in the most creative forms and artistic expressions and that women are strong, even in the face of oppression.

The chapters in Part IV, "Creative Resistances and Reimagining Settler-Colonial Justice," constitute the last section of this book. These chapters build on the creative inspiration drawn from the proceeding chapters and offer

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alternative and creative conceptualizations and practices of justice from an anti-settler colonial perspective. Lorinda Riley, in comparing the United States and Canada, evaluates the current frameworks utilized by Indigenous nations in the delivery of tribal justice and how aspects of each model can learn from the others to further Indigenous self-determination over justice. Josephine Savarese examines what the artwork on the "Starlight Tours" of a Métis Regina-based artist, David Garneau, brings to thinking about colonial hauntings, settler colonialism, and criminal justice systems. This type of artwork witnesses the ongoing violence of settler colonialism while also destabilizing conceptual frameworks in ways that allow the viewer to imagine a justice system that would better serve Indigenous peoples. *Evidence*, she argues, is a counter-archive that unsettles colonial archives, such as judicial inquiries. Jillian Baker explores the intersections of colonialism, fatherhood, and incarceration in a local art show. The author considers how artwork is a vehicle for anti-carceral and decolonial resistance. Vicki Chartrand, in looking at missing and disappeared Indigenous women, considers how Indigenous people build community in their pursuit of justice. The author highlights how the grassroots work reflects the many things justice is and needs, well beyond what a "criminal" justice can provide. Mark Jackson evaluates what justice might look like in the context of decoloniality, posthumanism, and Indigenous studies through a pluriversal approach. Pluriversality offers a way to recognize justice across many worlds, beyond a politics of critique and reconciliation, where we can attend to the relationalities of sociality, story, kinship, individuality, responsibility, land, and law. The chapters in this concluding section offer diverse considerations of how to address the many problematic aspects of and encounters with current colonial models of justice identified throughout the book. It is clear that any actions moving forward must imagine justice as Indigenous-based and led and must operate outside of colonial criminal justice systems.

It is not enough to only point out the ongoing colonizing tendencies of the state and justice apparatuses. To unsettle is to also rethink our current social and justice arrangements to counter colonial recursions and offer initiatives and possibilities for moving forward. Possibilities such as anti-colonial abolition and alternative justices are tacitly and explicitly outlined in this collection and further highlighted and discussed in our conclusion. This is a timely book given the current intellectual, political, and public climate around the Canadian criminal justice system and international movements to cancel,

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defund, and abolish. This edited collection captures how so-called justice becomes another tool through which settler colonialism in Canada is articulated. This collection is also a call to action in an important and unprecedented moment in history where calls for change are resonating throughout the land now known as Canada, and internationally, for radical change. The tipi erected just outside the gates of Parliament Hill not only reminds us of the colonial violence both past and present but also signifies a resurgence in the demands for a world beyond colonial structures. It invites readers to join the efforts to cultivate and build this alternative.

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Human to Human

A Poem Written for Pamela George

Chevelle Malcolm

An intake of breath, a shake of the hand—what do we all have in
common, human to human?
Behind her second face are tear-stained cheeks, in solitude she pens
her soul,
oh, how she bleeds.
She bleeds
with an empty stomach and two mouths to feed.
She bleeds,
in a world that passes her by without so much as second look, too
much brown on its white canvas,
oh, how she bleeds.
She whispers, "Mama, it's cold outside."

She bleeds
when white supremacy forces itself onto her, once
again assuming ownership of what does not belong
to it.
As it rears its two ugly heads, oh how she bleeds.
She bleeds
when white supremacy leaves her for dead, battered and
bruised—too much brown on its white canvas,
although crimson it could choose.
She bleeds,

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her heart, her soul bleeds,
She whispers, "mama, it's cold outside."

An intake of breath, a shake of the hand—what do we all have in common, human to human?
She was here
her tears familiar to the earth.
She was here
her cries familiar to the heavens—
to lady justice.
She was here,
abused and forsaken by man as she took her last breath, her dignity robbed by white supremacy.
She was here.

Abused by man,
but not forsaken,
not forgotten by her kin.
Not forsaken, not forgotten by those who also bleed.
Not forsaken, not forgotten, by the heavens
that whisper, "Pamela, you're safe to breathe."
An intake of breath, a shake of the hand—what do we all have in common, human to human?
When you look in the mirror, she looks back at you;
when your tears fall those are her tears too.

When you try everything in your power to make sure the stomachs of your loved ones are not left empty,
when you give life your all,
when you square your shoulders and hold your head high,
when you put on a smile, muster up the last bit of courage you have inside, not allow the cold outside on the inside,
that's the Pam in you.
Abandoned by man,
but not forsaken, not forgotten by her kin,
not forsaken, not forgotten by those who also bleed,
not forgotten or forsaken by the heavens.

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An intake of breath, a shake of the hand, what do we all have in common human to human?
Inspect yourself,
look deep within,
the outside might not be the same—
different eyes, different hair, different skin,
but what about within?
Look to the human in you, she bleeds, you bleed
Look to the human in you, put down your stones,
We all bleed.

When you square your shoulders and hold your head high,
when you put on a smile, mustering up the last bit of the courage you have inside,
When you put on a smile—not allowing the cold outside on the inside,
That's the Pam in you.
Abandoned by man but not forsaken.
Not forsaken, not forgotten by her kin,
not forsaken, not forgotten by those—who also bleed
Not forgotten or forsaken by the heavens, it whispers, "Pamela, you're safe to breathe."
To the self-righteous crowd I say, "put down your stones, we all bleed."

An intake of breath, a shake of the hand, what do we all have in common human to human?
Abused and forsaken by man,
but not forsaken, not forgotten by her kin—
by those who also bleed.
The heavens whisper, "Pamela, you're safe to breathe."
The eyes of Lady Justice are not as clouded as it seems—it whispers, "My child,
you're safe to breathe."
The eyes of Lady Justice are not as clouded as it seems,
"You're safe to breathe."

Abused by man, but not forsaken.
Not forsaken, not forgotten by her kin;

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not forsaken,
not forgotten
by those who also bleed.
An intake of breath, a shake of the hand—what do we all have in
common, human to human?
To the crowd I say, "Put down your stones,
we all bleed."
"Pamela, you're safe to breathe."

Postscript

In January 2020, news stories reported that the University of Regina in Saskatchewan planned to host a lecture by a well-known Canadian poet. The acclaimed poet planned a talk focused on varied themes including truth and reconciliation, murdered and missing persons, Indigenous experiences of injustice, along with showcasing four Saskatchewan poets. Advocates strongly opposed the talk because the keynote lecturer had a friendship and a literary connection with a man, S. K. S. K. had also become a published poet, partially due to the mentoring granted to him. S. K. was living outside of Canada after serving a short sentence for the 1995 death of Pamela George, a mother, provider, daughter, sister, member of the Zagime Anishinabek (formerly the Sakimay) First Nation in Saskatchewan, and poet.

The acclaimed poet even reported he might read from S. K.'s work during the talk. Eventually, the poet withdrew even though the university planned to proceed, citing freedom of speech related arguments. The renewed attention to the case brought home the deep inequities in the Canadian criminal justice system given that an Indigenous woman's victimization and death were diminished by the legal system.

Toronto-based Cree/Métis filmmaker Danis Goulet, a former resident of Saskatchewan and a peer of S. K.'s, penned a letter to the university administrators who were refusing to cancel the event. Danis Goulet recalled the fatality with horror as a young Indigenous woman who knew the accused on a casual basis. She stated that violence against Indigenous women was still a crisis even though twenty-five years had passed since the killing of Pamela George. The tragic phenomena could only be countered by collective efforts. She argued that it was "bewildering" that a public institution would believe "that the way to start contending with violence against Indigenous women

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is to give voice to the person who murdered Pamela George in the very city her murder took place" (Simonpillai 2020). It was important to remember that this was "not an intellectual or philosophical exercise; there are peoples' lives and families involved." Furthermore, it was "brutally irresponsible to the George family and to Indigenous communities" to host the event (2020). This decision was contrary to "any purported reconciliation efforts."

Chevelle Malcolm read this poem at an event on 23 January 2020 at St. Thomas University held to honour Pamela George. By that time, the senior poet had withdrawn from the public lecture in Saskatchewan, which was finally cancelled. The First Nations University Student Association at the University of Regina held a smudge walk around the campus to clear some of the energetic harm and to offer healing (Soloducha 2020).

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Part I

Settler Colonialism and Canadian Criminal Justice in Context

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1 Memoryscapes

Canadian Chattel Slavery, Gaslighting, and Carceral Phantom Pain

Viviane Saleh-Hanna

Canadian histories of chattel slavery have been dismembered, erased from public recollection, shadowed deep within the occupied lands and memoryscapes of Canada's white-settler-nation-body. This is possible partly because white slavers and colonists, alongside their allies, descendant accomplices, and institutional kin have been preserved and placed at a false distance from their own acts of violence and consequent legacies of white settler nationhood. Ending colonialism requires undoing the illusions and delusions of this distance through a mapping of the structural relationships that exist across time and space between colonizers, slavers, conquered memory and the lands and humans that never belonged to them. Memoryscapes are the lands and spaces we take back as we begin the process of remembering the dismembered histories of Canadian slavery, so that we can locate and unearth the roots from which colonial systems of control are upheld and allowed to grow.

In this chapter, I offer memoryscapes as a portal out of the colonizing narratives of Canadian history that have been branded upon time, vision, land, and space. Waking up from the colonial coma (Absolon, 2022) requires a multisensory process that enables us to see proximity and continuity in places we have been indoctrinated to unsee. In the context of Canadian chattel slavery, the excerpting violence of white supremacist narratives have allowed white power to spread while remaining hidden in plain sight. In truth, the annexation of its own history from public memory could not delete the facts of

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Canadian slavery nor prevent their enduring legacies given that they form the core of contemporary white-settler wealth and power. As a result of Canada's broken histories, carceral racializing pains manifest through a shadowing of racism and its intersectional ways. Rearticulating chattel slavery into Canada's origin stories allows us to name and come into seeing the centuries long structurally abusive race-relationship that forms the foundation of all carceral systems of power (Saleh-Hanna, 2017). In Canada, structurally abusive race-relationships manifest through institutionalized gaslighting and carceral phantom pain. Within the shadows of time and white wealth lives a carceral ↔ enslaving ↔ colonizing occupation that stands tall, wide, and runs deep within Canada's origin ↔ continuing story.

In this chapter, I place arrow-glyphs " ↔ " to map proximity, relationality, and co-dependency. Above and beyond the use of "and" to tie objects and actions together, arrow-glyphs enable a seeing of the institutions, beings, or entities being discussed as extensions of each other, as co-dependent in manners that cannot be untangled. An " ↔ " indicates that one could not exist nor extend without the other. Colonization ↔ enslavement are relational and co-dependent in ways that "colonialism and enslavement" may not be. An arrow-glyph indicates that one needs the other not just to survive, but to exist. From this frame of reference, colonizers ↔ slavers are extensions of each other, they form a singular co-dependent structure that feeds off the blood and pain of their targets across time ↔ land. The use of " ↔ " allows us to visualize how these systems ↔ histories ↔ white power agents move as one. I also illustrate how white power systems of colonialism ↔ enslavement are inherently fueled by carceral power so that the kin ↔ descendants ↔ accomplices ↔ beneficiaries of these systems ↔ histories can continue to occupy ↔ exploit ↔ extend the occupation of land ↔ time. Unearthing the roots of Canadian chattel slavery and its extensions into carceral systems of governance is a requirement for liberation of the land, for as long as colonial laws and systems of punishment exist, the land and all her peoples will never be free.

Canadian mythology claims (1) that the problems faced by Black people here are subdued or nonexistent (depending on the political leanings of the speaker of these myths) in comparison with the problems faced elsewhere, particularly in the United States (Maynard 2017), and (2) that the United States has a problem with racism because of its history of slavery, while Canada's history with the Underground Railroad absolves it from such trajectories

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(Cooper 2006). Contributing to Maynard's deconstruction of the first myth, I mobilize Black feminist hauntology (Saleh-Hanna 2015) to enable a seeing of these minimizations of violence as only possible within the structurally abusive race relations that form this white-settler nation. In regard to the second myth, I illustrate how the instrumental mischaracterizations of the Underground Railroad taught to us through Cooper's work are extended and ghosted within contemporary discussions on immigration and political refugees. Primarily, Canadian mythology on the Underground Railroad rewrites a vicious white-settler setting into a refugee haven by cloaking its violence within white-saviour narratives. Undoing these two founding mythologies opens us up to memoryscapes of a world that cannot accept the conditions under which we are forced to live.

Canadian Chattel Slavery

> *Canadian history, insofar as its Black history is concerned, is a drama punctuated with disappearing acts. . . . Black history is treated as a marginal subject. In truth, it has been bulldozed and ploughed over, slavery in particular. Slavery has disappeared from Canada's historical chronicles, erased from its memory and banished to the dungeons of its past. (Cooper 2006, 7)*

Maureen Elgersman (2013) traces the start of Canadian chattel slavery to 1689 under French occupation, and records its sporadic growth under British occupation starting in 1760. Robin Winks (originally published in 1971 and reprinted 1997) located records of Canadian Black enslavement dating back to 1628, nine years after the first group of African captives arrived to occupied Turtle Island in Viginia. It was during this time that "David Kirke, the so-called English Conqueror of Quebec" brought an enslaved child to French occupied shores. Black folks "were present in New France and in British North America thereafter" (ix). Records indicate the African child's colonial name at death was Olivier Le Jeune. Citing *The Jesuit Relations and Allied Documents: Travels and Explorations of the Jesuit Missionaries in New France, 1610–1791*, Winks writes of a priest baptizing Olivier in 1632 claiming "all men were one when united under Christianity" to which Olivier responded, "You say that by baptism I shall be like you: I am black and you are white, I must have my skin taken off then in order to be like you" (quoted in Winks

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1997, 1). Branded within these early records of Canadian chattel slavery is the large and small acts of resistance that get omitted from public memoryscapes of African enslavement. The annexation of such histories from public memoryscapes disinherits living Black communities from accessing the roots and powers of ancestral legacies of resistance. Also, unearthing this history allows us to see clear overlaps between historic slaver ↔ colonizer narratives of white saviourhood through abusive systems of white power and contemporary arresting ↔ imprisoning ↔ colonizer narratives of white saviourhood extended through the criminal-legal system.

Regardless of silence on these matters, the truth is that historically, French colonists in Canada further established and expanded their militarized occupation of Indigenous lands ↔ resources by passing a series of enslaving laws in 1663. By 1685, French colonist ↔ slavers had formed a local militia in Montréal to further institutionalize and expand their colonizing ↔ enslaving industries. After committing genocide and displacing Indigenous nations from these lands, French Canadian colonists complained to their king about a need to "populate" the colony claiming, "slavery appeared to be one means of increasing manpower . . . the fisheries, the mines, the agriculture all offered potential wealth too great for only nine thousand colonists to tap" (Winks 1997, 4). By 1685, Code Noir had been passed for France's colonist ↔ slavers in the Caribbean and French Louisiana in the United States. This promoted French Canadian colonist ↔ slavers to write to their king for permission to "import" enslaved Africans from French colonies ↔ plantations in the islands "to help solve New France's chronic shortage of unskilled labor" (Winks 1997, 5). Their letters and appeals unearth the foundational role chattel slavery occupies in the colonization of Canada and dispute any suggestions that minimize its presence and significance.

After Britain won the Seven Years' War, it became the "most powerful slave trading nation" in the world (Cooper 2006, 83). The end of this war between Europeans brought negotiations that moved the majority of Indigenous lands occupied by New France into British control:

> By the time of the Conquest of Canada, Britain had transported hundreds of thousands of captive Africans to the New World in numerous slave ships. Britain also had a large slave empire centered in the West Indies and the United States, with slave colonies in southern India and south Africa. (83)

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As occupation expanded past New England in the United States (when they were still a British colony) and into British North America in Canada, British colonist ↔ slavers migrating north brought captured ↔ enslaved Africans. This onset meant a significant increase of enslaved African presence upon these occupied lands. Mapping memoryscapes of northward extensions of the middle passage inland allows a more comprehensive vision of the global pathways of historic chattel slavery. And while New France had a significant growing reliance on African enslavement in Canada, it was through the transfer of power into British rule that enslaved Africans began to outnumber enslaved Indigenous people in Canada (Rushforth 2012) and "consequently, enslavement gradually became identified solely with Africans" in Canada (Cooper 2006, 84).

Memoryscapes into Canadian ↑ Northward Slave-Catching Pathways and ↓ Southward Underground Railroad Routes to Freedom

> *I remember calling a prestigious Canadian library and requesting information about sources on slavery, only to be told that there had been no slavery in Canada. This suggested that some Canadians labor under the false assumption that somehow Canada, because of some combination of climate, limited population, or Christian morality, had opted not to engage in the slave trade. (Elgersman 2013, xi)*

In 1924, William Riddell published "Further Notes on Slavery," revealing the persistence of Canadian slavery under British colonialism ↔ occupation. Among these records was a "bill of sale" dated 13 June 1777, recording the purchase of Sylvia, a Black woman enslaved by a white man in New York whose estate was being liquidated to repay his debts. The highest bidder for Sylvia was a colonist ↔ slaver living in Montréal named Edward William Gray. He paid £60 (about $150 at the time) for control over Sylvia. He returned to Canada with Sylvia as his legal property in 1777 (Riddell 1924, 26–27). Also in Riddell's paper, we learn of the colonist ↔ slaver Alexander Harrow, a "Scotsman who came to this continent in 1775 as a lieutenant in an armed ship for the defence of Quebec. . . . His diary for some years is extant. It shows that slavery was common in Upper Canada in those days." (28–29).

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In his first diary entry, dated 27 July 1791, Harrow records the amount of money he was sending to a businessman and doctor to purchase salt, pork, and "a little Pawnese" to be delivered to him. "Pawnese" or "Panis" in French history refers to Indigenous persons enslaved by French colonizers ↔ slavers (Rushforth 2012). Harrow's subsequent diary entries infer that "Dr. Mitchell had not sent the 'Pawnese'" for on September 23 that same year Harrow wrote again from Fort Erie explaining he had received the doctor's "letter about Salt and Pork" and to send "the boy he mentioned of 12 or 16 years old if not exceeding £40 or £50 or thereabouts . . . if the Boy was a little [African], the better" (quoted in Riddell 1924, 29). Riddell recorded several more diary entries by Harrow requesting to purchase young, enslaved Africans.

In Harrow's diary we also learn about the northward trajectories of European slave-catching networks throughout Turtle Island, the continent of North America. In an entry dated 13 February 1797, Harrow writes of his discovery that Sampson, an enslaved African man, had escaped. He requests assistance recapturing and/or selling Sampson, citing British law and existing transnational slave ↔ catching ↔ carceral networks. In his footnotes, Riddell writes about Lochvan, whom he infers was a "bound servant"—a term used in early Canadian archives to describe enslavement. Lochvan had escaped, and Harrow was requesting his imprisonment "to cool or be sent back to make up lost time" (Riddell 1924, 31). Through Harrow's diary entries we expand our vision of how Canada ↔ US pathways into colonialism ↔ enslavement interlock to include, not only the familiar and recognizable Underground Railroad's northern trajectories toward freedom in Canada, but also their mirror image (the same and reversed) northern pathways that kidnapped ↔ imprisoned ↔ deported escaped Africans from the United States back to their colonizers ↔ slavers in Canada. Furthermore, we must bring back into public memoryscapes that the Underground Railroad's northward freedom trajectories so publicly celebrated today took place illegally and in the dead of night, while the slave-catching trajectories that brought escaped Africans back into Canadian enslavement were legal and operated in plain sight, yet are now obscured and buried within racist Canadian mythologies and violent exceptings of history.

Afua Cooper (2006) further debunks the myth of the Underground Railroad as a strictly northern trajectory. She explains that gradual abolition laws generally declared enslaved Africans would remain enslaved within their existing territories (gradually dying or aging out to abolish slavery)

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while proclaiming newly arrived enslaved Africans as free upon arrival. This prompted enslaved Africans in the United States to travel north for freedom, while enslaved Africans in Canada had to travel south into northern US colonies that had passed similar laws. These memoryscapes of freedom trails complicate and expand our vision of Canadian freedom and US racism. They also bring into our memory and vision the overlapping relationships that exist between various institutions, most notably, the long-standing structural relationships between the criminal-legal system's imprisoning ↔ immigration ↔ deportation schemes and these histories of enslavement and fugitive recapture. While Canada has a very public historic memory of its place upon the northward ↔ freedom trajectories of the Underground Railroad, that is neither the start nor the end of this memoryscape. In addition to southward ↔ freedom trajectories out of Canada, there was the realities of unfreedom and violence faced by fugitive Africans who escaped into Canada. While they were no longer legally enslaved, they did not experience freedom in Canada—they faced violence and disenfranchisement upon arrival ↔ forward into present days (Maynard 2017).

Unfreedom along the Freedom Trails

Black disenfranchisement is clearly documented within the archives and lived realities of Black Canadians in many arenas of life, then and now. The memoryscapes of Black disenfranchisement live within the policies and actions taken against Africville, Canada's oldest Black community. Established in Nova Scotia in the mid 1700s, Africville was founded and built by freed, escaped, or deported Africans (discussed below). In the 1960s, the city of Halifax smashed Africville under bulldozers after centuries of dumping toxins and sewage there, forcing industrial land use upon its residents. Industrial land use, colonization's words for violating the land, hauntingly included a cotton factory and the building of a railroad through the middle of the community. White-settler Canadians also commissioned and built a prison and an infectious disease hospital there in the mid 1800s. By the mid 1960s the city of Halifax began implementing a years-long plan of eliminating Africville altogether from Nova Scotia—continuing the trajectories of annexation and dismemberment started by their ancestral colonizers ↔ slavers. The city systematically tore down homes and community infrastructures that had survived previous attempts of destruction. The demolition of Africville's Black church in the middle of

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the night in 1967 was said to be the biggest blow against Canada's oldest Black community (Clairmont and Magill 1999; Carvey 2008).

Regardless of this rather recent history, national narratives and dominant white-settler identities frame and reframe Canada as a place of refuge and escape from oppression. Canadian narratives on slavery and the Underground Railroad distract and project outwards the histories of racial violence and colonial ↔ slavery that abound within (Maynard 2017). More than anything else, Canadian critiques of slavery ↔ racism ↔ immigration are aimed at the United States in a way that underwrites a "Canadian nationalist, anti-Americanism" (Clarke 2017, 23) that functions to obscure white Canadian racism by denying its existence as an extension of the same European imperialism that created both Canada and the United States. At the same time, memoryscapes in the United States project back upon Canada its own false sense of progressiveness, freedom, and equality—not as a proper critique of racism or in full recognition ↔ rejection of racial brutality, but as a limit upon what freedom could constitute within the United States. Gentzler's (2018) writings for the Oklahoma Policy Institute provide an example of this:

> Oklahoma incarcerates about 1,079 per 100,000 of our residents. . . . When counting only adults, our incarceration rate is even higher: 1,300 out of every 100,000 adults, or 1.3 percent. . . . These numbers put Oklahoma at the very top of the list of states, just more than Louisiana and Mississippi, and over 50 percent higher than the national incarceration rate. And we're far out of step with the rest of a country that is already far out of step with the rest of the world. Oklahoma's incarceration rate, for example, is nearly 10 times higher than that of Canada.

In this narrative, the expansive use of carceral violence in the United States is not contextualized within enslaving structural exploitation and colonial racial violence against Black and Indigenous people ↔ communities ↔ nations. Instead, mass violations are framed as a problem of excessive unfreedom in the United States relative to Canada's "sparser" use of the same colonizing ↔ enslaving ↔ carceral violence. As a result, freedom in the United States is limited to what Canada is seen to have achieved from within the confines of white ↔ settler ↔ nationhood, while freedom in Canada is defined, not by the absolute absence of carceral ↔ white ↔ supremacy,

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but by how much or little of it is "seen" to exist in comparison to the United States.

Multicultural White Power: Homeland Refugees, Deportation Schemes, and Political Campaigns

> Multiculturalism has served a role similar to that of the Underground Railroad, allowing Canadian state officials and the general public to congratulate themselves on Canada's comparative benevolence, while rendering invisible the acute economic and material deprivation currently facing Black communities. . . . While economic violence has played an important role toward this end [through devaluation of Black labour and Black life], it does not, by far, encapsulate the full extent of Black dehumanization in Canada. (Maynard 2017, 82)

In 1655, the British "took" Jamaica from the Spanish and declared it a British colony. As Spanish colonizers ↔ slavers fled from the island, enslaved Africans seized the opportunity and escaped into the hills, establishing marooned free Black communities. They grew to resist ↔ accept ↔ assist arriving enslaved Africans under British rule in Jamaica. The British viciously suppressed marooned communities in many ways, including the deportation of hundreds of Africans from Jamaica northward to Nova Scotia (Whitfield 2018). In 1776, thirteen years after the Seven Years' War ended, more than 150 families were uprooted when 549 Jamaican Moors were forcibly migrated via "three large transports" from Trelawney Town into Halifax. They were deported after an eight-month battle against British forces that took the lives of hundreds on all sides (Chopra 2017, 6–7).

By the 1990s, the mirror-image (the same and reversed) of these colonizing ↔ slaver pathways reemerged as Jamaicans became the most deported group of Caribbean nationals out of Canada, the United States, and Britain (Burts et al. 2016). These southward ↔ northward ↔ southward loops of deportation across memoryscapes of time and colonized space are mirror-imaged within the northward ↔ southward ↔ northward trajectories of the Underground Railroad. The sterilizing contours of white settler narratives obscure history, presenting a false, singular, southward trajectory of deportation, and a false, singular, northward trajectory toward freedom. These false narratives reproduce and reinforce white power mythologies that project

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false freedom ↔ civilization images within white northern settler territories juxtaposed against unfree ↔ uncivilized (and criminal) images upon Black nations formerly occupied by white colonizing ↔ carceral ↔ slavers.

And yet, in the 1850s there are "scores of self-congratulatory newspaper articles appear[ing] each year in Toronto, London, Hamilton and Windsor on the theme of how the slave found freedom in Canada" (Winks, 1997, ix–x). Further, there is an official plaque that "notes the spot on the banks of the Detroit River where the Underground Railroad is said to have had its terminus. There, the monument [falsely] proclaims, the fugitive 'found in Canada friends, freedom, protection, under the British flag'" (Winks 1997, ix–x, notes in brackets added). Ironic since it was under British rule that so many enslaved Africans were transported to Canada.

In 2017, Trump declared that all citizens of seven majority Muslim countries could not enter the United States for ninety days, including by "legal" means. These ninety days were meant to buy him time to solidify a long-term plan to ban Muslims permanently.[1] In response to these outward acts of border ↔ violence, the Canadian prime minister took to Twitter on the same day, declaring ↔ extending the false narratives of the underground railroad: "To those fleeing persecution, terror & war, Canadians will welcome you, regardless of your faith. Diversity is our strength #WelcomeToCanada."

In 2018, Fortune Magazine published an article titled "Canada's Advantage over the United States? Immigration, Says Justin Trudeau." In it we stumble upon several versions of Canada's hundred-year-old lie tangled up within historic letters to King Louis XIV on importing labour to populate and work white-occupied Indigenous lands:

> "We're a country that is open to immigration right now," Trudeau said at Fortune's Most Powerful Women International Summit in Montreal Monday night, responding to a question about how Canada is competing with the United States on attracting business. "[That's a] hell of a competitive advantage I don't see the U.S. matching anytime soon," he added. (Hinchliffe 2018)

The same article noted a prior interview in which Justin Trudeau declared that "Canadians are positively inclined toward immigration." The article continues on to say, "It's an advantage that [Trudeau] says places Canada ahead in the business world despite the United States' recent lowering of corporate tax rates." In practice, Canada's carceral ↔ immigration ↔ deportation policies

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are stringent, and visa application rejections are rising steadily. In fact, Canada has one of the "world's most restrictive visa rules. A World Economic Forum survey . . . ranked Canada among the worst in the world—120 out of 136 countries—for the restrictiveness of its visitor visa requirements" (Keller 2018). Despite these facts, dominant Canadian narratives claim the opposite. In 2019, ThinkProgress policy analyst Ryan Koronowski published a piece claiming "Canada Knocks U.S. from Perch as Top Destination for Refugees," with a tag line reading, "Tired, poor, huddled masses are being directed to breathe free in the Great White North." These false narratives on Canadian carceral ↔ immigration ↔ deportation policies bleed between and within progressive ↔ liberal ↔ conservative ↔ far right political platforms. For example, Maxime Bernier, of the "People's Party of Canada," proposed the following immigration policy in his 2019 electoral campaign:

> Canada has always been a country largely open to immigration, because of its vastness and its relative youth. I believe that by and large, our immigration policy has been very successful. However, Immigration should answer the needs of sectors where there is a scarcity of manpower with specialized skills; and in more general terms contribute to increasing the number of younger workers in a society that is fast aging. It shouldn't be used as a social engineering program for ideological purposes (People's Party of Canada 2019).

Bernier's platform is full of "human resource" incentives mirroring entry to Canada within chattel slavery's legacies of requesting power to import labour. This is especially evident when mapped alongside immigration as a racial phenomenon juxtaposed against the colonizing framings of whiteness as naturally "settled" and "at-home" upon these Indigenous lands. Regardless of citizenship or nation of ancestral origin, white is almost always framed as naturally present upon newly born Canadian territories, while immigration for everyone else is cast as necessary only when productive for white-settlers ↔ colonizers.

These patterns of exploitation mirror one another, echoing across memoryscape's time, endlessly repeating, reverberating loud and clear. Both progressive and far-right narrators, alongside variations of themselves within the white ↔ colonizing political spectrums, uphold these politics because they all rely upon the same historic systems of colonizing white supremacy to extend their wealth and power. Andrew Scheer, the Conservative

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Party representative running for prime minster in the same election as Bernier declared and echoed the following in his "Immigration Plan":

> Canada is the greatest country on earth.
>
> It is built on **a rock-solid foundation** of enduring values, democratic institutions, the rule of law, and fundamental and universal human rights. We absolutely must protect these values—because they are **what set us apart**.
>
> They **allow Canada to offer what so many other countries simply cannot**: the freedom to preserve and pass on their cultural traditions; and the opportunity to live in peace with those around them; and the economic freedom that so many governments around the world deny their people.
>
> *But with each passing day, Justin Trudeau and the Liberals undermine this proud legacy.*
>
> In four years, they have not only undone the progress the previous Conservative government made to strengthen our immigration system—*they have managed to undermine the long-standing consensus that immigration is indeed a positive thing for this country*. (Conservative Party 2019; italicized emphasis in original, bold emphasis added)[2]

Declaring Canada an unrivalled landscape for freedom, Scheer invokes the previously constructed "clean historic record" and "rock-solid foundation of enduring values." Dissolved within these false narratives are the annexed histories of Canadian chattel slavery and facts of militarized exile in wars waged and genocides committed against Indigenous people ↔ nations. Buried within the memoryscapes of these narratives is the intergenerational enslavement of Africans and Indigenous peoples ↔ nations massacred, enslaved, displaced, imprisoned within reserves, asylums, prisons, and residential schools ↔ mass graves. Within Scheer's proclamations we map multicultural white power made possible by an impairing dissolution of the unnamed first refugees in these narratives: enslaved Africans escaping tyranny and unfreedom from southern white-settler-occupied regions, and Indigenous peoples and nations rendered refugees within their own homelands.

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Multicultural White Power: Within Canada's Enslavement ↔ Imprisonment Pathways

Ontario, Québec, and the Maritimes are regions holding significant histories in Canadian chattel slavery (Cooper 2006; Donovan 1995; Elgersman 2013; Whitfield 2018). The legacies of this violence upon these occupied lands extends literally through carceral institutions. The Government of Canada's Research and Statistics Division (2022) reported that Ontario and Nova Scotia had higher than average provincial imprisonment rates for Black folks. The Office of the Correctional Investigator reported (2022) that Ontario, Québec, and the Maritimes held captive 79% of Canada's imprisoned Black population. In 2013, collectively, these regions held captive 86% of Canada's imprisoned Black population (Office of the Correctional Investigator 2013, para. 6). Echoing the principles of multicultural white power, the 2013 report states that the "Black inmate population is a very diverse group and includes a variety of ethnic backgrounds, nationalities and experiences. Just over half (53%) of Black inmates were born in Canada" (para. 9), meaning that 47% of imprisoned Black people in Canada are immigrants, countering the claims that Canada is an oasis for immigrants or refugees. The report continues that for "those that were foreign born, Black inmates were most likely to be born in Jamaica and Haiti (17% and 5% respectively)" (para. 9). It is important to recognize that Jamaica is a former British colonial ↔ enslaving ↔ plantation and Haiti is a former French colonial ↔ enslaving ↔ plantation, and to understand that the relationships between that past and this present are extensions of each other. Ensuring full allegiance to multicultural white power, the report affirms that "there are also sizable populations from Barbados, Ghana, Grenada, Guyana, Somalia and Sudan, representing many different cultures, traditions and customs" (para. 9). And finally, the report concedes:

> The high proportion of Black inmates born in countries other than Canada presents CSC [Correctional Service Canada] with some challenges as many of these inmates may speak a language other than English or French as their first language. While the majority of Black inmates reported affiliating with some form of Christianity, other religious faiths were represented as well, including Muslim (23%) and Rastafarian (6.5%). Differing religious diets, clothing, medicines, books and worship practices adhered to by the faithful must be accommodated by the CSC (para. 9).

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The 2022 Correctional Investigator's report stated there had been "little progress" on the racialized issues identified in the 2013 report, while at the same time reporting that Correctional Service Canada (CSC) had developed an Ethnocultural Action Framework (EAF) in April 2021, and adopted an updated Anti-Racism Framework in December 2021 that claims to contain "a number of corporate-wide actions aimed at engaging staff, incarcerated persons and stakeholders to 'create an anti-racist organization that is more inclusive, diverse and equitable.'" Imprisoned Black prisoners interviewed for the 2022 investigation confirmed racism still thrives inside prisons. Regardless of language, intent, and even policy, the CSC's outward proclamation of progressive "tolerance and accommodation" and "anti-racism" is disrupted by the facts of Black unfreedom rooted within the very existence of the CSC.

Phantom Pain: White-Settler Cortical Maps

I recently learned that the human brain has a map that connects the brain to our whole body. When a limb is amputated, the portion of the brain associated with that limb continues to exist until the cortical [brain] pathways can be reorganized to account for this loss. Because the cortical maps do not immediately register the loss of a limb, phantom limb pain can manifest. Originally categorized as a psychiatric illness by white war surgeons, phantom limb pain was first described by French military surgeon Ambrose Paré (1510–1590). The term was coined by the "father" of American neurology, Silas Weir Mitchell (1829–1914), while working with injured soldiers during the US civil war over slavery. Mitchell heard repeated reports of pain in limbs that had been amputated (Kline 2016) and coined the term "Phantom Limb Pain" to describe this experience.

We now know that phantom limb pain is a product of a delayed "cortical reorganization," or a "remapping" of the brain's pathways or "cortical maps" to account for the loss of that limb. Cortical [brain] maps are comprised of response-based organization of information that moves between neurons in the same cortical area of the brain. Importantly, cortical maps "provide important clues about how we form and maintain representations of the external world" (Bednar and Wilson 2015, 1). When the body loses a limb, the portion of the brain associated with that limb continues to exist producing phantom pain that can only be healed when cortical maps are redrawn to account for the trauma of amputation. As McKittrick explains, "The site of

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memory is a powerful black geography because employing it assumes that the story of blackness in the diaspora is actual and possible, and that the discursive erasure of black people does not eliminate how they have been implicated in the production of space" (2006, 34).

White settler nation bodies hold institutionalized memories (cortical maps) of African and Indigenous colonization ↔ enslavement ↔ displacement. The continued and false insistence on their absence extends the power of institutions rooted within human suffering to further instill phantom racial pain: a disorienting "now you see it ↔ now you don't" symbiosis that structurally gaslights and disables freedom from colonialism ↔ enslavement.

Memoryscapes that annex colonizing ↔ slavery's existence manifest traumatizing and entrapping pathways that feed and extend the roots of white carceral power—even the slightest questioning of these annexations dissolves their reality. For example, many in the US vehemently (because it is not true) insist that slavery is in the past and therefore devoid of consequences in the present. On the other side of Europe's colonizing border, Canadians (falsely) declare that slavery never existed and therefore also deny the existence of anti-Black racism and institutionalized white power in Canada (mainly in comparison to the US). Others in Canada adopt a hybrid middle ground model declaring (inaccurately) that although minor or minimal occurrences of chattel slavery existed, these are on the periphery and therefore inconsequential to modern Canadian life.

To deconstruct these narratives, we must contextualize them through each other. To undo their power we must move them beyond the controlling ↔ categorical ↔ binaries of colonial thinking. Mapping white-settler proclamations side by side as they exist above and below the settler ↔ colonial ↔ Canada ↔ US border allows us to see that when placed in proximity they unravel each other: if Canada has a "smaller" problem with racism than the United States because chattel slavery was not practiced in Canada, this means that history *does* impact present life ↔ death conditions, and US mythology on "the past being the past" falls apart. In the same breath, if, as so many in the US insist, "the past is the past and people just need to get over it," then why do Canadians work so hard to construct and extend mythologies of a "rock-solid foundation" and "clean historical record" that uphold half-truths (therefore total lies) about origin stories of this white-settler nation-state? The answer is both mythologies are based on falsehoods reverberating within the echo chambers of white power logistics and abusive tales.

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Gaslighting: Mapping Canada's Structurally Abusive Race Relations

In "Black Feminist Hauntology" (2015), I describe colonizing race relations as inherently abusive. To start, enslavement ↔ colonialization ↔ imprisonment structurally separate their targets from kin, loved ones, identities, and communities in the same way abusers isolate and separate their targets from all who would defend them. In "An Abolitionist Theory of Crime" (Saleh-Hanna 2017), I mapped institutionalized racism in the United States through the cycles of abuse identified by Lenore Walker (1979) and locate how that the trajectories of interpersonal abusive relations are mirrored within institutional race violence, not only in the onset of these dynamics through enslavement ↔ imprisonment's isolation and control, but also in the prolonging of these relationships through veiled apologies ↔ false promises of change in the form of reforms and white legalization of Black freedom.

In the United States, institutionalized cycles of structural abuse hold overt Middle Passage distinctions that clearly isolated Africans from Africa. These isolations led to hundreds year long beatings and abuse in the form of auction blocks and plantations. These prompted the expected threatening apologies of abusers who promise to change while continuing to blame their victims for their own explosions of manipulative, exploitative, extractive violence: "Neither slavery nor involuntary servitude *except as a punishment for crime*" (Section 1, Thirteenth Amendment, emphasis added). This promise to stop slavery's abuse if Black folks "behaved" according to white power's criminal-legal system's laws is abusive. These genocidal ↔ rapist ↔ colonizer ↔ slavers declared themselves the moral authority and enforcers of the penal code in the same way that abusers declare themselves the authority and guiding light over their victims' lives.

The apologies and gift-giving portions of the cycle (here the flowers are presented in the form of an ill-written Thirteenth Amendment) is often followed by periods of superficial calm (referred to as Black Reconstruction in the United States), only to be followed by rising tensions that lead into the next set of institutionalized explosions of overt violence. It was the rise of overt white nationalism (the child of colonial white imperialism) that ushered in decades of lynching, followed by the next structural apology ↔ promise of change, accompanied by an abuser's bouquet of flowers in the form of the Civil Rights Act. This was followed by rising tensions and increasing

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controls that paved pathways into the next institutionalized explosions of violence through COINTELPRO's suppression of Black, Indigenous, Asian, queer, and anti-colonial freedom movements in the 1970s ↔ the rise of the war on drugs in the 1980s ↔ the opening of doors into racialized mass incarceration in the 1990s ↔ the increasing militarization of policing ↔ onward into the present.

These abusive structural explosions of violence in the US were followed by Obama's presidencies rife with promises of change (his campaign literally declared "change we can believe in" and "yes we can") underscored by rising tensions and growing white resentment made visible through incidents of viral policing caught on tape. This led to the rise of Black Lives Matter and freedom uprisings that demanded an end to intergenerational structural violence, threatening a full exit from the abusive relationship. As we know, some of the most lethal use of force within abusive relationships occurs when abusers realize the trapped ↔ captured person is taking actual steps (psychological, physical, economic, etc.) to get out (Campbell et al. 2003). Within the context of the United States, the desperate move to keep control and power within the abusive structures of this white-settler-nation-state manifested through Trump's toxic presidential campaign and his electoral victory solidifying an openly threatening and abusive allegiance to racist ↔ sexist ↔ heterosexist ↔ classist ↔ ableist ↔ nationalist white violence. Trump ushered in the next formation of overt institutionalized beatings currently in the making as I write this chapter. The impact of this next level of institutionalized abuse is being felt worldwide.

As calls to defund the police emerged on all sides of the colonial border, we witnessed carceral power's attempted transformation into new ↔ expansive institutions, and for a moment, it seemed that "behavioural health" would become dominant within progressive ↔ liberal discussions on alternatives to policing while more funding and police defence would take over the right. Scholarship by Syrus Marcus Ware, Giselle Dias, and Nwadiogo Ejiogu's writings on disability justice (Ejiogu and Ware 2019; Ware, Ruzsa and Dias 2014) and Liat Ben-Moshe's (2020) work on decarcerating disability is crucial to our understandings of these traps and cooptations of freedom from the cycling carceral landscapes of colonialism ↔ enslavement.

"Whereas [the United States of] America loves to broadcast the vivid black-and-white contrasts in its red-white-and-blue, Canadians prefer pastels and greys. What is clarity in America—slavery, a civil war to end

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it, segregation, the civil rights movement—is foggy here" (Clarke 2012, 81). Canada is like that house on the block sitting pretty and looking peaceful while behind closed doors abuse is rampant and dangerous. And while the exterior is looking fine, the abuser within is pointing to the loud, openly abusive household across the street, declaring to his victims (because patriarchy centers male power, no matter the form in which it arrives) that they should feel lucky he is not doing to them what the abuser across the street is doing to his targets. Mapping Canada's colonizing ↔ enslaving race relations through Black feminist hauntology's frames of reference allows us to see what abusive race relations look like on this side of the colonial border. In Canada, structural abuse is obscured and veiled within the arsenals of structural gaslighting manifested through an abuser instilling within their targets "false information in order to bring that person to doubt his or her perceptions and memories" (Kluft 2010, 55). The National Domestic Violence Hotline (2014) explains that the term *gaslighting*

> comes from the 1938 stage play *Gas Light*, in which a husband attempts to drive his wife crazy by dimming the lights (which were powered by gas) in their home, and then he denies that the light changed when his wife points it out. It is an extremely effective form of emotional abuse that causes a victim to question their own feelings, instincts, and sanity, which gives the abusive partner a lot of power (and we know that abuse is about power and control). Once an abusive partner has broken down the victim's ability to trust their own perceptions, the victim is more likely to stay in the abusive relationship.

They list a "variety of gaslighting techniques that an abusive partner might use," including withholding, countering, blocking/diverting, trivializing, and forgetting/denial. In the Canadian context, so much of the history highlighted in this chapter (and beyond) is steeped in structural gaslighting:

> The mass dis-re-membering of Canadian chattel slavery, constitutes structural gaslighting.
>
> The suppression of "legal" acts of Canadian chattel slavery from dominant narratives while celebrating the "illegal" Underground Railroad and simultaneously insisting that the criminal-legal system is necessary and legitimate, constitutes structural gaslighting.

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Suggesting that Canada welcomes refugees and "values" immigration while enforcing one of the most impenetrable colonial borders is gaslighting. Placing this image within the history of an underground railroad that ran both ways is an expansion of this gaslighting.

Referring to enslaved Africans as "slaves" (as if slavery is not enforced by an external power) and imprisoned people as "inmates" (as if they voluntarily checked themselves into "correcting service facilities") or "prisoners" (as if imprisonment is not enforced by an external power), constitutes gaslighting.

Failing to identify the acts of arrest, deportation, imprisonment, and enslavement as militarized kidnapping rooted within histories of land theft and enslavement is gaslighting. As is failing to reference colonialism and slavery as wars waged against people while reserving the historic use of that term for white-on-white violence over Black and Indigenous land ↔ bodies ↔ labour ↔ time ↔ life.

Building a cotton factory near Africville in full knowledge of the violent symbolism and exploitations associated with "cotton-picking" and the significance of cotton in slavery's power, constitutes structural gaslighting.

Spending years intentionally transforming Africville into an industrializing and toxic space and then tearing it down because it is industrial and toxic, constitutes structural gaslighting.

Referring to lands that Indigenous people are pushed into as "reservations" while actively engaging in genocide (annihilation is the opposite of reserving anything), constitutes structural gaslighting.

Referring to prisons for Indigenous children as "reform schools" that teach "civilization" while actively using these sites to savagely mass murder children whose graves are still being unearthed, constitutes structural gaslighting. Using that same term—*reform*—to speak about modernizing or civilizing prisons and policing, constitutes structural gaslighting.

Suggesting that imprisoned and criminalized people are fully responsible for the violence that the state imposes and perpetuates through criminal sanctions, constitutes structural gaslighting.

Suggesting that prisons can become "anti-racist" is structural gaslighting!

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Referring to punitive ↔ colonizing ↔ enslaving violence as (criminal) justice, constitutes structural gaslighting.

Deporting Black people to Canada in the name of "saving Jamaica" in the 1700s and reversing that trend centuries later under the guise of "saving Canada" from crime constitutes structural gaslighting. This is especially true when we consider the *actually dangerous acts* of structural violence (mass enslavement) that promoted the first round of deportations northward into Canada, and the *actually dangerous acts* of structural violence (mass racial capitalism) prompting current rounds of deportation southward and out of Canada. All of this constitutes structural gaslighting.

"Emptying" the land of Indigenous people and then writing to the king of France to request enslaved Africans to populate and work these lands constitutes structural gaslighting.

The manners in which Canada ↔ US narratives interlock within the shadows of their colonizing border to uphold each other's white power structures, while performing binaries that construct themselves as "oppositional" constitutes structural gaslighting.

Concluding on Amputated Histories and Carceral Phantom Pain

Canadian chattel slavery has been dismembered from public memoryscapes to strengthen structural white power within the white settler nation-body. This shields the roots of white power in manners that grow and perpetuate its impact. Colonizing histories and their institutionalized dismemberments produce phantom racial pain. As I illustrate in this chapter, carceral phantom pain extends and flexes itself through the criminal-legal system and its expanding, spiraling, carceral, immigration ↔ imprisonment ↔ deportation pathways that form the cortical maps of Canadian colonial rule, perpetuated within Canada's structurally abusive race relations. Regardless of white power's colonizing power and its institutional might under enslaving ↔ carceral occupations, white settlerism cannot undo its own past, cannot erase the source of its power, and cannot change history or avoid the impact of both its existence and its wrath. Contrary to abuser narratives, our survival resides within a collective exit from the structurally abusive structures for Canadian racism. Memoryscapes paving pathways into structural remembering are

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but one tool we can use to look at that which we have been conditioned to overlook, to name—out loud—that which we have been conditioned to silence, to connect " ↔ " that which we have been taught to disconnect, so that we can re-member that which has been dis-membered. Chattel slavery is a part of Canadian history. Nothing colonizers ↔ slavers ↔ arrestors ↔ imprisoners say or do can change that. It is time to move forward with awakened spirits and seeing eyes that allow us to pave pathways off the beaten pathways of colonization's cortical pathways into abuse and unfreedom. We must end these structural cycles of abuse. We must end them now.

Notes

1 Buying time is a carceral concept born out of chattel slavery.
2 During the writing of this chapter, "Andrew Scheer's Immigration Plan," Conservative Party of Canada, 2019 was available at https://www.conservative.ca/cpc/andrew-scheers-immigration-plan/, but the page has since been taken down.

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2 The Destruction of Families

Canadian Indian Residential Schools and the Refamilialization of Indigenous Children

Andrew Woolford

> *I think that in these alternative establishments one finds what I would call the principle of refamilialization (*refamilialisation*), operating through different mechanisms, yet preserving the idea that it is the family which is the essential instrument for the prevention and correction of criminality. . . . When houses of correction were set up for young offenders, such as at Mettray in France, it was the idea of refamilialization, rather than that of familialization, that was put into practice even more rigorously than in other prisons, in the form of more or less artificial families that were constituted around the children. . . . It was the family that was thought of as the fundamental agency for legality, for disciplined life, or for a return to lawful life. (Foucault 2009, 15–16)*

In the epigram to this chapter, Michel Foucault expands on a notion of refamilialization developed previously in his seminal text *Discipline and Punish* (1975). Through practices of refamilialization, youth criminality was addressed by connecting the young delinquent to a substitute family designed to model law-abiding behaviour. For Foucault, the early-to-mid-nineteenth century move toward strategies of refamilialization marks a shift in the way the family as an institution of regulation and order was deployed by carceral institutions.

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Prior to this reform in western European nations such as France, youth corrections typically sought to encourage "familialization" by maximizing points of contact between the incarcerated young person and their families of origin so that the positive bonds of family life might have a salubrious effect on the delinquent. In contrast, reformers began to understand the family as a source of disorder, thereby necessitating a "*re*familialization" whereby the delinquent is attached to a proxy family, whether in the form of the staff, a religious community, a group of peers, or even the nation, that would sever and replace connections to the original family, now cast as a source of pollution. Foucault presents the "Colonie Agricole" of Mettray as a point of origin for this method.

The Mettray penal colony, opened in 1840 and closed in 1939, was located in a small town in Indre-et-Loire, France. Mettray had wide national and international influence, spawning many imitations (Driver 1990; Ramsland 1999; Ripley 2006; Toth 2019). The final report of the Truth and Reconciliation Commission of Canada [TRCC] (Sinclair 2015) identifies Mettray as an institutional predecessor of Canadian Indian residential schools (IRS). Notably, Mettray informed the IRS system indirectly through its influence on the 1854 Reformatory Schools Act (also known as the Youthful Offenders Act) and the 1857 Industrial Schools Act in Britain (Sinclair 2015). Many British reformers, such as Matthew Davenport Hill, who likened a trip to Mettray to traveling to Mecca, advocated for its principles to be adopted into British practice (Driver 1990, 273). The 1854 Act began this process, mandating the care of criminal children in state-supported reformatories. The 1857 Act extended this practice to children who were poor and presumed to be neglected and disorderly (Driver 1990, 282). In the two decades that followed these acts, more than sixty reformatories modelled on Mettray were established in Britain (Sinclair 2015, 135). Moreover, they were part of a growing international practice of "rescue" and removal for unruly children.[1]

Though residential schools derived influence from multiple sources, ranging from similar schools in the US to the longer history of missionary schooling in North America, the similarities between Mettray and residential schools are significant. In both settings, one can observe military discipline and regimentation used to instill order among the student population; mobilization of religious indoctrination for purposes of behavioural change; use of solitary detention cells, flogging, and the denial of privileges, such as opportunities for socializing or special foods as punishment; emphasis on agricultural and trades-related work; splitting of the day between

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classroom education and work; and elaborate data kept on the children, their family networks, and their post-incarceration outcomes. Based on these similarities, the carceral origins of the Canadian Indian residential school system is made clear.

This chapter focuses on one particular resemblance between Mettray and the residential schools, namely, the practice Foucault labelled refamilialization. Despite the fact that residential schools were most frequently uncaring and abusive spaces where the staff, typically members of various Christian religious orders, provided their charges with little comfort, this chapter will illustrate that one can still see strategies of refamilialization attempted in such institutions. Although the predominant experience of residential schools was one of violence and forced separation, with few exceptions, these moments of refamilialization are sometimes drawn upon by those seeking to minimize the harm of residential schools. A recent example can be found in the comments made by former Canadian senator, Lynn Beyak, who in March 2017 proclaimed before Senate, "I speak partly for the record, but mostly in memory of the kindly and well-intentioned men and women and their descendants—perhaps some of us here in this chamber—whose remarkable works, good deeds and historical tales in the residential schools go unacknowledged for the most part and are overshadowed by negative reports" (Kirkup 2017; see also Bayes 2009). Refamilialization, in Beyak's account, is presented as benevolence toward Indigenous children within Canadian residential schools, and as a counterpoint to those who refer to this as a history of "cultural genocide" or simply genocide (for a discussion see Sinclair 2015; Woolford 2015). By returning to Mettray and the practice of refamilialization, this chapter seeks to demonstrate that refamilialization is consistent with the charge of genocide. This is because refamilialization for Indigenous children began through a process of "defamilialization," the destruction of Indigenous families, which was the primary experience of children within the carceral space of Canadian residential schools. The work of refamilialization could only take place when existing family relations were compromised or removed.

Defamilialization and refamilialization have not disappeared from the carceral landscape in Canada. As historian Margaret Jacobs (2014, 189–207) notes, the "habits of elimination" practised in residential schools persevere in child welfare and prisons because social service and state workers have become accustomed to these ways of understanding and acting toward Indigenous families. In child welfare removals, families continue to be fractured by child

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removals that operate according to a logic of "rescue" from the family and integration into mainstream, colonial society. These removals have a compounding effect on the destruction already wrought by residential schools (Blackstock 2008, 163–78). Likewise, prisons remove fathers, mothers, aunts, uncles, and others, from the web of family relations. Survival within prison can further involve allegiance to a gang or racialized prison unit, potentially fostering disconnection from family, which occurs alongside the various barriers to family contact that occur through incarceration, such as the costs of telephone calls or travel for visitation (see for example Hannem 2009). Thus, residential schools, and their underlying logic, remain entangled with the Canadian prison system.

Mettray

According to Jacques Donzelot (1997), the family has long been a target for policing in western societies. Whether seen as the bastion of pro-social morals and values by conservatives, or as a protector of the private realm by liberals, the family has been upheld as both a model and a project. As Donzelot (1997, 3–8) notes, the family is an aspirational ideal and a problem to be fixed, optimized, or simply improved. It is in this manner that the family comes to the fore as a site of social regulation, serving as a mode of discipline and governance, both shaping and inculcating social order through the members of families. However, when families are deemed by governing agents, such as police and social workers, to provide inadequate regulation, state intervention is seen as necessary. Under the logic of refamilialization, such families were not themselves targeted for reform, since the parents were viewed to be set in their ways; only their children possessed the necessary plasticity to be proper targets for civilizing transformation (Maxwell 2017). For this reason, refamilialization came to be organized through the creation of alternate family arrangements designed to place the young person on the path toward responsible citizenship. Mettray is one such example where the social institutions of prison and family intersect through refamilialization.

Mettray was based on the "family system of moral training" (Driver 1990, 272). The grounds of the reformatory were unwalled and situated on a flat plain in a rural area near the city of Tours. This rural location provided opportunity for the young boys held in the institution to be trained in agricultural work in addition to trades. A chapel sat in the centre of the compound and

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was open for the children to visit during their free time, in addition to their mandatory attendance on Sundays. Most of the children detained in the carceral space were considered "orphans" by the staff at Mettray, though this term was often applied not because of a lack of parents, but rather on the assessment that their parents had failed to provide proper moral and religious socialization.

Over 17,000 young boys who had found themselves in trouble with the French justice system were held in Mettray during its 76 years of operation. The reformatory organized these children into "families" of 30–60 charges who were assigned to the same unit for the entire period of their detention. According to the colony's founder, Frederic Demetz, this organization was beneficent because the family is "the great moralizing agent of the human race" (Driver 1990, 277). These makeshift families lodged together in "houses" that were arranged around the central square and were led by one adult and one or two "older brothers," representing a "natural family" and not just a household (Ripley 2006, 406). However, Mettray family groupings were blended when inmates were sent for training in industry or agriculture.[2]

Of the family system, William Henry Baron Leigh, a visitor to Mettray from the Committee of the Warwickshire Reformatory, wrote in a letter from 1856:

> To return to the family division, to which I conceive the success of Mettray to be greatly due: I am of opinion that this system alone allows of that attention to every individual child, which is indispensable to the reformation of each individual character, while it procures for children who have perhaps never experienced them before, the happy influences inspired by the love of home.[3]

As such, Mettray "families" were conceived not only as a model of organization, but as a means to address birth families that were found wanting in their ability to provide the child development necessary for production of a responsible citizenry. In this manner, distance from the family of origin is not incidental to the reformatory strategy of Mettray. As J. C. Symons, an English barrister and school inspector, asserted in 1849, "distance is a great advantage, as it entirely removes the prisoner from his former habits, his bad relations, and he is thus in some measure transported into the interior."[4]

In addition to the artificial family units that introduced techniques of peer observation and pressure to control and correct the children, the Mettray staff were also intended to foster the refamilialization of the delinquents:

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> As for the employés themselves, who are gentlemen by nature if not always by birth, it is quite impossible to see and converse with these intelligent, well-educated, and benevolent men without feeling how great must be their elevating influence upon the character and general tone of the boys.[5]

Substitute families thus proliferated within the carceral space of Mettray, beginning with one's fellow students, and moving upward to staff, the school, and the nation. New bonds were to be forged to replace those thought to be broken, regressive, or a source of moral taint. This is not to suggest that staff at Mettray were above resorting to violence when the rules of the reformatory were flouted; and there were many rules—247 according to Toth (2019, 3). Social order at the institution was often maintained through slaps, kicks, intimidation, and fear when gentler disciplinary measures failed (Toth 2019, 81).

The Canadian Residential School System

That the techniques used in Mettray would be deployed in boarding schools for Indigenous children should give us pause to consider the ongoing criminalization and mass incarceration of Indigenous youth and adults in Canadian prisons (Department of Justice Canada 2017).[6] One can see in this example that contemporary Canadian prisons are not far removed from the IRS system (see Adema 2015). As well, in his discussion of refamilialization, Foucault notes how its use within carceral institutions was eventually replaced by child removal and "placement with [alternate] families" (Foucault 2009, 16). The same shift can be viewed within Canadian settler colonialism when residential schooling morphed into increasing levels of forced adoption of Indigenous children into non-Indigenous families (MacDonald 2019, chap. 4), as well as increased federal imprisonment (Chartrand 2019). As the Canadian government gravitated away from the language of assimilation to that of "integration" in the 1960s, forced adoptions such as those perpetrated under the "Sixties Scoop" sought to refamilialize Indigenous children through direct insertion into settler families (MacDonald 2019, chap. 4). However, the focus of this chapter is the extent to which refamilializing techniques homed in on penal colonies like Mettray to reform criminalized youth were re-purposed to assimilate Indigenous children toward the settler norm.

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The Canadian turn toward systematic use of assimilative schooling occurred in the late nineteenth century (Reyhner and Eder 2004). At this time, discussion of the so-called "Indian problem," a notion that Indigenous groups presented an obstacle to land acquisition and settlement, turned toward ideas of "assimilation" and "civilization" as solutions (Dyck 1997). Education—a technique long used by missionaries in efforts to proselytize and convert Indigenous young people—came to be viewed as the primary vehicle for addressing the "Indian problem." Lieutenant Richard Henry Pratt's experiment with "industrial" education in the United States was particularly influential. Pratt's model adopted many of the strategies used at Mettray. It involved removing Indigenous children from their home communities and placing them in schools closer to what was defined as "civilization" by settler societies. Such propinquity to European settlers was seen as a necessary means to distance Indigenous children from the ways of their parents and attach them instead to European life. To facilitate this transformation, Pratt sought to discipline children through a combination of military style regimentation, work training, and basic education. Students would spend each day of the school year rising early to assemble on the grounds for marching and inspection before splitting the remainder of their day between work and school (Fear-Segal 2007). Pratt's vision of the industrial boarding school did not simply arise from his own imagination; it drew from his experiences in the US army, but also from recent innovations in youth reform developed in Europe (Sinclair 2015, 135).

Pratt's ideas traveled across the border to influence Canada's initial effort to enhance assimilative education. Canada had not engaged in warfare with Indigenous populations to the extent experienced in the US and had long sought a more assimilative path for dealing with its "Indian problem." However, after Nicholas Flood Davin was dispatched in 1879 by John A. MacDonald's Conservative government to study Indian education in the United States, a clearer embrace of industrial education was promoted with one exception—Davin felt that a state-run system was impractical because Indigenous communities tended to be isolated and widely dispersed. He argued that Canada should build its boarding school system through the missions that were already established near Indigenous communities.[7] Canada initially developed an industrial school system comprised of large schools equipped to prepare male students for menial labour in agriculture and the trades, and females for caring for the household; however, the costs of this

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system gradually drove the government to opt for a residential school system based more, though not exclusively, on smaller schools located closer to Indigenous communities (Miller 1996). Under this adaptation, children were still prohibited from having regular contact with their families; but the government spent less on transporting them to and from school. As well, the missionary societies, already located in reserve communities, were able to solidify control over those communities, such as by ensuring competing Christian denominations could not enter to recruit promising students.[8]

The relationship between the government and the Protestant and Catholic missionaries assigned to operate government-funded schools was problematic. The churches maintained a great deal of influence over educational policy, given the government's dependence on their services. Canada's schools were thus consistently defined by a regime of monastic discipline oriented first and foremost toward reshaping the souls of the students toward Christian ideals (Woolford 2015, chap. 5). As well, the relationship was defined by the government's desire to keep costs for IRS to a bare minimum (Miller 1996, 12). Because of the poor funding, children regularly suffered from overcrowding, poor nutrition, inadequate clothing, a lack of health care, and other problems. This was in addition to the high levels of physical and sexual violence experienced within the schools (Miller 1996; Woolford 2015). These conditions often proved deadly, as the children lost their lives to murder at the hands of their keepers, unchecked disease and malnutrition, suicide, freezing or drowning when running away, among other causes—a fact attested to by the 215 possible unmarked graves of Indigenous children found in 2021at the Kamloops Indian Residential School (Warick 2021). The National Centre for Truth and Reconciliation (2021) has identified 4,117 children who perished in residential schools, though this is likely an underestimate as efforts continue to account for all who went missing during or shortly after their time at a school.

There was very little turnover among the bureaucrats running the residential school system. Deputy Superintendent of Indian Affairs Duncan Campbell Scott, for example, managed the system between 1913 and 1932 in an exceedingly frugal manner (see in general Titley 1986). It was not until the late 1960s that the system started to decline through the closing of residential schools, and during this period other institutions began to carry the burden of Indigenous institutionalization, namely the aforementioned practices of forced adoption through child welfare and incarceration in the prison system

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(Chartrand 2019; see also Hounslow 2018). With respect to Indigenous education, government resources were shifted toward promoting public schools as the key conversion point for Indigenous children, with the buzzword "integration" replacing "assimilation" (see for example Big White Owl 1962, 2). Public schools, like IRS, operated under the auspices of the "Indian problem," since Indigenous children continued to be viewed as a challenge to the settler colonial norm. Integration, unlike assimilation, was meant to communicate the values of liberal egalitarianism, with Indigenous children receiving the same opportunities as those provided to non-Indigenous children (Hounslow 2018). But as with the 1969 White Paper, which sought to eliminate the 1876 Indian Act and impose a blanket equality on Indigenous peoples in Canada, the negative flipside of this variant of liberalism for Indigenous people was the loss of their distinct identity, culture, and practices as they were to be immersed and lost in mainstream Canadian society (Woolford and Benvenuto 2015).

Defamilialization and Refamilialization

In this section, examples from residential schools in Southern Manitoba, in particular the Fort Alexander (FAIRS), Portage la Prairie (PLPIRS), and Assiniboia (ARS) schools, are used to illustrate the twin processes of defamilialization and refamilialization common in many Canadian residential schools. Given that most Survivor testimony collected by the Canadian Truth and Reconciliation Commission comes from Survivors who attended these schools after 1940, the information presented below is more reflective of the later stages of the IRS system, though some examples of earlier practices are also given. I will first focus on *defamilialization*, the breaking of family bonds, before turning to *refamilialization*, the creation of replacement bonds. Beforehand, however, it is worthwhile to examine the broader policy context in which defamilialization and refamilialization took place.

Indigenous families were, throughout most of the residential school period, perceived to be obstacles to rapid assimilation (Byler 1977). The home environment was believed to tempt students away from the lessons in civilization provided at the schools. The Archbishop of St. Boniface (located in Winnipeg), Louis Philip Langevin, argued in the early twentieth century that Indigenous children needed to be "caught young to be saved from what is on the whole the degenerating influence of their home environment" (Dussault

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1996, 314). This was a view common among missionaries and which found regular expression in colonial policy (Sinclair 2015, chap. 9). It also informed government policy once the residential school system was underway. For example, in 1883, Public Works Minister Hector Langevin argued before the House of Commons that

> if you wish to educate these children you must separate them from their parents during the time that they are being educated. If you leave them in the family they may know how to read and write, but they still remain savages, whereas by separating them in the way proposed, they acquire the habits and tastes—it is to be hoped only the good tastes—of civilized people. (Sinclair 2015, 161)

These words were echoed in the same year by Prime Minister John A. Macdonald:

> When the school is on the reserve the child lives with its parents, who are savages; he is surrounded by savages, and though he may learn to read and write his habits, and training and mode of thought are Indian. He is simply a savage who can read and write. It has been strongly pressed on myself, as the head of the Department, that Indian children should be withdrawn as much as possible from the parental influence, and the only way to do that would be to put them in central training industrial schools where they will acquire the habits and modes of thought of white men. (Sinclair 2015, 164).

These statements are a subset of broader arguments that discouraged the use of government sponsored days schools, where children were exposed to religious education during the day before returning home at night. These schools were deemed inadequate in the project of cultivating civilization among Indigenous children because the children still received regular exposure to their families and communities (Sinclair 2015, chap. 9).

Defamilialization

The above statements were not mere rhetoric. Practices of defamilialization were applied in Canadian residential schools with disastrous consequences, several of which will be illustrated in this section. Drawing children away from their families and communities, and imposing upon them European notions

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of liberal individualism, disrupted familial and social relations in Indigenous life. A child of Survivors testified to the Truth and Reconciliation Commission of Canada, "these people that raised us were basically raised by priests and nuns, and they were not taught by their own parents . . . how to be parents, so they didn't know how to be parents, and I don't blame my father for what he did to me."[9] For this person, knowledge of the artificiality of residential school refamilialization helps her understand the failings of her own parents, who were raised by these inadequate substitutes. In this instance, one can see that the experience of defamilialization was not confined to the children within the schools; it reverberated throughout Indigenous communities and continues to have an impact on Indigenous families today (Dussault 1996, chap. 13). Many communities attribute persistent cycles of violence, sexual abuse, addiction, suicide, and other harms to the residential schools (see Wesley-Esquimaux and Magdelena Smolewski 2004).

In addition to losing out on socialization into the patterns of Indigenous parenting, the removal of children from families often resulted in resentment toward parents, who became suspect in the child's eyes because they were unable to offer protection from the schools. This contributed to severing the child-parent bond. Staff at IRS sometimes actively promoted such disconnection from parents. A Survivor who attended FAIRS in the 1960s reported, "I remember one of the nuns one day told me, told us not to call our mum 'mum' because she's not your mum—she's your mum, but call her by her Christian name. And when you go home, and once and a while we do call her [. . .] I did call her by her name a few times in the summer. And she used to get mad, she'd get upset and [say] 'call me, call me mama. I'm your mum, call me mama.' Took me a while for me to call her mum."[10] Another FAIRS Survivor recalls returning home to her parents' house and chastising her father for speaking Anishinaabemowin:

> I just absolutely hated my own parents. Not because I thought they abandon[ed] me; I hated their brown faces. I hated them because they were Indians; they were Indian. And here I was, you know coming from [residential school]. I looked at my dad and I challenged him, and I said, 'From now on we speak only English in this house,' I said to my dad. And, when in a traditional home like where I was raised, the first thing that we all were always taught was to respect your elders and never to challenge them.[11].

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Resentment toward parents is a common theme in the testimony of Survivors from schools in Southern Manitoba and throughout Canada. This resentment, too, was at times actively encouraged; notes one FAIRS Survivor,

> At that point in my life, when I was going to residential school, I thought my life had ended because the love that I had from my parents was taken away from me and we were not taught that in residential school. We were not told that our parents still loved us. We were told differently, that's why we were in residential school, that our parents didn't love us anymore. That we would have to stay there until we were adults and able to go back to our communities as educated people.[12]

Parents were thus not only resented because they were perceived to have left their children at the schools, but also because staff often gave the children the impression their parents were unloving, backward, and sinful. The latter characteristic was communicated by the Lacombe's ladder that was prominently on display in FAIRS. In this particular 1874 version of the Catholic ladder, Indigenous peoples were illustrated as facing a choice between two roads, one leading through civilization toward eternal salvation and the other through the ways of savagery toward damnation. Ozaawi Bineziikwe recalls being confronted with this device while at FAIRS:

> Every morning we had catechism. The priest hung this calendar in the classroom as a reminder of our unworthiness. This calendar was known as Lacombe's Calendar. I remember always worrying about meeting God and having to hear Him say, 'You were bad and you're an Indian so you go to hell,'—that is where the people who stood on the left-hand side of God went. According to the priest and the nuns, we were standing on that left-hand side of God. I struggled to memorize every prayer that the priest ever taught me. (Bineziikwe 2005, 13)

Family members, however, did not have access to the left-hand side of God. They were thus to be abandoned to their damnation.

The competence of the teachers and other school staff was regularly in question. J. R. Miller (1996, 320) writes of "a tendency to use the residential schools as a dumping ground for missionary workers who were a problem for the evangelical bodies." Up into the 1950s, the churches possessed full control over hiring of teaching staff. The Catholic Church, for instance, typically hired

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from female religious orders, "whose recruits were often young women from rural backgrounds" (Sinclair 2012, 71). Examples of teaching incompetence are frequent in the testimony of former students from PLPIRS and FAIRS, but criticism of teaching staff is less frequent in Canadian government records. Nonetheless, one does see on occasion mild concern expressed by inspectors who uncover that certain teachers lacked the skills or training to fulfill their position.[13] They also lacked the life skills that would enable them to serve as replacement parents for the student. Theodore Fontaine observes that his parents did not know when they dropped him off at FAIRS that, "From this point on, my life would not be my own. I would no longer be a son with a family structure. I would be parented by people who'd never known the joy of parenthood and in some cases hadn't been parented themselves" (Fontaine 2010, 20). Parents immersed and socialized into a community of families and familial practices were replaced by teachers who did not have this same parenting background.

From the moment children were dropped off at the school, defamilialization was underway. The rituals of institutionalization made sure of this. Children were immediately taken from parents, if parents had accompanied them to the school, once they crossed the threshold of the building. Clothes, often lovingly selected by parents, were removed and taken away.[14] Hair, a symbolic connection to family and community, was shorn. New names, and numbers, were assigned, further distancing children from their familial heritage. Siblings, if members of the opposite sex, were kept separate from the incoming child, while same-sex siblings and extended family members were enlisted in orienting the new student, making them accomplices rather than allies (Chrisjohn and Young 1997; see also Wolochatiuk 2012). A Survivor who attended FAIRS in the 1940s testified,

> My sister abused me in school, my older sister; she was very mean to me. And I figured maybe that was just the way of life. She was looking after me when I first went to school and the nuns ordered her to comb my hair and she'd braid my hair and bang my head against the sink if I didn't keep still. Very abusive! That's all I remember—is being abused. If you don't do things right, disciplined right away.[15]

The feelings of being quickly and brutally disconnected from family were exacerbated by restrictions the schools and government sought to place on parental visits and time at home. Policies on visits from parents and visits

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by the children to their homes varied by region and era. However, for much of the time, both local and central school management agreed that parents were a disruptive influence and that their contact with children should be minimized (Sinclair 2015, chap. 25). At FAIRS, the proximity of the school to the reserve resulted in school staff complaints about parents: "Interference by the parents and guardians, is the chief source of trouble experienced by the school staff in maintaining discipline. The parents want to visit and talk to their children in a free and easy manner, and it is difficult to make them understand that they are causing trouble."[16] A year after this remark, Sagkeeng leaders attempted to gain access and inspect FAIRS, as well as another school to which their children had been sent. A 28 February 1923 letter from Chief William Mann requested that the Department of Indian Affairs, "Kindly tell us if Chief and Councillors of the Band of this Reserve has any rights to see if the schools are well conducted by the teachers or the Principals."[17] J. D. McLean, secretary of the Department of Indian Affairs, responded on 6 March 1923 that the schools are under the auspices of the Roman Catholic and Anglican Churches, respectively, and chief and councillors possessed no authority to direct policy in this regard. if they had complaints, they were directed to bring them to the attention of Indian Affairs through the Indian agent. McLean noted in his last sentence, "It is the duty of yourself and the councillors to assist the principal and teachers in any way that you can in encouraging the Indian parents to send their children to school."[18]

It was not just in the schools that families were fractured by settler colonial policy; competing religious denominations also divided families as they laid claim to communities of adherents. In Fort Alexander, the Catholic and Anglican churches split the community, with the Anglicans claiming those Sagkeeng living closer to the town and the Catholics claiming the remainder. Marcel Courchene remembers the pain caused by the separation from his grandmother, who was considered Anglican: "But these priests, their [sic] the ones that were separating us—a religious thing. It was not right, their teaching was it was not right to associate with Anglican" (Charbonneau Fontaine 2006, 23). This division prevented community unity, since the teachings were that the other side was tainted by their profane faith: "That's what the church teachings were, 'You don't wink at a protestant girl or even smile at them—the Anglicans are going to hell and the Catholics are going to heaven'—that's what they said" (Charbonneau Fontaine 2006, 55).

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These efforts by the schools to sever connections to culture, family, and community had long-term consequences for the children subject to these defamilializing strategies. Theodore Fontaine, quoted earlier, remembers his entry into FAIRS with the following words, "Thus were born the abandonment issues I would struggle with for years henceforth" (Fontaine 2010, 30). And with abandonment came an abatement of the trust that is essential to human relationships. As one Manitoba-based Survivor remarked about his experience of relationships after residential schools,

> I called those people who ran the boarding school, "stone people." What did I learn from those stone people? I learned how to suppress my natural feelings, my feelings of love, compassion, natural sharing and gentleness. I learned to replace my feelings with a heart of stone. I became a non-human, non-person, with no language, no love, no home, no people, and a person without an identity. In this heart of stone grew anger, hate, black rages against the cruel and unfeeling world. I was lost in a veil reaching up to the black robes and priests and nuns trying to make sense of all of this anger and cruelty around me. Why were these people so cold? Did they not have parents somewhere who loved them? Why did they despise us so much? In the beginning, I was constantly confused and always, always lost to their ways. I even went so far as to find a woman to marry that had no family connections, literally an orphan, my wife was an orphan, she has no family so that way I didn't have these people touch me. I didn't love this woman and I told her I didn't love her because I didn't know how. It was a cold calculated act, like buying a car. She had to meet certain requirements and function properly, but I didn't love her. (Quoted in Dalseg 2003, 76–77)

A Survivor, who attended FAIRS in the 1960s, also explained the feeling of loss of familial love:

> A typical day, I guess like, they separate the family. Like you know family like, things to do with your family, the way you grew up. And when you're being separated after and you don't know how to function with your life normally, how you grew up. Like love was gone, like love was not there no more. Love was kind of . . . a stranger I used to know. Now . . . love is not there, you sort of just like, something like military camp; get up certain time and do a certain thing.[19]

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A Survivor from PLPIRS echoes this point. Reflecting on her time at the school in the 1950s, she discussed how her connections with family members were severed. She noted,

> I keep all these things to myself because I got nobody to tell it to and especially family, I don't like to talk about family. Today, my brothers and sisters I just see them as people, I don't think of them as my brothers and sisters because I never grew up with them. All I know is they are my brothers and sisters and that's it. I don't know their personal life; I don't know anything about them.[20]

Indeed, loss of connection and the ability to feel and communicate love are two of the most frequent remembrances within Survivor statements to the Truth and Reconciliation Commission of Canada.

Defamilialization in this fashion disrupted Indigenous family life, and in doing so disrupted Indigenous nations built upon familial networks. The family is the primary transmitter of culture for Indigenous young people. Removal from Indigenous families meant disconnection from the building blocks of culture, including language, land, and stories. Defamilialization thus threatened the loss of collective identity as represented within stories. Stories carried the time and space, the knowledge, the lessons of the group between generations. As well, family was a source for connecting children to their territory, which was also intimately entangled with their language; separation from these three essential foundations—family, language, and territory—often meant separation from the group itself through the loss of collective identity.

Refamilialization

Residential schools diminished family and community connections, but this work was not done solely to foster individualism among the students. Formation of new group identities were also attempted through refamilialization (Margolis 2004). The new identities on offer often seemed to lack the depth and connectedness of Indigenous ontologies, and students rarely felt that they could be fully admitted into a new family of the school or the nation as they did not feel accepted as equals by the settler society (see Bradshaw 1962a, 22). But because they felt isolated and alone in the schools, and suffered from homesickness, students were at times drawn to the staff members, who were presented as a substitute family. Though frequently poorly trained in

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the skills of parental warmth, staff members would on occasion offer small kindnesses to foster commitment to the assimilative project (Jacobs 2009). Ann Laura Stoler refers to this widely used colonial technique as "intimate colonialism," describing how colonization takes place not just at the level of policy but also in everyday, intimate relationships (Stoler 2002). Building on this idea, Cathleen Cahill provides a close-up examination of how in the United States the Bureau of Indian Affairs sought to form familial relationships between Indigenous students and school staff as a means to impart the habits of citizenship among these children (Cahill 2011). In the Canadian context, there is less evidence of refamilialization explicitly promoted by government as policy. However, the very notions of assimilation and "civilization" as responses to the so-called Indian problem presupposed bonding the children to non-Indigenous ways of being. Defamilialization operated to negate Indigenous identities, but refamilialization was deployed by those charged with assimilating Indigenous children to provide a replacement set of relationships for those lost to defamilialization. Teachers, dormitory supervisors, cooks, nurses, and other staff members were in place to serve meals, enforce bedtimes, care for the sick, and engage the children in extracurricular activities. Some exploited this intimacy by preying on them with sexual violence. Others simply were not up to the challenge of showing the care required by refamilialization, or responded to the children's resistance to refamilialization with physical violence.

Thus, for many reasons, refamilialization failed. On occasion, however, the desolate circumstances of boarding schools provoked refamilialization in a manner that successfully contributed to the intended assimilative project. Theodore Fontaine remarks on his time at FAIRS, "As young children, easily manipulated, we created new connections and rapidly bonded with some of our captors. Being malleable and wanting kindness and love, we slowly came to believe that there was kindness in those we were around every day and attached ourselves to those who looked after us" (Fontaine 2010, 132). Likewise, a sense of longing for home might lead a child to seek home-like connections within the school setting. Ozaawi Bineziikwe, who began school at FAIRS in 1949, goes so far as to compare her time in residential school to being adopted into a white family: "Now when I think about those times and the feelings I felt then, it was almost like being adopted into a white family. The clergymen were our fathers, the nuns were our mothers, and all the children at the school were our siblings" (Bineziikwe 2005, 12).

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Ozaawi Bineziikwe's comparison of the school to a family is neither random nor accidental. The Principal of Assiniboia Residential School, another school she attended, spoke directly to the "family atmosphere" at his school.[21] He is remembered by many of the students as a kind principal, especially when compared to those they recall from other residential schools they attended (see Survivors of the Assiniboia Indian Residential School 2021). Principals and other staff did not always assume the role of a kind parental figures, though. In a 1949 statement, Rowena Smoke describes how she was punished by the principal at PLPIRS when she complained about an abusive teacher: "Mrs. Ross hits us on the head with her fists. . . . We ran away because we do not like Mrs. Ross. . . . Mr. Jones [the principal] cut my hair off last year because I ran away. I ran away last year because I was treated badly by Mrs. Ross. Mr. Jones whips us when we say anything back to Mrs. Ross."[22] Several other girls complained of their treatment by Mrs. Ross, the school matron, and Mr. Jones, the principal, which were the reasons they provided for running away. Mrs. Ross responded by pointing out that she sometimes pulled hair and rapped the girls on the head with her knuckles, but not out of anger.[23] Jones requested through the Indian agent that he be permitted to punish one of the other girls further, by cutting her hair, so that she might serve as an example to the students. However, Indian Affairs instead reined him in, and he was told to practice punishment like "a kind, firm and judicious parent in his family."[24] Jones was later removed as principal from PLPIRS.[25] He clearly went beyond Indian Affairs' vision of a tough but fair father figure guiding his charges into an assimilated world.

Instead of simply accepting such stern parents, children often developed or solidified relationships among themselves, forging families independent of those the school sought to refamilialize them into.[26] Rather than bond with the school, nation or a new religion, students found camaraderie among themselves, creating connections that would, in many cases, last a lifetime, and networks that could be mobilized for later political involvements (Lomawaima 1994). Such camaraderie might be facilitated by a "house" system whereby the students were separated into different houses who would compete against one another in sport or debate. In other instances, school teams and groups were the vehicle for these new attachments: cadets, hockey teams, MAMI (Missionary Associations of Mary Immaculate), and other such avenues made possible further community bonding. Student councils were formed at some IRS to provide peer oversight and to ensure students followed school rules.

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Refamilialization at an IRS also included preparation for an assimilated family life after graduation, complete with prescribed gender roles. The young women at Assiniboia took part in Home Economics classes where they engaged in activities such as embroidering, knitting, sewing, baking, and preparing a fancy dinner to celebrate the principal's birthday, complete with white tablecloth, silverware, and candles.[27] The young men, in contrast, were engaged in typical masculine activities, including sports such as football, and cadet corps, which involved drilling and weapon training. On occasions like the Winter Carnival, the cadets displayed their skills. Reporter Theda Bradshaw describes the following at the 1962 carnival: "the school corps of 20 uniformed members marched down the ice in varying formations. Affiliated with the 39th Regiment, the boys have weekly practice drill and a lecture at Fort Osborne" (Bradshaw 1962b). These gendered activities were intended to train the students to take their assigned marital roles within a heteronormative family, with young women always encouraged toward care of the household, or employment in domestic labour or nursing, while the young men were pushed toward the military, farming, and certain trades.

Indeed, Indigenous marriages were often at the forefront of IRS concerns about refamilialization. This is most apparent in the forced marriages that students were subject to at the end of their time at school. This program traces back to 1896, when deputy superintendent of Indian Affairs Hayter Reed described how marriage might be the basis for discharging students from residential schools, suggesting that "It is considered advisable, where pupils are advanced in years and considered capable of providing for themselves, to bring about a matrimonial alliance, either at the time of being discharged from the school or as soon after as possible" (Sinclair 2015, 658). Such marriages, bringing together students from different cultural groups, were viewed as a bulwark against post-graduation retrogression into Indigenous ways, as the married students would be able to keep one another in check. This practice was not continuous throughout the residential schooling era; it was discontinued in the 1930s. For this reason, it is not as widely discussed in the testimony gathered by the TRC of Canada eighty years later.

IRS operated not only to disrupt families and foster individualism, they also sought to confer new family-like attachments on Indigenous children. In this manner, practices of defamilialization and refamilialization run parallel to a settler colonial logic of elimination that removes Indigenous peoples to be replaced by settlers (Wolfe 2006). Through mechanisms such as trust and

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loyalty formation, refamilialization wrenched the Indigenous child from the world of family and community and encouraged them to find succour in school, Christianity, and nation, those replacement institutions that promised the Indigenous child a new life and a new identity.

Refamilialization and Genocide

Returning to Senator Beyak and her claim that the negative story of residential schools misses the "well-intentioned" staff members who carry out "good deeds," we see that the practice of refamilialization further refutes her argument, which was already extremely questionable based upon the misery and suffering caused by Canadian residential schools. Even in the odd instances where seemingly kind staff members formed familial relationships with students, these relationships are not, as Beyak imagines, a counterpoint to the charge of cultural genocide or genocide.

It may on first blush seem odd to suggest that practices of refamilialization can play a role in genocidal processes (see Krieken 2004). This is not to say that they always constitute genocide, or by themselves are genocide, but merely that they can be deployed for group destroying purposes. One could build such an argument based upon the United Nations Convention on the Prevention and Punishment of the Crime of Genocide (1948), particularly section II(e) on the "transfer of children," as David MacDonald (2014, 306–24) does. Following this argument, the removal of children from Indigenous families and communities can be construed as destroying "in whole or in part" the cultural, biological, and even physical existence of the group, since having children socialized into the patterns of the group is essential to its continued existence. However, it is worth noting that the United Nations Convention on the Prevention and Punishment of the Crime of Genocide (UNGC) is built on colonial foundations (see Woolford 2019). Despite the involvement of representatives from around the globe in the final formulation of the UNGC, colonial rationalities were the basis for decisions made that have had consequences for how we understand genocide against Indigenous peoples in settler societies. This is particularly evident in the discussions surrounding so-called cultural genocide, where the arguments that won the day and resulted in the removal of Raphael Lemkin's Section III on cultural genocide, which among other things sought to protect of the language and artistic works of groups, included claims that some cultures were simply too primitive and backward

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and required forced assimilation (Abtahi and Webb 2008). Canada played a role in denying cultural genocide a place within the UNGC, again showing that this law is a political creation, and we must be careful about giving it objective status without critiquing its generative conditions and assumptions (Woolford 2019).

Beyond the legal definition, a sociological approach to genocide focuses more on the particular mechanisms that make the persistence of a specific group possible and works to identify when those mechanisms are purposefully targeted in a manner where it should be evident that the consequences will place the continued existence of the group in jeopardy (Powell 2011; Short 2010). This is certainly the case for the role of family and its interdiction as experienced by Indigenous groups in Manitoba, such as the Anishinaabe, Dakota and Cree children who attended the schools under consideration here. For each community, family is the store of culture, language, relationship to the land, and the complex of relations that are central to an Anishinaabe, Dakota, or Cree ontology. These elements of Indigenous group life fit what Lemkin referred to as the "essential foundations" of collective life, which he argued to be the target for genocide, because they are the practices and knowledges that allow the group to preserve its sense of itself as a group (Lemkin 1944, 79).

In this light, practices of defamilialization and refamilialization were incredibly detrimental to generations of Indigenous families in Manitoba (and elsewhere), not just because families are central to the reproduction of any group, but because of the specific and profound role of family for Anishinaabe, Cree, and Dakota peoples. Not only did the children lose familiarity with language, territory, and the story cycles through which their communal knowledge and history were carried; they also lost the ability to trust others, to form positive and healthy relationships, to love, to care, and to nurture future generations of their families. Defamilialization and refamilialization marked not only a severing of a relationship to the familial past, they deformed the potential for constituting and reconstituting Indigenous familial relations in the present and future.

Genocidal processes do not only negate, they also produce (Benvenuto 2014). Lemkin captures this aspect quite well:

> Genocide has two phases: one, destruction of the national pattern of the oppressed group: the other, the imposition of the national pattern

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> of the oppressor. This imposition, in turn, may be made upon the oppressed population which is allowed to remain, or upon the territory alone, after removal of the population and the colonization of the area by the oppressor's own nationals. (Lemkin 1944, 76)

Likewise, more recent work by scholars such as Patrick Wolfe points to how the "logic of elimination" both eliminates and produces settler colonial society in the void created by elimination (Wolfe 2006). Defamilialization and refamilialization are part of the same destructive movement. They seek to erase Indigenous ties to their cultures, only to produce new connections to the settler society that would enable the ongoing dispossession of Indigenous lands.

Conclusion

The refamilialization practices developed at Mettray were not meticulously applied at Canadian residential schools in part because of the physical and sexual violence rampant in these schools, and the general inability of staff members to forge these connections. More emphasis appears to have been placed on breaking down Indigenous families than on connecting Indigenous children to new staff and student communities, though certainly efforts were made, as demonstrated above, to form new family-like relationships. In this sense, the void created by aggressive practices of defamilialization made possible moments of refamilialization that stuck with Indigenous children as they formed new family-like relations with their fellow students and even, in some cases, staff members. The consequences of this sort of relationship building should not be seen as something outside of genocidal processes, or as somehow illustrating the so-called benevolence of IRS.

In this chapter, an argument has been presented that links Canadian residential schools to nineteenth-century changes to youth reformatory practices in Europe. In particular, the practice of refamilialization, creating new family relations to replace those deemed generative of delinquency, finds expression in the effort of residential schools to "assimilate" Indigenous children into European society. In addition to showing the carceral origins of IRS, raising questions about whether or not such institutions should even be called schools, this argument is presented to counter those who contend that the "good intentions" and perceived benevolence of some

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staff members somehow modifies or absolves the destructive (that is, genocidal) nature of residential schools. When examined in light of the carceral origins of residential schools, and the strategic use of family-like relations to transform inmates, these good intentions take on a different hue, showing how even the seeming kindnesses of intimate colonialism can be viewed as part of a strategy that seeks the erasure of Indigeneity and the consolidation of Canadian settler colonialism.

Notes

1 On a personal note, in 1909, after my great-grandfather was arrested for horse thievery in London, and my great-grandmother subsequently fell into poverty, my grandfather was removed from her household by the Barnardo's Orphanage, from which he was sent to Canada to be a farm labourer at the age of 10. Such practices were common at the time but could be turned to genocidal ends when targeted toward a specific group, such as Indigenous nations.

2 W. H. L. Leigh, *The Reformatory at Mettray: A Letter* (London: Thomas Hatchard, 1856).

3 Leigh, *The Reformatory at Mettray*, 5.

4 J. C. Symons, *Tactics for the Times as Regards the Condition and Treatment of the Dangerous Classes* (London: John Ollivier, 1849), 96.

5 Leigh, *The Reformatory at Mettray*, 13.

6 The Department notes that Indigenous peoples (adults and youth) are overrepresented both as victims and in custody relative to the non-Indigenous population. I prefer to use the term mass incarceration, since overrepresentation suggests that there exists a "normal" amount of representation in corrections, which by naturalizes incarceration and ignores the possibility of abolition.

7 Nicholas Flood Davin, *Report on Industrial Schools for Indians and Half Breeds* (Ottawa: Government of Canada, 14 March 1879).

8 Note that the Christian denominations that ran the bulk of the Indian residential schools (Catholic, Presbyterian, Anglican, and Methodist) had already laid claim to the various Indigenous reserves of Canada. They viewed these reserves as their personal recruiting grounds and complained loudly to the government when another denomination recruited from what they perceived to be their turf (Woolford 2015, 73).

9 Survivor testimony, Truth and Reconciliation Commission of Canada; 01-MB-3–6SE10–001; Beausejour, MB; 10 April 2010, Truth and Reconciliation Commission of Canada.

10 Survivor testimony, Truth and Reconciliation Commission of Canada; case file no. 2011–2619; Winnipeg, MB; 5 July 2011 Truth and Reconciliation Commission of Canada.

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11 Survivor testimony, Truth and Reconciliation Commission of Canada; case file no. 2011–2515; Pine Creek First Nation, MB; 28 November 2011, Truth and Reconciliation Commission of Canada.
12 Survivor testimony, Truth and Reconciliation Commission of Canada; case file no. 02-MB-18JU10–002; Winnipeg, MB, 18 June 2010, Truth and Reconciliation Commission of Canada.
13 For example, see Philip Phelan, chief of training division, to reverend J. O. Plourde, OMI, 5 July 1938, RG 10, volume 8448, file 506/23-5-019, Library and Archives Canada.
14 Survivor testimony, Truth and Reconciliation Commission of Canada; case file no. 02-MB-18JU10–057, The Forks; Winnipeg, MB; 2010-06–18, Truth and Reconciliation Commission of Canada.
15 Survivor testimony, Truth and Reconciliation Commission of Canada; case file no. 02-MB-18JU10–057, The Forks; Winnipeg, MB; 2010-06–18, Truth and Reconciliation Commission of Canada.
16 Report by R. H. Cairns, inspector of Indian schools, to deputy superintendent D. C. Scott, 16 Feb 1922, RG 10, volume 8448, file 506/23-5-019, Library and Archives Canada.
17 Chief William Mann and councillors, Fort Alexander, to Department of Indian Affairs, 28 Feb 1923, RG 10, Volume 6264, File 579–1, part 1, General Administration 1900–35, Library and Archives Canada.
18 Secretary J. D. McLean to Chief William Mann and Councillors, 6 March 1923, RG 10, Volume 6264, File 579–1, part 1, General Administration 1900–35, Library and Archives Canada.
19 Survivor testimony, Truth and Reconciliation Commission of Canada, case file no. 2011–2656, Winnipeg, MB; 2012-01-18.
20 Survivor testimony, Truth and Reconciliation Commission of Canada, case file no. 02-MB-17JU10–074, Winnipeg, MB, 17 June 2010.
21 Assiniboia Residential School Newsletter, *Assiniboia Highlights* 3(2) (1960). National Centre for Truth and Reconciliation Archives, Winnipeg, MB.
22 Statement from Rowena Smoke, Long Plain Sioux to department of Indian and northern development, INAC—Resolution Sector—Indian Residential Schools Historical Files Collection—Ottawa File 501/25-1-067, Vol. 1, Library and Archives Canada.
23 Mary B. Ross, Matron, INAC—Resolution Sector—Indian Residential Schools Historical Files Collection—Ottawa File 501/25-1-067, Vol. 1, Library and Archives Canada.
24 Bernard Neary, superintendent of Indian education, to inspector A. C. Hamilton, 25 Feb 1949, RG 10, volume 6275, file 583–10, part 2, Library and Archives Canada.
25 See, The Children Remembered, Residential School Archive Project, "Portage la Prairie Indian Residential School," The United Church of Canada Archives, http://thechildrenremembered.ca/school-locations/portage-la-prairie/.

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26 Based on these bonds, it is not surprising that many Survivors from Indian residential schools refer to their fellow students as their "family," a point made several times at a recent Assiniboia school reunion. This event was held on 24–25 June of 2017 at the former school site.

27 Assiniboia Residential School Newsletter, *Assiniboia Highlights* 3(2) (1960). National Centre for Truth and Reconciliation Archives, Winnipeg, MB.

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3 Walking on a Settler Road
Days in the Life of Colonialism

Clint Augustine McIntosh

My two children were in child services when I was incarcerated on 15 October 2016. This was the end of a two-year drug-fuelled binge of crime, alcohol, and methamphetamine. I spent nine months in remand sobering up and seeing the destruction I had created once again; this time at the cost of my sons. I love them so much. What I have done to them is unforgivable. I abandoned them in foster care with strangers and gave them a false sense that they might one day come home. During those nine months in remand, I reflected on my children and what I had become. I started to admit my problems to myself. I became truthful with myself before I could get lost in the fantasy world of "big plans" when I get out or how great I am out in the real world as a "badass" or "kingpin." I felt as though I was just a low-life thug wannabe who abandoned his family for drugs and alcohol. In short, a big-time loser. I wanted to openly admit, confess, or just testify my true past and present. I guess, in some sense, I had a spiritual awakening. I wanted it documented how I, Clint, was created. Maybe we could find him? Lay it all out from birth to present. No more secrets.

The prosecution came with an offer of seven years under the condition that I have the Gladue Report done. He told me this was the only way he could justify the time to a judge. The Gladue provision is a law passed by the Supreme Court to protect the Indigenous peoples of Canada. This law takes into consideration the past trauma, addiction, education, and abuse of sentenced individuals at the hands of government agencies. I fit this bill 100%.

So, as time passes, I anxiously awaited the court date when the Gladue Report would be ordered. One day before I entered the court, my lawyer

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wanted to brief me. He said I didn't need the Gladue Report and that we can just set a date for early resolution. He told me that the plea deal was still seven years, but we could get it done quickly and I could get on with my life instead of waiting in remand for another four months for a Gladue Report. So, I agreed. Just like I agreed to so much throughout all my criminal court cases in the past. Plead guilty and get on with the time.

A day and half later, I thought, "No!" I called my lawyer and said that I wanted the Gladue Report done. It was the beginning of my road to change. He emailed the prosecution about my change of heart. The prosecution responded, and I quote, "Well, if Mr. McIntosh wants the Gladue Report done, then the crown will request a sentence of ten to twelve years."

When I heard this, my hope for the full disclosure of my life went out the window. At that time, I really wanted someone to hear my life testimony. I really thought the Gladue Report would help me identify important points in my life, maybe even a pattern. I don't really know what I was hoping it would do, but I knew that it would follow me to the penitentiary for other professionals to read and maybe even work with me to address the issues identified. The threat of a twelve-year sentence scared me though. I would be sixty-one years old after twelve years in prison. So, I awaited sentencing. I alternatively tried to find someone who could help me make sense of my life situation. I reached out to someone on the correctional Transitional Team in Edmonton. They listened and documented my story. This seemed like great news. I thought, "These people will help me." Initially, they stated that the action of the prosecution was illegal, or at least a Charter violation, but soon enough I heard nothing more from them.

Now, in here I sit. I really want to change. I want to confess my life, but like so many of these correctional departments, psychologists, doctors, Elders, priests, society groups that are supposed to listen or help, they only seem to be there for a paycheque. I could be wrong, but I have been stepped over by the justice system so many times while incarcerated. I've reached out for help, only to be quickly shut down. I've seen men who just come in who are prime for change but are just left to rot in their own memories until they are past the point of recovery and increasingly on a path of destruction.

Here is my story . . .

I was born in Dawson Creek, British Columbia, in 1968. My father was a logger and we lived in Chetwynd. My earliest memory is at the age of four or five in Glenny's trailer court during early winter, when I was at the skating

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pond alone, I fell through the ice. I remember seeing my hands extended in front of me, reaching as I sunk below the surface and the light of the hole from which I fell. Suddenly, a shadow grasped my hands and pulled me through the surface, and I rose up toward the light. My rescuer was Darren Peters, the local kid who everyone teased and physically abused because of his weight problems. He carried me home to my mom and dad. That's also the day I had my first drink and cigar. I remember sitting on the couch with a little snifter of brandy and the rest of my father's cigar. It made me feel special and more connected to my father, who was a six-foot-one red-headed Scotsman. My mother was a raven-haired French Cree.

We moved from the trailer park to Sakunka, better known as Sakunka River. That is where I attended my first school where I would catch the bus with my four brothers and sisters to Chetwynd. On the first day of Grade 1, we boarded the bus. It was not pleasant. We were cursed at, pushed, pulled, and tripped by the other children because we were Native-looking. I remember exiting the bus and there was a boy standing in front of me when I got out. Suddenly, he spat in my face and called me a "dirty Indian." I do not remember much after that except for being pulled away from the boy, who I beat near the school entrance. I was suspended before I even made it to school. I remember a lot of fights in school. I also remember my parents drinking and fighting a lot when my dad was home, which was rare because he worked in camps. Us kids were not kept separate from the parties. I remember being sent to get drinks for my parents and their guests. Of course, I would sneak a few sips. I was also the official cigarette lighter, meaning I actually lit the smoke before giving it to my parents. By the end of the night, I was just as drunk as everyone else. If anyone even noticed, I became the night's stumbling entertainment.

I witnessed and experienced a lot of violence growing up. My father's discipline was strict and physical. I remember once my brother getting stuck in the mud by the well. I was trying to help him out, but he was up to his knees. At that moment, my father arrived home after being at camp for a long time. I was surprised and excited to see him drive up. Surprise soon changed to terror as he got out of his truck, pulled out his knife and cut a green garden hose that was attached to an outside tap. He proceeded to whip Scott and I while both now stuck in the mud. He whipped us until we were able to crawl ourselves out, and that took a while. There were many other events like this.

During Third Grade, we moved to Joussard, Alberta. This was primarily a Métis community. After my father moved us, I rarely saw him. He would

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go away to work for six months at a time. In the meantime, I joined a street gang called CUTTERS. We stole booze, smokes, and guns. I was introduced to many things, including drugs like marijuana, acid, mushrooms, mescaline, and cocaine. This was also the time that I was first sexually molested by a man; this is also the first time I have ever openly admitted this. He lived across the street. He molested a lot of the local boys.

I fought a lot in school. When my dad was home, he was drunk. If he knew I was having trouble with someone at school, we would drive around until we found them, then he would make me get out and fight. And boy, I had better have won. I usually did. One time, the local pedophile hurt my friend quite severely. Some gang members and I laid in the ditch waiting for him. After that, we never spoke about him again.

Around the same time, a man, his wife, and two daughters bought the property next door to us. He was a retired coastguard captain. He started building his house on the property and gave me a job helping him. We became very close, and I saw him as a father. He called me "fuzzy balls" and taught me many things. He took me hunting, fishing, and sometimes we would just sit in the backyard where he would tell me stories. He was an alcoholic, but he treated me like a son. I never experienced anything like this with my own father. We had a close relationship for about three years. One morning, shortly after starting junior high school, I stopped in on my way to catch the bus like I did every morning. He was different this morning. He wouldn't converse in his usual way or make eye contact. He told me that I better "get going" or else I would miss my bus. His last words to me were "See ya' around Fuzzy Balls." All day I was bothered. As the school bus returned home, I ran to his house, but he wasn't home. His wife was there with tears that streaked her face and a frantic look about her. She asked me if I had seen him. I told her about what happened that morning. She had a paper in her hand that she kept looking at and holding it close to her chest. I said I would go look for him. I went to get my friend who had a car, even though he was only twelve years old; it was a 1966 Plymouth. We went looking for him up the mountain where he and I used to park where the eye could see forever. That's where we found him; the black hose running from his muffler to the sliding windows of his Ford pickup truck. He was long dead, and my world exploded. I loved that man. I was angry and became even angrier when they wouldn't let me help carry him to his grave. At that moment, I hated everything with a passion. We buried him in Joussard, with a huge anchor marking his grave.

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Shortly after that we moved to Grand Centre (now Cold Lake South), Alberta. I was twelve and in the middle of a school year. I didn't like my new school, so I skipped class a lot. I remember one night I awoke to the sound of a loud fight between my mom and dad. They were drunk. I walked into the room to see them struggling with a twelve-inch bowie knife. My dad left that same day. I didn't see him again for five years. He moved to Grand Prairie to live with another woman, who he eventually married. I was left with my mom and my two sisters who were four and five years old at the time. Since he didn't help my mom financially, we went on welfare. My mom started leaving us alone frequently. I dropped out of school so I could look after my sisters. Mom would be gone for weeks at a time. Sometimes we had to live off spaghetti and ketchup. When we ran out, I wouldn't know what to do, so I went out at night and started raiding gardens for vegetables. This progressed to shoplifting, breaking and entering, and car hopping. This lasted for about two years. During that time, I used alcohol, drugs, and sniffed gas with my cousins. It was stressful. I was responsible for those girls until my dad came one day and took them. No one told me. He didn't take me. I was left alone.

My older cousin, Ricky, took me in and gave me a job as a carpenter. Things calmed down in my life for a little time. In 1987, I got a call from my mom. She needed me to drive her to Amisk, Alberta. I was living in Barrhead, Alberta. She said she needed to help one of my sisters. She didn't say why and wouldn't tell me when I asked. I lied and told her I had to be up at 5 a.m. for work, plus Amisk was about five hours away. So I put her on the Greyhound bus. I got a call the very next day from the RCMP notifying me of my mother's murder. My brother-in-law was beating my sister. My sister had asked my mom to help her pack up her two children and get them out. She made her promise not to tell us boys because she was scared we would kill him. Instead, my mom spent the night and my brother-in-law came home while everyone was asleep. He attacked her and beat her severely. Broke her jaw, arm, and bruised her all over. He also stabbed her nine times, including once in the face. I still live with the guilt. Maybe I could have saved her—or died with her.

Despite everything, I loved my mom more than anything. At the time of my mom's death, I was common law with a child. My relationship and life both went to hell and we separated. My alcoholism and drug addiction exploded. Crime followed. This was one of the most traumatic experiences I've had. I cannot express how much this defined my life. I've always said that you can connect my criminal past with my mom's death.

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I snuck into the criminal underworld and it fit like a glove. I've witnessed countless deaths; some natural, some violent; many tortures; I became head of prison gangs; you name it. There is so much trauma in my life, more than I could list here.

In 1998, I petitioned the court to keep my mother's killer in jail. I even did a television interview in Dawson Creek, BC, to stop his parole. But he was released anyway to his new wife, who he also eventually murdered.

My most recent trauma is the loss of my two boys to the government of Alberta. In a sense, this is what brought me here to this pen and paper. Nobody knows about my background, these admissions of abuse, these lifestyle factors, or of the colonial victimization that myself and many others have suffered. My mom was a residential school child, and this makes me a generational Survivor; what has been done to our ancestors was passed on to me. Believe me when I say that I want to change. I am a creation of these circumstances. I have awoken and hate who I am. I want to wake up and live. I want to change.

I know I had a lot to do with my path in life. But the justice system needs to change. My PTSD is devastating. The denial of a fair trial and Gladue Report, both of which I have a right to, are errors in justice. I've lost everything there is to lose in life.

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4 Colonial Mythmaking in Canadian Police Museums on the Prairies

Kevin Walby and Justin Piché

> *It was the gayest of spectacles that had ever invaded Indian land. "A" Troop, fifty strong, led off on dark-bay horses, the fifty jets of scarlet uniform merging into one rich flame far ahead. . . . "B" came next on dark-brown mounts; "C" on light chestnuts, and to "C" was given the bedevilling honor of drawing the two field-guns and mortars. "D" rode grays, and "E" shining blacks, while "F" was mounted on well-matched light bays. (Longstreth 1934, 27–28).*

The opening epigraph is a romantic description of the Great March West, which established the North-West Mounted Police (NWMP) as the dominant, para-militaristic police force throughout lands that would come to be known as the Canadian provinces of Manitoba, Saskatchewan and Alberta. Before the March West, there was no NWMP presence in what many now call Western Canada. In the passage above there is no shortage of flowery adjectives and nouns for referring to horses. There is also a damning singularity: the Indian. The NWMP would use those field-guns and mortars against the Métis at Batoche, Saskatchewan in 1885 to mow down human beings resisting state occupation and fighting for their way of life (Bumsted 2001). The same guns would be used twenty-two years later against Almighty Voice to blast him into the earth near Duck Lake, Saskatchewan (Shrimpton 1999; Anderson 1971).

From where we are situated, as white settlers who take seriously the obligations of the Truth and Reconciliation Commission (2015) on residential

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schools and the National Inquiry into Missing and Murdered Indigenous Women and Girls (2019), including the need to acknowledge the genocidal means directed at Indigenous peoples through which Canada established and retained dominion over the lands and human beings (Harrison, Walby, and Piché 2022) from which it derives wealth (see Pasternak and Metallic 2021), there is no conceivable honour in having hauled NWMP cannons. There is no intelligible claim to alliance as per the treaties in the establishment of NWMP outposts, guardhouses, and barracks from the Red River westward. The "scarlet flame" of a mass Red Serge likely did not resemble a picturesque sunrise for anyone who saw it except white settlers. Viewing hundreds of police with guns on horseback as "the gayest of spectacles" rather than a petrifying sight is a privilege only white settlers could enjoy. Describing this history of occupation, assimilation, dispossession, and criminalization as honourable, heroic, and wondrous is truly a settler colonial delusion. Yet this type of representation can be found in abundance today across the prairies and beyond in police museums that depict this history (Ferguson, Piché, and Walby 2020).

The Canadian state and its social control agents have displaced and dispossessed First Nations, Inuit, and Métis peoples as a means of creating an expansive frontier for settlers. The history of this displacement and dispossession is well documented (Pasternak and Metallic 2021; Pasternak and King 2019; Logan 2015; Monaghan 2013; Frideres and Gadacz 2008; Hedican 2008; Satzewich 1996; Satzewich and Mahood 1994; McLoughlin 1993; Bourgeault 1991). Police have played a central role in colonialism, protecting state and capitalist interests (Hill 2010a, 2010b). As Crosby and Monaghan (2016) note, policing agencies in Canada have operated with a settler colonial mentality since their inception. Through police interventions in Elsipogtog and Wet'suwet'en, as well as the surveillance of Idle No More, settler colonial policing across Canada continues (Monaghan and Walby 2017; Baker and Verrelli 2017; Proulx 2014), as does Indigenous resistance (Dhillon 2017; St.-Amand 2016; Barker 2014). Outside of First Nations, Inuit, and Métis histories, Canada's colonial and violent past and present is often minimized. Most cultural representations of colonialism downplay the violence and instead perpetuate settler colonial myths (Onciul 2014; Rifkin 2013; Wolfe 2006; Mackey 1998). Here, we examine recurring myths of colonialism produced at and communicated in Canadian police museums across the prairies. Police

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museums are heritage sites in which the history of policing and social control is represented (McNair 2011).

It is crucial to examine what happens in museums since these cultural institutions are treated as authorities in conserving the historical record (Ashley 2005). The knowledge produced in museums tends to be trusted (Simon 2006). To the extent that this knowledge goes uncontested, the place of museums as authorities creates the potential for myths to be fostered. As Dickinson and colleagues (2006) point out, museums in the United States tend to advance obliviousness as it regards colonialism. If mentioned at all, police museums in Canada tend to create a distance between the present and colonial injustices of the past. The mythological status of the Mountie as "both courageous and benign" (Nettelbeck et al. 2016, 203) is the baseline frame for many police representations. For First Nations, Inuit, and Métis peoples, colonial injustices remain palpable (Estes 2019; Monchalin 2016; Simpson 2014).

This chapter examines myths of colonialism produced at and communicated in Canadian police museums located in Manitoba, Saskatchewan, and Alberta that were the epicentre for the NWMP Great March West. These include the myth of terra nullius or empty land; the myth of the noble savage; the myth of violent, well-armed Indigenous agitators; and the myth of the benevolent settler state. As white settlers committed to working toward reconciliation and decolonization, we argue that Canadian police museums position officers as ideal custodians of the benevolent state and that the representations in these museum sites misconstrue colonial relations, as well as malign First Nations, Inuit, and Métis peoples. Building on our previous work on representations of colonialism and police in museums located on the grounds of the RCMP Musical Ride in Ottawa, Ontario and the RCMP Depot in Regina, Saskatchewan (Ferguson, Piché, and Walby 2020), we draw from the results of fieldwork at the Winnipeg Police Museum, the Shoal Lake Mounted Police Museum, the Saskatoon Police Museum, Russell Hanson's Mounted Police Museum (in Duck Lake), the Duck Lake Regional Interpretive Centre, the Rotary Museum of Police and Corrections (in Prince Albert), and the YouthLink Calgary Police Interpretive Centre. By exploring these materials, we contribute to literature on policing myths (e.g., Campeau 2019; Phillips 2016), as well as work on contemporary colonialism in Canada (e.g., Simpson 2014; Coulthard 2014; 2007). Decentring the normalization of the settler colonial frame that passes for truth in mainstream discourses, in the discussion and conclusion we reflect on how the curation and representational

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work within such cultural spaces could be done differently to better align with crucial efforts to acknowledge and make amends for the past, along with the ongoing harms and injustices integral to and stemming from colonialism. By examining the underlying myths conveyed in the displays, the relics, and the photographs that visitors encounter in these police museums, we highlight the need to challenge and displace these depictions to make room for representations curated and communicated by First Nations, Inuit, Métis peoples, and their allies.

Conceptual Encounters

Before examining our data, we review relevant literature on museums and representation. The museum is a place where versions of national identity and belonging are on display (Sutherland 2014). As a place in which knowledge is communicated, the museum is one location where imagined national communities (Anderson 1991) and who belongs to them are negotiated (Douglas 2017). Part of the fostering of nationalism in the museum (Drzewiecka 2014; Velmet 2011; Mittner 2000) involves depicting some persons as authentic citizens and other people as worthy of exclusion (McLean 1998). To the extent Indigenous peoples are not included in Canadian museums, they are not treated as part of Canada's historical record. Drawing on this literature, our conceptual approach treats the museum as a realm of meaning making that is inherently political and reflective of power relations. Although there are exceptions (Fiander et al. 2016), Canadian museums have often not included or have diminished the voices and perspectives of Indigenous peoples (McLoughlin 1993). The same can be said for police museums.

Smith (2006) has argued that heritage is political since it is always used to advance partial narratives that leave out aspects of the past, which has implications for how people understand the present. As she notes, "the idea of heritage is used to construct, reconstruct, and negotiate a range of identities and social and cultural values and meanings in the present" (Smith 2006, 3). Heritage displays and discourses become authorized knowledges advancing truth claims viewers and tourists encounter, which are difficult to contest. From this perspective, police museums not only provide limited, partial views of the history of social control in Canada, they also gloss over the injustices and violence that police have perpetrated (Ferguson, Piché, and Walby 2019). The police museum positions itself as a holder of the truth about policing in

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a given jurisdiction. Canadian police museums tend to mute understandings of injustices and violence that police have perpetrated against First Nations, Inuit, and Métis peoples in Canada. Smith (2006, 287) goes on to suggest that authorized heritage discourses such as those found in state museums are sites where the stories about the history of colonialism are manipulated. Police museums displace First Nations, Inuit, and Métis histories of colonialism and knowledges concerning the territories now called Canada. As our analysis of partial "establishment narratives" (Wilson 2008) in police museums demonstrates, it is time for these sites to cede space for representations created and communicated by First Nations, Inuit, and Métis peoples.

Onciul (2014) argues that museums and heritage spaces must be decolonized to work toward reconciliation. This means representing "hard truths" about colonialism such as the genocide perpetrated against First Nations, Inuit, and Métis peoples in Canada (Woolford 2009). Police museums are crucial to examine in the context of literature on colonialism and the Canadian state (e.g., Chartrand 2019; Monchalin 2016; Hinton, Woolford, and Benvenuto 2014), since police have been primary agents of the genocide against Indigenous peoples in Canada. From this perspective, police need to learn from First Nations, Inuit, and Métis peoples about colonialism and let this inform representations found in police museums. Museum spaces must become forums where Indigenous groups are able to claim part of history and articulate their own understandings of the role of police in colonial state practices. As we suggest in the discussion, decolonizing police museums in Canada will likely be a challenging and jarring process.

Findings and Analysis

As part of a larger research project on policing, courthouse, and prison museums in Canada, we have conducted interviews and observations at dozens of museums pertaining to "criminal justice." In our work, we follow Dickinson and colleagues (2006) in undertaking a critical analysis of the myths perpetuated in these museums by examining what is present in heritage sites and "tracing absence[s]" (Meyer 2012). For this chapter, we focus on data from the Winnipeg Police Museum, the Shoal Lake Mounted Police Museum, the Saskatoon Police Museum, Russell Hanson's Mounted Police Museum (in Duck Lake), the Duck Lake Regional Interpretive Centre, the Rotary Museum of Police and Corrections (in Prince Albert), and the YouthLink Calgary

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Police Interpretive Centre. We do not examine the RCMP Heritage Centre in Regina much here, although we do so elsewhere (Ferguson, Piché, and Walby 2020). Research team members made observations in a focused manner using observation grids, while also conducting semi-structured interviews with staff in museums where possible that were recorded and transcribed. Photographs of relics and displays were taken. We analyzed these materials from the above-mentioned sites with focus on displays of colonialism, as well as those depicting First Nations, Inuit, and Métis peoples.

Police-Centred Memorialization and Anthropological Looking

Before providing our analysis of the museum content, we begin with a few general observations. During the time of our fieldwork, no police museum in our sample opened its displays or tours with a land acknowledgement, which are important because such acts provide recognition for the ancestral lands upon which "we live and work" (CAUT, n.d.) that were acquired by the Crown through duplicity in the cases where treaties were signed, but not honoured, and by force when such agreements were not sought or obtained. In cases when settler relations with First Nations, Inuit, and Métis peoples is addressed, one type of looking that is fostered is "anthropological" (Dickinson, Ott, and Aoki 2006, 33). That is, while there is an acknowledgement of events, albeit incomplete, they are depicted as relics belonging to a distant history, which fails to recognize legacies of the past reverberating, and continuities at work, in the present.

One such site is the Shoal Lake Mounted Police Museum, located in Shoal Lake, Manitoba north of Brandon, which focuses on the NWMP and RCMP. It is located in Treaty 2 territory, situated on the traditional homelands of the Dakota, Anishinaabe, Oji-Cree, Cree, and Métis peoples. The museum is housed in a replica of the NWMP barracks erected in 1875. There is some mention of the colonial period, but only from the point of view of settlers. In one display, the arrest, detention, and escape of Almighty Voice is represented. The display recounts that Almighty Voice murdered Colin Campbell Colebrook, who was a Sergeant with the NWMP in 1895, and noted there was a $500-dollar reward for his capture. Almighty Voice is viewed by some as a warrior but as an outlaw by others (Anderson 1971), yet the museum framing of the story uses criminality and degeneracy as the only constructs. Almighty

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Voice was arrested for butchering a cow that belonged to the Indian Department without a permit. Several of his family members had also been arrested and detained for months. Their movement and ability to feed themselves was constrained by Indian Agents, and the pass and permit system. His community was hungry (Shrimpton 1999). This context is rarely, if ever, mentioned in museum settings. Almighty Voice did kill Colebrook who was trying to arrest him again after the escape. A manhunt ensued, and additional NWMP officers were shot. Months later, Almighty Voice and his close friends were killed after approximately a hundred NWMP and settlers fired upon them using rifles, as well as field-guns and mortars against the Métis at Batoche (Anderson 1971). In the Shoal Lake museum, the story is straightforward. Almighty Voice is depicted as a "criminal," as a "killer," as a "bad Indian," and as a problem for settlers. Such rhetoric is the vessel through which the myth of violent, well-armed Indigenous agitators is perpetuated. The context of forced deprivation and starvation is not raised. The elimination of the buffalo as a tactic of genocide (Woolford 2009) is not even alluded to. The imposition of a system of private property that benefited settlers, Indian Agents, and their families who expropriated land from First Nations, Inuit, and Métis peoples is not discussed. The issue of Indigenous resistance is framed as a matter of aggression by "defiant Indians" (Fetherstonhaugh 1938), as it has in many pro-NWMP and RCMP accounts. This is a striking example of how police museums in Canada bury much of the history of policing organizations by failing to acknowledge that many First Nations, Inuit, and Métis peoples have been injured, maimed and killed, and placed in settler colonial institutions, including residential schools (Woolford 2015) and prisons (Chartrand 2017).

At Shoal Lake Mounted Police Museum, the origins of police in Canada are depicted as benign. As a display case at the museum indicates, "In 1873 the North West Mounted Police Force was created to keep the peace and administrate Canadian Laws in the North West . . . in 1874 the Force moved west in what is known as the 'March West' to shut down a whiskey trading post." This account ignores the political context and Métis quests for self-determination. The Métis had established a different system of property following the seigneurial system of New France and Government in the Red River Valley in the early to mid 1800s, but then were exiled from the Winnipeg area in the 1870s. They relocated to Batoche, Saskatchewan. The NWMP were deployed to the prairies to disperse and eliminate the Métis and Indigenous groups who were beginning to mobilize against the Canadian state due to

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discrimination and deprivation. Prime Minister John A. Macdonald held a grudge against Métis leader Louis Riel after the Red River Rebellion in 1869 and the execution of Thomas Scott by a military tribunal appointed by Riel. Following the 1885 resistance in Duck Lake, Fish Creek, and Batoche led by Riel, Prime Minister MacDonald ordered that he be prosecuted for high treason, an offence for which he was convicted and executed (Bumsted 2001, 2000). The most pressing issue during the early years of Confederation for the federal government was national unity, which was secured, in part, through the quelling Indigenous resistance (Nettelbeck et al. 2016, 54–55). The Shoal Lake placards and displays gloss over the direct role of police in crushing Indigenous resistance, suggesting that the NWMP were established simply to create order and protect Canada from eccentric whiskey traders and wolf hunters based in the United States.

In terms of depicting Indigenous history, the Shoal Lake Mounted Police Museum offers one display full of numerous random artifacts, including arrowheads, pemmican, hammer heads, and other materials. Positioning Indigenous peoples as backward is another common curatorial tactic in these museums. These are strategies that perpetuate the myth of terra nullius (lands deemed to be uninhabited by rational beings and ownerless), as well as the myth of the noble savage. Indigenous artifacts are depicted as (ancient) history. Such "anthropological looking" (Dickinson, Ott, and Aoki 2006, 33) makes Indigenous peoples appear as foreign or from another time despite being the original occupants of these lands. There is no context regarding Indigenous spiritual, political, or economic life in such displays. This kind of distancing makes it seem as though Indigenous ways of knowing and living are extinct. The only other story mentioned about Indigenous peoples depicts NWMP in a positive light. A placard mentions that Inspector James Walsh of the NWMP assured Sitting Bull and 5,000 Sioux that they would be provided with protection from the American army if they agreed to obey the laws of Canada and the Queen. The NWMP Inspector is described as a protector of Indigenous peoples. US Indian Police later killed Sitting Bull at Standing Rock (Vestal 1989), a fact not mentioned in the museum since the focus on police and Inspector Walsh occupies most of the frame.

The displays at the Shoal Lake Mounted Police Museum are deficient. They do a poor job of reflecting on the history of how police in Canada have treated First Nations, Inuit, and Métis peoples. The major role the Métis played in the creation of Manitoba is downplayed. There is little attention given to the

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shootings of First Nations, Inuit, and Métis peoples in Manitoba or elsewhere across the prairies. Moreover, there is a lack of context and attention paid to the violence perpetrated by the Canadian state in the region, or the role police played in attempting to destroy First Nations and Métis life on the prairies. The operational role of the NWMP barracks at Shoal Lake in the aggressions against Indigenous and Métis peoples in Saskatchewan and Alberta in 1884–1885 is not mentioned. Instead, NWMP and RCMP officers are mostly depicted as heroic, benevolent figures. Public police are a main part of the lethal legacy and assimilationist history of the Canadian state (Miller 2004), but not according to police themselves as per their museum representations.

Unlike the Shoal Lake Mounted Police Museum, which has a small staff and a number of committed community volunteers, the Russell Hanson Mounted Police Museum—situated in Duck Lake, Saskatchewan, a small town north of Saskatoon—is owned and operated by one man. Russell Hanson is a former Saskatchewan farmer who has a passion for NWMP and RCMP history. Yet the history on display at this site is limited and partial. It reflects the historical vision and museum framing of a settler. The RCMP Heritage Centre in Regina has sent relics for display in the Russell Hanson Mounted Police Museum. The site also features the largest RCMP merchandise store outside of the RCMP Heritage Centre in Regina. When Indigenous people are mentioned at this museum, they are reduced to purveyors of beaver pelts, again what Dickinson and colleagues (2006, 33) call "anthropological looking." Almighty Voice is mentioned in one placard, again as a "criminal," rather than as a freedom fighter. During an interview, the killing of Colten Boushie, a 22-year-old Cree man from Red Pheasant First Nation, by Gerald Stanley was treated as akin to the protection of homesteads and farms by NWMP and RCMP in decades prior. If the Shoal Lake Mounted Police Museum is diplomatic in the way it fails to provide a space for the inclusion of history incorporating Indigenous views on policing and colonialism, the Russell Hanson Mounted Police Museum is a scene of settler governmentality (Morgensen 2011), in which the promotion of settler lives and their well-being to the detriment of First Nations, Inuit, and Métis peoples is normalized. This is evident in the way tourists can purchase RCMP garb and trinkets for adornment and display in the merchandise shop. One can position oneself as the protector of the settler. The RCMP police brand is depicted and materially treated as one to be trusted. Indigenous peoples are treated as collectors of furs, as "criminals"

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or as non-existent, even though Duck Lake has Indigenous reserve lands on all sides.

Remembering to Forget and Amnesiatic Looking

While the fostering of "anthropological looking" is pervasive in some police museums, we have also observed heritage sites where the role of policing in enforcing the dispossession of First Nations, Inuit, and Métis peoples is not explained or accounted for, which Dickinson and colleagues (2006, 38) refer to as "amnesiatic looking." Just as historical literature on policing in Canada often ignores First Nations, Inuit, and Métis peoples (McGahan 1988; Anderson 1972; Clark 1971), so too do many police museums, which is outrageous given the role that police have played in disrupting and controlling First Nations, Inuit, and Métis communities throughout Canadian history. It is also largely assumed what the "police" are. Obviously, the North-West Mounted Police were a central police force during the colonial period. However, other figures such as Indian Agents were engaged in policing activities, as well as through the enforcement of the pass system and permit system controlling the movement and activities of First Nations, Inuit, and Métis peoples on and off reserve (Satzewich 1997; Satzewich and Mahood 1995). In the vast majority of the police museums we examined, there is no room made for such actors who worked in concert with the NWMP and RCMP.

An example of this is the Rotary Museum of Police and Corrections in Prince Albert, Saskatchewan. This is a large museum with many relics on display. The Prince Albert region is home to several Indigenous communities. More than 40 percent of the city identifies as First Nations or Métis (White-Crummey 2017). In 1888, the site became the headquarters for the F Division of the NWMP until 1932, and the museum is located in the former NWMP guardhouse that once included detention cells in which many Indigenous peoples would have been held at various times. Yet one would never know this from the museum. It is vacant of policing history when it comes to First Nations, Inuit, and Métis peoples. In the tour script, it is claimed that the NWMP were created to "maintain law and order, protect Canadian sovereignty on Canada's side of the international border, safeguard settlers, police the construction of the Canadian Pacific Railway, look after Indians, and stop the illegal whiskey traders from the USA." Each of these state projects required dispossession and marginalization of First Nations, Inuit, and Métis

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communities, yet this is never made part of the tour. Moreover, claiming the NWMP were occupying the prairies to "look after Indians" shows the paternalism underlying the myth of the benevolent settler state, which is crucial to the work that such museums often do in sterilizing the history of police violence. As Mackey (1998) notes, museums and other cultural and heritage sites often communicate frontier narratives that position Indigenous persons as child-like figures encountered by tolerant and benevolent Canadian state agents and institutions. This representation is crucial to the myth the police created order, rather than mayhem and tension in Indigenous territories. These colonial myths are also policing myths (Campeau 2019; Phillips 2016) that legitimate Canadian state power.

Given that it is located on Treaty 1 territory, the original lands of the Anishinaabe, Cree, Oji-Cree, Dakota, and Dene peoples, and on the homeland of the Métis Nation, one might also expect rich documentation of First Nations, Inuit, and Métis peoples and policing at the Winnipeg Police Museum. Yet the Winnipeg Police Museum, a cultural site rich with relics and displays in a large space that is part of the Winnipeg Police Service headquarters (see Walby, Ferguson, and Piché 2021), is poor at providing an accurate or adequate history of First Nations, Inuit, and Métis peoples and policing. Museum staff at times also sort "good" from "bad" Indigenous peoples using their own shorthand rules. During the interview, a curator at the Winnipeg Police Museum talked about how he does not see eye to eye with Métis peoples on their history. For example, he felt strongly that Louis Riel was a "criminal" and was rightly executed, while bemoaning the fact that he is memorialized as a leader when certain other Métis leaders are not. For this curator, Cuthbert Grant is a Métis person deserving of more recognition because of his work as a sheriff. Cuthbert Grant was a sheriff or "warden of the plains" of the Assiniboia region designated by the Hudson's Bay Company (HBC) during the period from 1839 to 1845. He sided with HBC in many disputes. "We give a day off for Riel but we do not recognize Cuthbert Grant at all . . . one was right and one was wrong," the curator noted. The curator, a former police officer himself, featured no displays regarding Riel in the museum. Yet there is a small display for Cuthbert Grant, the HBC sheriff. This is an example of the settler mind frame (Morgensen 2011) in action in a Canadian police museum. Anyone not for the Canadian nation-state or the status quo is positioned as a "wrong" or "bad" figure to be eliminated from the frame, like so many First Nations, Inuit, and Métis peoples have been by the Canadian penal system.

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The only other depiction of Indigenous peoples in the Winnipeg Police Museum is on a box for an 1873–1973 centennial and ceremonial RCMP Winchester rifle displayed in a glass case. On the box there are two cartoon scenes in which NWMP officers on horseback chase Indigenous peoples across Prairie landscapes. This is an official box for ceremonial RCMP paraphernalia. These scenes are telling of the RCMP understanding of Indigenous groups. In addition, on the box it is written "Winchester salutes the RCMP on its centenary." As researchers we wondered how many First Nations, Inuit, and Métis peoples in Canada have been shot at by those rifles or guns like these. Again, on the most pressing questions, police museums tend to be silent. Such "amnesiatic looking" is an approach to curation and museum display that "privileges forgetting over remembering" (Dickinson, Ott, and Aoki 2006, 38, 40).

One common practice at the Winnipeg Police Museum, which is similar to other law enforcement museums, is that during open houses or special events staff allow visitors to put on an old buffalo coat officers wore during cold winters. There is no mention of where those buffalo coats came from or how the mass killing of the buffalo on the prairies was part of an extermination policy aimed at destabilizing First Nations, Inuit, and Métis peoples (Hinton, Woolford, and Benvenuto 2014). There is no mention that some Indigenous peoples considered the use of the buffalo coats as a form of desecration (Woolford 2009). Rather than using the relic to teach museum visitors about First Nations and Métis peoples, the coat, like so many other objects in the museum, is presented without context and background. The museum visitor is allowed to position themselves as a police officer through adorning themselves in their gear, yet representations of First Nations, Inuit, and Métis peoples that counter-inscribe settler colonial narratives are not presented in the building.

Located on Treaty 7 region in Alberta, the traditional territory of the communities comprising the Blackfoot Confederacy, the YouthLink Calgary Police Interpretive Centre is among those police museums that fail to represent First Nations, Inuit, and Métis peoples at all. The Interpretive Centre features an actual helicopter that serves as the museum centrepiece, a display of a full tactical team in operation, as well as a mock forensics lab. The most elaborate police museum in the country offers no placards dedicated to First Nations, Inuit, and Métis communities. This is shameful as the focus of the museum is children, who need to learn about Canada's history of state violence if reconciliation is to become more than rhetoric.

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A Discrepant Example Worthy of Replication

In contrast to the police museums above, the Duck Lake Regional Interpretive Centre does address colonization and its atrocities with displays on Louis Riel and Gabriel Dumont in the context of Métis leadership and organizing, as well as Almighty Voice, in Indigenous struggles. Also significant is the inclusion of First Nations and Métis accounts, alongside those of police, in museum narratives.

Out in front of the Interpretive Centre is a painting that depicts dead bodies, at least one of which is Métis, revealing the loss of the 1885 battles that occurred on all sides. This vision is also painful, displaying death and suffering in a vivid manner. It promotes reflection and contemplation before one even enters the museum (Fiander et al. 2016). The Métis flag flies beside the mural. Contrast this with a gigantic photograph at the entrance of the RCMP Heritage Centre in Regina, which depicts a NWMP or RCMP officer on horseback overlooking a vast, empty prairie expanse. This vision is one of a heroic mounted police custodian overseeing an empty land. It promotes myths, which sets up visitors for everything that follows in what is by and large an RCMP propaganda museum (Ferguson, Piché, and Walby 2020). In the former, the Métis subject and perspective is at least present; in the latter, the Métis and First Nations communities of the prairies are absent presences.

The critical forms of punishment memorialization that appear in the Duck Lake Regional Interpretive Centre alongside mainstream accounts is partly a function of the site having become less "criminal justice" oriented over time and more focused on regional history, creating space for non-police interpretations of law enforcement (Fiander et al. 2016). As a result of this rare approach, the inclusion of First Nations, Inuit, and Métis voices subject to Canadian state repression are positioned in ways that have the potential to challenge settler colonial perspectives.

Discussion

As noted by a former Canadian military member turned author in his musings on the 1885 Métis resistance, "when the arm of the Rebellion had been raised and loyal citizens and Mounted Police shot down for striving to vindicate Canadian authority, it was not for us as Canadians to ask whether the rebels had

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any right on their side or not. Our National integrity had been assailed, our National honour had been threatened, and it only remained for our citizen-soldiers to draw the sword in their defense" (Mulvaney 1885, vi). Based on our examination of representations, as well as interviews with staff, it is as if most police museums in Canada exist to carry this sentiment and posture forward into the future ad infinitum without a moment of critical reflection. The quote suggests it is not for Canadians to ask any questions about the past or the treatment of First Nations, Inuit, and Métis peoples.

Representations of colonialism are never neutral (Modest 2014). These representations can either be positioned to bury the past or to reflect critically on it. As it stands, given the partisan nature of how people remember and memorialize, there are almost two versions of history in Canada (Moran 2016), one that defends settler colonial thinking, and one that views colonialism as a historical and ongoing form of state-induced trauma. Settler colonial and frontier thinking often goes unchallenged in contemporary Canada as part of a backlash to official reconciliation efforts (Besner 2018). Settler Canadians are complicit in police repression of First Nations, Inuit, and Métis peoples, yet this is not an issue that is broached at most Canadian police museums. Instead, the state and many settlers are comfortable with the "killing indifference" (Razack 2013, 353) they display toward the First Nations, Inuit, and Métis peoples. By not providing a space for Indigenous voices and views of colonialism, heritage sites such as police museums can legitimate state practices and paradoxically justify or rationalize unjustifiable forms of violence and control (also see Sutherland 2014).

The museum should be an agent for social change in the public sphere (Piotrowski 2015). In this sense, the narrative of Canadian nationality that is found in many police museums throughout the country needs to be challenged (Ashley 2011) since it is part of the frontier mentality of curation that positions First Nations, Inuit, and Métis peoples as outside, or distorted within, the frame. Part of contesting colonialism and settler cities in Canada (Tomiak 2017) should be challenging museum representations of Canada's history. However, many police museums in Canada are not organized to host discussions that challenge settler colonial views. Like legacy media representations (Lambertus 2004), it could be argued that museum representations tend to erase the structural violence that police have played a role in perpetrating against First Nations, Inuit, and Métis peoples in Canada. The Red Serge of the Mounties is proudly displayed at most sites, but there

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are almost no Métis sashes to be found, nor are there adequate descriptions of their struggles on the prairies. Indigenous arrowheads and cultural artifacts are displayed as if they are dinosaur bones from a bygone millennium. Brutal police shootings of First Nations, Inuit, and Métis peoples (Stelkia 2020) are not mentioned. Police involvement in forcibly displacing First Nations, Inuit, and Métis children to residential schools and settler foster homes receives zero attention. Starlight Tours, where police abandon First Nations and Métis peoples outside Prairie cities in the dead of winter (Comack 2012), do not exist in these museums either. Struggles for land and self-determination that have occurred since contact (Pasternak and King 2019; Hill 2010a; York and Pindera 1991) also tend to be excluded.

Conclusion

The police museums examined here, and others in Canada, tend to provide insufficient accounts in their approach to depicting First Nations, Inuit, and Métis peoples and policing in Canada. The Truth and Reconciliation Commission of Canada's (2015) 94 *Calls to Action* and the dozens of *Calls for Justice* emerging from by the National Inquiry into Missing and Murdered Indigenous Women and Girls (2019)—whether they relate to "criminal justice" or the cultural, education and heritage sectors—are a starting point for thinking about how to represent this history differently. We are just beginning to encounter the difficult knowledge (Failler and Simon 2015; Segall 2014) and debates that need to happen as part of reconciliation, and, indeed, the radical change that needs to occur with policing itself should it exist at all (Vitale 2017). We cannot help but think that transforming the way Canadian police museums represent First Nations, Inuit, and Métis peoples, along with policing, could be one way of making changes in both sectors (also see Christie 2007; Green 2006) while working toward abolishing the police (Maynard 2020) that have been integral to settler colonialism and upholding white supremacy (Maynard 2017; Monaghan 2013). Given their links to active police forces and the placement of these sites in operational policing spaces, decolonizing police museums in Canada also requires parallel, radical changes in the way we as a society respond to transgression, conflict, distress, and poverty, such that the public police as we know them today become the relic of the past, and any future memorialization of them is seen as a monument to barbarism.

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5 Original Savages

Stands with the Wolves (Nolan Turcotte)

Part 1

They're calling us savages . . . they're calling us savages . . . but they are savages . . .
They're the ones killing our women and raping our children and stealing our land
My name is Stands with the Wolves and I'm taking a stand
I come from the Kopahawakenum Band
Fuck Parliament they eliminate hope
Word to the rope around Louis Riel's throat!

They weakened us with diseases, alcohol, diabetes, false treaties . . .
Then conquered us because they couldn't win in a fair fight, forced us to believe in Jesus!

They disrespected the Mother that's beneath us
And slaughtered buffalo, to control the way they would feed us, mistreat us!

They made it look like we needed them, but they need us . . .

To feel superior, important, we were peaceful, they were morbid
We only took what we needed; they wanted more of it . . .
To make profit, they were greedy, they "gifted" us with sugar, then they sugar coated those treaties

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We offered them tobacco and squash and taught them how to trap beaver
They gave us guns so we could kill each other . . .

The trees we used to make tipis were chopped down so they could make books
That way they can say to the future generations that we were the crooks

We gave to them, they took from us. Now tell me who's truly crooked!?

A portion of the Black Hills was transformed into four ugly-ass faces of the white race after they took it.

Was that racist? I don't care.
They created racism in the first place.
I practice Truth because Turtle Island's my birthplace!

Part 2

Abuse booze, hate life
Mutilate, with steak knives
Prescription pills, to ease the pain
Our memories, keep us chained
Reality is a nightmare, dreamcatchers no longer catch bad dreams
Our Sacred pipe was replaced with the crack pipe; we became fiends!
Suicide became our way out; it relieved us from our suffering
Bishops hid behind religion, and denied they were touching
That's fucking disgusting—reconciliation means nothing

The government of Canada is fronting . . .

You can't apologize for genocide
To the ones who are dead inside
Your sincerity is a joke—We're hungry, homeless, in jail, and broke
You blame us, but you're guilty of every crime you created a law for

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Because you couldn't learn Cree, it died with my great grandpa
Now I got to learn things late in life
When I should've got taught shit, back then
I can't relate to the Survivors, but I can empathize with what happened

Torture, pain, oppression, abuse
Betrayal, hopelessness. The consideration of a noose!
Excuse after excuse . . .

The justifications of injustice need to stop.
When the Mounties initiated the 60's scoop, it wasn't considered kidnapping because they were cops
Just imagine how they would feel
If we abducted their children and beat them and raped them and forced our spirituality on them
They're incapable of putting themselves in our shoes
Cuz they got entitlement issues
Their infected views left us bruised to blossom . . .

The stereotypes surrounding Indigenous people are just reflections of the Settler's true self . . .
They brought over the bad medicine with the intention to ruin our health—
And to exclude us from the true meaning of wealth . . .
Our connection to Gitchi Manitou

Part 3

Yo, Shut the fuck up!!
I got the eagle feather in my hand, it's my turn to speak.
I'm from Saskatchewan where racism is at its peak.
I pace in my prison cell day-dreaming about justice;
I think about Colten and judicial corruptness.
What happened wasn't right cuz we got no rights.
Gerald Stanley got acquitted by all twelve whites.
How the fuck can that be with a shot to the head?

Cops laugh when they find another Indian dead . . .

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When the Settlers invaded Turtle Island, they rapidly took over the
land and excessively hunted down the four legged . . .
Now it seems like we have become the buffalo—

They're aiming at us like we're game, fingers itching to shoot.
Colten's blood on the dashboard is physical proof
We're sitting ducks in a pond just waiting to get shot
In a spot where the blood can't clot, BANG!
They said Colten was a thug, but I doubt that shit.
I killed a white man, called a Good Samaritan.
They make the white look right and the red look wrong;
On our own land they make us feel like we don't belong . . .

The twisted existence of equality in the Constitution Act
Is a delusional fact
The forced covenant between cultures has been cracked!
The odds have been stacked against us . . .
These settlers' pretentious ways are relentless!

Even though the "hang fire" defense was proven flawed
He beat charge cuz de doesn't sweat inside of a lodge
He doesn't apply the grease of a bear to heal
He doesn't wave a braid of sweetgrass over every meal
How the fuck could he not even get manslaughter for killing?
Now we got to continue to fear for us and our children
Cuz the judicial system shows that the whites can murder
Indigenous
Without the consequences of living as federal prisoners!

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Part II

The Colonial Violence of Criminal Justice Operations

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6 "You're Reminded of Who You Are in Canada, Real Quick"

Racial Gendered Violence and the Politics of Redress

Carmela Murdocca

"You're reminded of who you are in Canada, real quick," explains Carolyn Henry, an Indigenous woman who lives near London, Ontario. She drove 1,200 miles to relive and describe a night in Maniwaki, Québec, in June 2007 when two officers from the provincial police force, the Surêté du Québec (SQ), offered to drive her and a friend back to a campground where they were staying after a night in town. She describes her experiences to journalists for an investigative documentary report by Radio-Canada's *Enquête*, a Canadian French-language television newsmagazine series. Driving with the crew from the television show, Henry explains that the officers drove them to a deserted area outside of town and left them to walk back to the campground. "I thought it was like a game to them. Something funny. They knew we were scared. They knew they had power. Those officers did something wrong. They knew they did something wrong. How many times have they done it, I don't know?" (CBC Radio-Canada 2016, at 15:25). The fear and harm Henry suffered made her painfully aware of the role of violence in defining the contours of who is regarded as fully human in Canada. Being subjected to the racialized and gendered violence of policing is a reminder of who and where you are. It is a reminder of the racial dehumanization that is expressed through state agents that help to sustain the white settler state.[1] In this particular case, Henry feared for her life in view of the knowledge that policing has racialized and gendered life and death consequences for Indigenous women.

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Since 2007, Henry has attempted to make three formal complaints to the SQ.[2] Her experience, along with many others' experiences of rape, sexual and physical assault, Starlight Tours, and other forms of racial, gendered, and sexualized violence, came to light following the investigative documentary report by Radio-Canada's *Enquête*, in October 2015.[3] As will be explored through the use of the testimonies of Indigenous women, the documentary films referenced in this article reveal the decades-long racial, gendered, and sexualized violence experienced by Indigenous women in Val-d'Or, a community approximately 500 kilometres northwest of Montréal. Since the original broadcast of the *Enquête* documentary, "SQ Abuse: Women Break the Silence" (CBC Radio-Canada 2015), Indigenous women in Maniwaki, Sept-Îles, and Schefferville have come forward to reveal similar experiences, some of which are detailed in a second documentary also produced by Radio-Canada's *Enquête: The Silence Is Broken* (CBC Radio-Canada 2016). These documentaries won the Michener Award, a prestigious award for public service journalism in Canada, for the role they played in uncovering the extensive stories of sexual, physical, and psychological violence by the SQ officers against Indigenous women (Bradshaw 2016).[4] In addition to providing the women in the film with a platform to speak about their experiences with the police, the findings of the documentary films resulted in the initiation of a government tip line inviting other Indigenous people in Québec to share their experiences and encounters with the SQ. Seventy-five calls were made to the tip line revealing additional stories of violence against Indigenous women by the SQ (CBC News 2016b). On 21 December 2016, Québec Premier Phillipe Couillard announced a two-year public inquiry (the Viens Commission) into the treatment of Indigenous people by various systems, including policing and corrections, health services and youth services (Fundira and Montpetit 2016; Gouvernement du Québec, n.d.). The final report of the Viens Commission details the extensive racism against Indigenous people in all of Québec's major public institutions, including the police. Following the report, the new provincial Premier, François Legault, has repeatedly denied the realities of anti-Indigenous racism in provincial government services (Curtis 2020; Viens 2019).

This chapter examines how the two documentaries, *SQ Abuse: Women Break the Silence* (2015) and *The Silence Is Broken* (2016), compel a consideration of how testimony about anti-Indigenous police violence reveals the limits of a culture of redress. I show how the testimonies and lived experiences

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of Indigenous women can challenge and expose the limitations of redress and reconciliation. By "a culture of redress," I am referring broadly to a mode of political activity on the part of a range of actors, agents, and community groups who contest relations of domination in an effort to expose links between historical and ongoing injustices. Over the past forty years, cultures of redress have formed part of the political, legal, social, and cultural life of liberal democracies.[5]

In Canada, redress, reparative justice, and reconciliation have formed a significant part of public policy in the last twenty years.[6] Far from being solely confined to formal legal negotiations for land title, or to monetary compensation as a result of the Indian Residential Schools Settlement Agreement, a culture of redress permeates many legal, political, educational, cultural, and artistic practices and sites in Canada.[7] The women's testimonies in the documentary films contest relations of domination and subjection such that their experiences open up questions central to a culture of redress, including reparative justice, state responsibility, and accountability as well as Indigenous sovereignty and self-determination. Despite the unique role these films have played in providing a platform for Indigenous women to detail their experiences of police violence, the role and responsibility of the Canadian media in addressing violence against women has repeatedly been called into question (CBC Radio-Canada 2017).

In this chapter, I explore the following questions: What do the films demonstrate about the constitutive role of gendered racialized violence and white settler colonialism in Québec and Canada? What do the visual dimensions of the testimonies presented reveal about the interdependence of gendered racialized violence and the politics of redress? The chapter is divided into three sections. In the first section, I briefly explore how testimony is a key ingredient in a culture of redress and an important site for "promoting both individual claims for redress and larger political demands for justice" (Rodriguez 2014). In the second section, I offer some context into the events in Val-d'Or and the surrounding regions. I also provide an analysis of the testimonies by Indigenous women in the documentary films. In particular, I focus on how the representation of individual and focus group narratives ultimately function as collective testimony about Indigenous women's experiences with police violence.[8] I analyze the testimonies of Indigenous women presented in the films to examine how racialization structures gendered experiences of police violence.[9] My approach is informed by a critical visual methodological

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perspective which considers visual culture "a specific technique of colonial and imperial practice," and focuses on the processes of racialization in visual materials. In the third section, following Allen Feldman's (2004) insights concerning the relationship between representing biographical narratives of trauma and harm and the "visual culture of witnessing," I explore the meaning of testimony as evidenced in the films. I suggest the testimonies are ultimately presented as *collective* renderings of the legal terrors of state-sanctioned racial gendered and colonial violence. The collective testimonies function as expressions of the gendered experience of racial difference and demonstrate how racial violence contributes to a liberal culture of redress in settler colonialism.

Testimony and the Politics of Redress

Violence against Indigenous women is a sanctioned, active, and constitutive practice in and of white settler Canada. Through the power of Indigenous social movements, direct-action advocacy and testimony as truth-telling, the historical, episodic, and extensive experiences of racial, gendered, and sexualized violence experienced by Indigenous women has become intertwined with the culture of redress in Canada. On 8 December 2015, as a result of decades of organizing by Indigenous families, women, and communities, the federal government announced a national inquiry into missing and murdered Indigenous women. Leading up to this announcement were a number of significant organizing and advocacy efforts by Indigenous women's organizations, Indigenous communities, individual activists, and non-governmental organizations that galvanized national and international attention to the issue.[10] This advocacy, and the many other small and large legal, political, and creative efforts that support such advocacy, provides a critical scaffold with which to consider racial, gendered, and sexualized violence experienced by Indigenous women in Canada within discourses and practices concerning the politics of redress. The final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls (2019) concluded that violence against Indigenous women is a "Canadian genocide." Key to this advocacy, and to this chapter, is the role of testimony by Indigenous women in offering an account of the violence of policing by state officials in white settler Canada. The events in Val-d'Or and nearby communities came to light, in part, following the powerful testimonies of Indigenous women documented by media. These documentaries are structured through the testimony of

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Indigenous women who share their experiences of racial, gendered, and sexual violence by police in Québec. The testimony of Indigenous women shows how their experiences of racialized gendered police violence opens questions concerning how the representations of memory and violence intervenes in broader discussions concerning ongoing racial and gendered violence in an era of redress and reconciliation.

Testimony is a medium for the politics of redress, and it is a method of examining the racial violence that has sparked compelling practices of political contestation, transforming the world of public dialogue on racial justice and altering socio-legal policy and reform. This chapter represents an engagement with the practice and representation of testimony regarding gendered racialized colonial violence. I explore how the documentary films function as evidence of, to borrow Shoshana Felman's phrase, the "practice of testimony" of racial, gendered colonial violence (Felman and Laub 1992, 1). Analyzing the practice of testimony requires attention to "how issues of biography and history are neither simply represented nor simply reflected, but are reinscribed, translated, radically rethought and fundamentally worked over" through representation (xiv–xv). Through testimony, memory is conjoined with performative representation and opens up a field of knowledge-making about state-sanctioned racialized gendered violence and survival. Above all, the practice of testimony unfolds within particular modalities of power in white settler colonialism, including intergenerational and ongoing structural violence, police violence, and state-sanctioned dispossession. Through "practising testimony," Indigenous women reveal how the content of racial difference is experienced through racial, gendered, and sexual violence perpetrated by police. When Indigenous women testify to violence experienced, they are ultimately challenging "the tendency to render disappeared women as anonymous figures whose lives and livelihoods are made to signal an apparent willing vulnerability to violence" (Hargreaves 2015, 84).

Representing the Legal Terror of Racialized Gendered Violence

Prior to the *Enquête* documentaries, the disappearance of Sindy Ruperthouse and the sustained efforts of her family and community to pressure police to investigate her case galvanized attention to the experiences of Indigenous–police relations in Val-d'Or (CBC News 2015). The first *Enquête*

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documentary, *SQ Abuse: Women Break the Silence* (2015), sparked a series of events that increased the profile of Indigenous women's experiences with the police in Québec. On 3 November 2015, there was a rally on Parliament Hill in support of the women in Val-d'Or (Rice 2015). Vigils in solidarity with Indigenous women in Val-d'Or were also held in Montréal (Pall 2016). It was following the first documentary that the Québec Minister of Public Security Martin Coiteux set up the hotline inviting women and community members to report police violence and misconduct (Balkisson 2016). Eleven of the seventy-five complainants were pursued as formal complaints (CBC News 2016b; see also MacKinnon 2016). The first *Enquête* documentary was indeed a watershed moment.

SQ Abuse: Women Break the Silence begins with a swift moving aerial shot of the Val-d'Or region, the green density of the La Vérendrye Wildlife Reserve is contrasted with harsh open pit mines. The pits mines reveal the extractive violence of settler colonialism. These images are anchored by the annual Sisters in Spirit Vigil on 4 October, an event that demands political action and honours the lives of missing and murdered Indigenous women (Native Women's Association 2014). We learn that, in addition to the many missing and murdered Indigenous women in Canada, the case of Sindy Ruperthouse, a 44-year-old Algonquin woman from Pikogan, is on the mind and in the hearts of the women at the vigil in Val-d'Or. Ruperthouse was last seen on 23 April 2014, when she checked herself in at the emergency room at the Val-d'Or hospital with three broken ribs (CBC Radio-Canada 2015, at 7:37). The SQ did not open an investigation into Ruperthouse's disappearance, but the case was reopened following the production of CBC Radio-Canada's investigative report *SQ Abuse: Women Break the Silence*. We learn that the last time Sindy's parents talked to her, she called asking for a large sum of money. She was living with a violent boyfriend at the time. After this phone call, they did not hear from her for months. Faced with months of silence and inattention from police, Sindy's parents decided to commence a search themselves, printing and distributing hundreds of photos and posters in Québec and Ontario.

The documentary explains that months after her parents started the search, Ruperthouse was in fact seen by Caroline Chachai in a local department store. Chachai reported the sighting to the police and to the local Native Friendship Centre. The police did not adequately follow up on this lead. Members of the Native Friendship Centre approached the department store owner and

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requested that he show the Ruperthouse family excerpts of video surveillance footage. The owner did not, however, provide an exhaustive survey of footage (nor did the police request that the owner do so), and none of the footage provided matched the description of Ruperthouse in a black jacket, which is what Chachai had reported. The department store owner explained that all Aboriginal women look the same (CBC Radio-Canada 2015, at 12:14) In frustration, Ruperthouse's father explains: "When it's a white person, they'll search everywhere. For us, nothing. It's like it's not important" (12:26). The documentary provides an intimate portrait of the haunting and unbearable pain of Ruperthouse's parents: the violence of racism, the indifference of the police, the inattention to their daughter's disappearance ("not one policeman has come," her father explains [1:21]) and their continuing search for their daughter. "It's terrible to live this, these moments. To be looking and looking. Sometimes I suffocate," her mother explains (4:13).

A focus on the racism and indifference of police and the intimate portrait of the aftermath of Sindy Ruperthouse's disappearance is juxtaposed with a group of Indigenous women sitting together around a table at the Native Friendship Centre in Val-d'Or. They unanimously confirm reports of the violence Sindy endured at the hands of her partner and the film weaves their own stories of the racial, sexualized, and gendered violence they have experienced in their dealings with the police with the details of Ruperthouse's disappearance. "These women," Josée Dupuis, the narrator-journalist explains, "publicly denounce the contempt they suffer from those who are supposed to protect them" (CBC Radio-Canada 2015, at 1:51). In the course of group conversations about Ruperthouse, the women begin to describe their own harrowing experiences of racialized police violence. Individually and collectively, they describe experiences with police where isolated spaces in the region become sites for inflicting bodily and sexual violence. They describe experiences of being taken to the outskirts of the city (on the road toward the airport, for example) or events that occur in empty parking lots in the middle of the night. These places are spaces of racial terror where experiences of gendered racialized violence are rampant and ongoing.

The film shifts from the humane space of the Native Friendship Centre in Val-d'Or to barren and desolate roads and parking lots. Their experience of racialized gendered violence at the hands of police is revealed to be distinctly spatialized—the spaces of terror in Val-d'Or reveal a visualized documentary account of the annihilative consequences of settler colonialism for Indigenous

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women. Systemic police violence directed at Indigenous women and girls, and the impunity with which such violence is perpetrated, is a form of racial legal terror.[11] Violence is written into their experiences of the space of the land in Val-d'Or. As Romeo Saganash explains, the violence of white settler colonialism and the dispossession of Indigenous people from their land is written into the geography of the Val-d'Or region. "It's a place that derives its wealth off minerals that come from stolen land," explains Saganash. "It's a lot easier to take things from people if you don't consider them your equals. But things can change and there are allies on the ground, people trying to find solutions, people recognizing that things have been unfair for a long time" (Curtis 2020). The spatial and legal terrors of Val-d'Or thus demarcate how gendered racialized violence defines the contours of humanity for Indigenous women. It has been well established that the violence Indigenous women experience should be properly understood as both racial and spatial (Razack 2002). That is to say, with each violation directed and experienced by Indigenous women, we must consider the racial and spatial dimensions of the dehumanizing effects of this violence. For example, how is the history and genealogies of white settler colonialism and the attendant carceral policies inaugurated by the Indian Act alive in the interaction between Indigenous women in Val-d'Or and the police? How is the Val-d'Or region, and the SQ, a symbol of eviction and dispossession for Indigenous people in Val-d'Or? Answers to these questions are revealed as the women recount their experiences of police violence.

Priscilla Papatie recalls that her sister was taken to the outskirts of town: "I think she really got a racist officer," she explains. Papatie recalls that many Indigenous women are forced by police officers into a remote wooded area and left there to walk the several kilometres back into town. This is an example of a Starlight Tour, a form of racial and spatial violence that results in the eviction of Indigenous people to the outskirts of the city. In the video, viewers accompany Priscilla Papatie to Baie de la Carrière, an isolated area on the outskirts of town. She explains:

> This is where people would take us when they wanted favours. The little road in the corner over there. . . . That's where often girls were dumped. Sometimes girls would say to me that they had to have oral sex or they would have to go all the way with people and the police, clients too. Then they would walk all the way back to get downtown. (CBC Radio-Canada 2015, at 13:34)

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In the car on a deserted road on the outskirts of Val-d'Or, viewers are presented with a powerful testimony of the corporeal and spatial dimensions of gendered racial and sexualized violence experienced by many Indigenous women. The experiential knowledge Priscilla Papatie offers encompasses her own experience and that of a number of other women. She moves between "us" and "they" and "girls" in her narrative reconstruction of these experiences in ways that conceal identity, articulate subjectivity, and expose the racial and spatial realities of violence and domination in Val-d'Or. It is a powerful scene in which the visual testimony that accompanies her words expresses a density of experience that strains the capacity of a single testimonial subject.

The documentary effectively shifts between the general and the particular, between the individual testimonial subject and the collective rendering of racialized gendered and sexualized colonial police violence. A subsequent scene, also situated in a remote area outside the town, prioritizes the individual testimonial subject. Bianca Moushoun's experiences reveal the complexities of survival and agency in the face of sexual assault. In conversation with journalist Josée Dupuis, Moushoun describes the coercive tactics deployed police officers to force women to take part in their own rape:

> **MOUSHOUN:** Often it was here that the police would drop off the girls. . . . And then the girls would walk back to town. . . . Often they would pick me up and then they would talk to me. And instead of taking me to the police station they took me to another place . . . like here. Then they would ask: Do you want a beer? They would have some in their trunk, the police. They would give me a beer and I would drink it. Then they would give me another and another. Then we would go into one of the little roads in the woods. And then they would ask me to perform oral sex on them.
>
> **DUPUIS:** How many police officers are we talking about?
>
> **MOUSHOUN:** Seven.
>
> **DUPUIS:** And you were not the only one?
>
> **MOUSHOUN:** No, I wasn't the only one . . . I would say almost all the girls who were prostitutes in town.
>
> **DUPUIS:** Did they pay you?
>
> **MOUSHOUN:** Yes, they paid me. They paid for each service. Let's say there were two, they would each pay $200, $100 for the

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> service, $100 so I wouldn't talk. Sometimes they would pay me with coke, sometimes cash, sometimes both. (CBC Radio-Canada 2015, at 16:30)

Moushoun's account of her particular experience, and of the general experience of Indigenous sex workers in town, functions to reveal the omnipotent threat of racial colonial violence expressed through systems of racial governance such as police. Later in the documentary, Moushoun indicates that she has filed two complaints about police abuse, one complaint concerning an interaction where officers broke her arm when she was a minor (CBC Radio-Canada 2015, at 25:26). For white audiences tuning into watch a CBC Radio-Canada documentary, Moushoun embodies the racist stereotypes concerning Indigenous women, and it is precisely through confirming such stereotypes—confirming the racial violence of white settler colonialism—that she reveals the daily realities of racial gendered colonial police violence.

The legacies of colonialism and racism have produced enduring stereotypes of Indigenous women. Recognizing the nature and extent of these stereotypes is key to understanding how police violence operates through race and gender. Historical and ongoing white settler colonialism is replete with gendered racialized stereotypes about Indigenous women. When assessing early patterns of settler colonialism, for example, it is evident that representations of Indigenous women were used strategically to deny Indigenous claims to land and to dispossess Indigenous communities through law and other policies (Jiwani 2009). Such gendered racialized stereotypes contribute to racialized and gendered knowledge about Indigenous women. These stereotypes are integral to understanding the ongoing victimization of Indigenous women and their resilience.

The testimony offered by Moushoun and others can be considered, in part, as "scenes of subjection," to evoke Saidiya Hartman's (1997) powerful illumination of the forms of everyday terror and resistance that have historically shaped Black identity. "Scenes of subjection" illustrate the interdependence of agency and violence in the experience of anti-Black, racial gendered and colonial violence. As Hartman explains, "these performances of blackness are in no way the 'possession' of the enslaved. They are enactments of social struggle and contending articulations of racial meaning" (Hartman 1997, 57). Indeed, Moushoun's testimony concerning the experiences of Indigenous

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sex workers in Val-d'Or reveals the interdependence of sexualized violence and possible conditions of agency for Indigenous sex workers. Victimization, therefore, does not dispossess Indigenous women of agency and choice. Instead, victimization must be understood in the context of "women's resilience and capacity for positive action as well as negative reaction against social injustices" (Kaiser-Derrick 2019, 109).

The documentary depicts additional accounts of women who offered CBC Radio-Canada testimony through written documentation of their experiences. The final scenes in the film depict the "crisis of trust" that is illustrated by apprehension and feeling "scared to death" when considering submitting a police complaint. Many of the women in the film identify the aim of warning other women as their reason for speaking to CBC Radio-Canada. As Angela King says, "Why come out with this? . . . If it has to do with the police, if it's to help other young women who may end up living the same thing" (CBC Radio-Canada 2015, at 20:55).

The Silence Is Broken (2016) was released a year later and represents the responses of Indigenous women to the stories revealed in the first documentary film, *SQ Abuse: Women Break the Silence*. This second documentary provides a platform for women in the surrounding regions of Maniwaki, Sept-Îles, and Schefferville who were triggered by the first report and now wished to come forward and add their voices and experiences of police violence to the record. Lise Jordan recalls a night in Schefferville in 1989 when she was taken into custody for no particular reason. "Most of the time they would load people in the car. And most of the time it was girls," she explains. "I don't really think they needed a reason to take them." She was raped in a cell by a police officer while other officers stood by. "I was raped by police officers in Schefferville. One officer, but I say more because there were others who were there and knew what was going on" (CBC Radio-Canada 2016, at 5:03).

The film cuts back and forth between these scenes of testimony and the barren winter roads of the Val-d'Or Region, thus symbolizing the spatial connections between land, dispossession, and violence in Indigenous women's lives. As they follow the road to Sept-Îles, viewers begin to hear the words of Deborah Aianish as she recounts her experiences of police violence. As she was leaving a bar, a police officer in Schefferville grabbed her and put her in the back of a police cruiser.

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> When we got to the police station it was dark everywhere. I screamed, I didn't want to be locked up. I was asking myself what I could have done. I was screaming. Then the white policeman gave me a glass of water and a pill. When I woke up . . . [she collapses into tears] . . . when I woke up my panties were pulled down. I knew he had raped me. I was pregnant when this happened. He very much destroyed me. (CBC Radio-Canada 2016, at 7:07)

Aianish's account, and that of other women in the surrounding regions of Val-d'Or, further reveals the historical, systemic, and systematized racial police violence directed at Indigenous women. This particular experience shows the sexualized, gendered violence of policing as well as the futility of pursuing justice within a system that has been dangerous for Indigenous women. That such violence is ongoing, sustained, and enduring is indicative of an organized system of complicity and silence that permeates the SQ. As Isabelle Parent explains, the SQ has "developed many techniques [of complicity and silence] so that it doesn't have to come out publicly" to denounce the actions of police officers (CBC Radio-Canada 2016, at 11:04). Aianish's testimony adds to the range of experiences of racialized gendered police violence identified in the film. In particular, her testimony illuminates how police violence is not an isolated event in past; her experience reverberates into the present, showing how the experience of settler state violence (police violence) shapes, to follow Hartman, subjection and agency.

Testimony and Racial Gendered Violence in Settler Colonialism

The documentary films function as an indictment of the state. The films can be said to function as an alternative inquiry, creating a national archive that catalogues Indigenous women's experiences of police violence. Through the use of individual, collective, and focus group testimony, the structure and visual representations in the film mimic that of a redressive human rights inquiry that gives priority to victims in testimonial process. In this way, the films establish a political and legal record, thus opening up questions concerning past injustices, racialization, gendered victimization, collective responsibility, and individual culpability. Key to the impact of the film is the representational effect of testimony in providing the basis of, and advocacy for, a politics of redress.

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Gendered racialized violence against Indigenous women is essential to the white settler colonial state. Visualizing testimony through these films assists in showing the temporal and spatial dynamics of racial gendered violence. Practices of violent colonial dispossession central to the settler colonial project are reproduced through racial sexual violence perpetrated by state officials. Sherene Razack (2002) argues that violence against Indigenous women should be conceptualized as racial gendered spatial violence. The temporal "spatiality of the violence" begins with Indigenous people being dispossessed of their land and continues through ongoing, systemized structures of dispossession which today resembles exclusion, dehumanization, the disregard of Indigenous sovereignty and self-determination, alienation from land, and disregard and the violence that Indigenous men and women experience (Razack 2002, 127). When police violate Indigenous women, they do so within and through the history of ongoing settler colonialism that renders such violence normalized. Razack describes these violent practices as "journeys of transgression" that "are deeply historical" since they form a central role in "settler strategies of domination" (130). Audra Simpson argues that Indigenous women,

> "Disappear" because they have been deemed killable, able to be raped without repercussion, expendable. Their bodies have *historically* been rendered less valuable because of what they are taken to represent: land reproduction, Indigenous kinship and governance, an alternative to heteronormative and Victorian rules of descent. Theirs are bodies that carry a symbolic load because they have been conflated with land and are thus contaminating to white, settler social order. (Simpson 2014, 157)

Visualizing testimony through these films assists in showing the temporal dynamics of racial gendered violence. Significantly, the methodological approach of the films highlights individual and focus group discussions that ultimately function as collective testimony about Indigenous women's individual and particular experiences of the gendered racialized violence of policing. In this way, the expressive and communicative function of the testimony mobilizes a politics of contestation that calls the state to account and exposes the relationship between gendered racialized violence and racial/human difference in constituting the politics of redress in Canada.

The film functions through what Allen Feldman (2004) describes as "memory theatres," which can be described as scenes of testimony production

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where "the production of biographical narrative, life history, oral history, and testimony in the aftermath of ethnocidal, genocidal, colonial, and postcolonial violence occurs within specific structural conditions, cognitive constraints, and institutional norms."[12] I suggest that the films act as a memory theatre for the historical and ongoing violence of settler colonialism. As a representational "memory theatre," the individual testimonies, visually collated as collective testimony, ultimately offer a "scene of testimony production" that functions "not only as a single testimony, but also an entire archive" (163). These scenes of testimony production exist within a culture of redress and reconciliation that has formed a significant part of Canadian national consciousness in the last twenty years. Arguably, the films function as a visualized human rights inquiry whereby the testimony of the racial legal terror of police violence effectively produces a redress aesthetic that makes a case for calling the state to account.

Together, Indigenous women's testimony as evidence and truth performed as testimony form a significant feature of the visual aesthetics of the films. Shoshana Felman suggests that through the practice of testimony, testimonial subjects transcend mere narrative or straightforward storytelling. As she explains:

> To testify—to *vow to tell*, to *promise* and *produce* one's own speech as material evidence for truth—is to accomplish a *speech act*, rather than to simply formulate a statement. As a performative speech act, testimony in effect addresses what in history is *action* that exceeds any substantialized significance, and what in happenings is *impact* that dynamically explodes any conceptual reifications and any constantive delimitations. (Felman and Laub 1992, 5)

Testimony thus transcends teleological narrative and, in this particular context, evokes the constitutive dimensions of the racial violence of ongoing settler colonialism and the subject-making practices that make it possible. The women testify to the repeated and sanctioned racial dehumanization experienced through encounters with state officials. In this sense, the films provide a record of their particular experience and of the violent role of authority and power performed through police violence.

The collective testimony presented in these documentaries function as collated experiences of gendered racialized police violence that is transformed into a performed narrative of human rights violations, surveillance, anger,

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disappearances, and death. I have suggested that these collective testimonies amount to documenting and affirming the legal terror of state-sanctioned police racial violence. In so doing, visualizing testimony in this manner categorically challenges the structure of "truth-telling" that is evident in human rights inquiries or other reparative processes that seek transcendence for the victim of a human rights violation. Visualizing testimony in this way echoes Hargreave's analysis of the documentary film *Finding Dawn* which similarly depicts Indigenous women's first-person storytelling to address the experiences of missing and murdered Indigenous women, their families, and their communities. The power of visualizing testimony "is to position the seemingly disparate stories of missing and murdered women in *relation* to one another and to the families, communities and territories from which they are missing, foregrounding not only Indigenous women's shared vulnerability to violence across different material circumstances, but also the politically resistive ways women are actively remembered within and across different familial and community-based networks" (Hargreaves 2015, 84).

The visual representation of collective testimony displaces the individual subject or the victim/survivor that would otherwise be central to the structure of human rights inquiries. Feldman suggests that human rights inquiries often follow a "curative and redress" teleology in which individual experience and biographical narratives are "processed through prescriptive expectations—that is, expected to produce healing, trauma alleviation, justice and collective catharsis" (Feldman 2004, 170). For example, he describes this process as "emplotment" whereby redressive projects are narratively structured through a temporal morality that follows a narrative structure that contains three parts: (1) Identifying racialized gendered violence; (2) Outlining the chronic, sustained, episodic or the aftermath of the violence; (3) Developing a set of recommendations to address the violence. This linearity is meant to culminate in the cathartic break with the past—"establishing the pastness of prior violence, and managing and controlling the conditions and term of its periodic reentry into the present, usually through appropriate commemoration," Feldman explains (170). The collective testimonies highlighted in the films do not fit easily into a narrative of moral or psycho-social overcoming. The visual testimony produces narratives that are anchored in the individual testimonial subject and significantly, also extend beyond the individual subject in producing an account of the racial gendered violence of settler colonialism. In this regard, the individual subject

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recounting a human rights violation, suffering or outrage is narratively reconstructed through the visual process of documentary film and invites a consideration of the relational experiences of Indigenous women. In so doing, the individual victim/survivor as archetype in the reparative process, is displaced or split open, giving way to a collective public record of gendered, racial violence in which legal terror is predicated on historical and ongoing racial colonial violence.

Conclusion

There is "unfinished business" between Indigenous women in Val-d'Or and the police (Curtis 2020). The Viens Commission concluded that "systemic racism acts as a barrier between Indigenous people and essential government services," including police services (Curtis 2020). As noted, Premier François Legault has repeatedly denied that systemic racism exists in government services in Québec (Curtis 2020). My focus in this chapter emphasizes how individual and collective testimonies concerning police violence necessitate a historical consideration of the logic of human and racial difference. Speaking back to state practices and calling the state to account through collective testimony shows how those who contest the racial logics of settler colonialism effectively mobilize to expose racist state violence, and ongoing experiences of gendered racialized violence. Through offering collated narratives that represent an archive of experiences, grievances, and ambivalences, collective testimony is a site of contestation concerning the psychic, social, and affective dimensions of police racial violence. These "residual" narratives cannot be smoothly integrated into "such master narratives as the idea of progress, collective reconciliation, or evolution to human rights equity."[13] In these residual collective testimonies, there is an asymmetry to the racial relations of domination and subjection, historical and ongoing, in which collective testimony into the terror of police racial gendered violence is iterative of human and racial difference. The violence of state officials is the violence of sovereignty in Canada (CBC News 2016c). The culture of redress thus requires racial violence as evidence of the need for the national project of reconciliation.

In response to the two documentary films, 41 police officers in Val-d'Or sued for defamation of character, claiming that the reportage was biased and untruthful and that their reputations were tainted and the community's

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trust in the police undermined (Croteau 2016; Lytvynenko 2016). That police in Québec would react in such an adversarial manner should perhaps come as no surprise. Regarding the disappearance of Indigenous women in British Columbia, the Inter-American Commission on Human Rights (2017, 22) concluded that the "police offered a dismissive response to reports of missing Aboriginal women, and failed to prevent, promptly investigate and sanction violence against indigenous women and girls." The suit brought by the Val-d'Or police officers further indicates that, quite apart from failing to conduct investigations themselves, the police also seek to discredit investigations conducted by others. The dehumanization of Indigenous women as an extension of police practices shapes the material and symbolic conditions of the grammar of racial difference in white settler Canada. The collective testimonies demand a consideration of the historical dimensions of the role of racial gendered violence in settler colonialism.

Notes

1 Racial dehumanization refers to how relations of power and privilege eject certain groups of people from category of human and evokes Frantz Fanon's writings on racialization. Fanon was a psychiatrist, philosopher, humanist, and revolutionary anti-colonial writer. He used the term "to racialize" when contrasting it with the phrase *to humanize*, thereby signalling the ways in which processes of racialization eject certain people from the very category of human. Racialized dehumanization is the experience (and experiential knowledge) of this ejection. In this chapter, I use the word racializing to show how it assists processes of domination, oppression, subjugation, violence, and marginalization (Murdocca 2014).

2 Two of Henry's complaints were made using an online system. One complaint was made in person at the police station in Maniwaki, Québec. The responding officer did not consider her complaint relevant because Henry and her friend voluntarily got into the police cruiser. Despite this response, the complaint was sent to SQ's internal affairs department in Montréal. The CBC reports that an investigator indicated to Henry that he did not receive her two prior complaints and requested that she submit an additional formal complaint in writing. At the time of the interview, it had taken five years for the SQ to respond to her complaint (CBC Radio-Canada 2016, at 27:35).

3 "Starlight Tours" is an expression used in Canada to describe the police practice of picking up or apprehending Indigenous people and driving them to the outskirts of a town in a remote area where they are invariably beaten up, abandoned, left to die, or are expected to walk back to town.

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4 See CBC News 2016a.

5 Henderson and Wakeham use the phrase "'cultures of redress' to signal the site for the polyphonic enunciation of diverse perspectives on grief and grievance, wrong and repair, and equity and justice. The term 'redress' is frequently invoked by marginalized constituencies in search for justice for grievances, connoting something more than the nebulous conception of a national 'coming together' or 'eliminating of differences,' often associated with reconciliation, and suggesting, rather, a demand for accountability, compensatory action, and concrete reparations" (Henderson and Wakeham 2013, 9; Torpey 2006).

6 I use the phrase "reparative justice" to describe the broad range of practices of governance, affective associations, and aesthetic expressions distributed across social, political, and legal life in Canada that invoke an attempt to address historical and structural injustices experienced by Indigenous, Black and People of Colour (Murdocca 2013).

7 For example, the "Common Experience Payment" is one element of the Indian Residential Schools Settlement Agreement (Common Experience Payments). See Government of Canada, "Indian Residential Schools Settlement Agreement," https://www.rcaanc-cirnac.gc.ca/eng/1100100015576/1571581687074#sect3, accessed 17 November 2022.

8 Critical visual methodology examines how images and the aesthetics of social media reflect social difference, social relations and social and political power (Mirzoeff 2013).

9 This approach examines how images and the aesthetics of social media reflect social difference, social relations and social and political power (Mirzoeff 2011).

10 For example, in 2002 the Native Women's Association of Canada, Amnesty International Canada, the Elizabeth Fry Society of Canada and the United Anglican Church formed the National Coalition for our Stolen Sisters. In 2004, Amnesty International released the significant report "Stolen Sisters" which documents a number of cases of missing and murdered Indigenous women and girls. In 2005, funded by the Status of Women Canada, Sisters in Spirit was created to provide research and policy led and developed by Indigenous women to respond to the issues concerning the disappearances and murders of Indigenous women (Stolen Sisters 2004).

11 I borrow the phrase "legal terror" from Colin Dayan who reveals the ritualized making and remaking of legal conditions of civil death ("naturally alive but legally dead") through legal processes that define and redefine personhood (Dayan 2005, 42–80).

12 In this article, Feldman (2004) suggests that human rights inquiries can be understood as memory theatres since participants testify to the state violence and atrocities the have experienced. The field of memory studies is vast and beyond the scope of this chapter. The interdisciplinary field of memory studies resides with areas of critical concern for social and political life across a number of fields including literary and cultural studies, historical studies, neuroscience,

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human rights law and legal studies, trauma studies, media studies, anthropology, and psychoanalysis, big data and artificial intelligence.

13 Feldman uses the word "residual" keeping in mind Raymond Williams's distinction between the residual and the archaic, and their differential relation to what he called the emergent (Feldman 2004).

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7 Clearing the Plains Continues

Settler Justice and the "Accidental" Murder of Colten Boushie

David B. MacDonald

On 9 August 2016, a 22-year-old Nehiyaw (Cree) man named Colten Boushie was shot in the head at point-blank range and killed by a white farmer named Gerald Stanley. Stanley was charged with second-degree murder and faced trial in early 2018. An all-white jury acquitted him on 9 February of that year, rejecting both the chargers of murder and manslaughter. The verdict cast Stanley's actions as an accident—a death for which no one was legally responsible. Consequent to this was a massive polarization between Indigenous peoples and their supporters and rural white settlers and their supporters. There were strongly divergent opinions as to whether the shooting was racially motivated, whether the trial was biased in favour of settlers and against Indigenous peoples, and whether Colten and his friends were shot at merely for being Indigenous. Two days after the verdict, I wrote an article for an online news platform, *The Conversation*, critiquing Stanley's acquittal and offering a broader settler colonial context for the shooting and the trial. I argued that there was a consistent pattern of settler colonial violence and stereotyping shown toward Indigenous peoples. This was evidenced by the biased nature of the RCMP investigation, the jury selection, the trial process, and the not-guilty verdict. The article was picked up by seventeen news outlets, including national and regional newspapers, gaining an online readership of almost 65,000 people. This wide distribution seemed to attest to the public's keen interest in the case.

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Before I begin my analysis, let me acknowledge my positionality. One facet of the white settlement of what is now western Canada was the initial exclusion of racialized peoples from the settler colonial project. My mother grew up in Trinidad, descended from many generations of the indentured labourers who were brought in from India by the British during the 1850s to work on sugar cane plantations. Racialized immigrants like my mother and her family, whose arrival postdated in the British North America Act, were purposefully barred from entry into the dominion (Bhatia 2013) and were also denied a legal relationship with Indigenous peoples. As Robinder Sehdev has argued, "people of colour have been written out of, perhaps forgotten in," discourse surrounding "the treaty relationship between the Crown and Aboriginal nations" (Sehdev 2011, 272). At the same time, racialized peoples have benefited far more from the colonial system than have Indigenous peoples, and so we occupy at times a sort of middle ground, understanding many of the privileges but also some of the negative aspects of living in Canada. As a settler of mixed ancestry, I am conscious of my liminal position. I am a settler, yet not the sort of settler who feels entirely settled and comfortable.

At the time of writing, five years after the trial verdict, the polarization of public opinion remains a serious problem. Nehiyaw filmmaker and educator Tasha Hubbard's documentary on the trial (*nîpawistamâsowin: We Will Stand Up*) has won numerous awards and positive acclaim following its release in 2019 (Hubbard 2019). However, attempts to bring these truths about Indigenous peoples to light took place in a climate in which Indigenous peoples were under threat from race-based attacks (CBC News 2018). In early June 2019, the National Inquiry into Missing and Murdered Indigenous Women and Girls noted that Canada had committed "race-based" genocide against Indigenous peoples—a genocide that continues still. The commissioners included a detailed supplementary report on genocide, to prevent "composite acts" of genocide from taking place in the future (National Inquiry into Missing and Murdered Indigenous Women and Girls 2019; see also Ling 2019). Supporters and detractors clashed openly in the media over how genocide should be understood and applied, and about whether such terms had a place in contemporary discussions. Prime Minister Justin Trudeau publicly stated that he recognized that genocide had occurred in Canada—a view then federal Conservative leader Andrew Scheer rejected (Canadian Press 2019). In October 2022, the House of Commons passed a non-binding motion recognizing the Indian Residential Schools system as genocide. This vote followed comments

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made in late July by Pope Francis acknowledging that genocide had taken place in the schools (Sachdeva 2022).

There is not sufficient space here to outline the confluence of events and the larger settler colonial context that led to the murder of Colten Boushie in 2016. What I would say here is that the murder, the ham-fisted investigation, the overtly biased trial, and the racist aftermath are all intimately connected as moving parts of a larger settler colonial project to steal Indigenous lands, control Indigenous bodies, and destroy Indigenous identities. Most readers will be familiar with how John A. Macdonald refused to see Indigenous peoples as treaty partners, cynically comparing them to children, "incapable of the management of their own affairs" (Milloy 2008, 7). The 1876 Indian Act deemed Indigenous peoples to be wards of the state, with few political rights within the new country (Regan 2010, 84–88). Also well-known are the starvation policies of the federal government, the forced removal of Indigenous peoples from their own lands, and their concentration onto small and isolated reserves, often far away from the fertile lands that the government opened up to European settlement. As James Daschuk observes, the killing of the bison and the withholding of rations were used to "starve uncooperative Indians onto reserves and into submission" (2013, 127–28).

The process of creating Treaty 6, which encompasses the lands where Boushie's murder took place, was the outcome of tremendous government manipulation. From 1876 onward, many Indigenous peoples resisted efforts to clear them off their traditional lands. In 1885, following the insurrection at Frog Lake, the Macdonald government ordered eight Cree men to be hanged in North Battleford, while children from the nearby Battleford Industrial School were forced to witness this grisly display of colonial vengeance—the largest mass execution in Canadian history (Saskatchewan Indian 1972; see also Kostash 2012). Today, the Red Pheasant reserve, where Boushie lived, remains mired in poverty, with the median household income under a third of what it is in local settler communities, while North Battleford has the dubious distinction of having been identified as Canada's most dangerous place by *Maclean's* magazine (Maclean's 2018). In a different world, Boushie might have owned his own farm. But he lived in this world, a settler colonial world in which farmers in Saskatchewan are overwhelming white and the legal system is dominated by settlers who work to naturalize and protect their own positions of privilege.

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A Review of the Known Facts of Boushie's Murder

One hot summer's day near the town of Biggar, Saskatchewan, Colten Boushie, Kiora Wuttunee, Belinda Jackson, Cassidy Cross-Whitstone, and Eric Meechance had been swimming, drinking a range of alcoholic drinks, and generally enjoying themselves at the Maymont River. At some point, they drove away from the river. When their vehicle got a flat tire, the group drove to a nearby farm to seek assistance. They drove their 2003 Ford Escape up a long gravel driveway, and Meechance got out and attempted to ride an ATV on the property. This is when they encountered a white farmer named Gerald Stanley. At Stanley's trial, he and his son Sheldon alleged that they were under the impression that the five Indigenous people were there to steal and acted according to this assumption. The son smashed the car's windshield with a hammer while his father kicked in the rear signal light. The smashed windshield made it difficult to see out of the vehicle, and the Escape subsequently crashed into another SUV as the group started to drive away. At this point, both Stanleys went to secure firearms for themselves. Cross-Whitstone got out of the Escape, while Boushie, Kiora Wuttunee, and Belinda Jackson remained inside (Feist 2018). Stanley fired what he described as two warning shots from his Soviet-made Tokarev pistol into the air, ostensibly to scare the youth away.

Stanley claims that he stood next to the vehicle, held the gun in his right hand and reached through the driver's side window and tried to turn off the Escape's ignition with his left hand. This was when the gun supposedly discharged accidentally into the head of Colten Boushie, who was in the front seat. During the trial, the defence claimed that the gun had discharged without Stanley pulling the trigger, an extremely rare situation known as "hang fire." The hang fire defence is extremely weak, given that Stanley claimed that the hang fire in his case must have lasted at least several minutes—hang fires only occur at most one or two seconds after the trigger is pulled and usually happen after a delay of milliseconds (Feist 2018).

Rather than detaining only Stanley, who was sitting drinking coffee after the shooting, the Royal Canadian Mounted Police chose to see Boushie's friends as potential criminals as well and bundled them into awaiting police cruisers. Some were held overnight and induced to make statements under very difficult conditions, including being deprived of sleep. After the shooting, the RCMP circulated a press release stating that three of Boushie's companions were taken into police custody as part of a theft investigation. Bobby

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Cameron, chief of the Federation of Sovereign Indigenous Nations, noted that the wording of the press release provided "just enough prejudicial information for the average reader to draw their own conclusions that the shooting was somehow justified" (Friesen 2018).

The RCMP also chose to treat Boushie's mother, Debbie Baptiste, with callous disrespect, as if she were a criminal, when they arrived to inform her of her son's death. The RCMP officers involved later alleged that they had been tipped off that "an armed person might have been in a trailer matching the description of the one Baptiste lived in" (Warick 2018). They pulled into the yard and surrounded the trailer in which the family was living. Some of the officers scanned the area, their weapons drawn. Baptiste and her son William went to the door, and the officers asked Baptiste whether she was Colten's mother. When she said that she was, they abruptly told her, "He's deceased." Crying in anguish, she was led back into the trailer by the officers, who did not ask permission to enter. Some began searching the home using flashlights, while another asked her whether she was drunk. As Baptiste recounted: "He said, 'Ma'am, was you drinking?' And I said 'No.' And then he smelled my breath." Precisely who or what they were searching for was not revealed, although the officers claimed that they were looking for one of Colton's companions (Friesen 2018). In 2021, the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police issued a highly critical report, concluding that the RCMP acted with "such insensitivity" that their treatment of Debbie Baptiste "amounted to a prima facie case of discrimination." While the National Police Foundation, the union that represents rank-and-file members of the RCMP, refused to acknowledge wrongdoing, the Saskatchewan branch of the RCMP did release a statement after the report, admitting that systemic racism existed and needed to be stopped (Austen 2021).

This systemic racism was evident in the jury selection process at the outset of Stanley's trial, which began near the end of January 2018. At the time, the Canadian legal system allowed both Crown and defence attorneys to use peremptory challenges to exclude prospective jurors, without having to explain the cause. Stanley's defence used this option to exclude five prospective jurors who looked as it they might be Indigenous, leaving only non-Indigenous individuals to determine Stanley's guilt or innocence. The Crown prosecutor could have attempted to offset the situation by requesting that a limit be placed

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on the number of such challenges and could also have asked that prospective jurors be vetted for racial bias (Hill 2018). But no such effort was made.

The trial lasted two weeks. On 9 February, after deliberating for a total of fifteen hours, the jury came back with a verdict of not guilty, acquitting Stanley both of second-degree murder and of manslaughter (Craig 2018; see also Canadian Press 2018a). Unsurprisingly, the verdict provoked outrage among most Indigenous peoples and their supporters, although it was applauded by the Stanley family and many settler farmers. There was considerable talk in the media about the possibility that the Crown would appeal the decision, but early in March 2018 it announced that there would be no appeal. As Saskatchewan senior prosecutor Anthony Gerein explained, under Canadian law the Crown can only appeal in the event of "legal errors in the course of the trial," but none of the lawyers and legal experts that the prosecution consulted were able to find just cause for an appeal (quoted in Canadian Press 2018b).

The trial's aftermath was extremely polarized. Most Indigenous peoples and their supporters lamented that a miscarriage of justice had occurred. The federal government expressed at least rhetorical support. There were vigils and rallies throughout the country. I was able to attend one in Guelph, where I work, and another in my hometown of Regina, where my sister and I participated in a rally at the provincial courthouse, which was followed by a round dance that blocked off one of the city's main thoroughfares. In contrast, many white farmers argued that Stanley had done the right thing. Saskatchewan was inundated with anti-Indigenous social media posts, as settlers reacted against claims that racism was to blame for Stanley's actions. Facebook groups such as Farmers with Firearms pledged support for Stanley and the armed defence of farms, to the point where the RCMP tried to persuade farmers not to resort to vigilante behaviour. In 2017, the Saskatchewan Association of Rural Municipalities passed a resolution promoting the rights of farmers to defend their property in an American style "stand your ground" initiative (Friesen 2018). On a private RCMP Facebook page following the trial, one poster had written: "Too bad the kid died but he got what he deserved. How many of us work on or near reserves and are getting fed up with the race card being used every time someone gets caught breaking the law?" (Tunney 2018). Crowdfunding for the Stanley defence fund reached six figures, with many farmers pledging they would have and would still do what Stanley had done in the same circumstances.

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The context of settler anger and a lack of understanding was palpable on social media, and that is what led to an article I published in *The Conversation* on 11 February 2018, in which I provided additional context relevant to the murder. As I noted there:

> Much was made about Boushie and his friends having had too much to drink on the day he was killed. The concept of "drunken Indians stealing" from white settlers also goes back to the early days of colonization. In 1868 federal laws prohibited Indigenous peoples from purchasing or consuming alcohol. Under the Indian Act, even possessing alcohol was illegal. This was only formally changed by an amendment in 1985. (Moss and Gardner-O'Toole 1991, under "Liquor Offences"; see also *Indian Act*, RSC 1985, c. I-5, s. 81.1)

I went on to quote from Sherene Razack's *Dying from Improvement: Inquests and Inquiries into Indigenous Deaths in Custody* (2015), in which she observes that settler societies are deeply invested in the "disappearing" of Indigenous peoples. "It is a process," she writes, "that involves marking (materially and symbolically) the Indigenous body as one that is not up to the challenge of modern life, a condition that leaves the settler as legitimate heir to the land" (Razack 2015, 193). As I further noted, myths of the inevitability of Indigenous disappearance allow settlers to evade responsibility for the negative impacts of colonization, since they are there only to promote Western civilization and law, while Indigenous peoples are "dying due to an inherent incapacity to survive modern life" (Razack 2015, 193).

Article Analysis

Within a day or two of its publication in *The Conversation*, syndicated copies of my article appeared in a variety of other online news and opinion outlets. I was surprised by its large readership and the polarized views it generated: over 1,500 comments altogether came from readers in these multiple outlets. Many of these reactions to the trial and to my subsequent article epitomize what scholar Robin DiAngelo calls "white fragility," a defensive reaction to "race-based stress" that causes white people to feel threatened, even by liberal calls for an end to discrimination (DiAngelo 2011, 54). As DiAngelo observes, "In the dominant position, whites are almost always racially comfortable and thus have developed unchallenged expectations to remain so." When faced

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by situations that challenge this comfort, they therefore tend to "blame the person or event that triggered the discomfort" (60)—a defensive response to avoid confronting their own racism. As she points out, "Whites often confuse comfort with safety," which allows them to complain about threats to their safety rather than to examine the discomfort they feel at the prospect of losing their position of privilege (61).

In an article written in the aftermath of the Stanley verdict, Métis scholar Brenda Macdougall (2018) described a new social environment in which narratives that had been promoted for decades by white male settlers were being displaced by more inclusive and authentic histories of settler colonialism. The erosion of these old discourses—among them "the historical myth of settlement, which tells us that hardy pioneers made productive use of unoccupied, unused, and unencumbered lands," specifically by becoming farmers—has undermined the presumption of white supremacy. "No longer enjoying the special status of their parents and grandparents," Macdougall writes, white settlers "regard themselves as losing rights in a system that once invested in them power and authority by virtue of their skin colour." This shift in social consciousness has created the racial discomfort that gives rise to expressions of white fragility, such as racist rage and the overall sense of white victimization on display in some of the comments on my article.

That Saskatchewan had serious problems with anti-Indigenous racism was well known before the trial (see, for example, MBC News 2016; Levasseur 2014). In my article, I sought to engage with some of the contemporary manifestations of this racism. Many of the comments on the article were steeped in anti-Indigenous racism, which extended to attacks on me for taking a stance critical of settler colonialism. I was encouraged by Indigenous friends and colleagues to make something of this situation, and on this basis I decided to conduct a content analysis of the views of a selected subset of readers, in all likelihood primarily settler Canadians, on Indigenous issues during what is purported to be an age of reconciliation. The themes, with illustrative examples, are discussed below. Also included in this analysis are comments of an overtly racist nature that had been deleted by the moderator of *The Conversation*, although I was kindly given access to them later on. My goal here is to highlight several key themes in public discourse around Indigenous peoples. Even though Canada has been widely portrayed as ready for reconciliation with Indigenous people, the definition of what reconciliation means is highly contested. As John Borrows (2017, 33) points out, "reconciliation" can

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sometimes be a euphemism for Indigenous peoples reconciling themselves to colonialism and assimilating fully into settler society.

As the readership of the article began to grow within the first four days of publication, I reached out to Mark Mitchell, one of my doctoral students at the time. He downloaded all of the comments from the various online sources and pasted them into a single Word document, which ran to over 700 pages (12-point Times New Roman, 1.5 spaced). I supplied a list of themes I had observed in the first week of reading through all of the comments. Mark read all of the comments, and added, changed, and deleted key themes as appropriate. The greatest number of comments were posted on *The Tyee* (1,148), followed by the *National Post* (102 comments), with smaller numbers of comments on *The Conversation* (56), the *Edmonton Journal* (14), and *iPolitics* (20).[1] The majority of comments were negative, although there were some strongly positive ones as well. Overall, the comments suggested to me divisions in perception about Indigenous-settler issues, at least among readers of the major online news sources in Canada.

I thought the responses to my article were, in many ways, predictable. Concerns had already been widely voiced about the racist and otherwise disrespectful comments that so often appeared at the end of news articles about Indigenous topics, to the point that some media outlets had done away with comments sections entirely (see Rice 2017). At the end of November 2015, even the CBC felt obliged to temporarily close down the comments sections on Indigenous news stories. As the then director of digital news explained, the CBC had noticed that "these stories draw a disproportionate number of comments that cross the line and violate our guidelines." He went on to say that "some comments are clearly hateful and vitriolic, some are simply ignorant. And some appear to be hate disguised as ignorance (i.e., racist sentiments expressed in benign language)" (Fenlon 2015).

In our analysis, Mark and I noted a mixture of both overt and far more indirect and cryptic forms of anti-Indigenous racism. Many of the comments we classified conformed to what Anishinaabe scholar and activist Hayden King (2017b) describes as a "depravity narrative" in media reporting. In this narrative, the focus falls on Indigenous peoples as a collective problem for settler society: the origins of Indigenous unhappiness and unrest are traced to "the community's own anger or dysfunction" but seldom to "the structural conditions of ongoing colonialism" (King 2017b).

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They Got What They Deserved

In the *National Post*, 70 of the comments were negative, with 4 neutral, and 19 positive. Blaming the victim was a common tactic amongst readers, dismissing the notion that "generational abuse, centuries of mistreatment" were to blame and instead presenting them as "stupid drunk trouble seeking kids wanting to feed their addictions." The author of a comment posted in *iPolitics* chose to blame Boushie for his own murder, stating: "If you don't want to be shot by a farmer, don't stumble onto his property, at night, drunk, wreck one of his vehicles, try to steal another of his vehicles and for god's sake don't ignore a couple of warning shots." That Boushie had remained in the vehicle the entire time was conveniently ignored. The idea that Boushie deserved his fate was an undertone in many comments, especially one in *NOW Toronto* magazine: "His friends were drunk and driving. They had a rifle which they discharged and were trying to steal cars. . . . Maybe other indigenous people will remember Boushie's fate and be smarter about things in the future."

Many of the responses reflect racist, anti-Indigenous stereotypes, which have a long pedigree in Canadian settler life. Settler anger is aroused when these taken-for-granted stereotypes are brought to light, questioned, and challenged. For those unaccustomed to examining their own positionality, which they assume to be universal and normal, being called out for racism can be discomforting. It can be a source of fragility and defensiveness. Regina-based settler educator Carol Schick (2014, 95) charted a rise in what she called settler resentment, the product of a range of factors and "complex social discourses fuelled by loss of jobs, immigration, general insecurity, fear of crime, and nostalgia for 'the good old days.' Anxiety over and disruption to 'how we do things' call for a re-affirmation and re-narration of cultural and social identities." She notes how this "re-narration of formerly established, especially white, communities finds its expression through the disavowal of the other." We can to some extent understand the racism on display in these comments as an attempt to re-establish a sense of settler security by deflecting anxiety onto Indigenous peoples as the source of threats that originate elsewhere.

The decades old racist stereotype of Indigenous peoples as alcoholics was evident in the comments, despite the fact that there is no genetic predisposition for any group to consume alcohol to excess. Instead, there is a scientific consensus that social conditions are responsible for alcohol abuse in most communities, whether Indigenous or non-Indigenous (CBC News 2014).

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Additionally, a pertinent study relying on 2009 Health Canada data reported "that FN people report lower alcohol consumption rates in the past twelve months (65.6%) as compared to the general Canadian population (79.3%)" (Spillane et al. 2015). Nevertheless, stereotypes persist and become the basis for disingenuously blaming Indigenous peoples for crimes perpetrated by settlers.

One writer of a comment posted in *The Tyee* rejected any need to display respect for Boushie, declaring: "He wasn't behaving in a manner to merit respect, he didn't give respect to others, but suddenly, we have to show respect because he is no longer breathing? A drunken punk is a drunken punk is a drunken punk." Other comments in *The Tyee* continued the same theme: "The deceased brought the whole episode onto himself. Mr. Stanley and his family were working on their farm, looking for no confrontations." And another: "One cannot in perpetuity, continually play the culture victim card in order to deny accountability." Or: "Don't show up on someone's property with a bunch of guys and a loaded firearm with intent to do harm. That's the lesson to be learned."

In fact, Boushie and his friends had no loaded firearm, nor is there any evidence to suggest that they intended harm—unlike Stanley, who fits the description well. Nor did Stanley's defence lawyer ever claim that the shooting was justified or in self-defence: the argument was that the shooting was accidental. All the same, the idea that these Indigenous youths were to blame was a central theme that surfaced in many of the comments. That Boushie was a victim of Stanley's violence was firmly rejected: "What a bunch of bull-crap! . . . enough of this poor hard-done-to Indians . . . time for them to take responsibility for their own actions . . . time for them to look after themselves and their families instead of waiting for the 'gov't' to do everything for them." And from another reader along similar lines: "Whose fault is it that more indians [*sic*] aren't lawyers or join the RCMP? No one but their own. Time to take some responsibility."

What these commentators ignored was the fact that, through no "fault" of their own, racism has resulted in the exclusion of Indigenous peoples from many settler-dominated professions, an obstacle that has nothing to do with a lack of Indigenous talent or ability. Billie Allan has identified serious problems of interpersonal racism directed by settlers against Indigenous peoples, manifest in "discriminatory treatment in employment or educational settings or in relational contact that occurs in day-to-day interactions . . . ranging in severity from being ignored, to poor treatment, to more overt and severe

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forms such as name-calling and physical or sexual violence" (Allan 2015, 5). Settler myths of a colour-blind society and a level playing field disguise the reality that even if Indigenous peoples want to abide by the settler rules of the game, they still face significant hurdles to achieving the same successes.

Indigenous Peoples as Primitive

The racist belief that Indigenous peoples were technologically backward and hence better off under colonial rule surfaced repeatedly in the comments. One reader of *The Conversation* excused the excesses of settler colonialism on the basis that "civilization" was preferable to what came before:

> When a proto-industrial civilization moves into land occupied by Stone Age tribes (that's not an insult, it is the simple truth of the thing), there will be dislocations and troubles even when intentions are good. But really, how many Indians honestly wish they could go back to living in skin tents over the winter, going for 10 months without a bath, never seeing hot water in your life except in cooking, and expecting to live to be maybe 30 for women and 45 for men? I suspect very few.

Such views appear to echo a fully discredited evolutionist model implicit in Frances Widdowson and Albert Howard's much contested *Disrobing the Aboriginal Industry: The Deception Behind Indigenous Cultural Preservation* (2008), published by one of Canada's leading university presses. Underlying their (what I would call a racist) argument is the idea that, at the time of contact, Indigenous peoples were so primitive—"either in a paleolithic or neolithic stage"—in comparison to Europeans, "who had already experienced thousands of years of civilization" (12), that they were ill-equipped to transition into a modernity (11, 12). Embracing an evolutionist paradigm now largely abandoned, the authors assert that "a number of neolithic cultural features, including undisciplined work habits, tribal forms of political identification, animistic beliefs, and difficulties in developing the capacity for abstract reasoning, persist despite hundred years of contact" (13). These "obsolete cultural features," the authors claim, have been responsible for a "developmental gap" that has inhibited the "integration" of many Indigenous groups into "the Canadian social dynamic" (13).

Such arguments dovetail well with opinions expressed by media tycoon Conrad Black, founder of the *National Post*, according to whom Indigenous

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peoples "had a Stone Age culture" and were mostly "nomads, clothed in hides and skins, living in tents, surviving on fish and game, and usually at war, which included the torture to gruesome death of prisoners from other tribes and nations, including women and children" (Black 2015). Black concludes that "even the First Nations should be grateful that the Europeans came here." Although Black may be an especially egregious example, such discourse is woefully common among settler commentators who feel unfairly held responsible for the purported problems of Indigenous peoples.

The reality is, of course, very different. Over the course of millennia, Indigenous peoples developed complex and sophisticated cultures and systems of governance, as well as trade networks and military alliances. As Hayden King has underscored, they maintained diplomatic protocols and practices that involved the exchange of gifts, ceremonies such as pipe smoking, and the negotiation of treaties, and they kept records of these diplomatic activities in "pictographs, birchbark scrolls, petroglyphs, masks, totem poles, beadwork, wampum belts and many volumes of text" (2017a). They also amassed extensive scientific knowledge of plants and animals, waterways, landforms, climatic systems, and so on. Yet a great many settler Canadians simply refuse to learn and understand these facts, apparently preferring the comfort and ease of familiar stereotypes. These stereotypes, which deny the inherent and demonstrable capacities of Indigenous peoples to govern themselves and to self-determine their own futures, have been used—and continue to be used—to legitimate colonization and the theft of Indigenous lands.

Media Double Standards and Political Correctness

Closely tied into these themes is the notion that double standards exist. In this view, Indigenous peoples are given far more latitude than white people for their actions. Commentary on my article in the *Windsor Star* featured a discussion of double standards, with one writer complaining about so-called "Liberal media using race as a tool to sell more papers." The author of another comment noted that "when it's an indian on indian crime NOBODY does anything but make excuses for them. Not to mention [that] indians don't serve their time in jails but serve them on the reservations. Funny how they don't have to follow the same laws as Canadians or serve their time like the rest of Canadians. But they constantly demand special treatment and criticize

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the justice system they have no respect for everytime [*sic*] they don't get their own way." A reader of *The Tyee* likewise pointed to double standards: "Now if the farmer had been a FN person there would be no big story here. The only reason this is receiving the attention it is getting is because the farmer is white. So just because of the color of his skin people are claiming he was a racist who deliberately murdered a FN man."

Another reader, writing in *The Conversation*, saw Indigenous peoples as "being treated as the first among equals and shown every favor." While conceding the existence of a small minority of racists in the country, the reader stated, "A bigger group are the professional victimists who make their living whipping up division even as they pretend to do the opposite. Most of them are white." This comment invokes yet another well-known trope—that white liberal academics advance their careers and make money by claiming that Indigenous peoples are victims, as doing so gains them moral capital that can be in turn used to advance their preferred political agendas. The tactic illustrates what could be called the "virtue-signalling" argument, most commonly deployed by those on the right "to cast aspersions on opponents as an alternative to rebutting their arguments" (Shariatmadari 2016).

The All-White Jury

Reactions were extremely negative to the term "all-white jury" and likewise negative to suggestions that race played a role in the verdict, even though research indicates clearly that representation on juries matters.[2] One comment, posted in *The Tyee*, managed to demean both Indigenous peoples and women: "for those who cry out for enforced indigenous representation . . . isn't that racism in reverse? Are we now to pick jurors BECAUSE of their skin colour as we now pick cabinet members by their reproductive organs?" Another defended white people as incapable of bias, while at the same time denigrating the spiritual practices of Indigenous peoples:

> It is extremely offensive to assume that in 2018, "white" people are incapable of making an unbiased decision regarding an aboriginal offender. I am also offended by having to stand around while animistic "prayers" are offered with smudging or spirit cleansing rituals at public government-funded events. Token acknowledgements of events taking place on unsurrendered whatever territory are also offensive. This land belongs to all of us equally.

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There seem to be echoes here of the federal government's White Paper of 1969, a "travesty of justice," in the words of Harold Cardinal ([1969] 1999, 107), with its assimilationist agenda cloaked in the rhetoric of "equality." In this view, "equality" is understood to mean sameness: Indigenous people are in no way deserving of special consideration—an attitude visible in this writer's fervent support of the myth that everyone should be treated equally, no matter what their historical and cultural circumstances, and outright rejection of the notion that those who were here first have a prior claim to their land. The idea that white people could be biased because of the privilege attached to their skin colour is dismissed as an insult. We also see here a resentment of the ways that Indigenous tradition and ceremony are becoming a more significant part of mainstream Canadian life. Such comments echo earlier beliefs that the best future for Indigenous peoples lay in total assimilation into settler society—that their cultures were too "primitive" to be worth saving.

Don't Call Me a Settler

Some respondents also took particular issue with the term "settler." Many readers of the *National Post* took offence to the term, which one described as a "racist and pejorative," while another called it "an insulting, derisive, racist turn of phrase. . . . Engineered to be inflammatory and disparaging. Calculated to incite an angry response." As the latter insisted, "Implicit within the very word is the notion that some of us have more right to be here than others. I reject that notion. We are all settlers. Some of us got here earlier than others, that's all." In other words, even Indigenous people are settlers who apparently arrived on Turtle Island from somewhere else. This is an oddly expansive understanding of the term. Another adopted a more restrictive definition, according to which settlers no longer exist: "While we still have 'immigrants,' we haven't had 'settlers' in more than a century. Present your case within the context of the present. None of the 36 million people living in Canada stole land from a Native (in fact, the notion of European settlers 'stealing' land from the Natives is asinine to begin with)."

The author of a comment in *The Conversation* also expressed disapproval of the term, arguing forcefully: "I am a Canadian. I'm not a 'settler.' I was born and raised in this country as was my parents and their parents. I refuse to be labeled as 'Settler' in my own country. I am as much of a Canadian as any Aboriginal person. If I tried to go back to Europe where my ancestors

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hailed from and claimed my 'rights,' I'd be laughed right back onto the plane." The respondent further asked: "Why should aboriginal persons have greater rights then [*sic*] someone born and raised in this country? Hint: They shouldn't! I have nothing to atone for or apologize for where aboriginal people are concerned."

This shared perception of settlers as people who have been unjustly blamed and whose own "rights" have been devalued is indicative of the white fragility that marked many of the responses. Clearly, these individuals regard the term "settler" as derogatory and therefore seek to repudiate it. Yet this reaction is founded on a very incomplete understanding of the term. "Settler" is not fundamentally intended to accuse but rather to identify one side of a colonial relationship that persists into the present. As Emma Battell Lowman and Adam Barker (2015, 2) argue, the term "settler" asks Canadians to recognize unequal power relations and to acknowledge that settler comfort has been "forged through violence and displacement of Indigenous communities and nations." The point is not to make settlers feel guilty but instead to encourage a sense of responsibility and accountability for what the settler state has done to Indigenous peoples and an understanding of the ways in which settler Canadians have benefited from "the dispossession and destruction of Indigenous peoples" while simultaneously denying that reality (Lowman and Barker 2015, 13–14, 16). This call to recognition and responsibility can, however, threaten the settler sense of self-entitlement, thus provoking defensive reactions, such as those illustrated above, that seek to restore and sustain a position of privilege.

Another common approach in these comments was to justify the present by recontextualizing it in far broader terms, most often in relation to the past. One writer appealed to the very origin of the species: "No one's ancestors are from anywhere but East Africa. Everyone is a settler." According to this reasoning, Indigenous peoples cannot claim special rights because they, too, are settlers. Another argued that Indigenous people have no right to complain that someone stole their land because they have done the same to others: "North American Indians fought over land just like everyone everywhere, and tribes were displaced and exterminated by other tribes just like everywhere else. We can never find the True Owner of any piece of land by trying to find who was the first person to ever step on it. I'm a settler, the Indians are settlers, the Syrian refugees are settlers and so is everyone else." Somewhat paradoxically, having claimed that everyone is a settler, this same writer went

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on to declare that "I was born here. I am a native of Canada, I have no other home and I do not consider myself second class based on racial-historical grievances." In this writer's view, the only sensible approach is to recognize that "everyone's country was stolen from someone else a hundred times" and otherwise leave settler institutions intact. Given that we "cannot repair history, the only thing we can do that works, is to go forward as equal citizens."

Because everyone is a settler and everyone is descended from perpetrators of violence, the argument goes, feeling guilty makes no sense. As the author of another comment argued: "I owe no one any apologies for things I did not do based on some unworkable notion of collective racial guilt. The past is behind us and cannot be repaired. Every last one of us have ancestors who have something to complain about." In other words, everyone is equal because everyone has faced similar experiences, and no one is guilty because all this has been going on since the dawn of time.

Attacking the Author of the Article

My own professional status and positionality were also subject to criticism and appear to have been seen as part of a larger, politically correct social justice movement based on promoting Indigenous "favouritism" and identity politics. For example, one reader of the *National Post* commented: "Was this MacDonald goof just being the fall guy for trying to explain Junior's opinion on this? No matter what the excuse he is a junk academic that should not be within a mile of our kids #firehisass." (Presumably "Junior" is Justin Trudeau.) Another asked: "What is the message here? That property owners are hostage to anyone that comes onto their property with the intention of taking it, damaging it and harming the property owner, provided the perpetrator is indigenous? We have no right to defend ourselves, our families and our property if the bad guys are FN?"

Yet another *National Post* reader wrote: "Typical Liberal Arts graduate—third rate degree from second rate university with a major in pandering and a minor in magical thinking." The reader went on to complain that my commentary on the acquittal of a white farmer in the murder of an Indigenous youth was among "the most racist articles I have ever read from the National Post!" He added, "Guy sounds like a zealot and a bigot," concluding with the question: "Why is the NP giving a platform to this lying, racist, academic cuck?" Another reader ironically thanked the *National Post* for reprinting the

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piece, observing: "It's important for the public to see the kind of racist, SJW [social justice warrior] identity politics indoctrination occurring at Canadian universities that is feeding the attitudes and actions we see in and from the federal Liberal cabinet/govt. Before it's too late. Sunshine is a great disinfectant."

Conclusions

Overall, the comments, grouped by theme, allow us to ascertain certain things about anti-Indigenous racist discourse in mainstream social media spaces:

- Both whiteness and settler privilege have gone unproblematized for most of Canadian history. Settlers do not think of themselves as treaty partners, as uninvited occupants of someone else's lands, as the beneficiaries of an exploitative relationship with Indigenous peoples, or even as being white rather than something else. Challenges to the idea of being just Canadian provoke fragility and a heightened sense of frustration, anxiety, defensiveness, and anger.
- Anger is directed in part toward the Liberal government of Justin Trudeau, which is alleged to be too soft on Indigenous peoples, and in part toward people who appear to be pandering to identity politics and political correctness. Left-oriented academics are also denounced for promoting Indigenous interests in order to claim the moral high ground and heighten their own public profile. The Trudeau government incurred the ire of many commentators for seeming to sell out to Indigenous interests.
- Indigenous peoples continue to be marked by recurring racist and false stereotypes that portray them as alcoholics, as prone to criminal behaviour, as habitual liars, and as lazy freeloaders, living on government benefits while complaining about unfair treatment. These stereotypes are nothing new, but digital platforms and social media have allowed voices that reinforce them to be amplified and spread to mass audiences.

In the aftermath of the Stanley trial, certain revisions were made to the laws surrounding jury selection. In late March 2018, the Liberal government of Justin Trudeau introduced Bill C-75, "An Act to Amend the Criminal Code, the Youth Criminal Justice Act and Other Acts and to Make Consequential Amendments to Other Acts," with the aim of eliminating not only white settler

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bias but bias in all forms. As the government explained in a backgrounder, among other things the bill would abolish "peremptory challenges of jurors" and modify "the process of challenging a juror for cause and of judicial stand-by" (Canada, Department of Justice 2019, 15). The bill received royal assent in June 2019 and is now law (SC 2019, c. 25). Hopefully, these changes will put a stop to the racial bias evident in all-white juries of the sort that chose to acquit Stanley even of manslaughter. Boushie's family and community are calling for more, however, including a return to traditional Indigenous justice practices (Di Donato 2021).

The comments posted in response to my criticism of Stanley's acquittal demonstrate that, for many settlers, not only do Indigenous lives matter less than those of white people but even the right of whites to defend their personal property counts for more than the life of an Indigenous person. Far from suggesting any awareness of the egregious racism underlying such white supremacist attitudes, the comments were characterized by a pervasive sense of unfairness—the conviction that Indigenous peoples were the ungrateful recipients of unwarranted favouritism on the part of the state, the left-of-centre media, and much of the academic world.

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Notes

1 Syndicated copies appeared on 12 or 13 February 2018, a day or two after my article was published in *The Conversation*. Most retained the original title ("'Clearing the Plains' Continues with the Acquittal of Gerald Stanley"), although *The Tyee* substituted "Colten Boushie and Settlers' Justice: Verdict in Killing Shows Deeply Embedded Racism in Legal System and Society" (https://thetyee.ca/Opinion/2018/02/13/Colten-Boushie-Settlers-Justice/), while *NOW Toronto*

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titled the article "Colten Boushie Murder Trial: This Is What Colonization Looks Like" (https://nowtoronto.com/news/colten-boushie-murder-trial-this-is-what-colonization-looks-like/). Some of these syndicated copies, including those published by the *Edmonton Journal* and the *Windsor Star*, are no longer available online. Others remain accessible, although the comments have usually been taken down. This is true of the two cited above, as well as those published by the *National Post* (https://nationalpost.com/news/canada/clearing-the-plains-continues-with-the-acquittal-of-gerald-stanley), *iPolitics* (https://www.ipolitics.ca/news/clearing-plains-continues-acquittal-gerald-stanley), and *Global News* (https://globalnews.ca/news/4019889/commentary-clearing-the-plains-continues-with-the-acquittal-of-gerald-stanley/). By way of an exception, the comments in *The Tyee* are still accessible—and their number has increased to over 1,300 since this analysis was conducted.

2 A report released in 2021 by the Equal Justice Initiative, *Race and the Jury: Illegal Discrimination in Jury Selection* (https://eji.org/wp-content/uploads/2005/11/race-and-the-jury-digital.pdf), offers a good summary of the issue in the context of the United States. On the situation in Canada, see Nathan Afilalo, *Jury Representation in Canada: Systemic Barriers and Biases in the "Conscience of the Community"* (2018), a report of the Canadian Institute for the Administration of Justice (https://ciaj-icaj.ca/wp-content/uploads/page/2019/02/r83_preliminary-report_jury-representation-in-canada.pdf).

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8 Killing in the Name Of

Police Killings of Indigenous People in Canada

Jeff Shantz

The common mythology of policing in Canada, especially of the RCMP as a national symbol of peaceful order and rule of law, does not give proper attention to—or even acknowledge—the real social histories of violence, dispossession, and displacement embodied in the Canadian state as a settler colonial project. The actual history of policing in Canada is an extensive history of violence against Indigenous people (Crosby 2021; Stelkia 2020; Monchalin 2016; Shantz 2016; Razack 2015). It is a history of lethal force in the service of social control of Indigenous people and communities, dispossession of Indigenous lands, and displacement. Furthermore, it is a history of racism and white supremacy. As various commentators, academics, scholars, and journalists have outlined, the RCMP was founded as a colonial force of occupation and control over Indigenous lands and peoples (Crosby 2021; Stelkia 2020; Gerster 2019; Shantz 2016; Brown and Brown 1978).

This chapter examines police killings of Indigenous people in Canada to show the layers of violence against Indigenous people within Canadian criminal justice. It does so in part by outlining several cases of Canadian police killings of Indigenous people over the last few years to highlight issues involved in settler colonialism and the policing of Indigenous lives. Part of the aim of this chapter is to counter the less critical framings of police killings and to question the legitimacy of policing as an institution of safety and service for all. Police lethal force against Indigenous people is, in some cases, the final action in a

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sequence of violence that includes dispossession, displacement, poverty, and social inequality, which is also extended through the violence of family separation, residential schools, sexual, emotional, physical assault, and through the traumatic effects manifested in addiction and abuse, and mental distress. David and Mitchell argue in a 2021 article that "understanding how settler colonial policies" exert influence over Indigenous peoples and the police may deepen understanding of the ways that "more general theories can make sense of Indigenous peoples' contact with the police" (n.p.). Police and criminal legal systems more broadly in Canada disproportionately target Indigenous people for violence. Criminal legal systems, including police forces, were founded as instruments of settler colonialism, occupation, dispossession, and displacement. This must be understood in discussions of policing in the country. It is an ongoing history of violence rather than random incidents of violence.

Lethal police engagement with Indigenous people occurs at all levels of police interaction, including first encounter; while negotiating with a person; during arrest; while in custody; after transport to station; and while transiting to hospital or shelter, etc. Police use of lethal force against Indigenous people often occurs on an extralegal basis. There are efforts to justify the force as necessary to suppress protests. The tendency to legitimate the force has been seen in relation to land defenders, as on Wet'suwet'en territory to allow pipeline development. This extralegal activity is evidenced in practices like "Starlight Tours," where police drive Indigenous people to the edge of town and abandon them in the cold. Neil Stonechild was allegedly killed by police in this way in 1990. Frank Paul was also left outside by police, left to die in the cold in an alley in 1998. Racist and colonial assumptions about Indigenous people who are in a health-related crisis (that they are drunk, addicted, etc.) often shape police responses. These are only a few examples of racial and colonial police violence against Indigenous people.

Over the last three years of research, I have documented numerous cases of lethal police force against Indigenous people (Shantz 2019). Of all the police killings of civilians over the last few years, a disproportionate level of violence is inflicted on Indigenous people. In 2017, there were at least 65 people killed through police encounters. Of these victims, six were identified publicly as Indigenous. In 2018, there were at least 59 police-involved deaths in Canada and eight of these victims were identified publicly as Indigenous. In 2019, there were at least 58 police-involved deaths, in which nine victims have been

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identified publicly as Indigenous. In 2020, at least 65 people died in police encounters. Where personal information is known, at least 13 were identified publicly as Indigenous people.

In what follows, I discuss some of these cases of police lethality in engagements with Indigenous people. These events occurred at various levels with police contact from initial encounter, during arrest, in custody, and in transit. These cases show the lethal nature of everyday policing practices; they also show the lack of oversight and accountability. On the whole, police killings of Indigenous people should be seen in a context of broader structural practices of criminal justice that disproportionately target Indigenous people and communities in Canada. As Wortley, Owusu-Bempah, Laming, and Henry stated in 2021, "more research and understanding on police use of force in Canada is necessary" (105). This chapter is timely in addressing that research gap.

Contexts: Criminal (In)justice Systems

To contextualize the deaths of Indigenous people at the hands of police in Canada, one can look at events that occurred over a few weeks in February 2018. These events involved four people who lost their lives. Two at the hands of civilians—white men—who were named publicly and became subjects of public outrage and two at the hands of police, whose identities have never been revealed, with little public, media, or criminal justice system attention.

The first two cases, the deaths of Tina Fontaine and Colten Boushie, respectively gained public attention in the Raymond Cormier and Gerald Stanley trials for the killings of Indigenous youth. In these verdicts, both men were found not guilty. In that same two-week period between the Stanley and Cormier verdicts, two more events occurred in the northern Ontario town of Timmins that left two Indigenous people dead through interactions with police. Officers in the small northern Ontario city shot and killed Joey Knapaysweet, 21, on Saturday, 3 February 2018. Then, on Sunday, 4 February, Agnes Sutherland, 62, died in police custody. Both victims were from Fort Albany First Nation, a James Bay community. These police killings have been less remarked upon and received much less attention than other highly publicized cases.

The lack of justice that Indigenous victims feel, as expressed in the Gerald Stanley and Raymond Cormier verdicts, can be contrasted with the especially harsh treatment of Indigenous people in other facets of the criminal justice

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system in Canada. It is well documented that Indigenous people in Canada are disproportionately targeted and processed by the criminal justice systems in Canada. While Indigenous people in Canada make up about 4.3% of the population, they represent more than 25% of prisoners. Over the decade between 2005 and 2015, the number of Indigenous prisoners grew by 50% compared to an overall growth of 10%. In some regions of Canada, Indigenous people are incarcerated at rates 33 times higher than non-Indigenous people. Furthermore, incarceration practices are gendered as well as racialized. Indigenous women make up 37% of all women serving a sentence over two years also do what is considered harder time. For example, they overrepresented among prisoners in solitary confinement, are subjected to more maximum-security placements, and are subjected to more use-of-force interventions (Mas 2016). The criminal justice system, including the courts, have made, and continue to make, millions of dollars on processing the bodies of Indigenous people while diverting social funds and resources away from necessary social supports, as part of an ongoing colonial project. The focus of much research and writing on criminal justice systems and Indigenous people in Canada has been on incarceration, as discussed above. We need to expand our focus and analysis of state violence inflicted through criminal legal systems to include policing and, particularly, lethal force.

While numbers and details on police killings of civilians in Canada are lacking due to an absence of systematic public reporting, there are some useful resources available. According to a December 2017 briefing note prepared for then Public Safety Minister Ralph Goodale, more than one-third of the people shot and killed by RCMP officers over the course of a 10-year period were Indigenous (Freeze 2019). The briefing note also reported that the RCMP documented 61 cases across Canada in which their officers shot people between 2007 and 2017. According to the briefing memo, the victims of the RCMP shootings were Indigenous in 22 of those cases; a full 36% (Freeze 2019). The memo further reported that 12 of the killings, or 20% of the total, occurred either on a reserve or in what was identified as an Indigenous community (since Inuit communities are not on reserve lands) (Freeze 2019).[1] In its explanation to the Public Safety Minister, the memo read:

> It may appear disproportionality [sic] high that 36 per cent of fatal member-involved shootings by the RCMP deal with Indigenous subjects. However, the RCMP is unlike any other Canadian police service

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> in that it serves over 600 Indigenous communities (approximately 67% of RCMP detachments serve aboriginal communities). (Freeze 2019)

Of significant importance, however, the memo does not indicate the population size being policed. The city of Surrey, British Columbia, for example, is a major suburban, with a population over 500,000 people; a single municipal area alone policed by the RCMP. How many of the 600 Indigenous communities referred to by the briefing note would be covered by a population over 500,000? Furthermore, the RCMP does not keep any detailed data about use-of-force cases or identity-based statistics regarding incidents where force is used.

Upon release of the briefing note, Perry Bellegarde, who was the national chief of the Assembly of First Nations at the time, spoke to the disproportionate and unacceptable nature of the RCMP's use of lethal violence against Indigenous people. In his response, he said:

> We're 5 per cent of the [overall] population—of course it's surprising. Thirty-six per cent of the fatalities from the RCMP are First Nations people? That's totally unacceptable. We call for immediate action to end the killing of our people. It's a highly disproportionate rate. No question. (Freeze 2019)

A 2017 analysis by criminologist Scot Wortley, of data compiled by the Canadian Broadcasting Corporation, found similarly that Indigenous people were disproportionately the victims of lethal force by police. In that project, Wortley analyzed a five-year data set on fatal shootings that involved all police forces in Canada. Based on the data he accessed, Wortley concluded that the "police-related civilian-death" rate for Indigenous people was over three times the national average in Canada (Freeze 2019). More recent research has reinforced this finding. A 2020 CTV News analysis found an Indigenous person in Canada to be over ten times more likely than a white person to be shot and killed by a police officer. Between 2017 and 2020, at least 25 Indigenous people were shot and killed by the RCMP alone. That analysis further showed that, since 2017, 25 of the 66 people shot and killed by Canadian police for whom race or identity could be confirmed were Indigenous. That represents almost 40 per cent of the total. When adjusted for population (based on 2016 Census data), this means that since 2017, 1.5 out of every 100,000 Indigenous Canadians have been shot and killed by police compared with 0.13 out of every 100,000 white Canadians (Flanagan 2020).

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According to my own research, in 2017 there were at least 65 people who died through encounters with police (Shantz 2018). Of these, six were identified publicly as Indigenous. In 2018, there were at least 59 people left dead in police encounters. Of those, eight victims were identified as Indigenous people. In 2019, at least 58 people died through police interactions. Of these victims, nine have been publicly identified as Indigenous people. In 2020, at least 65 people died through police encounters. Where information is known of the victims, at least 13 were identified publicly as Indigenous people. As of June 2021, at minimum 40 people had been killed by Canadian police or died through police actions. At the time of writing, little personal information was available about the victims. One of the problems in conducting more thorough analysis of police lethal force is the limited documentation and publication of police data. A recent 2021 study by Wortley and his colleagues outlines challenges accessing data, even after requests were made. The researchers state that they were "disappointed—but not necessarily surprised—with the low response rate to [their] data request" (8). They devote several paragraphs to their efforts noting that many police services approached for information failed to share data for their academic study on police use of force (8–10).

Colonial Encounters

Lisa Monchalin (2016) argues that what is often viewed as "the Indian problem" is actually a colonial problem. Colonized people are expected to know and observe the priorities, values, and languages of the colonizers. If the colonized do not conform, they are often more heavily policed as a result (Crosby 2021). Sherene Razack (2015, 30) puts these colonial encounters in these terms:

> A significant aspect of the relationship between Indigenous peoples and white settlers in contemporary colonial cities such as Canada's is the seeming paradox that an astonishing indifference or callousness marks the settler's response to Indigenous people, but this indifference occurs within intense, often daily encounters between state officials (police and health care professionals) and Indigenous populations in the city.

A colonial framework prioritizes social control and policing of peoples rather than social care, support, or service. As we will see, police are deployed even when health care, including mental health care, is needed. The police are

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also deployed where persons need support. Rather than receiving care, many individuals are criminalized. We can see this in the numbers of Indigenous people who die in police custody, Sean Thompson, for example, died after being arrested while in medical distress by Winnipeg police on 26 June 2019. Similarly, a coroner's inquest in Baker Lake, Nunavut, examining the death in jail of Paul Kayuryuk in October 2012 concluded that police must "challenge assumptions" about intoxication in Inuit communities after necessary medical attention was not provided to Kayuryuk after RCMP jailed the man, who was having a stroke, on the assumption that he was drunk. I outline below further cases of police lethal violence against Indigenous people that highlights the colonial character of these encounters and the various systemic problems endured in Indigenous communities.

"Police Have Killed More Tla-o-qui-aht First Nation Members than COVID"

Late in the evening of 27 February 2021, Tofino (British Columbia) RCMP shot and killed Julian Jones, a 28-year-old Tla-o-qui-aht man in a residence on Opitsaht First Nation. In a Facebook post, his brother Leo Jackson wrote: "Last night my brother Julian Jones was shot and killed by the Tofino RCMP on unceded Indian land."

According to the Independent Investigations Office of British Columbia (IIO), two officers from Tofino RCMP attended a residence on the Opitsaht First Nation at around 9:30 PM on belief that a woman was in distress. At some point after they arrived, Mr. Jones was shot and killed, and another man was arrested. A woman was located and taken to hospital "for medical assessment."

In fact, this was the second police killing of a Tla-o-qui-aht person in less than a year. Chantel Moore, a 26-year-old Tla-o-qui-aht First Nation woman, was shot and killed by police in Edmundston, New Brunswick, during a so-called "wellness check" early in the morning of 4 June 2020. She was shot four times, including multiple times in the back, according to her family. Edmundston Police Force Inspector Steve Robinson told reporters that he did not believe that the officer in question attempted to use any non-lethal force. Members of the family and community are certain the killing is racist in nature. In the words of Chantel Moore's grandmother, Nora Martin: "When I first heard about it, that was my first thought: 'This was racially motivated.' We've been dealing with police brutality for a number of years. I know in my

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own family it's been going on for a long time" (quoted in CTV News 2020). One week after the police killing of Chantel Moore, New Brunswick RCMP shot and killed Rodney Levi, a Mi'kmaq man, in Metepenagiag First Nation (also known as Red Bank First Nation). Mr. Levi was killed while he was experiencing mental health distress on 12 June 2020.

Only months after Chantal Moore's killing, her 23-year-old brother, Mike Martin, died at the Surrey Pretrial Services Centre, British Columbia's largest provincial jail. These familial deaths show a continuation of colonial criminal justice against Indigenous people. In a statement of 20 November, the Nuu-chah-nulth Tribal Council stated that "His death was a compounding effect from the shooting of his sister on a wellness check. One horrific injustice imperilled the life of another. The police officer that took Chantal's life inevitably took another" (quoted in Little 2020).

On 3 March 2021, the Tla-o-qui-aht First Nation released a statement that questioned the RCMP's use of deadly force against them:

> It is incomprehensible to see such unnecessary loss of life at the hands of the RCMP. Nine months ago, our Nation put forward a list of recommendations to support better interactions with police and to reduce police brutality. To date, none of the recommendations have been followed up on and the RCMP/police have killed more TFN members than COVID has. (Bailey 2021).

On 7 June, it was announced that charges would not be brought against Constable Jeremy Son, the officer who killed Chantal Moore. An investigation into the killing had been carried out by Québec's police oversight agency, the Bureau des enquêtes indépendantes (BEI), because New Brunswick has no such oversight body. The BEI is not an independent body and relies on police forces to carry out their investigations. In the conclusion of this investigation, the BEI report found that officer Son was justified in his actions, in part, because he claimed Chantal Moore appeared "angry with a furrowed brow." This is but one of many examples where officers have enjoyed impunity. It is not common for criminal charges to be brought against a police officer who has killed (see Puddister and McNabb 2021). Of the 460 fatal incidents involving police between 2000 and 2017, only three murder charges have been laid against police officers, and all of which were second-degree (Kim 2019).

Chantal Moore's family has since called for a public inquiry into systemic racism in policing. Despite calls from numerous Indigenous leaders, New

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Brunswick Premier Blaine Higgs refused to hold a public inquiry into systemic racism in the province's justice system.

These are too common cases of police being the first responders for people who are believed to be in crisis or in need of a "wellness check." This is problematic because police are not health care providers. Too often the outcome of these encounters with distraught individuals is police escalating the problem and, in these cases, killing the person needing support or care. Resources for health care, including mental health care, should be diverted away from police, and used in community health care supports. Police budgets continue to grow as necessary health care services require more funding. Policing plays a central part in the dispossession, displacement, subjugation, control, killing, and genocide of Indigenous people and communities. It has been central to the interlocking settler colonial capitalist projects. Policing continues to play a key part in maintaining those projects up to the present.

A Town in North Ontario: Two Deaths in Two Days in Timmins

Police in the small northern Ontario city of Timmins shot and killed 21-year-old Joey Knapaysweet on 3 February 2018. In this case, as in many cases across Canada, police controlled much of the information about the killing and few details were provided publicly. Joey Knapaysweet was from the James Bay community of Fort Albany—more than an hour's flight from Timmins. According to the family, he had gone to Timmins to "seek help in dreams for betterment of his life." On 15 February, the family released a statement from Fort Albany saying they need answers about why police chose to kill their loved one. In a statement, Micheline Knapaysweet, Joey's mother, expressed her pain: "I cannot sleep at nights, I need answers. This is my son, my child." She asks further, "What did he do that was so bad that he had to be shot and killed? I am so heartbroken, with so many questions unanswered" (Canadian Press 2018). The Special Investigations Unit, the agency that investigates cases of police harm to civilians in Ontario, has only said: "There was an interaction between the man and officers, and one of the officers discharged a firearm. The man was struck. He was taken to hospital where he was later pronounced dead."

The police killing of Joey Knapaysweet also occurred the same weekend as another Cree woman from Fort Albany—Agnes Sutherland, 62, died in

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custody of Timmins Police. Agnes Sutherland was arrested at a shelter after having been asked to leave the Timmins District Hospital where she had sought help. She was taken to a police station and put in a cell on Saturday, the same day Knapaysweet died. Later that same evening, she was taken to the hospital. She was pronounced dead late Sunday. In a statement issued by Indigenous leaders Grand Chief Fiddler, Grand Chief Jonathan Solomon of the Mushkegowuk Council, and Fort Albany First Nation Chief Andrew Solomon, serious questions are raised: "It is alleged that when police attended at the scene of the local shelter, Ms. Sutherland was treated roughly while being taken into police custody. She suffered severe complications during her detention" (Perkel 2018). Agnes was a mother of six with six great-grandchildren.

In their statement, Grand Chief Fiddler, Grand Chief Solomon, and Chief Andrew Solomon call for a timely and thorough investigation. They raise the very real issues of racism in policing and the violence targeted at Indigenous people by police. In their words, "We have seen systemic racism in the city of Thunder Bay and must now wonder if this is also happening in Timmins" (Perkel 2018). Grand Chief Alvin Fiddler of the Nishnawbe Aski Nation, which represents nearly 50 Indigenous communities in northern Ontario, expressed great concern over the two deaths in two days. In his words: "It's very troubling. The families have a lot of questions" (Perkel 2018). Details about both deaths are limited. In fact, police did not even release the names of their victims, but they were revealed through other sources, including federal Member of Parliament, Charlie Angus. Notably, Timmins Mayor Steve Black acknowledged that the deaths at the hands of police had increased racial tensions in the city, though he did not specify. He said: "I don't believe there's room for racism in any community. If changes need to be made or things need to be done to improve those relationships, we're definitely willing to work with our partners on improving those relationships" (Perkel 2018). Mayor Black's comments fall within a framework of assuming a criminal justice system should be maintained and can operate outside of a colonizing framework.

In addition to the policing response to health care needs, according to the Chiefs, both victims had left the remote community of Fort Albany, near Ontario's James Bay coast, to seek medical care in Timmins. They note in their statement: "Our people must continually leave their families and communities to come to cities to seek services that are not available in their respective communities" (Perkel 2018). The deaths occurred as an emergency summit was being held in Timmins by the Mushkegowuk Council, whereby the regional

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James Bay government declared a state of emergency in November, concerned over the growing number of drugs and alcohol coming into its seven-member communities (CBC News 2018). Agnes Sutherland's son, Glen Sutherland, told the *Timmins Daily Press* that his mother was a Survivor of the notorious St. Anne's residential school. He said that she needed a wheelchair to get around and questioned the actions of hospital staff. She was using a wheelchair at the time of her arrest. Glen Sutherland said that her frequent trips to the emergency room were a cry for help (Perkel 2018). The mistreatment of Indigenous people seeking medical assistance at hospitals has been a common issue in various locations in Canada and is further evidence of the ongoing legacies of colonialism and racism in Canada.

A vigil in Timmins for Knapaysweet on Tuesday, 6 February, drew around a hundred people. Chief Andrew Solomon is calling on the Attorney General of Ontario and the Minister of Community Safety to investigate the Timmins Police (CBC News 2018). Micheline Knapaysweet has made a dedication to wear a red scarf, Joey Knapaysweet's favourite colour, until the family receives answers to their questions. In the absence of effective accountability mechanisms, outside of the system itself, families and communities are left with few options.

Manitoba First Nations Police Kill Benjamin Richard on Long Plain First Nation on 2 April 2019

Manitoba First Nations Police shot and killed 23-year-old Benjamin Richard on Long Plain First Nation on the evening of 2 April 2019. The victim's identity was confirmed publicly by his sister, Patricia Richard. She reports that she called police after speaking with her mother because she believed her brother to be "freaking out" and firing shots from the house where her mother lives. Patricia Richard had hoped police would protect her brother, not shoot him. She is upset at how police handled the situation, believing it should have ended differently. She has since said that her mother told her: "They went rushing in there. Everything happened too quick. She said they didn't have to [shoot him]. He wasn't threatening anyone, he just snapped on himself" (CBC News 2019b). The victim's niece, Tammy Smith, said she was outside of the house in a pickup truck with Richard's mother when three officers spotted Richard through a window and started shooting at him. She describes a chaotic, reckless, rush to lethal force. In her words: "I was backing up to see

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if I could see Ben, when all the shots came from the [police]. I'm pretty sure they all unloaded their clips. We just started screaming" (Rollason 2019). She echoed the family's feelings of anger over how the situation was handled: "It should not have escalated to that point. They should have waited for more people. They should have tried to wait it out. They were all outside, shooting through the walls and windows. They never even entered the house" (Rollason 2019).

Witnesses suggest that the victim was only firing his weapon into an empty field and the ceiling of the house. They say he posed no threat to anyone but was simply upset. Richard's cousin, Tammy Smith, relates: "His mother, last week, called the [police] to take him to the hospital so he could be assessed. But when they came and talked to him, they said he wasn't a threat to anyone. Then a week later, they come back and shoot him" (Rollason 2019). Patricia Richard has said that in her view the officers were "trigger-happy." She suggests: "They knew my brother needed help a few days before anything happened. He was unstable. Everyone saw the signs" (Rollason 2019). Again, in the shooting death of Benjamin Richard, a police lethal encounter was the response to what was an ongoing mental health need.

Smith remembers Benjamin Richard in these terms: "He was kind, caring and always thinking of others more than himself. The world lost a great man. My heart breaks" (Macdonnell 2019). According to the Independent Investigation Unit (IIU), the agency that examines cases of police harm to civilians in Manitoba, it was notified by Manitoba First Nations Police that officers had responded to a report of a man armed with a firearm in a residence at around 6 p.m. During an encounter, at least one office fired a weapon, striking the man. The victim, Benjamin Richard, was pronounced dead on the scene. Three officers involved in the case are now on administrative leave.

Regina Police Kill Geoff Morris on 4 May 2019

The Federation of Sovereign Indigenous Nations (FSIN) is calling for an independent investigation after the killing of 41-year-old Geoff Morris, by Regina Police Service officers on 4 May 2019. Morris was shot and killed by Regina Police during what police say was a hostage situation. There are reasons to be skeptical about this given the lack of public information available. Notably, Regina Police chief Evan Bray would not say whether an alleged hostage was still being held when the shooting occurred. Indeed, the policing

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account of events is being contradicted by Morris's fiancé, Jasmine Brass, who says she was present when Morris was killed. In her words: "Honestly it wasn't necessary for them to kill him, they could've just tased him" (Melnychuck 2019). She reports that Morris had been struggling with mental health issues and that she and her sister were with Morris trying to help him the morning he was killed by police. Brass also reports that he became more agitated when police arrived, a common occurrence, as the appearance of police typically heightens tensions and stress. She gives a chilling account, saying on Facebook that she heard a "bang" and felt a splatter of blood at the moment of killing. Incredibly, Brass reports that police shot Morris while she sat between his legs.

Geoff Morris was the biological father to four children. He also took in six other children and raised them. One daughter, Tanisha Whiteman, remembers him as a good, loving man who struggled with anxiety issues. She asks why police acted so quickly to kill. In her words: "That's somebody's father. That's somebody's son. That's somebody's brother, somebody's nephew. He was loved by so many people. Why? Just like that, he's gone. There could have been other ways that could have been handled. They didn't have to take someone's life away" (Whitfield 2019a). Criticisms of the police also came from Morris's 12-year-old son, Nakayoh Friday: "I want people to know that the people who were supposed to protect us aren't protecting us. They are killing us. I don't want other families to go through my pain" (Whitfield 2019b). These statements are reminiscent of the colonial type of violent, dangerous policing historically experienced by Indigenous peoples.

According to Regina Police chief Evan Bray, legislation requires that the Regina Police Service's Major Crime unit investigates the shooting. Cops investigating cops. The officer involved in the shooting was a member of the patrol response and remains on active duty. In a news release, FSIN Vice Chief Dutch Lerat noted that:

> We have seen officers investigating their fellow officers and we all know how those investigations turn out. We are calling on the Regina Police Service to allow for an outside and independent oversight body to be a part of this investigation. We have been calling for this for years and these senseless police-related deaths keep happening. (CTV Regina 2019)

Regina Police claim that the killing of Morris is the first killing by an officer in the city since 1998. Police also claim that there have been four officer-involved

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shootings in the last 10 years, with none of those resulting in the death of the victim. With few public records, however, it is difficult to verify this information.

Robin Fiddler of Waterhen Lake First Nation Killed by Calgary Police on 26 June 2019

Family members have identified 34-year-old Robin Fiddler of Waterhen Lake First Nation in northern Saskatchewan as the woman who was shot twice and killed by a Calgary police officer on 26 June 2019. Fiddler was a trades worker in construction. Fiddler's family is demanding justice. They question the quick violence of the Calgary police. Mario Fiddler, the victim's cousin, says: "We believe Robin didn't deserve to die—we want to see justice. We believe the Calgary police officer could've taken different steps dealing with Robin [and that] a Taser could've been used instead of shooting our cousin. My cousin isn't the type of person to be an aggressor" (Laing 2019). When it comes to policing Indigenous people, the most lethal forms of violence continue to be employed.

Another cousin, Angela Fiddler, reflected on Robin Fiddler's determination and humour. In her words:

> She always tried to get through whatever systemic barriers that she faced—she always tried to make a way. She was just a blessing to us. It was her smile, she was always so funny and she always wanted to make people laugh. When we were both younger, I just took her under my wing and that was that. She would come live with me when she had the opportunity. I've always had an open door for her. Robin was a beautiful soul, she deserved to live. (Laing 2019)

Calgary police Chief Mark Neufeld has said that the officer who killed Fiddler was wearing a police-issued, body-worn camera at the time of the killing. No video has been released publicly. Robin Fiddler's killing is at least the third police-involved death in Calgary in 2019. The family reports that they are returning Robin Fiddler's body to Saskatchewan so that the family can lay her to rest and start a traditional healing journey (Laing 2019).

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Randy Cochrane of Fisher River Cree Nation Killed by Winnipeg Police on 14 July 2019

The family of a man who died during an arrest by Winnipeg police has identified him as Randy Cochrane, a 30-year-old father of three. Family members are calling for answers into what happened during the arrest and why there appear to be discrepancies in what police reported and what doctors in the hospital's emergency room have described. Randy Cochrane's cousin, Monica Murdock, asks pointedly:

> My family's devastated. We want to know what happened to him. Why did he die in cuffs? Why were they chasing him? Why are they saying he was bloody but the doctors we went and saw at the emergency room last night said that he had no injuries? (Grabish 2019).

Murdock reports that doctors at the Health Sciences Centre told her family on Sunday, after Cochrane died, that the young man had suffered a heart attack and had a high fever. She also reports that they told her there were no other injuries on his body. She says that doctors informed her that it was too late by the time Cochrane arrived at the hospital at 4:30pm because he had been without a pulse for some time (Grabish 2019).

Murdock describes her cousin as "a fierce protector of his family" and she says, "he was more like a brother to her" (2019). She relates fondly: "He always made sure we were protected. We were safe. The last time I saw him he came to my house and he gave me some money for my baby 'cause my daughter's in the hospital" (Grabish 2019). Marjorie Cochrane raised Randy after adopting him. She remembers: "He was really always close to his daughters. It's hard. Taking it hard" (Grabish 2019). She too has important questions for police: "What happened when they handcuffed him?" (Grabish 2019).

A witness, Will Couture, says Cochrane, rather than being a threat, appeared to be shouting for help while running from something or someone. Couture reports that the man kept repeating "Help me, help me" (Grabish 2019). He then saw police chase Cochrane across the street. The man looked "freaked out," Couture claims, "Just scared. Just like terrified of something you know what I mean? It was like the devil was chasing him" (Grabish 2019). It turned out to be the police.

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Saulteaux Man Lucien Silverquill Killed by RCMP at Fishing Lake First Nation

Saskatchewan RCMP shot and killed Lucien Silverquill, a 37-year-old Saulteaux man at a home on Fishing Lake First Nation on the afternoon of 27 August 2019. The victim was a father with young children. The only report made public so far has been by the RCMP and has not been independently confirmed. The RCMP claim that officers from the Wadena detachment were dispatched around 1:30 p.m. after receiving a call about a man, allegedly armed with a knife, who was causing a disturbance outside of a home. Shortly after encountering the man, at least one officer discharged their firearm, striking him. The man was declared dead at the scene.

Moses Silverquill, the victim's brother, suggested that the RCMP were more concerned with an arrest than with ensuring his brother received necessary medical attention. The scene he describes, and the RCMP's handling of it, raises serious questions about police misconduct. He reports that Lucien Silverquill was shot twice, once in the chest and once in the leg. He says his brother was alive for some time, but in great pain before he died. According to Moses Silverquill, RCMP officers attempted to handcuff and subdue his brother after they had shot him. In his view, more than half an hour passed before Lucien Silverquill was put into the ambulance that had arrived on the scene (Pasiuk 2019). In his words: "It was a very horrific scene when we got there. . . . They didn't give him CPR or anything like that. They just pinned him to the ground. That's what we saw" (Pasiuk 2019). Moses Silverquill also points out the lack of information and responses to questions by RCMP. He says that RCMP refused to let family members near his injured brother. According to Moses Silverquill, "It was very hard to get answers from [RCMP] as to what was going on with my brother" (Pasiuk 2019). The brother wonders why alternative approaches were not taken, why police acted so quickly to shoot and why the police were so single minded in prioritizing arrest over medical care. Moses Silverquill reflects on the brother taken from his family by police violence: "My brother was a good person. . . . He had kids. He left little kids. I know he was a caring guy when he was with his family" (Pasiuk 2019).

There is no police oversight body in Saskatchewan. RCMP have asked the Moose Jaw Police Service to conduct a police investigation into the killing. They have also asked the Saskatchewan Ministry of Justice to appoint an independent observer to assess the quality of the external investigation. The

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latter request is in accordance with the Royal Canadian Mounted Police Act. This means that there will be no independent investigation into this killing, not even nominally.

The Killing of Greg Ritchie of Saugeen First Nation by Ottawa Police

Greg Ritchie, a 30-year-old Ojibwe man from Saugeen First Nation near Owen Sound, Ontario, has been identified as the man shot and killed by Ottawa police on 31 January 2019. Family members have spoken publicly to say he was experiencing mental health crises and was heading to a pharmacy to pick up medication when he was shot and killed by police. The responding officers have been identified as Ottawa constables Thanh Tran and Daniel Vincelette. Witnesses reported hearing more than two shots. One witness, Shireen Moodley, reports hearing multiple rapid-fire gunshots. Tran and another officer were charged in September 2011 with assault causing bodily harm following the arrest of an intoxicated 50-year-old homeless man.

Family members say Ritchie, who had been taken from his mother and placed in foster care, had struggled with mental health issues from a young age. He had moved to Ottawa to live with his brother and his partner. Ritchie's sister-in-law reports that he was in good spirits the morning he was killed. Having received his Ontario Disability Support Program payment, he was going out for a coffee. He then set out to get his medication, as he was suffering a headache and recovering from a concussion. He had been a customer at the pharmacy at Elmvale Acres Mall since relocating to Ottawa earlier in 2019.

Police allegedly received a call about a "suspicious incident." Greg Ritchie's sister-in-law, Chantal Ritchie, provides a painfully poignant description, given that Ritchie's family says he had an ongoing fear that people viewed him suspiciously because of the way he looked and because of his Indigenous identity:

> And the thing is, that's not the kind of guy he is. He gets scared . . . and that's the saddest part. We know that he was in complete and utter terror in a moment like that. He's scared of just going into a grocery store . . . of just being in a crowd, because he's afraid that people want to do something to him or don't like him because of the way he looks. . . . And honestly, we've seen it. People just take one look and that's it. He's First Nations, he's been homeless before, and he is afraid. People just take all of that in one look and then make assumptions and

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> then act on it. And it just really hurts that we weren't there to be able to calm him down because there's no way that any of this would have happened if we were there. There's no way. (CBC News 2019a)

Chantal Ritchie says Greg felt better around family and was very involved in learning about his culture. She worries that cultural materials he carried with him might have been misinterpreted as weapons by the police who killed him.

The Inquest into RCMP Killing of Felix Taqqaugaq in Igloolik, Nunavut

Police should not be the ones to address people dealing with mental health issues; and in Indigenous communities, as seen in the above cases, a lethal response continues to be a common one. This is also the case in the community of Igloolik, Nunavut, where four years ago, RCMP shot and killed Felix Taqqaugaq at the age of 29 in his own home only moments after encountering the man. The 20 March 2012 killing occurred after Taqqaugaq called into a local radio station and engaged in a wordy rant, causing a listener to call the RCMP. The RCMP later encountered the victim at his home and killed him. Family members have noted that Felix Taqqaugaq experienced mental health issues. It remains unclear why anyone would call police upon hearing someone ranting on a radio program or why the police would respond.

It is rare in the Canadian context that police officers who kill civilians are ever named publicly. This generally only happens in the few cases that result in charges laid against police officers, or in case of a public inquiry or inquest. With the coroner's inquest onto the police killing of Felix Taqqaugaq on 20 March 2012, as is mandatory in cases of police harm to civilians in Nunavut, the RCMP officers who killed him have been identified publicly as Constable Jason Trites and Sergeant Peter Marshall. According to the report, Constable Trites knew that Taqqaugaq was dealing with mental health issues, which the officer understood to be schizophrenia. Yet, he still moved quickly to arrest the man for supposedly uttering threats and fired a Taser at him only moments into the encounter (and before the man had done anything more than speak to officers). It was surmised that the Taser fire may have upset Taqqaugaq, who was then chased back into his house by Sergeant Marshall. In response to this police chase, Taqqaugaq may have returned brandishing a knife.

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By Trites's own admission, he tripped while backing away from Taqqaugaq and fired his handgun, leaving a self-inflicted wound on his hand. While on his back, Trites shot Taqqaugaq three times. The man was taken to the hospital where he was pronounced dead. Trites's injury was initially reported publicly, but it was not clarified that he had shot himself. The early reports of officer injuries, devoid of the important context of self-injury, clearly gives the impression that police were physically threatened or harmed and thus justified in using lethal force. This was seen in a similar case in the RCMP killing of Hudson Brooks in Surrey, British Columbia, where a self-inflicted wound by police was only revealed later (Chan 2017).

According to Mary Ijjangiaq, Taqqaugaq's partner of 13 years, the police instigated the situation leading to the killing. In her words to the inquest: "They ganged up on him. He was deliberately provoked. I think [the officer] deliberately made sure he died" (Murray 2016a). She says the victim held a knife at his chest rather than over his head in a threatening manner, as police claim he did. Police audio from the incident raise further questions and point to a very quick escalation to lethal force by police. Only 60 seconds passed from the moment officers radioed the Iqaluit command centre to report that they had located the suspect until one officer called out, "Shots fired; suspect down" (Murray 2016a).

In many of these cases, officers are often treated as the victim. Both officer Trites and Sergeant Marshall were flown out of the northern community the very next day after the killing of Felix Taqqaugaq. Trites testified at the inquest by video from Halifax. In his testimony to the inquiry, he states: "I just hope the family knows that they're not the only ones that were hurt by this. The things that I deal with, do affect my personal life. I'm definitely not the same person as I used to be before this incident" (Murray 2016b).

No Justice: Inquest into Police Killing of Craig Mcdougall Sees No Racism despite Mistreatment of Family, Eight-Year Delay

As seen above, inquiries into police violence typically offer findings that diminish the violence and deny racism in police actions. Such was the case with the 12 May 2017, inquiry into the killing of Craig McDougall, a young Indigenous man, by Winnipeg police. There was an eight-year delay between the killing and the inquest report. Twenty-six-year-old Craig Vincent McDougall was

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shot and killed by police outside his father's home on Simcoe Street in Winnipeg on 2 August 2008. Police claimed to be responding to a 911 call when they arrived at the home in the early hours. Officers stated that McDougall was found outside the house holding a cell phone and a knife. One officer shot him with a Taser, then he was shot with a firearm, which killed him. A private investigator who examined the case has cast doubt on the assertion that Craig McDougall held a knife when he was shot.

At the scene, the victim's family members were immediately arrested and put in handcuffs on the front lawn, an act that is termed the "dramatization of evil" or what Harold Garfinkel (1959) termed a degradation ceremony—a practice designed to denigrate and humiliate people. Jonathan Rudin, a legal practitioner and acclaimed scholar on Indigenous people, policing, and the criminal justice system, testified as an expert witness that the way McDougall's family was treated after the young man was shot exemplified systemic racism, as they were treated by police as criminals. Despite this, the inquest concluded that there was no evidence of racism in the police actions.

Instead, the Inquiry offered a typified finding that police were justified in their actions. In the inquest report, Associate Chief Judge Anne Krahn wrote there was "no evidence of racism direct or systemic in the moments leading to the shooting of Craig McDougall." The judge found the arrest of McDougall's father and uncle to be a simple misstep. In her words, "there were missteps in the immediate aftermath of the shooting when Craig McDougall's uncle and father were left handcuffed and detained without lawful authority." From the historical violence to contemporary practices of lethal violence, the settler colonial character of the Canadian state continues in the current context of Indigenous policing.

Conclusion

This chapter outlines several cases of police lethal force to illustrate specific ongoing colonial violence and racism found in the Canadian criminal justice system. From the denial of health support and the tropes of "drunkenness" to the rapid use of lethal violence and the varying, limited and failed inquiries, it is clear that racialized violence against Indigenous people exists at every level of the system in almost every situation. In focusing on policing, this chapter expands on the scholarship, traditionally more focused on Indigenous

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sentencing and incarceration, to ensure that the colonial roots of policing are made evident.

In providing an overview of the landscape of police use of lethal force against Indigenous people through several cases, this chapter highlights the various levels of interaction and encounter between Indigenous people and law enforcement across varied police agencies. It also shows the layers of racism and colonial prisms through which Indigenous people are viewed and rendered as subjects to be killed with limited or no accountability. This fills a void in the research on policing interactions with Indigenous in the Canadian context (Wortley et al. 2021). We must not lose sight that police in the Canadian state emerged as colonial forces of occupation and control. Police use of lethal force against Indigenous people must be understood in this context.

Any solutions to colonial violence must be embedded in an anti-colonial framework to analyze and address lethal uses of violence more fully. This includes accounting for generations of theft, murder, brutality, and genocide carried out by the various agencies (police, courts, corrections, law, border security, etc.) that are ostensibly designed to protect and serve. In the Canadian context, this means confronting the colonial nature of policing and addressing the ongoing practices of colonial conquest, control, and violence embodied in and expressed through institutions of national identity and symbolism like Canadian police forces.

Note

1 The briefing note was only made public in November of 2019 after an access to information request was filed by the *Globe and Mail* newspaper.

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9 Elders in Prison and Cycles of Abuse

Paul Hachey

Ongoing institutionalized racism and the abuse of Indigenous prisoners by Correctional Service of Canada (CSC) has led to the systematic erosion of genuine Indigenous initiatives and supports. The following is not an exhaustive list of grievances at Mountain Institution and likely dozens of other CSC facilities across the country; it only notes some of the most pressing grievances concerning the ongoing institutionalized racist practices and abuse of Indigenous prisoners, and the systematic erosion of genuine Aboriginal initiatives and supports by CSC. To give you a greater understanding of our plight, here is a brief list of abuses and inadequacies I have personally experienced.

Elders

> "The community will define who they have as their Elders."

Elder Vem Harper's quote is true for Indigenous communities both in and outside of prison. Prisoners fought hard for many years to have Elders allowed entrance into prisons for the purpose of ceremony, the sharing of teachings, and the distribution of medicines that would not otherwise be accessible during their confinement. Further to this, Section 74 of the Corrections and Conditional Release Act (CCRA) allows people in prison to have input into decisions affecting their lives, excepting matters of security. Correctional Service Canada's response was the creation of processes that deny prisoners any role in the selection process of Elders (a process which has become

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rife with nepotism), the criteria by which they are hired, or any method to challenge unqualified, ineffective, or abusive Elders or Aboriginal Liaison Officers (ALO).

Within the current framework, Elders must sign a one-sided CSC loyalty and obedience contract, titled Standards of Professional Conduct in Correctional Service Canada, before they are permitted within the facility.[1] This contract stipulates that Elders must sign off on any restrictions CSC wishes to place on Indigenous initiatives that conflict with the correctional agenda—a stipulation that not only disregards any Indigenous traditions, culture, or ceremony, but also policy, established law, and the Charter of Rights and Freedoms. This policy and practice, which an Elder must willingly or grudgingly sign off on, are legitimated by then declaring them as "Elder Approved."

In Indigenous communities, Elders are respected and cherished individuals who have amassed a great deal of knowledge, wisdom, and experience over many years, and who are recognized by their communities. They are individuals who contribute to the good of others and set examples. In the process, they usually sacrifice something of themselves, be it time, money, or effort. I am not speaking of all Elders who work for CSC, many of whom care deeply for the needs of their often-broken people and dedicate their lives, no matter how restrictive, to helping heal the socially wounded Indigenous prisoners under their care, but there also many others who act otherwise. As I outline below, CSC also tends to hire and support the more obedient, and even abusive, Elders.

In many Indigenous traditions, the eagle feather embodies the seven sacred teachings and serves as a physical symbol of honour and nearness to the Creator. This is because the eagle is one of the only known birds to fly above 30,000 feet. This is the place of the firmament and the veil to the other world where our ancestors and the thunder beings live. Many Indigenous prisoners have no one in their community to offer them an eagle feather. In prison, many Elders refuse such offerings and deny Indigenous prisoners this honour because they are incarcerated. Although I have recently received two eagle feathers from other prisoners from my home territory, for fourteen years I was refused access despite my commitment to living a traditional way of life. One Elder in the Pacific Region, who has many close blood relatives that are also working as CSC Elders, even refuses to let prisoners use an eagle feather during Circles. Instead, he forces inmates to use goose feathers, even though there is an eagle feather available on our altar. He has a large bag of

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these goose feathers that he passes out to participants. This has caused much confusion with the Indigenous prisoners, some of whom cannot tell the difference between an eagle feather and a goose feather. This Elder steals our tradition and honour. In one instance, when I brought my own sacred eagle feather that holds the feathers of two different kinds of eagles, he refused to use it. The same Elder, among others, also refuses to share their ceremonial pipes with us, claiming that they do not want prisoners contaminating them. These CSC Elders believe prisoners are foul and that our very touch is poison to the healing nature of the pipe, among other sacred objects.

On our sweat grounds we have a small building in which to change, and we also have small circles. A one point, a CSC Elder brought in a two-inch-thick circular piece of asphalt and placed it under our cast iron smudge pan. From the day I arrived at the institution, I began complaining about this foul obscenity being used on our altar, but the Elder refused to remove it. Eventually the asphalt began leaking a putrid, toxic, black, oily, sludge onto our sacred altar; eventually, through much prayer, it broke in half. When I tried to throw it away, it was picked out of the garbage and placed on the window ledge above the altar, so its malevolence could continue infecting the sacred space.

I am a hereditary Dreamer, Rainmaker, False Face maker, and the maker of sacred and ceremonial objects. Even though I am a prisoner, I am recognized as an Elder to my people. I am also very proudly Christian. I once showed the CSC Elder one of my designs for a medicine staff and he mentioned knowing of an Elder in the community that needed one. I agreed to make the staff if certain sacred provisions were carried out during the harvesting of materials. Two weeks later, the CSC Elder said they felt obligated to tell the community Elder that I was also a Christian. Because of that, they both agreed I could not understand Native spirituality, nor have the spiritual capacity to make sacred objects. The Elder told me I was "spiritually sick" and of "two minds" because I could not make up my mind about what I wanted spiritually. He further told me I could not follow traditional Indigenous values because they are incompatible with Christian ones. These comments sit in judgment of my soul and faith and disparages my community and family and our traditions, ancestry, teachings, hereditary knowledge, and titles.

When I first arrived at the institution, I would speak in circle. Whenever I made criticisms of CSC policy while speaking, CSC Elders immediately dismissed my opinion while defending CSC practices and would later target me when we were alone. They told me that "nobody cared about how I was

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being treated; nobody was interested in hearing about it." They further told me I needed to learn to keep silent about corrections. They said that I should just "get over it" and, if I ever wanted to see the street again, I had better learn to keep my "mouth shut" and start "jumping through the hoops." At one point, I finally told one particular Elder that the same type of advice was no doubt given to Survivors of residential schools and Sixties Scoop survivors when they fought for so many years to be heard. How is his demand for my silence any different from those others who were silenced, or the many other attempts to make Canada's genocide policies and practices of Indigenous peoples disappear? When I talked about some of my experiences of being a Sixties Scoop Survivor and having been raped at the age of seven, one Elder suggested that "the Sixties Scoop wasn't all that bad" and that "at least we got some of our people educated out of the deal." This Elder also refuses to give teachings on traditional or ceremonial knowledge. When asked, he either refuses to answer or orders one of the older Indigenous prisoners to give the teaching. As an example of this individual's lack of knowledge, I asked for a teaching on the sacred history of the tobacco plant, for the benefit of the younger brothers. The only response I received was, "It is known as the Golden Plant." CSC Elders are intensely disconnected with the well-being of Indigenous people in prison; they often refuse outright to offer support or give teachings on traditional or ceremonial knowledge.

Semma (Tobacco) or Stemma (Our Family Tree)

Indigenous usage of sacred tobacco in federal prisons is criminalized. We are refused the right to carry more than a few grains in our bundle or medicine pouch, and that is only if we can find an Elder willing to give any at all. All CSC grievance responses over the issue of Indigenous prisoners' access to tobacco, most of which are denied, show either an ignorance about tobacco or simply demonstrate the perpetuation of spiritual discrimination.

In Native culture, Semma (tobacco) has many ceremonial and non-ceremonial uses beyond only smoking it. Tobacco is a prayer conductor. For the Christians and Jews, oil was used to anoint people or sacrificial animals. It is to create a spiritual conductive medium by which the spiritual can make contact with the corporeal. When I take Semma into my hand and place it onto the earth or next to the fire, I am making a spiritual and psychic connection to the earth, the Universal Unconscious, and the Creator God. When I

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take tobacco and place it into an animal track that I am hunting, I am intentionally making a psychic connection to the symbiotic relationship between me, the animal, and the planet. When I then take the life of an animal, fish, bird, or plant, I put down Semma as an acknowledgement to the forces at work in the universe that first gave it life so that it can in turn give its life to sustain mine or my family's.

The state has declared its dominion over all tobacco products so they can convert this sacred plant into profit. First, nobody can own the rights to this sacred plant. The Indigenous peoples of North America have been using this plant as a trade item and sacred medicine for many millennia before colonization. Now CSC has decided to ban this sacred plant. That only further degrades the culture of the Indigenous prisoners in the name of a "smoke-free work place." To my shame, I must approach my Elders without Semma to offer them. The reason why we give our Elders tobacco is that they, above all others, must use more Semma in their daily lives. Using tobacco, they pray for the people, and they prepare the ceremonies—in addition to all of the other duties mentioned previously. Traditionally, the supplicant for ceremony or teaching from an Elder brings an offering of tobacco. CSC has perverted this ancient tradition by which we honour our Elders by making sure Elders have enough of our Semma to perform ceremony and offer prayers. When Semma is smoked in the sacred pipe, which was given to the people by the White Buffalo Calf Woman, it is transformed into a spiritual wind so that one can see, smell, and taste the essence of our prayers. We believe the unseen wind carries the spirits of our ancestors and all spiritual beings. Tobacco, when smoked or burned, connects us to this sacred wind. When we see the smoke, we are reminded of a simple truth: no air, no life. The state only sees it as a commodity to be controlled and taxed.

I would ask you to call on CSC to take active steps to reverse this repugnant practice of banning the use of tobacco. They must also stop ordering our Elders to refuse tobacco under threat of dismissal. Give us back the honour of our sacred ceremonies and way of life, which have become diminished without our Stemma and in so many other ways.

Systemic Religious Persecution and Cultural Genocide

Being born Indigenous, following traditional and cultural Indigenous ways and teachings, engaging in ceremony, and declaring our Elders on parity

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with religious leaders does not make one Indigenous by definition, nor does it make a way of life into a religion. CSC however, is attempting to force that distinction on Indigenous prisoners and peoples in many ways. The most destructive of these programs is the Pathways Initiative (CD 702–1).[2] This program is the next phase in Canada's residential school program and the next step in the cultural genocide of its Indigenous people.[3]

Pathways is a CSC created and controlled initiative that does nothing to treat the real socio-economic or colonial issues facing the Indigenous today. Instead, participants are forced to sign behaviour contracts, which demand participation in all ceremonies and teachings, even those that contradict our spiritual paths. Any mention of one's individual tribal culture, traditional teachings, or even thoughts toward Christianity are banned in discussion as irrelevant through the homogenization and forced indoctrination of all Indigenous spirituality, culture, and tradition into one contrived, state-sanctioned religion. Most of the Pathways participants that I have spoken with say that they get almost no teachings at all, and little ceremony, and that most of their Pathways activities consist of sharing personal information and crafts (crafting sessions only happen if there are supplies available). Furthermore, CSC is systematically de-funding all Aboriginal initiatives not associated with Pathways, which can only support approximately 15% of the Indigenous inmates. CSC refuses to officially acknowledge or recognize the accomplishments, pro-social traditional activities, or Christian lifestyles practised by many Indigenous prisoners who are not associated with Pathways. This imbalanced and repressive strategy contradicts the very foundation of our teachings and culture.

Under CSC direction, our population's Change of Season Ceremony has been disgraced. Traditionally, a Change of Season Ceremony is a community and family gathering of food, song, stories, ceremony, and dance to welcome the new season, say goodbye to the old, and to pray for a fortuitous coming one. In complete disregard for the many reasons Indigenous cultures have Change of Season Ceremonies, our families are often not allowed to attend; families who are central to Indigenous relations. We are also required to pay for the ceremony, which should not cost as much as it does, given that most of the food is country food potluck prepared by the Elders. While prisoners are forced to pay for these ceremonies, any staff member that is invited by another staff member does not. The problem arises when our finances are so minimal that the five dollars I am charged, which is one-third of my two-weeks' salary,

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makes it so cost prohibitive that the majority of prisoners either refuse or are unable to afford the ceremony (that's equivalent to someone paying $150 for a plate of country food). As a result, attendance numbers are low and Indigenous prisoners are left feeling frustrated, degraded, and demoralized. Unnecessary security personnel, staff, and management are attending and eating for free at an Indigenous ceremony where the Indigenous prisoners cannot afford to attend and/or their families are not allowed to visit.

Aboriginal Initiatives

Indigenous cultures are highly oriented toward family and community. That is the whole reason why the Aboriginal Wellness Group was created, although it has proven itself a complete failure in its capacity to provide the Indigenous population with a sense of brotherhood and family. This group was supposed to provide an opportunity for Indigenous prisoners to gather productively in cultural, pro-social, pseudo-familial activities. Sadly, the idea is now completely dead.

Although we are supposed to choose our leaders through an election process, our group leaders are often hand-picked by management. This is to prevent inmates from choosing our own leaders who can stand up for our rights and bring our collective interests to management. These individuals would not only be well-informed about our rights as Indigenous prisoners, but about our constitutional and legal rights as well. The reality is that management vets all such nominees with these qualifications and deems them undesirable troublemakers who are labelled a "unsuitable." In our most recent election for three vacant leadership positions, we were left with three management approved candidates out of approximately thirty well-suited nominees.

In addition to this, requests are refused for tribal, cultural, or local dialect information. I have been attempting to buy a Métis Sash for more than ten years. While in tears after months of effort, I literally begged the ALO to help me purchase my sash and a turtle shell to create a rattle that my tradition requires me to carry. Even though my plea was granted after jumping through every conceivable hoop, the staff still refused to process my order without explanation. Also, for years there have not been visiting Elders to teach the Indigenous population the making of ceremonial objects or crafts. There are no more bush craft and woodland survival circles that would teach these men how to hunt, fish, snare, trap, and dress the animals they catch, or

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which plants can be harvested for food and medicines. Other than the occasional sweat lodge ceremony and basic medicines, most funds are directed away from Indigenous social and cultural activities. This anti-Indigenous agenda has become so repressive that we are even being refused the ability to raise money for activities on our own. Previously, we created powwow drums, carvings, and crafts for sale in the community in order to raise money for other activities. Now all of our tools, and the space used to create these items, are locked away from us.

I write this as a call for action on behalf of Indigenous prisoners incarcerated in Correctional Service Canada (CSC) facilities across this country. Sadly, what I am making public will undoubtedly make me a target for more CSC retaliation. However, this will not deter me. These corrupt practices must be exposed to the light of public scrutiny if they are to be eradicated.

Notes

1 "Former Correctional Officer Charged with Sexual Assault of Inmates," Public Safety Canada, https://www.publicsafety.gc.ca/cnt/trnsprnc/brfng-mtrls/prlmntry-bndrs/20200831/054/index-en.aspx, accessed 17 November 2022. See, in particular, under the heading "Standards of Professional Conduct."

2 The Pathways Initiative is described at: https://www.csc-scc.gc.ca/acts-and-regulations/702-1-gl-eng.shtml.

3 Specifically, as defined under Article 2c of the Convention on the Prevention and Punishment of the Crime of Genocide (https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-prevention-and-punishment-crime-genocide).

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10 Gendered Genocide

The Overincarceration of Indigenous Women and Girls

Pamela Palmater

This chapter is based on the author's submission to the Liberal Senate Forum on Women in Prison, 18 April 2018, Ottawa.

Indigenous Nations all over Turtle Island on the lands now known as Canada, the United States, and Mexico, are diverse in their traditional cultures and governing structures. Historically, there were nonetheless some general similarities, especially in relation to the important role of Indigenous women. Indigenous women were often viewed at the hearts of our Nations as the life-givers and caregivers of our children, who in turn, would become the future Nations' warriors, hunters, healers, leaders, and life-givers. In addition to their critical roles as life-givers, Indigenous women also acted as inter-tribal interpreters, negotiators, political advisors, and strategists, warriors, and leaders. They were critical in establishing and maintaining trading relations and peace in our territories. The reality that Indigenous women are now overincarcerated today stands in stark contrast to their positions of power pre-contact. I outline below this trajectory of violent dispossession of Indigenous women to incarceration and the ongoing colonial impacts.

Since Indigenous women are central to their Nations, colonial governments targeted the women in an attempt to dismantle our Nationhood and dispossess us from our sovereignty, our lands, and our resources. While colonial governments subjected all Indigenous peoples to brutal acts of violence,

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Indigenous women were specifically targeted in a form of "colonization as gendered oppression"—one that combined racialized and sexualized violence (National Inquiry into Missing and Murdered Indigenous Women and Girls 2019a, 229). Indian agents and police used food rations to extort sex from Indigenous women and girls (Palmater 2016). Our children were stolen and placed in residential schools where many were tortured; medically experimented on; physically and sexually abused; starved and died (Truth and Reconciliation Commission of Canada 2015). After residential schools, our children continued to be stolen from their Indigenous mothers in the Sixties Scoop of forced adoptions, which continues today in the modern foster care crisis (*First Nations Child and Family Caring Society of Canada and Assembly of First Nations v. Attorney General of Canada* 2011). At the same time, Indigenous women and girls continue to be forcibly or coercively sterilized—sometimes without their knowledge or consent (National Inquiry into Missing and Murdered Indigenous Women and Girls 2019b).

In addition to the physical violence, the Indian Act 1876 specifically targeted Indian women's identities through exclusion from registration as an "Indian" and membership in our First Nations, setting up legal structures that prevented them from engaging in the governance of their communities for generations. This unequal treatment in Canadian law has been preserved in the Indian Act and, despite numerous court challenges and condemnation from the United Nations human rights treaty bodies such as those monitoring the implementation of the United Nations Declaration on the Rights of Indigenous Peoples and the Convention on the Elimination of All Forms of Discrimination Against Women,[1] Canada's piecemeal and limited amendments have left tens of thousands of First Nation women and children without social or legal entitlements (Canadian Feminist Alliance et al. 2019). The federal government refuses to repeal the remaining Indian registration provisions that combine to create legislative extinction dates for each First Nations—impacting First Nation men, women, and children alike (Palmater 2011). While we will all still be here physically, the disappearing Indian registration formula in the Indian Act—based on racist notions of blood quantum—ensures that there will be not legally recognized "Indians" in the future (Palmater 2011). Legislating Indian women and children out of the Act for decades has greatly reduced the recognized population already. No Indians means no Indian bands, and no reserves or treaty rights, which has always been an overarching goal of the Canadian state. Such racial and

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sexual discrimination against Indigenous women and girls has permeated federal and provincial laws, policies and practices resulting in devastating socio-economic conditions and is the root cause of today's abused, exploited, disappeared, and murdered Indigenous women and girls. As reported by the National Inquiry (National Inquiry into Missing and Murdered Indigenous Women and Girls 2019a), it is genocide.

Canada's dark history of racism, sexism, oppression, dispossession, and sexualized violence toward Indigenous women and girls continues into the present day. Ongoing racism and violence toward Indigenous women are enabled by poor socio-economic conditions which make powerful, warrior women vulnerable; it is not the so-called "high-risk" lifestyles that do so. Genocide is not a lifestyle; genocide is a complex set of legal, political, social, and economic structures of violence—created and maintained by Canada—through which Indigenous women and girls are forced to navigate to try to survive (National Inquiry into Missing and Murdered Indigenous Women and Girls 2019b). As I further discuss below, these are the conditions that fuel the overrepresentation of Indigenous women in prisons and Indigenous girls in youth corrections and the complex relationship between racism and sexism within justice, including sexualized violence against Indigenous women once they get to prison (Palmater 2016).

Indigenous peoples represent less than 5% of the population in Canada (Statistics Canada 2017).[2] Indigenous women make up about half the Indigenous population, which is less than 2.5% of the Canadian population. Yet Indigenous women are grossly overrepresented in all of the crisis-level socio-economic conditions throughout the country and are disproportionately impacted by poverty and violence. At any given point in time, dozens of First Nations live under some type of drinking water advisory (Council of Canadians, n.d.).[3] We know from previous studies commissioned by the federal government that 73% of First Nations water systems are medium to high risk (Neegan Burnside Ltd. 2011). This water crisis is on top of the housing crisis in First Nations where more than 23% First Nations live in overcrowded homes, 37% of homes are in need of major repair, 50% have mould or mildew, and some are simply not safe for human habitation (Assembly of First Nations 2013). Indigenous peoples can represent numbers as high as 50–90% of homeless people, depending on the region (Thistle 2017).

While these conditions are bleak for Indigenous people in general, they disproportionately impact Indigenous women, who are also overrepresented

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as single mothers. Recent reports confirmed that 53% of First Nation children on reserve live in poverty and those rates jump to 65% and higher in provinces like Manitoba and Saskatchewan (Beedie, Macdonald and Wilson 2019). These conditions of poverty have led social workers to accuse Indigenous mothers and families of neglect and now half of all children in foster care are Indigenous. First Nations children are far more likely to be reported for conditions of poverty than abuse (Wall-Wieler et al. 2017). Again, in provinces like Manitoba, that number is as high as 90% (Province of Manitoba 2018). It should be no surprise that First Nations women are far more likely to suffer from mental health issues like anxiety, depression, and substance abuse, especially where they have had their children apprehended (Canadian Association of Elizabeth Fry Societies 2016, 6). The rates of suicide attempts and suicides are higher for Indigenous mothers, Indigenous women have higher rates of suicide attempts overall, and suicide is one of the leading causes of death in Indigenous youth (Wall-Wieler et al. 2018). The many and often criminalized ways in which Indigenous women and girls must navigate chronic poverty and violence, such as drug use or trafficking, prostitution, or theft, has also gone largely unaddressed by the federal and provincial governments. This situation has also created the crisis of abused, exploited, disappeared, and murdered Indigenous women and girls.

According to the federal government and the National Inquiry into Murdered and Missing Indigenous Women and Girls, there are more than 4,000 murdered and missing Indigenous women and girls in Canada (The Guardian 2016). According to an RCMP (2014) report conducted prior to the National Inquiry and based on a limited number of 1187 "known" cases of missing and murdered Indigenous women, Indigenous women represented more than 11% of missing women and 16% murdered women nationally. However, we should be wary about relying on these numbers, given the many claims of under-investigation and the admitted under-reporting of ethnic identity of both the victims and perpetrators. Just like the instance of children in foster care, the national statistics do not paint the whole picture. In provinces like Manitoba and Saskatchewan, the murder rates of Indigenous women and girls are as high as 49% and 55% respectively. Contrary to the racist stereotypes often perpetuated in the media, Indigenous women are less likely to be killed by their spouse than Canadian women (RCMP 2014) and are more likely to be killed by a stranger (Bruser et al. 2015). Given the failure of governments to protect them, Indigenous women are also seven times more likely to be

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targets of serial killers (Benjamin and Hansen 2015).[4] Indigenous women and girls also represent more than half of human trafficking victims (Barrett 2013). Relatively speaking, the perpetrators also know they have a high chance of getting away with it (Ibrahim 2016).[5] It is clear that Indigenous women have been made more vulnerable to every form of violence as a direct consequence of colonialism.

All of these statistics related to the violence perpetuated by the state and society are replicated in the justice system. As of 2022, Indigenous women make up 50% of all women in federal prison and this figure continues to rise every year (Zinger 2022, 20). These numbers have increased by more than double since 2000. This is despite the fact that incarceration for Canadians in general is on the decline (Zinger, cited in Cardinal 2021). Indigenous girls make up 53% of those in youth corrections, but in some provincial facilities make up as much as 98% of the female correction population (Praill 2018). We know from the decades of reports from the Office of the Correctional Investigator, the Canadian Association of Elizabeth Fry Societies, and Indigenous women's organizations that this problem has been getting worse with no substantive action from federal or provincial justice systems to slow or reverse the crisis (see also Standing Senate Committee on Human Rights 2021). From these reports, Indigenous women are also far more likely to be classed as maximum-security and considered high risk and high need and are also overrepresented in solitary confinement/segregation. Self-injury by Indigenous women in prisons is 17 times higher than non-Indigenous women (Zinger 2015, 51). Indigenous women are targeted at every level of the system.

While each Indigenous woman and girl in corrections has her own unique story and set of life experiences, the women also share many similar characteristics, which includes a common history of colonization, violence, and poverty; fewer opportunities for formal education; far lower incomes; and higher rates of mental health concerns and addictions than the general public. Approximately 90% of Indigenous women have suffered physical and/or sexual abuse prior to being incarcerated (Canadian Association of Elizabeth Fry Societies 2016, 10). As many as half of Indigenous women in prison in any given institution come from families impacted by residential schools. In 2016, more than half of Indigenous women had either attended residential schools or had a family member who did, and 48% had been removed from their family home by the foster system (Sapers 2016, 44) and the majority of those in youth corrections came from the foster care system (Brownell et al.

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2020, xvii). The bitter irony of this crisis is that the majority of Indigenous women in prison are single mothers, and the majority of their children will end up in foster care. This serves only to start the cycle of dispossession again. In other words, Indigenous children are more likely to end up in jail than get a high school education (Hyslop 2018).

This crisis is not new. Indigenous overincarceration is well known to federal, provincial, and territorial governments and to those working in the justice system in general. Not only is this a long-standing crisis, but it continues to get worse. The incredible rates at which Indigenous peoples generally, and Indigenous women specifically, have been incarcerated have been called the new residential schools (Chartrand 2019). After decades of Indigenous peoples, human rights organizations, women's organizations and Canada's own Office of the Correctional Investigator raising the alarm on this issue, government officials have not taken urgent action. Canada has been found guilty of genocide against Indigenous women and girls for their continued failure to protect them from poverty, discrimination, violence, and overincarceration (National Inquiry into Missing and Murdered Indigenous Women and Girls 2019a).

This discrimination against Indigenous women and girls stems from Canada's violent colonization of Indigenous territories but continues in the form of conscious acts of genocide based on sexism and racism. There have been many justice inquiries and commissions that have documented racism against Indigenous peoples at all levels of the justice system, including the *Royal Commission into the Prosecution of Donald Marshall Jr.* (Hickman 1989); the *Manitoba Aboriginal Justice Inquiry* (Chartrand and Whitecloud 2001); the *Saskatchewan Indian Justice Review* (Indian Justice Review Committee 1992); the *Report of the Royal Commission on Aboriginal Peoples* (Royal Commission on Aboriginal Peoples 1996); the *Commission of Inquiry into Matters Relating to the Death of Neil Stonechild* (Wright 2004); and the *Ipperwash Inquiry* (Linden 2007) to name a few. At the core of these inquiries is the racism experienced by Indigenous peoples from police, lawyers, judges, corrections officials, and at all stages of the justice system. No government to date has directly confronted or reversed this racism in the justice system in any substantive way.

Year after year, the Office of the Correctional Investigator has highlighted the overincarceration of Indigenous peoples and has identified it as:

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- a continuing crisis and embarrassment (Stewart 2003, under "Aboriginal Offenders")
- unchanged, unacceptable, and discriminatory (Stewart 2000, 31)
- a grave situation and a result of systemic discrimination (Sapers 2005, under "Aboriginal Offenders")
- a persistent pattern of disadvantaged outcomes and inequitable results (Sapers 2008, under "Enhanced Capacities")
- a gap between Indigenous and non-Indigenous that continues to widen (Sapers 2009, 29)
- a direct result of federal correctional policies and practices (Sapers 2010, 43)
- a breach of statutory and constitutional rights of Indigenous peoples with disturbing and entrenched imbalances, where federal corrections seems impervious to change (Zinger 2020, under "Indigenous Corrections—Update").

The Supreme Court of Canada (SCC) in *R. v. Gladue* (1999) stressed the need for alternatives to incarceration for Indigenous peoples, given the intergenerational impacts of colonization. The issue came up again in *R. v. Ipeelee* (2012), where the SCC confirmed their instructions to find alternatives to incarceration for Indigenous peoples at all levels of the system (see also *Twins v. Canada [Attorney General]*, 2016). Yet, despite those cases, incarceration rates only continue to increase. In addition to this, the Gladue Reports that are prepared for Indigenous peoples as a way to inform judges about Indigenous backgrounds before sentencing are not available to all Indigenous people, do not stem the tide of incarceration, and are even used as tools to further discriminate against Indigenous peoples by using their histories against them once they enter corrections by classifying them as higher security risks (The Agenda 2018, 4:47–7:40).

Imprisonment represents not only stolen years from an Indigenous woman's life, but it also results in reduced life chances. A woman who has been imprisoned is less likely to secure quality employment and provide for her children.[6] She is also at higher risk of homelessness and losing her children to foster care and, as a result, she also has a higher chance of further criminalization. Indigenous girls in foster care have a higher chance of ending up in youth corrections and less than 50% of Indigenous children in foster care complete high school (Rutman and Hubberstey 2016, vii). The majority (85–95%) of forced foster care and adoptions break down as the child gets older, leaving

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them more likely to be homeless, vulnerable to exploitation and trafficking, and over policed (Sinclair 2007). Some move straight from youth corrections to adult prisons. It is a circle of state racism, sexism, violence, criminalization, and oppression that is endured from generation to generation.

Compounding this injustice is the significant risk to the safety, well-being, and lives of Indigenous women while in prison. Segregation is a unique reality for women prisoners, especially those in maximum security. Indigenous prisoners have the longest average stays in segregation and make up 50% of all those placed in solitary confinement (Native Women's Association of Canada 2017, 6). This is despite that solitary confinement is considered by the United Nations and the Canadian courts as a form of torture (*Corporation of the Canadian Civil Liberties Association v. Her Majesty the Queen* 2017; United Nations Human Rights Committee 2015).[7] Indigenous women in prison are also at higher risk for physical harm. According to Correctional Service Canada, 27% of deaths in federal prisons between 2009 and the end of the fiscal year 2016 were Indigenous people (Correctional Service Canada 2017, 35, Table 22). Assaults involving Indigenous women have doubled in recent years and the use of force on Indigenous women has tripled (Zinger 2015, 51). Corrections officers in prisons in different provinces are under scrutiny for numerous allegations of physical and sexual assaults of women prisoners (Culbert 2019). The Canadian Association of Elizabeth Fry Societies (2016) has long called for external reviews of these sexual assaults and to stop the use of male guards for women in prison.

While many changes are needed within corrections, more importantly, there is a lack of focus and priority put on the prevention of and alternatives to incarceration in the first place. Similarly, legislative amendments that prescribe mandatory minimum sentences negate the ability of judges to use their discretion in sentencing, which again has a disproportionate impact on Indigenous peoples. Laws that limit the ability of a judge to consider the many ways in which Indigenous women are criminalized for negotiating their way through poverty, violence, racism, and state genocide, make the crisis worse and does not serve any valid legislative or sentencing objective.

There is ample research to demonstrate that racism against Indigenous peoples infects every level of the justice system from policing, lawyers, judges, sentencing, corrections, and release. As this chapter has shown, Indigenous women are placed in vulnerable positions from systemic racism to the distribution of resources and Canada's failure to protect their core human rights.

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The incarceration of Indigenous women also guarantees that their children will be impacted and statistically more likely to end up in youth corrections and adult prisons themselves. This is all done knowingly by those in the justice system.

This is a national crisis that requires urgent remedial action. It is time to move past surfaced recommendations and reforms like cultural sensitivity training for police, judges, and corrections officers. The problem is not a lack of awareness of or Indigenous culture itself—the problem is colonialism, racism, and sexism. Our culture is not at the root of the problem; the problem is the lack of accountability for sexualized violence in society and state institutions—including prisons and youth corrections. While this chapter cannot cover all the needed recommendations on how to move forward to end this critical crisis within Canada's larger genocide against Indigenous women and girls, the following represents a few core recommendations that would help stem the increasing rates and reverse them:

1. Immediately provide adequate needs and rights-based funding for all social programs on- and off-reserve at least on par with provincial funding levels, along with significant additional investments that address the housing and education backlogs, long-standing infrastructure deficiencies, and cumulative social and health problems that developed from lack of funding, with special attention to the particular disadvantages faced by Indigenous women and girls.
2. Sufficient and stable funding to support First Nation justice systems, healing lodges, shelters, health facilities, and other related supports both on- and off-reserve, to enable alternatives to incarceration and the immediate decarceration of those already in prison, together with programs and supports for post-release.
3. Immediately develop and implement a strategic decarceration plan for Indigenous women that provides an independent expert analysis on risk levels for current prisoners, together with age, health status, pregnancy, motherhood, and other social factors, together with a fully funded plan for release based on a combination of commuting sentences, early release, parole, community release along with the much-needed resources for support and other alternatives.
4. Conduct a formal and targeted review (in partnership with First Nations, women's organizations, prison advocacy groups and

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human rights experts) of physical and sexual abuse of Indigenous women prisoners within federal and provincial prisons and youth corrections, with a view to recommending and implementing preventative measures, and enforcing institutional accountability and discipline on a concept of zero tolerance for use of force, sexual harassment and/or assault against Indigenous women.

5. Put an end to the practice of employing male staff to work in front-line contact with women in prisons and with youth in corrections.
6. Increase funding for institutional and community support for Indigenous women with mental health issues to address the reality that women are being criminalized and incarcerated because of poverty, previous histories of physical and/or sexual abuse, social disadvantages, racialization, and disabling mental health and intellectual capacity issues.
7. Put an end to the practice of placing Indigenous women prisoners in segregation, solitary confinement, segregated intervention units, or any similar conditions under a different name.
8. Amend the Criminal Code to allow judges to depart from mandatory minimum sentences and restrictions on the use of conditional sentences.
9. Make full reparation and compensation for the harms suffered by Indigenous women and girls within prisons and youth corrections and address the lack of Indian registration, band membership, self-government enrollment, and access to treaty rights, Indigenous rights and their traditional lands and territories whether they live on- or off-reserve, in rural and remote areas, or large urban area.

Canadian prisons are not protecting society at large but are instead segregating Indigenous peoples—attacking the hearts of our Nations and clearing the lands for increased settlement and extraction of resources. There is no room to allow this crisis to continue unless the plan is exactly to incarcerate more Indigenous peoples. As a democratic society, based on the rule of law, which includes non-discrimination, non-violence, and respect for human rights, and Indigenous rights in particular, there needs to be a vested interest in addressing this crisis.

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Prisons are the new residential schools for Indigenous women and girls—complete with racism, sexism, physical abuse, sexual abuse, and torture. Canada has already been found guilty of both historic and ongoing genocide against Indigenous women and girls—they should not be imprisoned for trying to survive such genocide. Decarceration and preventing incarceration of Indigenous women and girls must be a central part of any transitional justice plan moving forward to end genocide against Indigenous women and girls in Canada.

Acknowledgements

This chapter is based on an oral and written submission I made to the Liberal Senate Forum on Women in Prison that took place on 18 April 2018 in Ottawa, Ontario. I have combined both the oral submission, questions and answers asked of the Senate Committee members, together with my written submission to complete this article. I have also updated it to include the most recent prison statistics and analysis from the National Inquiry into Murdered and Missing Indigenous Women and Girls. Thank you to Vicki Chartrand, Josephine Savarese, and their students who provided the transcription and additional research for this article.

Notes

1 United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*, Res. 61/295, adopted 13 September 2007, https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html; United Nations, *Convention on the Elimination of All Forms of Discrimination Against Women*, Res. 34/180, adopted 18 December 1979, https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women.

2 According to Statistics Canada, Indigenous peoples made up 4.9% of the Canadian population in 2016.

3 "Safe Water for First Nations," Council of Canadians, https://canadians.org/fn-water/, accessed 24 February 2023.

4 Craig Benjamin and Jackie Hansen, "#MMIW—New Information About 'Serial Killers' Another Reason Why an Inquiry Is So Urgent," Amnesty International blog, 24 November 2015, https://www.amnesty.ca/blog/blog-mmiw-new-information-about-serial-killers-another-reason-why-inquiry-so-urgent/.

5 The majority of human trafficking court cases are stayed or withdrawn.

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6 See John Howard Society for a discussion on how instability in employment and/or under-employment post-incarceration are risk factors for recidivism where criminal records can act like "automatic barriers" to finding work due to the requirement of criminal record checks. https://johnhoward.on.ca/wp-content/uploads/2016/11/Reintegration-in-Ontario-Final.pdf, 20–22, accessed 17 November 2022.

7 The United Nations Special Rapporteur on Torture, Mr. Juan E. Mendez stated: "The practice of prolonged or indefinite solitary confinement inflicts pain and suffering of a psychological nature, which is strictly prohibited by the Convention Against Torture."

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Part III

The Bureaucratic Trappings of Colonial Justice

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11 Moral Culpability and Addiction

Sentencing Decisions Two Decades After *R. v. Gladue*

Gillian Balfour

As settlers on the land of the Anishinaabeg and Haudenosaunee, my people have spent over 150 years "disappearing Indians" (Razack 2015) through the forcible removal of Indigenous people from their land through a litany of common laws and practices that enabled starvation, sexual and physical abuse, dispossession of land and identity, disenfranchisement, removal and loss of children, outlawing of traditional ceremony, withholding of medical treatment, and forcible sterilization (Milloy 1999; Monchalin 2016). Imprisonment, especially of Indigenous women within the Canadian provincial and federal prison systems, is argued to be one of the most expansive and systematic practices of contemporary colonial control (Chartrand 2015; Monture-Angus 1999). In this chapter, I explore how sentencing practices contribute to the ongoing disappearance of Indigenous women into Canadian prisons.

In Part I, I provide an overview of sentencing objectives and principles set out in Bill C-41, An Act to Amend the Criminal Code (Sentencing) (1995, SC c.22). A specific focus of this discussion is section 718.2(e) of Bill C-41, which establishes the statutory requirement to consider the special circumstances of Indigenous peoples, and to seek out non-carceral sanctions whenever possible. Following this, I review the legal arguments made in the case of *R. v. Gladue* (1999) in which the Supreme Court of Canada reaffirmed section 718.2(e). Whereas section 718.2(e) and the Court's ruling in *Gladue* should have resulted in lower rates of incarceration for Indigenous people,

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there is a steady increase in rates of incarceration especially for Indigenous women. In the second part of this chapter, I examine the cases of *R. v. Ipeelee* (2012) and *R. v. Moostoos* (2017) to theorize the persistent overincarceration of Indigenous women despite these sentencing law reforms. In *Ipeelee*, the court affirmed the importance of special consideration for Indigenous peoples in all cases, including those under long-term supervision orders for serious personal injury offences, and that rehabilitation is of paramount importance in sentencing. In *Moostoos*, an Indigenous woman from Saskatchewan who was living on the streets and was addicted to crystal methamphetamine, pled guilty to manslaughter. The judge ruled that, due to the seriousness of offence, consideration of *Ipeelee* did not apply in this case. The judge proceeded to sentence Ms. Moostoos to four years in addition to the three years she spent in pre-trial custody. In Part III, I discuss how the more punitive treatment of Ms. Moostoos can be understood as the gendering and racializing of risk and addiction. I extend Sherene Razack's analysis of systemic neglect of Indigenous peoples within policing and healthcare systems, to consider how medical and legal narratives of alcoholism and addiction are used by the carceral state in the justification of the imprisonment (and disposal of) Indigenous women.

Part I: Sentencing Law Reforms in Canada: From Bill C-41 to *R. v. Gladue*

Canadian sentencing laws have been the subject of serious legal and political debate since the mid 1960s. Starting with the Ouimet Report (1969), the work of the now disbanded Law Reform Commission of Canada (Hartt 1976), the Canadian Sentencing Commission (Bisson 1987), and culminating with the Daubney Report (Daubney 1988), various recommendations have been made to address the overuse of incarceration and unwarranted disparity in sentencing. At the same time, there is also the demand for "truth in sentencing" by victim's rights groups seeking more accountability through harsher punishment. These seemingly irreconcilable aims of constraining the use of incarceration but not the independence of the judiciary to punish, has culminated in the drafting of expansive sentencing law reforms. In 1995, Bill C-41 set out for the first time in Canadian law the overarching purpose of sentencing, sentencing objectives, and sentencing principles. The purpose of sentencing someone convicted of a crime is to foster "respect for law and the maintenance of a just, peaceful, and safe society by imposing just sanctions"

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(An Act to Amend the Criminal Code [Sentencing] 1995, SC c. 22, s. 6, amending s. 718 of the Criminal Code).

According to the Criminal Code (ss. 718.1 and 718.2), the fundamental principle to guide the crafting of a sentence is proportionality: the sentence must be proportional to the gravity of the offence and the moral responsibility of the offender. Other principles that are to inform a proportional sentence include:

- consideration of aggravating and mitigating factors
- parity across similar offenders convicted of similar offences under similar circumstances
- in cases of consecutive sentences for multiple offences, total sanction not excessive
- least restrictive sanctions imposed whenever appropriate
- restraint in the use of imprisonment, particularly with regard to Indigenous offenders

Under the 1995 amendments to the Criminal Code, judges retained their autonomy and discretionary authority to craft a sentence that considers the objectives such as denunciation, deterrence, rehabilitation, incapacitation, reparation of harm, and recognition of harm done to the victim and community.

Bill C-41 also included a new sentencing option: conditional sentences. Conditional sentences are a non-carceral sanction that could be handed down in cases where the criminalized person could be sentenced to up to two years in custody. A conditional sentence allows for them to serve their prison term in the community under various conditions. The intent of conditional sentences is to reduce the over-reliance on incarceration as a sentencing option, to encourage a restorative justice approach to sentencing by enabling criminalized people to remain in their communities, and to address the harms caused by their offence (Roberts and Roach 2003). Since 1996, conditional sentences have been criticized on several fronts. First, such sanctions are viewed as a form of "cheap justice," especially in cases of intimate partner violence wherein men convicted of sexual or domestic assault can be supervised in their communities with little concern for the victims (Cameron 2006; Coker 2006; Balfour and DuMont 2012). Second, conditional sentences extend rather than constrain the reach of the carceral state. Roach (2000) argues that criminalized people who would have been sentenced to a term of probation with no risk of incarceration are rendered more vulnerable to being incarcerated under this so-called progressive sentencing provision. Finally, other legal

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scholars have referred to conditional sentences as a penal paradox, given that a person who is judged as deserving of incarceration is nonetheless returned to the community to serve their sentence (Gelsthorpe and Morris 2002).

Politically, conditional sentences have proven to be controversial for austere law and order governments who have clawed back community resources, especially for the "criminalized other" (Garland 2012), leaving few supports available for effective supervision and reintegration. Ideologically, conditional sentences are often used as evidence of that state being "soft on crime." In 2007, the Conservative federal government tabled Bill-C9 to amend section 742.1 of the Criminal Code to severely limit the types of offences wherein a conditional sentence could be handed down (An Act to Amend the Criminal Code [Conditional Sentence of Imprisonment], SC 2007, c. 12). These amendments have had far-reaching effects on sentencing outcomes, in seeming contravention of the potential of section 718.2(e) to restrain the use of incarceration for Indigenous people. Judges are empowered on one hand to address the unique circumstances of Indigenous peoples' lives through non-carceral sanctions, yet on the other hand are constrained from doing so through conditional sentencing.

Despite the progressive potential of Bill C-41, with regards to section 718.2(e) to consider the special circumstances that are unique to Indigenous peoples, and the opportunity for conditional sentences served in the community rather than imprisonment, there has been a steady increase in the overrepresentation of Indigenous women in provincial and federal prisons. As reported by Department of Justice:

> In 2017/2018, Indigenous adult men accounted for 28% of the men admitted to custody in the provinces and territories. Indigenous women made up a greater proportion of custody admissions than their male counterparts, accounting for 42% of the women admitted to custody. Compared to 2007/2008, the number of admissions of Indigenous men to provincial/territorial custody increased 28% while the number of admissions of Indigenous women increased 66% in the provinces and territories. (Malakieh 2019, 4)

An often undertheorized aspect of Indigenous women's overincarceration is how their imprisonment intersects with the staggering rates of gender-based violence and femicide perpetrated against them. This victimization-criminalization-punishment continuum builds on earlier pathways model espoused by some feminists to explain individual women's criminal behaviour

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because of the effects of trauma (see Comack 1996; 2018; Bloom 2003). For example, the pathways model is rooted in an understanding of women's own violence or dependency on alcohol or illicit drugs as being linked to the impacts of their earlier experiences of sexual and physical abuse. The effects of these traumas result in ongoing psychological distress such as post-traumatic stress disorder, depression, self-harm, and suicide ideation, placing them at high risk for addiction to drugs, the use of violence to survive or resist ongoing victimization, and involvement in exploitative relationships. Thus, women with high rates of sexual or physical victimization are more likely to be criminalized (Covington 2007; Covington and Bloom 2007).

In contrast, I suggest the continuum model is more useful because it exposes ways in which criminal justice processes link Indigenous women's victimization to how they are policed, how their moral culpability is established, and ultimately how their level of risk and degree of securitization are assessed once imprisoned (Balfour 2013). Indigenous women experience three times the rates of violent victimization than non-Indigenous women. According to Statistics Canada (Mahony, Jacob and Hobson 2017), based on the 2014 General Social Survey results, the rate of violent victimization of Indigenous women is 160 incidents per 1,000 whereas for non-Indigenous women the rate is 75 incidents per 1,000. In turn, Indigenous women are more likely to be charged with, and imprisoned for, violent offences than non-Aboriginal women. In 2017, Statistics Canada reported that the proportion of Aboriginal females accused of homicide (4.33 per 100,000 population) was higher than for non-Aboriginal females (0.14 per 100,000 population).

In earlier studies of sentencing decisions in cases of Indigenous women criminalized for violent offences, I argued that it is the gendered conditions of endangerment in their own communities that foreground violence experienced and perpetrated by women (Balfour 2008, 2013). Conditions of endangerment include overcrowded and unsafe housing, high unemployment rates, the effects of residential schooling on family systems, and the displacement of Indigenous women from their traditional leadership roles. These conditions are compounded by colonial systems of child welfare as well as police indifference and brutality (Amnesty International 2006; Rhoad 2013; Oppal 2012). In the words of women who addressed the National Inquiry into Missing and Murdered Indigenous Women and Girls (2019, 510), "violence is as constant presence . . . threats of sexual violence made by family and friends reveal how Indigenous women live with those who commit violence.

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And women and girls devise ways of creating safety as violence is an expected part of their lives." An important question that drives this scholarship is how then does the law attend to the "constant presence" of violence in the lives of criminalized Indigenous women?

R. v. Gladue

Despite the legislated provisions of section 718 that set out numerous sentencing principles and objectives, the meaning and implications of section 718.2(e) specifically for sentencing of Indigenous people has been the most contentious. The constitutional decision with regards to sentencing under the provision of section 718.2(e) was the case of *R. v. Gladue* (1999). Jamie Lynn Gladue is a young Indigenous woman who, at that time, was convicted of manslaughter in the death of her common law husband after years of documented domestic violence. In that case, she was initially sentenced to three years in prison, but on appeal her defence counsel argued the lower court had not applied 718.2(e) or section 742.1 in her sentencing and failed to consider her status as an Indigenous person simply because she did not live on a reserve. On appeal, the Supreme Court of Canada upheld the appeal but set aside the non-carceral sentence sought by the defence and imposed instead a three-year sentence due to the seriousness of the offence, and the need for denunciation and deterrence. Importantly, for the purposes of this chapter, the Supreme Court established that judges and lawyers must consider the "the background factors which figure prominently in the causation of crime by aboriginal offenders":

> Years of dislocation and economic development have translated for many aboriginal peoples, into low incomes, unemployment, lack of opportunities and options, lack or irrelevance of education, substance abuse, loneliness, and community fragmentation. These and other factors contribute to a higher incidence of crime and incarceration. (*R. v. Gladue*, at para. 67)

It is important to note, however, that the lower court decisions and the Supreme Court of Canada together did not recognize gender-based violence as a systemic or background factor that may contribute to Indigenous women's criminalization.

In my earlier research, I explored fifteen years of sentencing decisions following *Gladue* to discern how sentencing decisions in cases of Indigenous

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women convicted of violent offences made sense of gender-based violence under section 718.2(e) (Balfour 2013). Case law reviewed at that time indicated that sentencing judges appear to minimize the continuum, resulting in the imprisonment of Indigenous women whose lives are dramatically shaped by the threat of and lived experiences of sexual and physical violence. Gender-based violence appears to be unrecognizable under section 718.2(e) as special circumstances of Indigenous women's lives to be considered at sentencing. How then are the legal narratives in sentencing decisions constructed in cases of criminalized Indigenous women like Jamie Lynn? Despite the evidence of gender-based violence in her life as the context for her own use of violence, the focus of the sentencing court's decision appeared to focus on the interpretation of section 718.2(e) against other sentencing objectives such as deterrence and denunciation, especially in serious personal injury offences. As stated here by the Supreme Court justices in *Gladue*:

> In describing the effect of s. 718.2(*e*) in this way, we do not mean to suggest that as a general practice aboriginal offenders must always be sentenced in a manner which gives greatest weight to the principles of restorative justice, and less weight to goals such as deterrence, denunciation, and separation. It is unreasonable to assume that aboriginal peoples themselves do not believe in the importance of these latter goals, and even if they do not, that such goals must not predominate in appropriate cases. Clearly there are some serious offences and some offenders for which and for whom separation, deterrence, and denunciation are fundamentally relevant.
>
> Yet, even where an offence is considered serious, the length of the term of imprisonment must be considered. In some circumstances the length of the sentence of an aboriginal offender may be less and in others the same as that of any other offender. Generally, the more violent and more serious the offence the more likely that it is as a practical reality that the terms of imprisonment for aboriginals and non-aboriginals will be close to each other or the same, even taking into account their different concepts of sentencing. (*R. v. Gladue*, at paras. 78–79)

Since 1999, *Gladue* has been cited in over two thousand common and civil law cases before the Supreme Court of Canada and various provincial courts of appeal. In addition to its significant doctrinal impact, this decision has influenced the creation of specialized legal advocacy services. For example,

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Aboriginal Legal Services, in Toronto, provides specialized legal advocacy including specially trained Gladue Report writers who can support Indigenous men and women who have admitted guilt and are facing at least 90 days of incarceration. Today there are over twenty satellite offices of the Aboriginal Legal Services throughout Ontario that are staffed with Gladue Report writers. Other specialized courts have been developed in other provinces and territories following the *Gladue* decision to implement the objectives set down in section 718.2(e). There are seven alternative courts: four in BC, one in Alberta and Saskatchewan, and a fully integrated Criminal and Indigenous court in Nunavut. Each of these specialized courts utilize Gladue Reports as sentencing tools intended to bring "holistic culturally situated assessments" (Hannah-Moffat and Maurutto 2010, 274) into the sentencing decision-making process. For example, personal experiences of alcohol dependency and interpersonal violence are contextualized in the devastating intergenerational effects of abuse experienced in residential schools. After a lengthy interview process and consultation with the Indigenous person's community to determine how best to meet her needs as an Indigenous person outside of the carceral context, the Gladue Report writer proposes sentencing options. These reports are intended to augment the pre-sentence reports used by the court to inform their understanding of the accused's personal circumstances. Legal scholars however have pointed to the problematic implementation of the Gladue Report process. Milward and Parkes (2011) for example, point out how pre-sentence reports remain the standard format through which judges are apprised of the Indigenous person's lived experiences. Gladue Reports are often appended to pre-sentence reports, which are structured in a manner that prevents a robust analysis of complex socio-cultural factors.

Despite this precedent-setting decision handed down by the Supreme Court in *Gladue*, and the evolution of Gladue Reports and specialized courts, sentencing judges can rely on standardized pre-sentence reports generated by probation officers often using the LSI-R (Level of Security Inventory-Revised). The LSI-R is an actuarial assessment tool that calculates an individual's risk to reoffend, their criminogenic and dynamic needs, and their responsivity to learning. This "risk need responsivity" model predicts the likelihood of recidivism as well as treatment and supervision need that should be considered in the determination of an appropriate sentence. The shift toward actuarial sentencing is cast as "smarter sentencing" that is evidence-based to prevent disparate (excessive or lenient) outcomes (Hannah-Moffat 2013). Critics of

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these actuarial or statistical sentencing methods assert that the way risk is constituted on the basis of aggregate data can lead to an individual's inflated risk score and thus more punitive sentencing (Hannah-Moffat and Maurutto 2010). For example, most criminalized people are marginalized by poverty, lack of education, and familial breakdown and violence; these structural conditions are restated through an actuarial logic as predictors of individual risk to reoffend. In this way LSI-R risk assessments sidestep important legal questions such as: should LSI-R generated pre-sentenced reports be entered as evidence, and as such should they be subject to legal scrutiny and cross-examination; is the LSI-R as a risk/needs assessment tool valid in cases of racialized men and women, given its reliance on aggregate population-based data? As explained by Hannah-Moffat and Maurutto (2010, 275):

> [There is] little guidance on how probation officers ought to reconcile their assessments of the offender with the policy's emphasis on criminogenic risk/need. The result is Aboriginal offenders continue to be characterized as high risk and high need. PSR [pre-sentence report] policy is thus limited. Its effect is to situate race within a broader actuarial risk framework with no clear direction on how to reconcile the embedded contradictions. Race is identified as a "special consideration" for Aboriginal offenders, but simply adding race as an addendum does not sufficiently address the situational context of the Aboriginal person, nor the theoretical and methodological difficulties associated with the use of conventional risk/need assessment instruments on non-white and Aboriginal populations.

These authors argue that Gladue Reports tend to obfuscate race when merged with LSI-R pre-sentence reports in the final risk/need assessment and sentencing recommendations. As a tool devised to predict the likelihood of recidivism based on offender and offence characteristics, the LSI-R is grounded in a gender-blind model of risk–need responsivity. According to advocates of the LSI-R scale, men and women share similar risk and criminogenic need factors that allow for prediction of recidivism as well as the type of interventions required. Men and women only differ based on how they acquire risk factors (such as peer groups or family members) and their responsivity to treatment.

For Indigenous women, the LSI-R obscures the effects of both gender and race, resulting higher risk–need scores, and lower responsivity to treatment.

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As documented by various government and Indigenous led inquiries, gender-based violence is intergenerational and rooted in intersecting colonial forces of systemic racism (Chartrand and Whitecloud 1999; National Inquiry into Missing and Murdered Indigenous Women and Girls 2019; Oppal 2012). Indigenous women are more vulnerable to predatorial harm with few means for maintaining safety and well-being. In the context of violence, precarity, and endangerment, Indigenous women are at higher risk of criminalization for the use of defensive violence, substance abuse, robbery, or theft. Thus, implications of the LSI-R scoring of Indigenous women's risk–need level as a part of the sentencing process are dire. The pre-sentence report and LSI-R scoring is typically accepted by the court as a matter of fact, rather than as evidence for closer scrutiny in terms of its validity. In 2009, Hannah-Moffat argued that the use of LSI-R in pre-sentence reports is legally problematic as it relies on grounds that in human rights laws are protected from discriminatory use—such as age, mental or physical disability, gender, race, in its calculus of risk and need, and therefore conditions and duration of detention. The alchemy of risk factors and Gladue factors that comprise pre-sentence reports in the sentencing of Indigenous men and women, is considered more deeply in the next section wherein I explore two cases that resulted in very different sentencing outcomes.

Part II: *R. v. Ipeelee* and *R. v. Moostoos*

Sentencing decisions are an important site of empirical study for critical legal scholars seeking to understand how the state reproduces carceral strategies, especially those that imprison the most marginalized and disadvantaged. Critical legal inquiry also exposes the limits of law as a strategy of transformational justice. I conceptualize sentencing decisions as a nexus of legal rationalism (sentencing objectives and principles) and the discretionary authority of justice professionals such as Crown attorneys, defence counsel, and judges. My interest is in the legal narrative contained within sentencing decisions; the stories that law tells us about crime and punishment, and the criminalized. In this chapter, I juxtapose two recent sentencing decisions: *R. v. Ipeelee* (2012) and *R. v. Moostoos* (2017) to discern the gendered framing of moral blameworthiness. The legal arguments in both cases turn on the sentencing principles of proportionality: a just sanction is that which balances the gravity of the offence with the moral responsibility of the offender. It is

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the determination of moral responsibility or blameworthiness of Indigenous women that interests me here: Does the racial and gendered disadvantage reframe moral blameworthiness through the application of section 718.2e?

R. v. Ipeelee

In 1999, Maniece Ipeelee—an Inuk man from Iqaluit—was sentenced to six years of incarceration followed by a 10-year long-term supervision order (LTSO) for sexual assault causing bodily harm of a homeless woman sleeping in an abandoned van. At that time, the sentencing judge from the Northwest Territory superior court stated that Ipeelee "shows a consistent pattern of administering gratuitous violence against vulnerable helpless people while he is in a state of intoxication" (*R. v. Ipeelee*, at para. 34). The Gladue Report completed at that time documented a "life far removed from most Canadians" (para. 3). His mother was an alcoholic and froze to death when Ipeelee was five; he was raised by his grandparents. He himself began drinking at age 11, dropped out of school and was criminalized by the age of 12. His youth criminal record consists of over three dozen charges; his adult record sets out 24 convictions, including sexual assault and aggravated assault. At the time of sentencing, the court noted in graphic detail the extent of the violence in various offences:

> The incident took place outside a bar in Iqaluit and both Mr. Ipeelee and the victim were intoxicated. Witnesses saw Mr. Ipeelee kicking the victim in the face at least 10 times, and the assault continued after the victim lost consciousness. The victim was hospitalized for his injuries. (para. 5)
>
> Once more, both Mr. Ipeelee and the victim were intoxicated. During the fight, Mr. Ipeelee hit and kicked the victim. After the victim lost consciousness, Mr. Ipeelee continued to hit him and stomp on his face. (para. 6)
>
> The female victim had been drinking in her apartment in Iqaluit with Mr. Ipeelee and others, and was passed out from intoxication. Witnesses observed Mr. Ipeelee and another man carrying the victim into her room. Mr. Ipeelee was later seen having sex with the unconscious woman on her bed. (para. 7)

Ipeelee's long-term supervision order or LTSO was suspended four times over a three-week period due to his poor behaviour, attitude, and performance.

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He was described as agitated, non-compliant, and refusing a urinalysis. He was eventually charged with public intoxication and breach of the conditions of his LTSO and sentenced to three years in federal custody in 2009. In giving his reasons for this sentence, Justice Meggison, of the Ontario Court of Justice, stated:

> On his history, Mr. Ipeelee becomes violent when he abuses alcohol, and he was assessed as posing a significant risk of re-offending sexually. Defence counsel argued that the facts of the present breach disclose no movement toward committing another sexual offence, but I think that is beside the point. (Quoted in *R. v. Ipeelee*, at para. 14)

Based on these findings, Justice Meggison believed Mr. Ipeelee would inevitably commit another sexual assault based on earlier risk assessment reports, therefore the sanction was proportional to the severity of the potential offence of sexual assault. In that decision, Justice Megginson stated that "Mr. Ipeelee's Aboriginal status had already been considered during sentencing for the 1999 offence giving rise to the LTSO, and that when protection of the public is the paramount concern, an offender's Aboriginal status is of diminished importance" (para. 15). On appeal to the Supreme Court, the defence challenged the three-year term of incarceration for a breach of a long-term supervision order condition. He argued that section 718.2(e) is to be applied in every instance, regardless of seriousness of offence.

In its decision, the Supreme Court recognized the importance of this case as it was first time the Court had to address breaches of long-term supervision orders whose purpose is to assist with rehabilitation. The central issue in this case was the determination of a fit sentence for a breach by an Aboriginal offender in the context of proportionality, protection of the public, and rehabilitation. Writing for the majority, Mclachlin, J. articulated the relevance of the Gladue Report as an "indispensable sentencing tool and to a judge in fulfilling his duties under section 718.2(e); and that a failure to apply Gladue principles would run afoul of this statutory duty" (436). Thus, the high court found that the lower court indeed "erred in not concluding that rehabilitation was not a relevant sentencing objective in this case, and thus the courts gave insufficient consideration to Ipeelee's circumstances" (437). In a dissenting opinion, Rothstein, J. found "a pattern of repetitive behaviour with a likelihood of causing death or physical or psychological injury or a likelihood of causing injury, pain or other evil to other persons in the future through

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failure to control his sexual impulses. His alcohol consumption is central to such behavior" (438, emphasis added). The appeal was nonetheless upheld, and a sentence of one year was imposed.

R. v. Moostoos

In the second case, decided five years later, Candace Moostoos, a young Indigenous woman severely addicted to alcohol and crystal meth was convicted of manslaughter in the death of Mr. Burns, a 70-year-old man referred to as "Gramps," who was Candace's maternal great uncle. Burns had sexually assaulted and exploited Moostoos and other members of her family over several years. Moostoos was reported to have worked on the streets as a sex worker and was raped by the victim two weeks before his death. When giving her statement to the police, Moostoos described herself at the time of the rape as "dope sick" and was seeking money to buy drugs (para. 8). At the time of the offence, Moostoos was 35 years old and weighed 80 pounds. She had been using drugs and alcohol for five days prior to the killing. She was heavily intoxicated, sleep deprived, dehydrated, and malnourished. When she met Burns at his apartment to ask him for money, he demanded oral sex, and she refused. He viciously grabbed her by the crotch and told her that he had given her HIV when he raped her. Moostoos lunged at him with a knife and stabbed him, watching him succumb to his injuries. She took his car keys and left the apartment. In the days that followed, Moostoos said goodbye to her children, and then turned herself into the police to give a statement. Even while she was still heavily impaired by crystal meth, her confession was accepted by the police.

The judge who presided at the Court of Queen's Bench, Justice Barrington-Foote, relied heavily on the pre-sentence report provided to the court. In the sentencing decision, there was no mention of a Gladue Report entered for consideration at sentencing. The pre-sentence report described the "tragic familiarity" of Moostoos's childhood and adolescence:

> Both of her parents frequently abused alcohol, and frequently had parties at which her relatives also drank. She was verbally abused by her relatives when they were drinking and was exposed to her father's physical abuse of her mother. She experienced poverty, as her parents spent much of their income on liquor. When both of her parents were incarcerated, an aunt would help care for her and her siblings. When

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> she was sexually assaulted by Mr. Burns, she did not report it, as she had learned from her mother that she should not tell. (*R. v. Moostoos*, at para. 14)

At the age of 10, Ms. Moostoos was sent to residential school in Prince Albert for three years, as her parents could not look after her as a result of their own struggles with alcohol. She was cut off from home and family and felt lonely and abandoned. She was verbally abused by the dorm supervisor and other students, beaten up by other students, and raped. A year later, she was sent to live with her aunt in Prince Albert, as she was acting out and getting into fights. At 15, she attempted suicide. By the age of 18, she was living on the streets, working in the sex trade to support her drug addiction. She worked the streets for about six years, until she was unable to continue due to health problems. She continues to suffer from heart problems that require surgery and also has hepatitis C. (*R. v. Moostoos*, at para. 16)

Despite the clear record of Gladue factors set out above, as well as the precedent set in *Ipeelee*, the judge rejected the relevance of *Ipeelee*. Indeed, when presented with the defence counsel's argument of the significant Gladue factors and relevant case law, the justice asserted "the cases provided were unhelpful and bear little or no similarity" (para. 29). The judge went on to assert that "a long and serious list of Gladue-type considerations does not mean that those factors substantially affect the offender's moral culpability" (para. 40). In contrast to the defence submission, the Crown's submission focused on Moostoos's self-induced intoxication as an aggravating factor, and her claim of being provoked by Burns when he painfully grabbed her by the crotch. These factors were considered to have been already accounted for when the original charge of second-degree murder was reduced to a charge of manslaughter.

The legal narrative in this case shows that the sentencing judge was careful to set out the fundamental intention of section 718 as being to ensure "the protection of society, and to ensure any sentence is proportional to the gravity of the offence, to ensure denunciation and justice for victims" (*R. v. Moostoos*, at para. 31). He then went on (citing *R. v. LaBerge*, at para. 9) to establish "a careful review of the moral culpability in the context of the crime committed to include personal characteristics of the offender" to establish the mitigating or aggravating factors. In his decision, Barrington-Foote focused on Moostoos's addiction to alcohol and street drugs, stating: "she acknowledges

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that she will always be an alcoholic, and would use opiates everyday if she could get them, she cannot stop using. Despite attending AA, she is unable to stay sober" (*R. v. Moostoos*, at para. 19). In the end, Candace Moostoos was sentenced to four and half years of incarceration after nearly three years in pre-trial custody. The Crown in this case sought to restrict her eligibility to enhanced credit for time spent on remand prior to her unsuccessful attempt to be released on bail; however, the judge ruled that she was to receive enhanced credit for all 915 days in remand. Despite the recognition of all the time served by Moostoos, the sentencing judge asserted his decision was in accordance with sentencing principles of deterrence, denunciation, incapacitation, and justice for victims, with little regard for section 718.2(e) nor *Gladue*.

Part III: Moral Culpability and Addiction

The outcome of these cases rests on the disappearance of the gendered conditions of endangerment and the hypervisibility of "self-induced intoxication" and addiction in the formulation of a just and proportional sanction. In *Ipeelee*, the sentencing principle of rehabilitation is recognized as fundamental to a just sanction to allow the offender to receive treatment for his chronic alcoholism, which is identified as a pathway to violent behaviour. In *Moostoos*, the matter of addiction plays heavily in the determination of Candace Moostoos's moral blameworthiness and the need for incapacitation, rather than rehabilitation despite her life history of "tragic familiarity." Maniece Ipeelee's moral responsibility is mitigated somewhat by his lived experience of disadvantage, "a life story removed far from the experience of most Canadians." Indeed, the Supreme Court Justices in *Ipeelee* state: "the reality is that their constrained circumstances may diminish their moral culpability" (477). How do we understand the gendered reframing of addiction in the lives of an Indigenous woman in *Moostoos* other than as evidence of her moral blameworthiness? In *Moostoos*, Barrington-Foote, J. dismisses the relevance of *Gladue* and sidesteps the statutory requirement to consider all alternatives to incarceration and the unique circumstances of Indigenous offenders.

Sentencing decisions signal the completion of the criminalization process, but judicial reasons for sentence and the use of LSI-R scores become a part of the carceral treatment of the prisoner and inform her risk/need profile once imprisoned. Indigenous women are significantly overrepresented at maximum security (42%) and segregation placements (50%) but underrepresented

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at minimum security (26%) (Webster and Doob 2004). In 2020, the *Globe and Mail* released a series of articles stemming from an exhaustive investigation of the discriminatory outcomes of risk assessments used by prison authorities to determine the correctional plans and security classifications. Data showed how Indigenous (and BIPOC) prisoners are systemically classified/profiled as high risk based on classification regimes that link social disadvantage and victimization with a need for intensive supervision and maximum security (Cardoso 2020). Correctional Service Canada research shows that when comparing federal custodial classifications between Indigenous and non-Indigenous women, Indigenous women are more likely to have their initial classification changed from medium to maximum security. Security classifications are comprised of custody rating scales and offender security level assessments. Between 2010 and 2022, data indicate that custody rating scales are overridden by a secondary measure of offender security level assessments performed by correctional authorities once admitted to custody (Motiuk and Keown 2021). The annual report of the Office of the Correctional Investigator (Zinger 2022) reports 64% of women classified as maximum security are Indigenous, and over half are serving sentences of less than four years. Thus, Indigenous women in maximum security are not confined there due to the seriousness of their admitting offence, but rather due to their offender security level assessment determined by correctional professionals. In that same report, the Office of the Correctional Investigator indicates that 82% of Indigenous women prisoners are assessed as high risk and high need, and 69% are under the age of 30 (Zinger 2022). Correctional Service Canada now applies an Indigenous Social History tool to classify and assess the risk levels of Indigenous offenders. The stated purpose of the tool is to "examine the direct and indirect social and historical factors that have impacted the individual and contributed to their involvement in the criminal justice system. The assessment is intended to ensure the unique circumstances of Indigenous prisoners are deliberated and that culturally appropriate/restorative options are considered and provided" (Zinger 2022). A review of those assessments, however, reveals the persistence of the individualized narratives of criminogenic factors such as substance abuse, violence, family dysfunction, exposure to criminal and violent behaviour, and negative peers (Zinger 2022). This retrenchment of individualized criminogenic risk through the trope of Indigenized correctional practices, removes the colonial violence that underpins criminalization and incarceration.

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In a similar fashion, sentencing of Indigenous women such as Candace Moostoos continues to retrench individualized and decontextualized assertions of moral blameworthiness that obfuscate gendered colonial harms. Decades of research has documented the profound impacts of colonial violence and intergenerational trauma: staggering levels of gender-based and sexualized violence experienced by criminalized Indigenous women, destitution, homelessness, feminicide, and addiction (see Comack 2018; Dell and Kilty 2013; Smith and LaDuke 2015; Statistics Canada 2006; 2011; 2017). Gladue Reports are intended to capture the impacts of these experiences on the lives of criminalized Indigenous people to provide context to judges in their determination of an appropriate sentence. As shown in *Moostoos*, Gladue Reports can be sidestepped and thereby eliding the colonial harms that frame the conditions of Candace Moostoos's life.

Razack's analysis of coroner's inquests into the deaths of Indigenous people either in hospitals or police holding cells provides a frame for us to better recognize how the state disposes of Indigenous bodies in a manner that "cannot be connected to the violence of ongoing colonialism" (Razack 2011, 352). Drawing on Mbembe's (2008) theorizing of necropolitics, Razack sees Indigenous people who are addicted or alcoholic as existing in a death world where they are severed from care and humanity. Moreover, the state's response to those in need of care are purposefully disconnected from colonial violence. The overincarceration of Indigenous peoples—especially women—is a disposal of unwanted bodies. Razack exposes how medical systems and public policing reproduces the deaths of Indigenous peoples through neglect and failure to care or protect. Through a critical examination of coroner's inquiries into deaths of Indigenous people brought to emergency rooms or confined in holding cells, Razack shows how the "drunken Indian's" diseased body (fatty liver, tremors, slurred speech, incontinence) is discursively untethered from the ravages of colonization, and instead police and doctors and nurses work with impunity as they deny treatment, drag bodies in and out of cells, or leave them at the city limits in winter. This discursive or text-based "untethering" of Indigenous bodies from socio-political and historical violence through bureaucratized and professional state agencies is what interests me here. Through the narratives of legal experts, such as lawyers and judges, the sentencing of Indigenous women under the terms of section 718.2(e) appears to untether the lived experience of victimization from the lived experience of addiction. Alcoholism, drug dependency, and

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violence appear naturalized, and the state's neglect and failure to exercise care or take precautions is obfuscated by a complicated narrative of addiction as a lifestyle choice that demonstrates a measure of inferiority. Addiction, not gender-based state and interpersonal violence, is seen as the root cause of Indigenous women's "criminal choices."

The criminalization and imprisonment of Indigenous bodies through puritan or medicalized discourses of addiction is evident in throughout colonial history. Early settlers used alcohol in their treaty negotiations with Indigenous leaders, and as motivation for an eventual strategy of confinement onto "dry reserves" for their own good under the terms of the Indian Act (Thatcher 2004). Consumption of alcohol criminalized and regulated as public drunkenness, has been grounds for policing, detention, and child apprehension. Today, the use of alcohol or drugs is framed as a metric of criminogenic risk, warranting longer terms of incarceration. Kaiser-Derrick's (2019, 117) review of 175 sentencing decisions in cases involving Indigenous women reported between 1999 and 2015 exposes a "language of predictability" within legal narratives, specifically with regards to how "tragedy and trauma have led to, not surprisingly substance abuse." This understanding of addiction and violence as both inevitable and criminogenic are neoliberal narratives that individualize and decontextualize gendered conditions of endangerment through actuarial logics of risk assessment. As I discussed above, Candace Moostoos's fear of sexual assault by a man who had previously raped her and abused other family members was lost in a legal narrative of excessive violence, which the judge felt justified a sentence promoting denunciation and deterrence. Her own use of violence when grabbed painfully by the crotch and dragged across the floor was denounced as evidence of her (im)moral culpability. Barrington-Foote, J. did not request a Gladue Report. Rather, he relied on previous decisions that established guidelines for sentencing in cases of "stabbing deaths over drugs" (para. 31). None of the case law cited in his reasons for sentence involved Indigenous women. Instead, Moostoos's lived experiences are quantified through a calculus of criminogenic risk:

> Ms. Moostoos was assessed using the Saskatchewan Primary Risk Assessment, which is designed to predict the risk of general criminal recidivism if the offender's risk factors are not addressed. Risk factors include criminal history, residence stability, education and employment, financial situation, family and marital relationships, peers,

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> substance abuse and self-management awareness. Ms. Moostoos was assessed as being at a high risk to reoffend, with only 4% of Saskatchewan offenders having more risk factors. (para. 21)

The actuarial logic of risk assessment is used in this case to circumvent the statutory requirements set out in section 718 and the decisions in *Gladue* and *Ipeelee*, which require judges to seek the least restrictive sanction wherever possible, and to consider the circumstances of Indigenous peoples, regardless of the seriousness of the offence. In efforts to explain the reified practice of locking up Indigenous bodies, I am drawn to Razack's analysis of how the state disposes of those whose "annihilation is at the core of the colonial project" (2016, 307). Razack (2016) theorizes the death of Cindy Gladue who was brutally assaulted by a man and left to bleed to death from puncture wounds to her vaginal wall, as evidence of Indigenous women's disposability at the hands of white men, as well as the eroticization or affect of the mutilated Indigenous woman's body. Razack writes of the scopic regime used at trial to visualize the disembodied specimen of Cindy Gladue's severed vaginal wall as a form of terrorism used against all Indigenous women. I extend her logic to argue that incarceration is a form of corporeal disposability of Indigenous women. In the earlier case of Jamie Lynn Gladue, relapses into addiction and the inability to control her drinking were understood as context for her violence against an abusive common law partner. Similarly, Candace Moostoos's violence against a sexually abusive family friend is cast as blameworthy. The reframing of Indigenous women's resistive violence as gratuitous violence fuelled by alcohol and drug use seems to be a way that imprisonment is used to dispose of Indigenous women through their containment. This scholarship presents the ways the subversive stories of the "the unrelenting victimization histories of criminalized Indigenous women" (Kaiser-Derrick 2019, 88) and the ways these narratives of white brutality threaten the legitimacy of racial governance as a pressing matter (Murdocca 2009). Risk logics of addiction and trauma constitute a legal narrative of Indigenous women's predictive violence, justifying the further use of imprisonment.

Conclusion

In the two decades since the Supreme Court decision of *R. v. Gladue*, where the court ruled on the responsibility of sentencing court judges to take into

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consideration the special circumstances of Indigenous peoples' lives and to seek out non-carceral sentences whenever possible, rates of incarceration of Indigenous women have steadily increased and now outpace the rate of men's incarceration. In this chapter, I explored two recent key decisions since *Gladue* to discern the gendered differences in sentencing methodologies. In *Ipeelee*, an Indigenous man with a lengthy criminal record for violence and history of chronic alcoholism was provided with access to treatment in the community for his addiction. He was not returned to prison for breaching a condition of his long-term supervision order. This decision was welcomed by defence lawyers for its affirmation of proportionality in sentencing and the relevance of *Gladue*, regardless of offence. Five years later, in *Moostoos*, the relevance of *Gladue* and *Ipeelee* were both dismissed in favour of deterrence and denunciation given the seriousness of the offence. I argue here that we need to consider how risk logics of actuarial assessments embedded in presentence reports enable a necropolitics of disposability for Indigenous women. The reality of overincarceration and vulnerability to personal violence that is too often lethal that faces Indigenous women exposes a naturalized victimization to incarceration continuum wherein the state is immune from sanction.

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12 Cookie-Cutter Corrections

The Appearance of Scientific Rigour, the Assumption of Homogeneity, and the Fallacy of Division

Jeff Ewert

On 12 October 2017, in *Ewert v. Canada*, 2018 (SCC 30), the Supreme Court of Canada (SCC) heard the appeal from the decision in *Canada v. Ewert*, 2016 (FCC 203) where the Federal Court of Appeal overturned the Interim Order that prohibited Correctional Service Canada (CSC) from utilizing impugned actuarial and non-actuarial risk assessment instruments on Indigenous prisoners until such time as a Remedies Hearing to refine the issues had occurred.[1] On 12 June 2018, the Supreme Court of Canada overturned the decision of the Federal Court of Appeal and ruled that the CSC had not validated the impugned risk assessment tools on Indigenous peoples. In this chapter, I outline the court processes that led to this final Supreme Court decision.

I embarked on this risk assessment challenge in April of 2000, after reading the user's manual for the Statistical Information on Recidivism (SIR) Scale—one of the first actuarial risk assessment tools ever adopted for use by the CSC. Within the first pages of that users' guide was the caution "Not for use on young offenders, female offenders or Aboriginal offenders." Curious as to why this scale was not intended for use on Indigenous prisoners when, by 2000, a myriad of other tools were already being routinely used to assess the future risk of Indigenous prisoners, I set out to learn more. When I could not get a satisfactory response after inquiring with the CSC, I simply submitted a formal written complaint on an CSC Complaint form, stating "For the same

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reason the SIR is not to be used on Aboriginal offenders, neither should the VRAG, PCL-R or any other such tools be used."

In terms of modern risk assessment used by corrections, there are two kinds of tools in current use, distinguished from one another as "actuarial" and "non-actuarial" tools. An actuarial tool is a future risk prediction tool that incorporates post-release follow-up results in order to see how the predictions measure up against the commission of actual future violence or general recidivism. A non-actuarial tool does not incorporate this follow-up.

"Psychopathy," also a correctional measurement, is a clinical construct, but with important criminal justice implications. The Psychopathy Checklist Revised (PCL-R) is a non-actuarial checklist made up of a 20-item inventory of various personality traits or behaviours believed to be associated with the presence of psychopathy. As testified to by Dr. Stephen Hart in *Ewert v. Canada* 2015 (FCC 1093) before the Honourable Justice Michael Phelan, the PCL-R was not initially designed as a risk prediction tool, although it has become widely used as such in corrections as it is believed there is a strong correlation between psychopathy and future violence risk. In particular, the PCL-R's twenty items are divided into two factors. Factor 1 of the PCL-R contains eight factors that are sub-divided into two facets described as "Interpersonal" and "Affective" facets (e.g., "glibness and superficial charm" or "shallow affect"). Individuals are scored 0, 1, or 2 on the absence, potential presence, or actual presence of each of the listed personality features. Factor 2 also has two facets, which are described as "Lifestyle" and "Antisocial" facets (e.g., "early behavioural problems" or "juvenile delinquency"). Factor 2 of the PCL-R contains nine personality features and scores the individual on a value of 0–2 based on the presence or absence of various past types of behaviours. Factor 1 and Factor 2 variables are weighted equally. PCL-R then generates a total score by separately summing the items under each of Factor 1 and Factor 2. Percentages are assigned to each Factor and then an average of the percentages is taken. In addition, a total numeric score is generated by summing Factor 1 and Factor 2 item scores and three items that are not included in either Factor 1 or Factor 2.

The PCL-R was developed by Dr. Robert Hare in the 1970s with the intention of assessing the presence of the construct of psychopathy, but it is used "off-label," meaning for something other than the purpose of predicting recidivism risk. Thus far, there has not been anything objectionable in using such "off-label" assessments for either diagnostic or risk assessment purposes on

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white people in prison. This tool, however, has never been demonstrated to reliably assess the risk of an Indigenous prison population. In other words, no sufficiently substantive empirical studies have been conducted on the use of the PCL-R, or any other actuarial or non-actuarial risk assessment instruments, on the Indigenous sub-population in prisons. There have only been a few studies (such as the 2013 Olver Study which I discuss further below) that have analyzed the validity of the PCL-R's use with reference to Indigenous people, but the very small subject sample does not make the study generalizable. As such, it is the lack of evidence in support of the continued use of the impugned risk assessment tools used on Indigenous people in prison that shaped the Supreme Court of Canada's decision.

As the Plaintiff, it first took five years to exhaust the CSC's Offender Complaint and Grievance System (OCGS) with respect to Correction Services Canada's reliance on tools that have not yet been validated when assessing the risk posed by Indigenous people in prison. Upon receipt of the Final Grievance Decision, I filed an action in August of 2005 as an unrepresented lay-litigant, which had to be first amended as an application for judicial review in *Ewert v. Her Majesty the Queen* (2007 FCC 13) and I later filed an appeal in *Ewert v. Her Majesty the Queen* (2008 FCA 285). The Respondent's Certified Tribunal Record (CTR) contained within the CSC's OCGS file granted me access to copies of interdepartmental emails I would have otherwise never seen, one of which read from Randy Mason (NHQ-AC) to Paul Sonnichsen (NHQ-AC) on 20 January 2003. The subject line was "Inmate Grievance re use of PCL-R and VRAG instruments":

> Paul: This is timely in that we have already flagged this issue as a concern. In fact, the Research Branch (NHQ) has already began [sic] some work on this—if only in a preliminary capacity. I suspect the inmate will win his case and that this will force our hand as a Service. And rightly so! It has always been our position that the inappropriate use of actuarial scales and measures adversely affects our Aboriginal offender population. In fact, we contend that the use of these measures artificially inflates need and risk ratings. *(Signed)* Randy Mason

At my judicial review hearing in January 2007, I argued, in part, that it is not demonstrably justifiable in a free and democratic society to permit the use of assessment instruments that bear out higher risk/needs outcomes for Indigenous people due to their inherent and immutable characteristics

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(or disadvantage, primarily ensuing from colonization). I argued that the inappropriate use of these tools violates ss 7 and 15 of the *Charter of Rights and Freedoms* (The Constitution Act) because, when used on an Indigenous person, the risk tools may not be actually measuring the risk a subject poses, but something else altogether (such as the impacts of colonialism). I also argued that since these risk tools were first employed the general recidivism rate had remained relatively static and, therefore, merely predicting recidivism did not improve public safety. I argued that risk prediction in the absence of improving public safety is not a sufficiently important objective. I argued that while these instruments categorize offenders in groups, such as where 75 out of 100 will violently reoffend following release, detaining all 100 in this group as high-risk results in the arbitrary detainment of the 25 people who will not reoffend. This, I argued, is contrary to Section 9 of the *Charter*. This practice is known as the fallacy of division (or the logical error of division) that says what is true for a group might not necessarily be true for every member of the group. CSC detains individuals who could be safely released to the community based on this fallacy as a result of their categorization in a group deemed to be high risk.

My judicial review was quickly dismissed within days on the basis that the Respondent, CSC, claimed it had not had enough time to complete their promised review of CSC intake tools. I appealed on the basis that I was challenging the use of all actuarial and non-actuarial risk assessment instruments on Indigenous peoples for whom the use of these tools had not been validated, not just the CSC intake tools. In September 2008, my appeal was dismissed, but the court did set a timeline for the CSC to complete its promised review of these risk assessment tools and invited me to come back before the Court if the review was unsatisfactory or not completed. The CSC exceeded the timeframe, and the Federal Court of Canada issued a Notice of Status Review with respect to the then five-year-old file and ordered me to amend my appeal and file the originating statement of claim by 30 April 2010. At that point, the BC Legal Services Society got involved and hired two lawyers to take the matter to trial.

At the time of my first PCL-R assessment, I had the curious anomaly of having been assessed in the 100th percentile (meaning that 100 percent of others would test lower than me) on the PCL-R's Factor 1 and in the 51st percentile on the PCL-R's Factor 2. The second time I was assessed, I was similarly scored in the 98th percentile on Factor 1 and at the 61st percentile on Factor 2. As a result, case management personnel and other CSC decision makers were

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dissuaded from recommending or approving me for any form of conditional release or cascade to lesser security. From the written submission of the Plaintiff presented in *Ewert v. Canada* (2018 SCC 30):

> Correctional decision-making and reliance on the risk assessment tools
>
> 63. In making a host of decisions affecting Mr. Ewert's liberty, the correctional service has consistently relied, in part, either explicitly on the PCL-R findings themselves, or else on the psychological risk assessments which have relied on the PCL-R.
> 64. The Plaintiff does not say that the PCL-R assessments are the sole basis for certain decisions taken by the correctional service over the past twenty years. Rather, the Plaintiff submits that the high risk assessments yielded by the PCL-R is a contributing cause of certain decisions made by the service.

In 2013, Mark E. Olver, Stephen C. P. Wong, Craig S. Neumann, and Robert D. Hare wrote a paper called "The Structural and Predictive Properties of the Psychopathy Checklist—Revised in Canadian Aboriginal and Non-Aboriginal Offenders." The paper concluded in part that "[w]hen disaggregated into its constituent factors, for both ancestral groups, the Lifestyle and Antisocial factors consistently and significantly predicted all recidivism outcomes, whereas the Interpersonal and Affective factors did not significantly predict any of the recidivism outcomes" (Olver, Newman, Wong and Hare 2013, 167). In other words, my Factor 1 scores cannot be relied upon with respect to risk of violence prediction and my Factor 2 scores place me right in the middle of the risk of violence continuum. If used in accordance with the findings of the Olver Study, the PCL-R would assess me as the average prisoner in terms of risk of future violence.

The trial, *Ewert v. Canada* (2015 FC 1093), took place before the Honourable Justice Michael Phelan in Vancouver. Appearing as an expert witness for the Defence was Dr. Marnie Rice, psychologist and co-author of the Violence Risk Appraisal Guide (VRAG), and as a fact witness was Dr. Larry Motiuk, Assistant Commissioner Policy and Programs for CSC. Appearing as an expert witness for the Plaintiff was Dr. Stephen Hart:

> 41. The Plaintiff says that the actuarial tests applied to Mr. Ewert were not reliable because they were more likely than not to be subject to cross-cultural bias. There is no or insufficient

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evidence to displace the inference that the actuarial tests are biased.

42. In Mr. Ewert's case, there is a particular skew arising from the conclusion of the Olver 2013 study demonstrating that PCL-R Factor 1 is not reliable in respect of Aboriginal inmates. Mr. Ewert tested at 100% and 98% on Factor 1, and his Factor 2 tested at 51% and 61%. If Factor 2 is considered on its own, Ewert tests as a normal or average inmate in the middle of the pack. If Factor 1 alone is considered, Mr. Ewert tests at the most psychopathic level. If both Factor 1 and Factor 2 are averaged, Mr. Ewert tests at moderate-high risk and is above the cut-off grade for psychopathic designation.
43. If the Court relies on the Olver study to eliminate Mr. Ewert's Factor 1 score from the equation, the only available conclusion is that Mr. Ewert's risk to reoffend has been dramatically overestimated and that the PCL-R tests have wrongly labelled Mr. Ewert as a psychopath.
44. Mr. Ewert would qualify this result to ensure that this conclusion does not detract from the systemic nature of Dr. Hart's evidence regarding cross-cultural bias. Dr. Hart testified that the Olver study used a smaller sample and did not conduct some of the appropriate reliability analysis. Mr. Ewert's objective in this lawsuit is systemic—he wishes to challenge the use of these actuarial tools on all inmates. There was no available evidence regarding the average spread between Aboriginal scores on Factor 1 and Factor 2 of the PCL-R. (Submission of the Plaintiff in *Ewert v. Canada*, 2015 FC 1093)

Plaintiff's lawyers, Jason Gratl and Eric Purtzki, set the case out as consisting of breaches of the governing legislation (ss 4(g) and 24(1) of the Corrections and Conditional Release Act [CCRA]) and set out that the Defendant, CSC, was aware of the false or otherwise unreliable scores resulting from the use of the questionable tools in respect of Indigenous prisoners. Subsection 4(g) of the CCRA sets out, inter alia, that correctional policies, programs, and practices respect the special needs of Indigenous peoples. One argument we presented was that the use of risk assessment tools on sub-populations of offenders, for whom the tools have not been standardized/validated for use, does not respect ethnic or cultural differences and is not responsive to the special needs of Indigenous peoples.

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Another argument we presented was that the Defendant was aware of the existence of information that, if incorporated into the design and development of the risk assessment instrumentation in question, would mitigate the risk assessments produced on Indigenous peoples. Subsection 24(1) of the CCRA sets out that the "Service shall take all reasonable steps to ensure that any information about an offender that it uses is as accurate, up to date and complete as possible." At trial, the Defendant acknowledged the existence of a study showing that Indigenous prisoners who follow the traditional teachings of their Elders are in a category where only two percent (2%) recidivate, yet this knowledge is not incorporated into the design of any risk assessment tools and, therefore, the Service has not taken all reasonable steps to ensure that all information about an offender that it uses is accurate, up to date, and complete as possible.

Dr. Stephen Hart further provided his expert opinion as to the limited reliability and validity of using risk assessment tools on subjects where the personal characteristics, including culture, are not accounted for by the tools. Dr. Hart opined on the nature of bias due to culture, referred to as cross-cultural bias, or more simply, culture bias:

> In Canada, one of the most important cultural characteristics that is likely to cause cross-cultural bias is status as an Aboriginal person. Status as an Aboriginal person is a general or higher-order characteristic that encompasses numerous specific characteristics, including such things as language. Religion or spirituality, self-concept, and fundamental social norms and attitudes . . . there is no research evaluating the cross-cultural bias in reliability or validity of assessment instruments such as the VRAG, SORAG. STATIC-99, VRS-SO, and PCL-R due to status as an Aboriginal person using scientifically adequate procedures. It cannot be safely assumed that research findings derived from a heterogeneous group apply equally to its constituent elements: this would be making the logical error of division. What holds true for a group does not necessarily hold true for the individuals or sub-groups within that group. (Written Submissions of the Plaintiff, *Ewert v. Canada* 2015 FC 1093)

On 18 September 2015, the Honourable Justice Phelan issued an Interim Oder concluding:

> [113] a) that the use of these assessment tools is both inconsistent with the principles in 5.4(9) of the Act by not being responsive to the special

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needs of Aboriginal people and further such use breaches s. 24(1) of the Act; and further

b) violates the Plaintiff's s 7 Charter rights without 3.1 justification. (*Ewert v. Canada* 2015 FC 1093, summary)

Justice Phelan enjoined the Defendant from using the results of the assessment tools until a study could confirm the reliability of those tools in respect to adult Indigenous people in prison.

There were also, however, some issues that were not put before the Court with respect to the use of the risk assessment tools that I include here (see also Cremin et al., 2009). First, while I had initially challenged the use of "any and all actuarial and non-actuarial risk assessment instrumentation on sub-populations of offender for who said instruments have not been validated for use on," the Court only heard of a few.[2] With respect to the PCL-R, the experts who testified at trial agreed that the greater the divergence between Factors 1 and 2, the less reliance should be placed on the scores:

> 34. In Dr. Rice's opinion, there was significant doubt about whether Factor 1 scores were reliable in respect of Aboriginal inmates, and acknowledged that in some circumstances, when Factor 1 scores were higher than Factor 2 scores, it would not be appropriate to use the PCL-R to assess the recidivism risk of Aboriginal inmates. She also acknowledged that it would not be appropriate to use the VRAG or SORAG on those Aboriginal inmates, because VRAG and SORAG incorporate the PCL-R scores. (Written Submissions of the Plaintiff, *Ewert v. Canada* 2015 FC 1093)

During the trial, it was evident there was no available evidence regarding the average spread between Aboriginal scores on Factor 1 and Factor 2 of the PCL-R, but during cross-examination when the Plaintiff's Factor 1 and Factor 2 scores were presented to Dr. Marnie Rice, who had over forty years of experience in the field, she balked at the suggestion that such a score could exist and stated that she had never heard of such divergence between these factors. I can attest to having seen the raw PCL-R scores of two other Indigenous prisoners that were more divergent than my own.

A third issue that escaped judicial scrutiny during this trial, due in part to the legal strategy of staying focused on the issue of culture bias as the reason for the disastrous overrepresentation of Indigenous peoples within Canadian

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prisons, is that Canada is not the only settler country that suffers from this ailment. Deborah Dawson (1999) identified a relationship between the use of Westernized risk assessment tools and the overrepresentation of Indigenous Australians and Torres Strait Islander people in the Australian prison system. The same problem was identified by Dawson (1999) with respect to the Māori people of New Zealand. It is a similar relationship as the one between the use of such tools and the overrepresentation of Indigenous people within Canadian prisons.

A fourth issue not scrutinized by the Court in my case is revealed in an article by Quinsey et al. (2006, 218), which states that the authors propose a standardized predictive scheme as a means, in part, of avoiding liability. What this means is that a psychologist or psychiatrist who clinically assesses, for conditional release purposes, the risk of future violence of anyone with past violent conduct, could be liable for any harm suffered by a victim of the subject's future violence should that subject reoffend. While publicly purporting that the main purpose is to accurately predict risk of future violence in the interests of public safety, amongst their peers the authors admit that part of the purpose of the Violence Prediction Scheme is to avoid liability. Avoiding liability is not a sufficiently important objective when there is either a risk to public safety or a risk of unnecessarily and improperly prolonging the carceral experience of minoritized sub-populations of prisoner due to culture bias. As attested to by the expert witness, Dr. Marnie Rice, there is no evidence that CSC programming does anything to reduce risk.[3] Indigenous prisoners are discriminatorily assigned higher risk/needs scores by tools that were not designed to assess their risk.

The Remedies Hearing was held on 25 April 2016 and Justice Phelan went out on reserved decision. The Defendant's appeal was heard on 13 June 2016 and the judges went out on reserved decision. On 3 August 2016, the Federal Court of Appeal rendered their decision to overturn Justice Phelan's 18 September 2015 ruling before his decision on the Remedies Hearing was rendered. On 29 September 2016, lawyers Jason Gratl and Eric Purtzki filed our brief for leave to appeal (Memorandum of Argument) to the Supreme Court of Canada. On 9 March 2017, the Supreme Court of Canada granted us leave to appeal the decision of the Federal Court of Appeal. On 12 October 2017 that appeal was heard. Ten interveners joined the Plaintiff in arguing that the tools are inappropriate in their use with respect to Indigenous peoples.[4]

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On 12 June 2018, the Supreme Court of Canada found that the Plaintiff had not proved the tools were invalid when used on Indigenous peoples; it did find that the CSC had not proved that they were valid prior to using them, to the possible detriment of the Indigenous sub-population of prisoner. The CSC is legislatively required to ensure that it takes all reasonable steps to ensure that any information that it uses about an offender is as accurate, up to date, and complete as possible.

> [33] On its face, the obligation imposed by s. 24(1) of the CCRA appears to apply to information derived from the impugned tools. Section 24(1) provides that the obligation applies to "any information about an offender that [the CSC] uses" The fact that s. 24(1) applies to "any" such information confirms that, if its words are read in their grammatical and ordinary sense, it applies to the information at issue in this case. (*Ewert v. Canada*, 2018 at para. 33)

The Supreme Court of Canada also examined the scope of s. 4(g) of the CCRA for the first time:

> [53] In my view, the application of that approach leads to the conclusion that the principle set out in s. 4(g) of the CCRA can only be understood as a direction from Parliament to the CSC to advance substantive equality in correctional outcomes for, among others, Indigenous offenders. Section 4(g) represents an acknowledgement of the systemic discrimination faced by Indigenous persons in the Canadian correctional system. This is a long-standing concern, and one that has become more, not less, pressing since s. 4(g) was enacted. In these circumstances, it is critical that the CSC give meaningful effects to s. 4(g) in performing all of its functions. (*Ewert v. Canada*, 2018, at para. 53)

In concluding that the CSC could no longer utilize the impugned risk assessment instruments on Indigenous prisoners the Court said that, at minimum, the CSC "must conduct research into whether and to what extent they are subject to cross-cultural variance when applied to Indigenous offenders" (para. 67). The Court also stated in part that "Numerous government commissions and reports, as well as decisions of this Court have recognized that discrimination experienced by Indigenous persons, whether as a result of overtly racist attitudes or culturally inappropriate

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practices, extends to all parts of the criminal justice system, including the prison system" (para. 57).

What will we use to assess the risk of future dangerousness if we do not have actuarial and non-actuarial assessments? First, as argued above, the recidivism rate does not appear to have improved since the introduction of actuarialism/non-actuarialism in the assessment process. The use of the tools has not shown to improve public safety. It is important to not forget that the fallacy of division results in significant numbers of prisoners being held back from conditional release because they are assessed as being in groups of offenders of which a majority percentage are deemed "high risk" to reoffend. This practice constitutes arbitrary detainment, contrary to section 9 of the *Charter*. What may be statistically true for the group is not necessarily true for all the individuals within that group. Second, as opined by Dr. Stephen Hart at the 2015 trial before Justice Michael Phelan, the tools could still be used to inform a clinical assessment in what is called a "structured clinical assessment." This would entail utilizing the tools to better identify personality profiles, possible mental disorders, among other things, but without assigning a numerical value or percentile to the assessed risk of future violence prediction.

As also evidenced above, the CSC has admitted in emails from as far back as 2003 that they know Indigenous peoples bear out higher risk/needs assessment scores by way of these impugned tools. This is likely the result of a culture bias scenario in which higher numbers, while not equating to higher risk, equate to incarceration at higher rates, at higher levels of security, and for longer periods of time for Indigenous peoples when compared to their non-Indigenous counterparts. Fifteen years later, the CSC has not yet addressed this. In addition to this, Dr. Larry Motiuk, the CSC's witness, misled the court when he stated that weight is not necessarily given to such scores by decision makers in the annual security classification.[5] Motiuk testified that the CSC knows from its research where the weight is put on those items, but when asked about the research, he replied that the study was completed in late 1992 through early 2003, and was at the time on the CSC's website. Later in the cross-examination Motiuk testified that, in fact, there were no studies completed by his department that assess the weight CSC decision makers attribute to actuarial test results.[6] It is clear that changes needed to the problem of improper risk assessment for Indigenous peoples must come from outside the CSC.

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Recommendations

How do we assess the reintegration potential of Indigenous prisoners? We involve traditional Elders and our Indigenous communities. Under s 82 of the CCRA, the Commissioner is required to establish a National Aboriginal Advisory Committee (NAAC) to provide advice to the Service on the provision of correctional services to Aboriginal prisoners; however, it appears that the NAAC no longer exists. It is important that traditional Indigenous people and communities oversee the services provided to Indigenous prisoners in corrections. The "special needs" of Indigenous peoples cannot be respected under section 4(g) of the CCRA if traditional people are not consulted. I recommend that the CCRA be amended to change the name to National Indigenous Advisory Council (NIAC) and to include provision for the NIAC to:

- oversee and contribute to the mental health assessments of Indigenous prisoners with respect to assessing the risk and reintegration potential of candidates for conditional release;
- ensure the provision of traditional cultural and spiritual activities, appropriate in quality, duration, and frequency for Indigenous people in prison;
- identify any and all "special needs" that the CSC is to be mindful of in managing the Indigenous prisoner population, and;
- liaise between the Service and traditional communities that are willing to receive Indigenous people from prison conditional release.

I also recommend that the impugned tools not be used at all with respect to Indigenous prisoners who, instead, should be assessed by recognized Elders from traditional communities under the direction and supervision of the NIAC and that legislation be passed prohibiting the use of such impugned tools on Indigenous prisoners because, despite the Order of the Supreme Court of Canada that the Service not use the impugned tools on Indigenous peoples until they are validated for such use, lawyers have advised me that some of their Indigenous clients are still being assessed by way of these impugned tools. This amounts to contempt of an Order of the Supreme Court of Canada.

I am but one of approximately 4,000 Indigenous prisoners in Canada who are affected by the use of these such tools. Culture bias can affect the

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operability of any and all tools; not just the tools referenced as examples in my specific case. For example, there are tools that are designed specifically for women in prison that have not been validated for use on Indigenous women. This case was about the discriminatory impact of improperly calibrated Westernized risk assessment tools on any and all Indigenous prisoners to the detriment of our equitable cascade to lesser security and approval for conditional release, among other disparate conditions of our carceral experiences relative to that of non-Indigenous prisoners.

Notes

1 The decision of the Federal Court of Appeal was delivered while Justice Phelan was still deliberating the issues argued at the Remedies Hearing, thus rendering a ruling from the Remedies Hearing of no purpose.

2 Additional tools include, but are not limited to, the Level of Service Inventory (LSI); Historic Clinical Risk-20 (HCR-ZO); Spousal Assault Risk Assessment (SARA); Sexual Violence Risk-20 (SVR-ZO); Risk for Sexual Violence Protocol (RSVP); Wechsler Adult Intelligence Scale Revised (WAIS-R); the Brief Spousal Assault Form for the Evaluation of Risk (B-SAFER); the Millon Clinical Multitaxial Inventory (MCMI and MCMl-II); Minnesota Multiphasic Personality Inventory (MMPI); *Rapid Risk Assessment for Sexual Offense Recidivism* (RRASOR); the Structured Interview for Alexithymia (SIFA); Comprehensive Assessment of Psychopathic Personality (CAPP), Psychopathy Checklist Youth Version (PCLzYV); Psychopathy Checklist: Screening Version (PCL:SV); Psychopathy-Scan Research Version (P-SCAN); Self-Report Psychopathy (SRP) ll and III; Static99-Revised; Static-2002; Static-2002 Revised; Violence Risk Appraisal Guide–Revised (VRAG-R); Sex Offender Risk Appraisal Guide Revised (SORAG-R); Domestic Violence Risk Appraisal Guide (DVRAG); Message Authentication Codes (MAC); Short-Term Assessment of Risk and Treatability (START); Violence Screening Checklist (VSC); Brief Psychiatric Rating Scale (BPRS); Antisocial Process Screening Device (APSD); Childhood and Adolescent Taxon Scale (CATS); Personality Assessment Inventory (PAI); and the Level of Service/Case Management Inventory (LS/CMI). With respect to the Static99-R, Static-ZOOZR, VRAG-R, and SORAG-R, the 'R' stands for revised.

3 Transcript excerpt, testimony of Dr. Marnie Rice, 29 May 2015.

4 The interveners were the Native Women's Association of Canada; Canadian Association of Elizabeth Fry Societies; Mental Health Legal Committee; West Coast Prison Justice Society; Prisoners' Legal Services; Canadian Human Rights Commission; Aboriginal Legal Services; Criminal Lawyers' Association

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(Ontario); British Columbia Civil Liberties Association, and; the Union of BC Indian Chiefs.

5 Transcript excerpt, cross exam of Larry Motiuk, 2 June 2015, 788–98.

6 Transcript excerpt, cross exam of Larry Motiuk, 2 June 2015, 849.

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13 To Be Treated as Human

Federally Sentenced Women and the Struggle for Human Rights

Kim Pate

Based on an extract from the author's submission to the Liberal Senate Forum on Women in Prison, 18 April 2018, Ottawa.

I want to begin by acknowledging that we are uninvited guests on the unceded, unsurrendered territory of the Algonquin Anishnabeg and I thank all of the ancestors and the future generations who take care of the land. I also want to thank, particularly, all of the individuals who inform all about which I'm about to speak. It's the women inside—and before my work with the Canadian Association of Elizabeth Fry Societies (CAEFS), the men and young people inside—who have shaped my thinking and therefore these remarks. Many of them called me or sent me messages when I out a message that this Forum was happening and asked what they thought needed to be said. So I want to thank them because it is those women and their experiences that inform what I now have the privilege and responsibility of articulating. I also want to thank the Senate for these open caucuses because it was an open caucus like this one that led to the human rights review of the current situation in prisons across the country by the Senate Human Rights Committee.

Open caucuses like this and the discourse that arises from them are important. Many of the factual pieces about prison are often difficult to access, such as who, in fact, is in prison. As well, as Howard Sapers noted, many policy decisions made by governments have led to an increasing use of, reliance on,

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and normalization of crime and punishment in this country in a way that mirrors and follows a lot of what has happened in the United States (Sapers 2019). It means we are doing things that have put us on a trajectory that is not impossible to exit, but which necessitates examination of the intersecting areas and issues.

When we talk about what contributes to increased criminalization of some of the most marginalized, we need to talk about how economic realities feed this issue. We know that the last time this issue was explored in Canada by Statistics Canada (2016), in the mid 1990s, more than 80% of the people in custody were in prison as a result of behaviour related to their attempts to navigate life circumstances related to past trauma and economic impoverishment. This is particularly true for women. Data from 2008 reveals that 39% of women prisoners were convicted of failure to pay a fine, and 80% of women in federal prisons were unemployed at the time of incarceration, as compared with less than 10% of women in the general population. In Alberta alone, 74% of incarcerated women indicated they were unable to financially meet their basic needs at the time of their arrest. Indigenous women represent a whopping 44% of women in federal prisons throughout Canada and as many as 75 to 90% of those in provincial custody in Prairie provinces.

The fact is that if you are a poor, racialized—especially Indigenous—woman, dealing with past trauma, the likelihood of you being criminalized and imprisoned increases exponentially. The 2009 report, *In from the Margins* (Eggleton and Segal), by the Standing Senate Committee on Social Affairs, Science, and Technology showed how experiences of homelessness, lack of educational opportunities, disabling mental health issues, and living in marginalized neighbourhoods are associated with increased risk of criminalization. Indigenous, Black, and other racialized individuals disproportionately experience these determinants.

Canadians who are racialized, for example, have a greater likelihood of living in poverty than non-racialized Canadians. According to 2016 census data, one in five racialized families are living in poverty, as opposed to one in twenty non-racialized families. A 2016 study by the Canadian Centre for Policy Alternatives found that Indigenous children are more than twice as likely to live in poverty than non-Indigenous children, and Indigenous Peoples make up 32% of those in custody—and a horrific 50% of federally sentenced women alone, yet are fewer than 5% of the total population. Such Canadian

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statistics show a devastating pipeline—from poverty, racism, low education, wage gaps, and more—to crime and incarceration (Zinger 2022, 96).

We must also discuss the impact of experiences of violence against women and children. The reality is, we know that those who experience physical and sexual abuse are unlikely to receive support and instead are essentially encouraged to anesthetize themselves to that violence rather than to have those issues addressed. This can lead to issues of addiction, particularly with drugs and illegal substances, but also to prescription drugs and other "legal" substances that can cause people to be in situations where they are trying to navigate an increasingly inhospitable world. Instead of criminalizing people in such cases, we should be looking at approaches like guaranteed livable income, supports in Indigenous communities, self-governance, and nation-to-nation relationships. We should not be just encouraging First Nations—when we talk about self-governance—to import and Indigenize mainstream models. For instance, in some First Nations, discussions are focusing on decolonizing justice committees, court work, or community integration. In this decolonizing approach, community-based and culturally appropriate approaches are being developed by First Nations, rather than having Indigenous replications of current criminal legal models.

We need to educate Canadians about our history and relationships with Indigenous Peoples. We also, however, need to be clear about how we educate, approach, and describe certain issues. For example, think about the messages it sends when we talk about crime prevention instead of healthy communities—by which I mean access to clean water, food security, adequate housing, educational, economic, and health, as well as social supports—or when we talk about funding "crime prevention initiatives" that really should be fundamental human rights and protected and promoted by section 15 of the *Canadian Charter of Rights and Freedoms*. When we have programs that are about feeding children in schools and we call it crime prevention, and when we have programs that are about supporting pregnant teens and we call them crime prevention, we are sending a message that we need to prevent the next "crop of criminals." Those are the messages we send when we develop policy and fund initiatives in this way rather than in a manner that centres substantive equality.

The fact that women are the fastest growing prison population—particularly Indigenous women and women with disabling mental health issues—is symptomatic of the fact that we are settling for harm reduction models instead

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of demanding the substantive equality models promised by the *Canadian Charter of Rights and Freedoms* and which the Charter and our human rights acts presume. I was struck by this reality many years ago when I was visited by somebody from Europe. They were shocked by how criminal activities and crime dominated our media and the norms they produce. For example, think about how children learn about consequences; they are often told that, "If you're 'bad,' you'll go to jail." So what does that mean? It means when you talk about law reform that adds to the system, and when you expand police, court and correctional responses, you inadvertently feed the system. Special circumstances courts and new programs in prisons have not prevented the marginalization, victimization, criminalization or institutionalization of women and girls. In fact, the unintended consequences seem to be that the various system actors seem to feel better about relegating more—especially of the exponentially most marginalized and discriminated against—to the system, not fewer.

Programs need to be delivered and developed by and in communities, not in the correctional system. We should be asking why the government has not fully and expansively implemented the parts of the Corrections and Conditional Release Act, S.C. 1992, c. 20 (CCRA), which would more likely result in non-carceral options. Sections 29, 81 and 84 of the CCRA allow for the decarceration of women, Indigenous Peoples, and those with mental health issues. As Hansard records of the late 1980s through to 1992 debates reveal, Parliamentarians considered the CCRA as a piece of human rights legislation that was aimed at reducing the number of people in prison, particularly Indigenous Peoples. Political and correctional policy decisions have since led to a failure to fully implement those provisions. The policies that Correction Services Canada have put in place can and must be changed.

Following the report of the Canadian Human Rights Commission (CHRC) entitled *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women* (2003), Correctional Service Canada (CSC) hired Moira Law to review the classification system used to assign security levels to incarcerated women and to make recommendations that would respond to the CHRC finding that the manner in which women are assessed and treated in the federal prison system is discriminatory. She recommended, as did the Task Force on Federally Sentenced Women (Correctional Service Canada 1990), that because most women do not pose a risk to public safety, CSC should start all women at a minimum-security level.

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Both also recognized that when women do pose a risk to anyone, it is often to themselves. These recommendations were not, however, implemented.

Too often, CSC develops systems to address the issues with which they deal in response to concerns pertaining to male inmates. They essentially "add women and stir" as women have historically been considered "too few to count" and other clichés that have been used to describe this practice. We have the opportunity to do things very differently. One of the challenges in terms of doing this work—when you talk about women—is the overarching shadow of what happens in men's prisons and what happens with men.

A high-water mark when it comes to prisoners' rights was Louise Arbour's report following the *Commission of Inquiry into Certain Events at the Prison for Women in Kingston* (1996). One of the things Arbour recommended was that corrections should promote women's corrections as the flagship to try every new progressive pilot—from decarcerating Indigenous women, in particular using sections 81 and 84, and section 29 for those with mental health challenges, to using new measures of bringing community into prisons with a view to getting women out. At that time, when we had no limit on the use of segregation,[1] one of the things she did was recommend some limits on the use of segregation. In the twenty-five years since then, despite the introduction of Bill C-83 and the supposed replacement of segregation with "structured intervention units," as the work of Tony Doob and Jane Sprott (Doob and Sprott 2020; Sprott, Doob, and Iftene 2021) has revealed, CSC has failed to develop the requisite limits or judicial oversight she recommended.[2]

Many people do not realize that if a woman in a prison is classified as maximum-security, she is in a separate living unit and therefore in a state of segregation. In prison, segregation is both a status and a place: the status of being separated from the general prison population and the place called segregation. Maximum-security units are separate units within federal penitentiaries for women; they are in effect separate, fortified prison units within the prisons. Federally sentenced women classified as maximum-security do not have access to the gymnasium, programs, visits, etc. except when escorted by officers, and can be strip-searched each time they go in and out of the living units. Women are effectively treated as though they are actually being transferred from one prison to another. Until the amalgamation of prisons for men during the Conservative government's deficit reduction action plan (DRAP), this was different for men. Men classified as maximum-security

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were usually "housed" in maximum-security institutions, which had all of those services available.[3]

Why should we be looking at fundamentally different approaches for women? Most people, including correctional staff, disagree with official positions taken by ministers. Most people working within the bureaucracy of prisons agree that women are not the people who usually cause the greatest challenges to public safety. If they are considered challenging, it tends to be emotional rather than physically disruptive behaviour that challenges corrections. This was the situation for Ashley Smith, as well as for Terry Baker—two women who died approximately eight years apart under similar circumstances in the segregation unit at the Grand Valley prison for women in Kitchener. Kinew James was also in the same segregation unit but died in the Regional Psychiatric Centre in Saskatoon; she had a heart attack and died after being denied medical attention. Women develop mental health issues and their mental health conditions and symptoms are exacerbated because of the treatment they receive and the conditions of confinement to which they are subjected.

Women also tend to be held in more restrictive conditions. We could prevent and alleviate those conditions, preferably by release and community integration. Many people also do not know that section 81 of the CCRA can be used to release people who are classified even as maximum-security or who are serving life sentences, if an agreement is negotiated between the Minister of Public Safety and a community. The section was originally enacted as part of a strategy to reduce the number of Indigenous Peoples who are imprisoned. In addition, a subsection of that provision of the legislation says it can apply to non-Indigenous people who are imprisoned as well. In actuality, the provision could be applied to enable all kinds of populations to serve their sentences in the community. Unfortunately, CSC policy has inappropriately limited its application.

During the study by the Standing Senate Committee on Human Rights of the human rights of those who are imprisoned, a common question has been "Who should we be emulating?" followed closely by the corollary, "What are international best practices or who's doing it right?" In my opinion, Canada has the opportunity to be the leader in this area. Canada *could* be the one to say, "We will do it right."

But let me give you some examples of where things are or have been done differently—One of the first things Nelson Mandela did when he became the

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president of South Africa was to release women in prison who were mothers of children under the age of 12 years. Based on his own experience in prison, as well as that of his second wife, Winnie Madikizela-Mandela, he understood that to jail and separate a mother from her children was to relegate generations to a similar subjugation.

As was previously mentioned, CAEFS recommends the elimination of the use of segregation for women and offered to do a pilot to get every woman out of segregation. At the request of women inside, CAEFS, in conjunction with law students, also developed human rights education training and handbooks for people inside. Based on a model developed by CAEFS with the women at the now closed Prison for Women (P4W) in Kingston, human rights advocacy teams visit each federal prison for women on a monthly basis. They walk through the entire institution to monitor the conditions of confinement and allow every federally sentenced woman to have the opportunity to speak with them in confidence. Even the Correctional Investigator does not go into segregation in the prisons for women as often as the Elizabeth Fry advocacy teams do. What remains unique about the program is that since their inception, the advocacy teams in the prisons include Elizabeth Fry women, sometimes lawyers, usually formerly imprisoned people, as well as people inside whose institutional employment while serving their sentences includes peer and systemic advocacy and collaborative work as part of CAEFS's Regional Advocates teams.

Renée Acoby, for example, who was a member of the CAEFS's Pacific Regional Advocacy team. One of the challenges highlighted by how she has been treated is the incredible misogynist and racist double standards when it comes to the classification and treatment of women. Renée was labelled a "dangerous offender" based on what she did in prison, not based upon her actions in the community—either prior to her incarceration nor since her conditional release. Her mother was murdered by her father when she was six months old. She ended up in the care of family first, then the state. The impacts of intergenerational residential school and child welfare trauma run deep and wide. Renée entered the prison system on a short sentence (three-and-a-half years for drug trafficking, which is parenthetically one of the few employment opportunities for many of the most marginalized in our country).

When she entered the prison, Indigenous women in the Prairie region were held in a segregated unit in the Saskatchewan Penitentiary for men.

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Nevertheless, contrary to CSC policy, they had contact with the men, who encouraged them to take hostages in order to try and get the attention of senior correctional authorities with a view to accessing services and programs. Renée was involved in a number of those hostage takings, some of them staged, some of them not, and started to accumulate charges and sentences. As a result of multiple prison-generated charges, she accumulated some 21+ years of cumulative sentences. She was then labelled a dangerous offender (to use the official terminology) and was subjected to an indeterminate sentence. Not surprisingly, Renée trusted nobody in corrections. When she was finally provided with access to a non-CSC therapist who is both a psychologist and psychiatrist (someone who did not report confidential information to corrections) she started to work on getting out. She has now been out for years on parole and continues to be a trusted support and advocate with and for others. Unfortunately, some within CSC persist in characterizing her as an ongoing danger, threat, and risk. Her lawyer and supports have had to repeatedly dismantle two, three, four, five, six, ten, 20-year-old information to try and reconstruct Renée as the leader she is, an Indigenous woman who has and will continue to lead. The biggest impediment to her actually moving forward was—and remains—the potential for re-imprisonment.

One of the many challenges with getting lawyers involved in prison law cases is that, unless they go into the prisons and see what happens, it is very difficult for them to truly understand and challenge conditions of confinement. That is part of the reason why we encourage all Parliamentarians and judges to exercise their rights to enter prisons pursuant to section 72 of the CCRA.

Part of the reason that the lawyers who brought the segregation cases to a court challenge failed to argue for an end to the use of isolation is that they actually did not believe it was possible; they did not understand completely how prisons work, nor did they adequately and critically engage with the people inside.

There are many positive ways that we can move forward. We need to ensure that there are effective judicial oversight of corrections and remedial mechanisms for prisoners if we truly wish to have any hope of seeing the Charter and human rights of people in prison respected and upheld.

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Notes

1 These remarks have been updated to account for developments relating to the enactment and implementation of Bill C-83, An Act to amend the Corrections and Conditional Release Act and another Act, legislation characterized as eliminating segregation. It removed procedural—albeit inadequate—safeguards and replaced segregation with structured intervention units (SIUs). Despite the intention of the Bill, conditions amounting to segregation and solitary confinement persist both within SIUs and elsewhere in prisons.

2 Had the Senate amendments (Chantal Petticlerq, *Observations to the Thirty-fifth Report of the Standing Senate Committee on Social Affairs, Science and Technology (Bill C-83)*, Ottawa: The Standing Senate Committee on Social Affairs, Science and Technology, https://sencanada.ca/en/committees/report/76407/42-1) been accepted by the federal government in 2019, key recommendations of the Arbour Commission would have been implemented. Judicial oversight and remediation for prisoners remain imperative.

3 During the 2020–2021 COVID-19 pandemic, most prisoners have been held in segregated conditions of confinement that, according to the United Nations, amount to solitary confinement and torture. The government's abandonment of appeals to the Supreme Court of Canada of decisions regarding limits to the use of segregation further underscore the urgent and ongoing need for the Senate amendments and the Arbour remedies.

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14 Earth and Spirit

Corrections Is Not Another Word for Healing

Charles Jamieson

Indigenous people in prison continue to be denied access to supports and programs that address the underlying issues associated with their experiences with the violence of colonialism without the overwhelming presence of Westernized ideologies. Today, this overwhelming influence of Westernized ideologies exists within the Indigenous-Integrated Correctional Program modules implemented by Correctional Service of Canada (CSC). Indigenous people in prison and their supporters continue to (politely) ask the CSC to accept the traditional teachings on their own, without the correctional interventions, as credible resources for healing its people and to (intelligently) effect change.

Recognizing the effort that CSC has made to introducing Indigenous perspectives into mainstream curriculum, it must also be recognized that corrections developed (made sure) the revised Indigenous-Integrated Correctional Program modules contained Westernized ideologies of correcting and rehabilitating (assimilating) Indigenous people, in reference to Indigenous healing traditions. This approach negates any and all authenticity that the traditional teachings offer "on their own."

Let's be very honest: in corrections (yesterday and today) there does exist an opinion that traditional methods (rehabilitation) are too anachronistic to effect change. Traditional teachings "on their own" are too (weak) open-ended to effect change. Traditional methods of healing are not (intelligent) enough to

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be described as an approved prescription of conduct. In corrections, there exists a strong opinion (even some Indigenous) that although seeking information from traditional teachings is excellent, its relevance in today's society is at question.

Prescription for conduct is in a person's mannerisms, intelligence, and behavioural traits (how a person conducts themselves). For people whose behaviour is expressed in "antisocial" ways, in corrections, the notion of change suggests addressing their underlying issues. For Indigenous people, we are discussing traumas that have affected Indigenous people over generations, mentally, emotionally, spiritually, and physically. In the absence of addressing these colonial issues, nothing about a person will change. We will continue to get what we have always gotten. The diabolical cycle does not go away.

Although traditional teachings are dated in our society, this opinion relates to the belief that traditional teachings cannot move Indigenous people into (internalizing) rehabilitation. Corrections does not believe that traditional teachings, of their own merit, can be a reliable source for "pro-social" change. I (unequivocally) disagree. Incorporating Westernized ideologies into Indigenous-Integrated Correctional Program modules is not only insensitive but highlights a misunderstanding and ignorance of traditional teachings. CSC has never wanted to acknowledge that Indigenous people do not need their influence to (rehabilitate) change.

There is no need for a handbook entitled, "For all Aboriginal people in prison in CSC: This is How you Rehabilitate." Teaching Indigenous people in prison how to fill out identification forms, submit tax returns, open chequing accounts, and obtain a driver's licence should be the extent of Westernized (ideologies) influence concerning the rehabilitation and healing of Indigenous people. When it comes to these underlying colonial issues, Indigenous people in prison should have the choice, which comes without consequences.

I concede that Corrections offers an opportunity for Indigenous people in prison to address these issues with an Elder. However, they (must) will still be referred to participate in their Indigenous-Integrated Correctional Program modules to address the issues they have identified as contributing (criminogenic) factors. This additional (required) step is unnecessary for Indigenous people in prison. Why? That individual sought out a method of treatment that they were able to identify with on a personal and cultural level. That contact (identification) with their Elder was already the driving force that propelled the individual to reconnect with their culture and

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spirituality. These individuals then made an intelligent and informed decision to address underlying issues in a religious way; religion referring here to the active and full participation in any and all traditional ceremonies, traditional rules of ethical conduct, and traditional views of a spirit dominated universe. These are views that did not simply come into being on their own. They were created.

Anishinabek consider the Earth a sentient being that helps generate life, and many believe that the Creator created a universal bond between all living things that placed the earth at the centre of a vast web of kinship relations. CSC does not acknowledge the connection between Earth and Spirit. It is this refusal that does not allow traditional teachings the authenticity and validation that they deserve. In CSC, the meaning of equality and fairness is specified in the principles of justice, which also require that equal basic rights be assigned to all persons; the constitutional category under which Anishinabek people have a right to their spiritual (religious) beliefs is section 35(1) Part II of the Constitution Act, 1982. A contemporary applied example of this principle is provided in the issue involving the Cape Croker Indian Reserve. This challenge revolved around a piece of land that held spiritual significance regarding land called the Alvars that have an age between 4200 BCE and 2700 BCE. Scientists, lawyers, band counsellors, grandmothers, Elders, and medicine people, drew strongly on Anishinabek law, respecting Anishinabek spiritual beliefs. This led to a (positive) resolution.

Anishinabek people have multiple viewpoints on religion and spirituality. Yet despite diverse perspectives, the land's sentience is a fundamental principle in Anishinabek law, one upon which many Anishinabek people attempt to build their societies and relationships. Of course, they have not always been successful in this regard; like most peoples, they often fall short of their highest ideals. Nevertheless, it is a (present-day) principle of central significance that has tremendous implications for how we live with one another on the earth's surface.

This brief review of Anishinabek law demonstrates that Anishinabek beliefs concerning the Earth as a living being can be (legally) recognized and affirmed. I am stating that CSC should give relevance, authenticity, and validity to traditional teachings as an appropriate (rehabilitative) method. In this context, Indigenous people in prison are not refusing to rehabilitate, nor are they refusing treatment. They are choosing a method that they can identify with.

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Are traditional teachings too anachronistic to effect change? The Anishinabek take their identity and traditions from their ancestors. This (sacred) story is part of what Anishinabek people call the Grandfathers. Stories of this nature are set in time immemorial; they explain how the world came to have its present form and furnish embedded observations of how the beings (who currently inhabit earth) should relate to one another.

Are traditional teachings (not) intelligent enough to be described as advancing pro-social conduct? In addition to the pervasiveness of Anishinabek thought regarding the Earth, there are strong and formalized Anishinabek structures to give this belief even greater coherence. For example, the Midewiwin society is regarded as the traditional Anishinabek religion. It teaches the people how to appropriately relate to the Earth and other living beings (who currently inhabit earth).

Are traditional teachings too open-ended? CSC needs to recognize that traditional methods (of rehabilitation) are not solely based on sweats, spirit baths, and Elder one on ones. Through these ceremonies, individuals begin to appreciate that rehabilitation at CSC is a very small portion of their rights and responsibilities that they will have to undertake should they choose to live an Anishinabek lifestyle.

Indigenous program facilitators do have the training to make accurate assessments regarding Indigenous people's amenability toward (internalizing) traditional teachings. The facilitators have the (education) ability to provide a professional opinion regarding an individual's suitability for participation in a Healing Plan. Indigenous Liaison Officers have the insight and training to interpret the Offender Management System and to make appropriate referrals regarding individual program needs. The Indigenous Liaison Officers can make informed decisions that distinguish between those who would benefit from Healing Plans and those who are not ready.

For Indigenous people in prison, having made a cultural and spiritual connection was the catalyst that encouraged them to address their traumas in a holistic way. When an Indigenous person asks for the program room to be smudged, what does the program facilitator say to such a request? When an Indigenous person asks their parole officer to be discharged from the Indigenous-Integrated Program because it does not provide cultural and/or spiritual connection, what does parole officer say to such a request? Indigenous people in prison are being told that the environment they are in

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is not appropriate for smudging and that regardless of the reason why, if that offender stops going to their core program, there will be consequences.

Traditional teachings and those who undertake their rights and responsibilities need to be protected. Those who work with a facilitator and Elder developing a Healing Plan should receive Constitutional and Charter protection under Section 2(a) of the Charter and Section 35(1) Part II of the Constitution Act, 1982. Those methods of protection should be conclusive so that authenticity is not compromised. Otherwise, the person becomes oppressed with nothing to make a connection to. That's the Indigenous person we need to protect.

The Indigenous person we need to protect is choosing to return back to the (Reservation) community and they are making intelligent and informed decisions, choosing to participate in religious ceremonies to address their underlying issues. It is a spiritual choice, but this is not an Indigenous issue; this is a Constitutional challenge and you people are the law.

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15 Shit

A Poem Dedicated to All Incarcerated Sisters

El Jones

This poem is dedicated to all incarcerated sisters.

If you done shit in your life, recognize.
Apologize.
Then move forward and let it lie.
If you got shit in your life, analyze.
Then energize.
Move yourself forward and let it lie.

If they treat you like shit, strategize.
Mobilize to get them out of your life.
If he says you ain't shit, then realize
He is speaking bullshit and lies.
Then reprioritize.

Know you deserve better than that:
Say your goodbyes.
I know you have it in you girl.
Rise.

I have seen other women come through these trials.
You will survive.
What doesn't kill us makes us wise.

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If they say you can't do shit, then organize.
Don't be surprised when you discover how strong you are inside.
The sky is the limit, so don't compromise.
Don't let them cut you down to size.

If you are feeling bad shit, then let yourself cry
Know that you are bigger than your shit,
keep your eyes on the prize.

If you think shit is more than you can bear, just hang on tight.
White knuckle it through until help can arrive.
I promise you shit will work out all right.

When you get a handle on shit, then memorize.
Repeat to yourself: I am too great to minimize.
My life means too much to jeopardize.
Shit cannot fuck with me now
'cause I am immunized.

Say: The worst shit was thrown at me and I am still alive.
Say: My shit is too powerful to be euthanized.
Say: By not being beaten down by shit, I have advertised
That the next time that shit happens I am desensitized.

Say: I am familiarized with your shit, so I can neutralize.
You have exercised your worst shit and I'm still standing by.
I can dust off that shit
and hold my head up high.

Say: I have seen it all now, so I am qualified.
Say: You will not catch me with that same shit twice.
Say: I have decided to live so I can testify
That there is no shit that can undermine.

When you have made it through shit, then inspire.
Don't give shit back to other people, empathize.
Because you have been through shit, you have the power to
advise.
Give all the help you can provide.

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Know that coming through shit gives you the knowledge to guide.
Remember at the end of each tunnel there is a light.
Reach back and bring others alongside.
Know that you are a goddess in disguise
Suffering through shit brings you close to the divine.

Say: I embrace all of my shit because it is mine.
Come to terms with your shit and harmonize
Say: I'm not ashamed of the shit I have done, because it clarified.
Acknowledge the shit you have done but then let it fly
Say: I had to experience that shit to come through the fire.
Don't go back to that shit, just let it expire.

If you are caught up in shit, then override.
If shit is bringing you down, then purify.
If you got too much shit, then simplify.

When you have dreams for the future, past shit don't apply.
Remember out of cocoons come butterflies.
Visualize what you want, and then actualize.
Remember your true value cannot be priced
And don't ever let shit demoralize
Because you are the shit girl—you can never be denied.

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16 Incompatible or Congruent?

Can Indigenous and Western Legal Systems Work Together?

Lorinda Riley

The land masses currently known as the United States and Canada have many commonalities including a similar historical path of settler colonialism (Cornell 2006). Both countries were either influenced by or adopted the Magna Carta, a charter of rights issued by the British King in 1215, and the Royal Proclamation of 1763, which prohibited colonial settlement past the Appalachians. Read together, these documents guided the initial interactions between settlers and Indigenous people by acknowledging that even a nation's leaders could be held accountable for actions that violate the law.[1]

Despite these similar histories, the relationship that each nation has today with Indigenous communities is quite different. The United States, in line with federal-state separation of powers, developed a system of separate sovereigns for dealing with tribal nations under the pen of Chief Justice John Marshall, who is likely the most influential justice to sit on the US Supreme Court. In contrast, Canadian federalism does not employ a separation of powers doctrine. Thus, the Indigenous people of Canada are more fully embedded in the Western legal system. This can be seen in the Indian Act of 1876 (as amended), which defines nearly every aspect of how the Canadian government interacts with First Nations and its members. For example, the Indian Act defines who is considered a status Indian, property tax obligations, and what powers band councils can exercise.

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Although two different systems of handling Indigenous criminal justice have developed in neighbouring countries, there is much that can be learned from each other. This chapter will first discuss the current frameworks utilized by Indigenous nations in deliberations of justice in both Canada and the United States. After contrasting the two frameworks, this chapter will provide an analysis of the strengths and weaknesses of each model. Finally, I will opine on what best practices can be transferred from one model to the other in order to further Indigenous self-determination, or the right to make one's own rules and be governed by them. By incorporating the beneficial aspects of the Canadian and US Indigenous legal systems, both nations may be able to begin correcting the detrimental effects of an ongoing colonial legacy.

Traditional Indigenous Justice Systems

While there is great variety in the rules that Indigenous communities instituted and enforced, one constant is that Indigenous people effectively regulated the behaviour of individuals in their communities. The Dog Society of the Pawnee is one example of such a community in which an independent collective of individuals regulated behaviour within the larger community (MacLeod 1937). Some Clown societies of the Pueblos regulated behaviour through ritualized entertainment and teasing (Horton 1976). These two examples provide a glimpse at the diversity of traditional modes of behaviour regulation. In both, an attempt to change and reintegrate the offending individual(s) is made at the outset. At the same time, the communities were prepared to remove harmful individuals from the group through banishment. Given the challenges of a traditional subsistence life, banishment often, but not necessarily, equated to death (Llwelyn and Hobel 1941). Thus, mutual need and strong bonds served to reinforce community norms in a powerful and profound manner (Kunesh 2007; Llewellyn and Hobel 1941).

As Indigenous people came into contact with settler colonial populations, Indigenous populations were devastated by unfamiliar diseases and raids which significantly reduced their population even when friendship ensued. In other instances, relationships between the two nations deteriorated and war ensued, compounding the damage. In early contact times, Indigenous nations were able to match forces with the settlers, making peace a mutually desirable goal. Durings these early years of contact when nations engaged in peace negotiations, the terms tended to be more equal (Williams 1994, 983;

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Cornell 1988, 23–24). Early treaties often included "bad men" clauses that stated that bad or problematic men amongst the whites were to be returned to the federal government for punishment ("A Bad Man Is Hard to Find" 2014: 2521). These clauses were reciprocal, but required that bad men amongst the Indians be provided notice before being required to appear before the Indian agent, all the while allowing tribes to maintain justice amongst their own tribal members.[2]

In keeping with this approach, the US Supreme Court heard a series of cases in the late 1700s and early 1800s that became the foundation of US federal Indian law. In one of these cases, *Worcester v. Georgia*, the Supreme Court held that the Cherokee Nation could manage its own internal affairs without interference from the State of Georgia.[3] These "bad men" clauses and early Supreme Court cases like *Worcester v. Georgia* highlight the intent of settler colonial nation to create a dual system of justice in the United States.

Another Supreme Court case, *Ex Parte Crow Dog*, is often cited as the first sign of pressure to reduce Indigenous control over their internal justice system.[4] During the early twentieth century, the settler government focused on assimilating Indians into the settler society by relegating tribes, who were seen as a strain on the nation's resources, to reservations. Efforts were made to assimilate Indians into mainstream society by breaking up the kinship systems and teaching them farming; however, tribal assimilation proved slow. In *Ex Parte Crow Dog*, a traditional Indian killed Spotted Tail, an Indian that the military often turned to for support, which angered the US military. The tribe provided a restorative justice focused resolution whereby Crow Dog was made to provide for Spotted Tail's family through payment and service, which is stark contrast to the settler criminal justice system that relied on punishment. As a result, there was an attempt to try Crow Dog again in federal court. Through a writ of habeas corpus, Crow Dog successfully argued that he had already been tried and the military had no authority to hold him. While this case upheld Indigenous authority by agreeing with Crow Dog and mandating his release, it also prompted congressional legal reactions that eroded Indigenous authority.

The Crow Dog case was the impetus of the Major Crimes Act of 1885, which was the first significant erosion of Indigenous jurisprudence.[5] The Major Crimes Act enumerated seven crimes that, if committed by an Indian on a reservation, would fall under the jurisdiction of the federal government. Over the years, this act was amended to expand to thirteen felony crimes.[6] As

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a result, a complicated, Western-oriented criminal justice system developed that was focused on the nature of the crime, political status of the offender, political status of the victim, and the location of the crime. The answer to each of these fields determines whether the incident will be prosecuted in federal, state, or tribal court.[7]

Overrepresented in the Settler Carceral System

The operation of separate criminal justice systems has achieved several conflicting results. Tribal nations have developed unique and often highly culturally relevant tribal courts. Many of these tribal courts have incorporated tribal common law or traditional law (Austin 2009, 62–69) and use traditional justice models that lean toward a restorative focus. Restorative justice differs from the overarching American legal system, which is adversarial and punitive in nature, whereas restorative justice focuses on restoring the victim while reintegrating the offender back into society (Johnstone 2003, 12–22). Thus, having a separate judicial system has allowed tribal nations in the United States to maintain some judicial integrity and to continue to experiment with reintegrating culturally grounded rehabilitation methods.

At the same time, however, a complicated and multi-layered jurisdictional system developed, which has posed significant law enforcement challenges. For example, on certain reservations where much of the land has changed hands to non-Indians, tribal police only have jurisdiction on tribal lands, as opposed to the norm where tribes maintain jurisdiction over all lands within the exterior boundaries of the reservation.[8] In such cases, tribal police are often forced to carry playbooks in their patrol cars to ensure that they have jurisdiction when responding to calls or pulling over vehicles. In these reservations there is an uneasy balance between federal, state, and tribal jurisdiction over criminal activities. Some non-Indians have become aware of this jurisdictional complexity and are using Indian reservations as safe havens for their illicit activities (Hudetz 2018).

Furthermore, tribal members who moved off-reservation were exposed to new norms of behaviour and a foreign justice system, resulting in the overrepresentation of the Indigenous persons in state and federal prisons. Recent figures show that Indigenous people make up 3.7% of US citizens in the federal prison system, even though they make up only 1% of the total national population.[9] In fact, the number of incarcerated Indigenous adults keeps increasing.

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From 1999 to 2014 the number of incarcerated Indigenous adults increased by 4.3% per year compared to 1.4% for all other races (Minton, Brumbaug, and Rohloff 2017, 1). Indigenous adults also are more likely to be sentenced for the crimes that they are accused of—53% compared to 47% for all other races, and they were more likely to receive a sentence of more than 5 years (Minton, Brumbaug, and Rohloff 2017, 9).

Overrepresentation of Indigenous people in the Western criminal justice system does not just apply to the continental United States. Thirty-nine percent (39%) of Native Hawaiians in Hawai'i are in state prison even though they make up only 20.1% of the population (Office of Hawaiian Affairs 2021). Native Hawaiians are also more likely to receive prison time and be sent out-of-state to serve their sentence than other races (Office of Hawaiian Affairs 2010). At least one scholar has suggested that this may be because of the tendency for Indigenous people to take responsibility for their actions as promoted by the traditional Indigenous justice system (La Barre 1947, 301–7). Thus, even though tribal courts may have developed justice systems that are modelled on their traditions, because of the distinction between on-reservation and off-reservation crimes and the concomitant loss of land that Indigenous people have experienced, the vast majority of criminal incidents end up being prosecuted in state or federal court, which limits the impact of innovative tribal justice approaches and results in overrepresentation in state and federal prisons.

Even more dramatic figures exist in Canada where Indigenous people are 4.1% of the population, but make up 30.4% of the incarcerated population. Indigenous women make up nearly 42% of the female incarcerated population (Clark 2019, 8; Statistics Canada 2016). The Indigenous women incarceration rate is nearly 12.5 times higher than that of non-Indigenous women (Statistics Canada 2018, 2). These figures have risen nearly 5% in the past six years since working on this chapter, indicating that despite a pre-existing recognition of this disparity, the system still grew its number of Aboriginal prisoners. Clark (2019, 13–25) notes that the causes for this overrepresentation can be traced to colonization, socio-economic marginalization, systemic discrimination, including policing, courts, and corrections, and a cultural clash. The failure of the Canadian criminal justice system has become so persistent that the Truth and Reconciliation Commission of Canada listed eighteen Calls to Action aimed at the justice system.

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US Indigenous Approach to Criminal Justice

The US model of separate sovereigns first developed from the establishment of the states from the former colonies and, later, from the United States government's preference for the use of treaties to resolve Indigenous–settler conflict. In *Worcester*, the court found that Indian tribes were capable of handling their own affairs within the boundaries of their reservations and that the state could not intrude on their authority.[10] This philosophy of separate affairs continued throughout America's early history. For instance, the Reservation Era (1829–1886) was a period in which American politicians sought to contain Native Americans on plots of land in order to facilitate westward expansion.

Throughout history, the government attempted to assimilate Indians. Even as they sought to separate Native Americans from the rest of the population on reservations, they sponsored programs to encourage farming, sewing, and other industrious tasks (Lomawaima 1995, 18, 81, 84, 88; Tetzloff 2009, 82). Despite these efforts, assimilation was overwhelmingly unsuccessful and many tribal nations not only lost much of their land, but were also restricted to the reservation. This meant Indigenous persons could no longer support themselves using traditional methods and were unwilling to adopt the "Western" ways promoted by the settlers. Thus, when industrialization began in the 1870s and the United States became exponentially more economically developed, whole tribal nations were not part of this journey.

It was not until the late 1960s that the Self-Determination Era (1961–present) ushered in a focus on tribal self-determination and capacity building. The era began in ernest when President Nixon, addressing the US Congress, argued that "the goal of any new national policy toward the Indian people" should be "to strengthen the Indian's sense of autonomy without threatening his sense of community. . . . And we must make it clear that Indians can become independent of Federal Control without being cut off from Federal concern and Federal support" (Nixon 1970). Whether this was realized is another matter, but it is under this policy of self-determination that tribal nations have received funding for capacity building, taken over program formerly managed by the federal government, received direct federal grant funding, and strengthened the process of nation building.

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Benefits to Self-Determination

Self-determination is the ability of a people to make their own rules and be governed by them. The Self-Determination Era encouraged tribal nations to develop their own systems of governance, including court systems, with the full support of the federal government. Prior to the Self-Determination Era, existing tribal courts used the US Code of Federal Regulations (CFR) laws and procedures. These CFR courts are tribally operated, but utilize federal procedures to adjudicate crimes articulated under the CFR rather than tribally enacted laws and procedures. As a result, these CFR courts operated in a similar fashion to the Western court system.

While many tribal nations continued to practice traditional peacemaking techniques during the Allotment and Assimilation Era (1887–1932), these traditional practices became seen as a legitimate legal processes during the Self-Determination Era. For example, the Navajo Nation Peacemaking Program, founded on a time-honoured method of resolving disputes among individual Navajos, now has an official office with twelve locations across the vast Navajo Reservation operating through the Navajo judiciary. Any criminal case may, under certain circumstances and with the agreement of all parties, be removed to the Peacemaking Court. Citizens can also request non-judicial services for issues such as family problems, lifestyle concerns, and problems in school (Navajo Nation Peacemaking Program 2012). Other tribal nations, such as Village of Kake in Alaska (Organized Village of Kake 2000) and Mashpee Wampanoag Tribe in Massachusetts also have peacemaking programs modelled after their traditional dispute resolution system (Mashpee Wampanoag Tribe, n.d.). In other words, because of the increased external legitimacy, if a resolution such as the one found in *Ex Parte Crow Dog* were to come up today, it may receive less outrage.

Whether the tribal judicial system creates a separate peacemaking court or whether they incorporate non-adversarial, traditionally rooted, restorative measures in their main court system, tribes can use self-determination to make decisions on how to best maintain justice in their communities. For example, the Navajo Nation operates both traditional Peacemaking and a more Western court system that utilizes Navajo laws and custom, whereas the Mashantucket Pequot Nation in Connecticut operates a unitary tribal court system that utilizes Pequot traditional laws, but in a modern Western court system. As long as the tribal court does not exceed its jurisdiction by prosecuting crimes

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articulated under the Major Crimes Act of 1885, tribal courts have primary jurisdiction, which must be exhausted prior to appealing to the federal court system.[11] This relative freedom allows them to tailor their justice system to the needs of their people.

Concerns Related to the US Approach

Where issues occur is when Indigenous values of truth-telling collide with the Western adversarial model. The adversarial model attempts to take advantage of procedural missteps in order to convict or discharge the culpability of a defendant. When individual Native Americans transition between the two models, misunderstandings and unique procedural inequities develop. Utilizing a restorative method in a tribal court setting may prejudice Native American defendants in a state or federal court system because they may reveal facts that under a restorative system would be beneficial, but can be used against them in an adversarial system.

Another concern that has arisen as tribal nations have become more engaged in governance, the federal government has begun to realize the scope and quality of information that tribal nations control. For example, in the criminal law context tribes have their own criminal records, arrest histories, and tribal orders of protection. Tribes, as the entity that has primary jurisdiction over reservation lands, patrol their lands and are able to provide information on border incursions, suspicious activity, and other activities that may be useful to federal and state law enforcement. As a result, the federal government has attempted to encourage tribes to share information, especially in the criminal and homeland security contexts (Figueroa 2018, 41–42; Department of Homeland Security 2013). While this may be a sign of increased respect and understanding, it also fails to consider some of the unintended downstream consequences that may occur.

When a tribal citizen is charged in tribal court with a criminal offence and is found guilty, they may be required to participate in cultural programs, community service, probation, or even jail time. Restorative options may or may not include an expungement of the criminal record. When criminal records are not expunged and the information is then shared with other governmental entities, the tribal nation loses control over how that information will be utilized. For instance, there have been examples where tribal citizens who have two prior convictions in tribal court are brought up on enhanced

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state charges or receive longer sentences in the federal judicial system than they would have in the state judicial system (Forsch 2015; Droske 2008, 723).[12] In addition, they run the risk of having a "three strikes" rule or some other state or federal sentencing enhancement applied at their sentencing hearing.[13] Some might argue this result is the unfortunate cost of tribal self-determination rather than a repressive outcome.[14] However, it is important to remember that because many tribal courts utilize some degree of restorative justice, these courts encounter the accused pleading guilty and waiving potential procedural concerns more often than adversarial courts do. Thus, even in a system that respects tribal self-determination, colonialism still resurfaces.

Thus, even in a self-determination framework the colonial system still influences the tribal model. This may, in turn, influence the approaches to justice that the tribe may find prudent to pursue. US tribal nations have the inherent freedom to create a justice system that matches their traditional and modern culture.[15] While there are some limits to this freedom in terms of the types of crimes that the tribes have exclusive jurisdiction over, tribes have significant freedom to determine the type of behaviour that they believe is appropriate for their community. As a result, while some may see the US model of tribal law as a separate justice system that runs in parallel, it may more accurately be described as an overlapping helix since it crosses over with the federal justice system at several junctions.

Canadian Approach to Indigenous Criminal Justice

Although the legal system of Canada and the United States both trace their roots to British common law, there are several key distinctions between the two systems. First, unlike the United States which bifurcates its judicial authority between the state and the federal system, Canada follows a unitary judicial model.[16] Thus, these courts are charged with adjudicating cases brought under federal, provincial, or territorial laws. Similarly, there is a singular Criminal Code in Canada which operates in all provinces and territories. However, while the legislative authority for criminal law rests with Parliament on the federal level, the implementation is mostly handled by the provincial governments. In other words, the provinces are charged with enforcing criminal laws that they have not necessarily passed. Accordingly, even though the provinces do not have the authority to create their own criminal laws, they still have a strong interest in the federal criminal justice system (Doob 1983, 256).

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In addition, the Canadian court system, resembling a pyramid, is somewhat more simplified than that of the United States due to its unitary nature. Because the same criminal law applies regardless of the province or territory, there is less benefit to forum shopping or challenging the jurisdiction of a particular court. In the United States, it is fairly common practice for defence attorneys or for parties to a civil action to motion the court to change the venue of the hearing because they believe an alternative venue may be less biased or more sympathetic to their client (Fried 2005). This enterprise of forum shopping is less beneficial in a unitary system. The Canadian Supreme Court, then, as the apex of the pyramid has significant ability to influence the affairs of the provinces by continuing to encourage federalism and uniformity (Girard 2007, 739–40).

The unitary system has some benefits on the law enforcement side because training can also be standardized across provinces since the same legal elements exist regardless of which province the alleged crime took place in. Similarly, standardization makes integration of new ideas and methods related to Indigenous offenders easier since many of the variances between provinces have been eliminated. The unitary system, however, also has the effect of discouraging Indigenous sovereignty and autonomy by ignoring the unique cultural differences among Indigenous people, including their understanding of what constitutes criminal behaviour (Hodgin 2012, 968–69). Comparatively, a separate sovereign justice system would allow Indigenous people to pass and enforce laws that correspond to their cultural values and mores. For example, a matrilineal community may decide it is appropriate to extend the definition of incest beyond first degree cousins on the maternal line. Such a law may better reflect their traditional conception of appropriate behaviour.

Nonetheless, this federal system of justice has resulted in several benefits to the administration of justice in the courts, including the standardization of criminal law. The Canadian Criminal Code, which is regularly updated, provides a one-stop shop for criminal law. Thus, regardless of which province someone lives in, the same actions are considered a crime and the same elements must be proven in order to be convicted of that crime.[17] Similarly, changes made at the national level would automatically trickle down into the provincial level. Finally, because the court system is unified there is less need to adjudicate jurisdictional challenges, which produces some efficiency. These benefits trickle down to First Nations as well since it reduces the need to educate and re-educate multiple levels of government about the unique aspects

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of their tribal justice system. For instance, once a specific topic of concern is addressed, such as the consideration of negative colonial experiences for all self-identifying Indigenous individuals during sentencing, also known as a Gladue Reports, this principle theoretically applies universally across provinces. Although it is accurate to state that many of these provisions are unequally applied and result in some variation between provinces, the reality is that the principle nonetheless exists uniformly, which is not true for US tribal nations, where some scholars have used the term jurisdictional maze to refer to Indigenous criminal jurisdiction.

Concerns Related to the Canadian Approach

This focus on a strong federal judicial system has significant impacts Indigenous communities in Canada. Unlike the United States where tribal nations have retained their judicial authority, in Canada all crimes are adjudicated under the federal Canadian Criminal Code regardless of whether the offender is Indigenous or the crime occurs on a reserve. There is no doubt that this model is simpler to implement; however, concerns related to cultural relevancy and self-determination exist (Washburn 2006, 781–82). The ability to determine what actions are criminal, how those actions are specifically defined, and what sentences each criminal act carries is fundamental to reinforcing acceptable modes of behaviour (Hart 1958, 418–27; Washburn 2006, 832–36). Without having control over the judicial process, the justice that is meted out may not be legitimate to the people.

In its essence, a judicial system provides a way to regulate behaviour. It allows a community to ensure that its citizens meet certain moral and behavioural standards. Laws, then, represent a code of conduct endorsed by the larger community. Differences in laws, processes, and sentences all highlight the cultural differences among communities, and suppressing these differences through the application of a Western model may result in a reduction of internal legitimacy (Cornell 1992, 9–15; Riley 2018, 531–36). In order for Indigenous nations to exercise true self-determination, control the over the judicial process is paramount. Indigenous nations need the ability to create laws, when necessary, and to change laws as needed, using a process that is legitimate in the eyes of the community.

Under the Canadian model of a unitary judicial system it is the colonizing government that has the power to regulate the conduct of the Indigenous

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people. Not only do Indigenous people not have the authority to alter the laws of the colonizer in order to better fit their own codes of conduct, they cannot impose their beliefs upon the larger settler community as has been done unto them. Attempts at mitigating this imbalance through the implementation of healing lodges and sentencing circles have been made, but implementation of these options must always be done with the "blessing" of the colonial government.

Benefits of a Unitary Approach

Despite the challenges, one of the benefits of a unitary system such as the one in Canada is that Indigenous communities are incentivized to work within the colonial structure to effectuate changes and improvements, which, if successful, may result in a large impact as the lives of Indigenous people. For example, healing lodges in Canada are able to work with a multitude of Indigenous defendants precisely because they are not limited to one reserve. These healing lodges, which are are made available to a largely minimum-security population, are technically an extension of the state, but are nonetheless influenced by Indigenous healing concepts (Correctional Service Canada 2013).

The overrepresentation of Indigenous people in the prison population is an unfortunate testament to the lingering effects of colonialism. Indigenous prisoners make up 28% of the Canadian prison population even though they only comprise 4.3% of the total population (Office of the Correctional Investigator 2018, 11; 61). This highlights the negative effects of colonialism on Indigenous people, but also allows for better data collection and analysis in order to determine the utility of the restorative methods utilized due to the population size (Milward 2011, 30). Several scholars have suggested that colonialism affects Indigenous people in ways similar to post-traumatic stress disorder (PTSD) (Braveheart 2003, 10–11; Ehlers, et al. 2013, 6–8). PTSD is, in turn, correlated to an increased rate of imprisonment (Hamilton and Sinclair 1991), difficulty integrating, and increased criminalization (Friel, White, and Hull 2008, 72; Calhoun et al. 2004, 9–11).

Canada, like the United States, has a history of federally sponsored assimilation policies, which pushed many Indigenous people to reside off-reserve to escape poverty and seek additional economic independence (Statistics Canada 2011, 10–11). Legislation that defined Indigenous status, compulsory

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enfranchisement, outlawing cultural practices such as potlatch, and residential boarding schools all supported assimilationist policies that disconnected Indigenous people from the land, their culture, and families (Monchalin 2016, 123–24). Because the Canadian unitary system forces Indigenous people into the colonial judicial system, it provides an opportunity for a more meaningful approach to criminal justice reform since Indigenous people reach a critical mass, thus enhancing successful advocacy. In the United States, many tribal communities have pragmatically chosen to focus criminal justice efforts on their own tribal court. Nevertheless, when more than half of the tribal citizens reside off-reservation and would come before the state or federal judicial system if charged with a crime occurring off-reservation, focusing on tribal justice systems leaves the majority of justice system touchpoints unaffected.

Inescapable Colonialism?

Canada's unitary justice system includes national guidelines detailing how one can participate in criminal justice alternatives such as healing lodges. Under the Corrections and Conditional Release Act (CCRA), the Correctional Service Canada (CSC) uses the Custody Rating Scale to determine the risk of an offender (Correctional Service Canada 2018, Annex B).[18] Only low risk prisoners as determined by this scale may participate in these alternative programs. Static factors such as sentence length, age at the time of the crime, and prior offences weigh heavily in one's risk factor. These are all areas where Indigenous people tend to be systemically overrepresented and consequently Indigenous prisoners tend to have higher risk factors (Milward 2011, 3, 41, 47). Accordingly, Indigenous prisoners are systematically disadvantaged when judged under this framework making Indigenous prisoners less likely to qualify for alternative programs and later be granted parole. Furthermore, at least one scholar has found that some of these factors, such as criminal history, have no predictive value of future criminal justice involvement for Indigenous prisoners (Webster and Doob 2004, 403–5). This finding suggests that an alternative rating system may be more appropriate for Indigenous prisoners in Canada (Milward 2011, 36–38).

Thus, the sad reality is that both the Canadian model that oppressively dictates the boundaries of the laws and justice system that Indigenous people must comport to and the US model, which purports to support

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self-determination by allowing tribal nations to create their own laws, but has created a hegemonic belief among many US tribal nations that a punitive justice model is preferable, in actuality illustrates inescapable colonialism. The Canadian model at least provides for a type of transparency as to the boundaries and rules of the "game." Under the US model, many tribal nations are told that they have self-determination, and to a certain degree they absolutely do; however, they also are induced to create a justice system that meets Western standards of judicial behaviour.

In both the United States and Canada, the colonial judicial system is set up to be adversarial in nature, which is incompatible with many traditional models of Indigenous justice (Reimund 2005, 11–12). The adversarial system rewards strategic manipulation of the procedural aspects of a case and discourages truth-telling, which is an important part of restorative justice systems. In fact, taking responsibility for one's actions is a mandatory element of restorative justice (Wenzel et al. 2008, 378).

Furthermore, the punitive aspects of Western judicial systems not only do not match more traditional Indigenous methods of justice, but they do little to repair the harm done to the victim. The punitive system is a repressive system founded on the idea that punishment will not only deter others, but will in and of itself rehabilitate an offender. This idea has been shown to be misguided (Tannenbaum 1938, 475–76; Sutherland and Cressey 1992, 278–320; Kramer 1996, 55). When implemented on a juvenile or youthful offender, a punitive focused approach more often results in the solidification of criminal character into adulthood (Fagan 2010, 53–54). When a repressive approach is implemented among adults, educational and career opportunity costs among prisoners appear, which has been shown to lead to increased rates of recidivism (Rubin 2003, 56–62; Kramer 1996, 3; Fagan 2010, 53).

Regardless of the model that an Indigenous community must operate in, it is imperative to understand the invidiousness of colonialism. Although there may have been human rights-oriented changes through the centuries, the fact still remains that the judicial system is set up in a colonial structure that was not designed by Indigenous people themselves. As a result, it is important for Indigenous communities in both nations to acknowledge and protest unintended consequences as well as strive to coordinate with the settlers. Thinking deeply or for the next seven generations is critical, as tribal communities decide how to restructure their own judicial system

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and determine how to best allocate scarce resources to meet the needs of their citizenry.[19]

Best Practices in Canada

As a consequence of the limited self-determination that the Canadian criminal justice model offers to Indigenous nations to create their own legal justice system, Canadian Indigenous communities have focused their efforts on restoring the Western justice system writ large. In 1992, for example, Canada passed the CCRA, which allowed the CSC to make agreements with Aboriginal communities for the "care and custody of offenders who would otherwise be held in a CSC facility" (Sapers 2012, 3). Although some healing lodges, such as the Native Counselling Services of Alberta, existed as early as 1988, the CCRA provided more legitimacy and now nearly ten are in operation (Nielsen 2016, 323). These healing lodges seek to incorporate Indigenous values into the corrections system for the purposes of healing, but they do not attempt to incorporate restorative justice into the pre-sentencing system.

Healing lodges are minimum security institutions that offenders can transfer to post-sentencing in order to participate in Indigenous-focused programs geared toward healing the offender and reintegration upon release. Although the actual practice varies, the premise of these programs is that they are based on the Indigenous values of balance, individual authority, non-coercion, collectivism, interconnectedness, and healing (Dumont 1996, 26). Counselling by Elders along with participation in ceremonies strengthen the individual's connection to community and provide mechanisms for them to deal with stress (Duran and Duran 1995, 196–97).

Studies indicate the recidivism rate of people leaving the healing lodges are between 3.5% and 11%, which is quite low given that Indigenous populations are at high risk of recriminalization (Correctional Service Canada 2013). Evidence also indicates that participation in culturally relevant programs, regardless of the locus of those programs, decreased recidivism by 9% (Gutierrez, Chadwick, and Wanamaker 2017, 341). According to Sioui et al. (2001, 43–44), Indigenous prisoners who participated in cultural activities have a recidivism rate of 3.6% compared to 32.5% for those who did not, a rate of 14.4% for those who participated in spiritual activities, such as sweat lodges, compared to 24.2% who have not, and a rate of 12.9% for those who interacted with Elders compared to 26.8% for those who have not.

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Although Canadian healing lodges have produced some impressive results, they have also experienced challenges. Perhaps the most pressing issue is that there is not enough space to adequately serve the Canadian Indigenous prisoner population. Furthermore, in some provinces there are no healing lodge facilities at all. Another concern is that the CSC has opted to provide their own services through "Pathway Units" rather than contracting with First Nations and other Indigenous providers. Not only does this provide an end run around First Nation self-determination, but it also increases the struggle for funding that exists among First Nation lodges since the same funds are utilized for both First Nation and provincial run services (Nielsen 2016, 327). Using a lack of capacity on the part of First Nations as the justification, the CSC has taken over the project and funding themselves. Nielsen suggests that even though the CCRA provides clear support for Indigenous people taking on these programs, the colonial structure has resisted full implementation of the program resulting in diminished potential for change. However, despite these challenges, there is evidence that healing lodges have been beneficial for Indigenous offenders. And even though they are part of the colonial justice system they may have a larger positive impact compared to the US model, which supports a separate tribal justice and correction system.

In a similar vein, First Nations have attempted to integrate Indigenous ideas into the colonial legal system. For example, Canadian courts have utilized sentencing circles in order to rehabilitate individuals in accordance with the Indigenous community's traditions. For example, Judge Stuart in the Yukon even used sentencing circles in serious cases. Although there is no statute authorizing this type of sentencing, judges are able to use their judicial discretion to provide this type of community driven sentencing (Stuart 1997, 59–60). The sentencing circles used by Judge Stuart followed the cultural values of the Indigenous people of the Yukon region, which is that: (1) a criminal act represents a breach of relationship between two individuals and between the offender and the community; (2) repairing these relationships is imperative to the sustainment of the community; and (3) that the community is better positioned to repair conduct because the root causes are likely socio-economic (Lilles 2002).

Sentencing circles require dedicated effort, are open to the entire community, and are limited to cases where participants demonstrate a commitment and sincerity to rehabilitation and either plead guilty (preferably early in the process) or fully accept a determination of guilt (Lilles 2002; Spiteri 2001,

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11–12). Because Canadian criminal law does not specifically allow for sentencing circles, judges who utilize them see them as an extension of judicial discretion (Green 1998, 72). Judge Lilles, for example, generally held two hearings. The first provided a set of goals and actions that the offender must perform in order to receive his or her final sentence and the second hearing several months later reviewed the offender's progress toward those goals. Other judges convene sentencing circles upon request (usually by the offender) and defer heavily to the Indigenous community regarding procedural aspects of this model (Spiteri 2001, 84).

Sentencing circles, of course, are limited by Canadian criminal law and procedures, which institute mandatory minimums for certain offences that cannot be contravened through an alternative sentencing process. In addition, at least one judge has determined sentencing circles are best utilized for crimes where probation is a possibility (Green 1998, 91). Furthermore, judges do not always accept the recommendation of sentencing circles. Goldbach (2016, 91) notes that in 2009 and 2010 judges did not accept the sentencing circle's recommendation more often than it did accept them. Yet when the community fully engages in the process and the offender is motivated, according to Judge Lilles, it is rare for an offender to fail. This, then, supports the potential of sentencing circles.

Other nation-states such as New Zealand have statutorily solidified sentencing that considers the effects of colonialism. In New Zealand, the Sentencing Act passed in 2002 allows a judge to consider cultural factors including connection to whanau and iwi when making sentencing determinations (Taumaunu 2014).[20] Canadian Gladue Reports are similarly a type of pre-sentencing report under Section 718.2(e) of the Canadian Criminal Code that provides a method of analysis, which considers the Indigenous status of the person at sentencing.[21] This system ostensibly allows opportunities for services specifically geared toward the offenders background and that use a culturally relevant approach. However, because access to these alternative services vary based on geography, many Aboriginal offenders do not receive the full benefit promised by *Gladue* (Hebert 2017, 168). Nevertheless, these processes, which work explictly within the criminal justice system of the colonizer, provide a mechanism to Indigenize the Western court system, thus allowing for the possibility of improved outcomes for Indigenous people. The United States could benefit from a similar mechanism to account for the

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lingering effects of colonialism on Indigenous people and opportunities for alternative support services.

Although we are seeing some interest in restorative approaches in the larger US judicial system, change has been slow. Concerns have been raised that incorporating a restorative approach would create constitutional problems. For example, some are concerned that a person's 5th Amendment right to be free from self-incrimination and double jeopardy would be implicated if the accused is encouraged to "take responsibility" for their actions. Sixth Amendment issues related to the right of effective assistance of counsel and an impartial jury may also be jeopardized by community participants that support the victim. Theoretically, the 8th Amendment's prohibition of cruel and unusual punishment may be implicated if punishments are humiliating, shaming, or if they include banishment (Reimund 2004, 23). As a result, most restorative programs in the United States are exclusively post-trial and pre-sentencing, which reduces the potential conflicts that may arise. Despite these concerns, US tribal nations should consider developing healing lodges and pushing state and federal courts to utilize sentencing circles and Gladue-type reports in order to better serve the majority of their tribal citizens who tend to appear in state and federal courts.

Best Practices in the United States

While focusing on restoring the Western colonial judicial system may have a larger impact on a most Indigenous people, it nonetheless does not provide the full effect and impact of self-determination. As such, resources need to be allocated to developing internal Indigneous legal traditions that are a cultural match to the communities' traditional justice sense and that are seen as legitimate in the eyes of the Indigenous community. The more that Indigenous communities can take control over their own futures, the better the outcomes will be.

Having a separate judicial system has provided US tribal nations increased flexibility to create and implement laws that are culturally relevant, steeped in tradition, and seen as legitimate by their citizens. Tribal courts are similarly free to create their own judicial procedures that rest on restorative principles. Having this type of autonomy over the judicial system allows tribal nations to innovate by providing programs, services, and other rehabilitative efforts geared toward the specific needs of their community. Canadian

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Indigenous communities may be able to incorporate some of these concepts when tackling justice issues in their communities, but do not have access to the full spectrum.

Ideally, tribal judicial systems have de jure (legally sanctioned) authority alongside de facto (the current state of affairs regardless of legality) authority. However, a regulatory system need not have the force of law in order to maintain legitimacy in the eyes of the community and thereby even a non-legally sanctioned judicial process can be a useful tool to a tribal nation in better servicing its citizenry. Consider the Listuguj Mi'gmaq Nation and their quest in the early 1980s to manage fish stocks along the Restigouche River that runs between New Brunswick and Québec (Cornell et al. 2010, 5). Based on the de jure authority granted by treaties, they saw the importance of regulating the fish stocks as their way of life was being threatened due to overfishing. Through a standoff with the Provincial police and some citizens questioning the abatement of their rights to fish, the nation's leaders remained steadfast. Now the Listugui Mi'gmaq Nation manages the waterway through a Management Agreement with the province that was passed in 1993, and which provides for Mi'gmaq rangers to patrol the waterways and enforce Mi'gmaq law (Cornell et al. 2010, 14–15).

Any judicial system must maintain high standards to ensure independence from unfair influence. Independence from tribal politics ensures that decisions made by tribal arbiters will be honoured. In the Lustugj Mi'gmaq case, there were regulations on taking fish, which supported a type of legitimacy that would not have been possible had certain tribal members been able to take and others not. Politicians must ensure that they do not have the ability to override judicial decisions nor "punish" tribal judges by removal or reduction in pay for decisions they may personally disagree with (Flies Away, Garrow, and Jorgenson 2012, 120–23). An independent judiciary is imperative for the proper regulation of behaviours of citizens and to create an environment conducive to nation building. By taking control of the management of fishing, the Lustuguj Mi'gmaq nation was able to rely on de jure authority granted by treaties.

The Lustuquj Mi'gmaq example provides a blueprint to reinforce how to gain legitimacy in the eyes of one's own community and also in the eyes of the colonial system. In this particular case, there was a converging of interests that allowed the provincial government to acknowledge the benefit of cooperating and supporting the plan for fish stock restoration. However, in other cases,

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the colonial power may not see the benefit of utilizing a more traditional Indigenous approach. Thus, success from the Indigenous perspective may be difficult to realize. Framing the issue based on mutual benefit can be useful in this effort.

Indigenous communities that are able to set up separate restorative systems outside of the federal, state, or provincial system should be encouraged to do so. These Indigenous systems can operate in familial civil disputes or in a criminal context upon the agreement of the parties. For example, US schools have recently started moving away from a zero-tolerance disciplinary policies to a more restorative model where juveniles with disciplinary issues are encouraged to explore their behaviour rather than simply be punished (Guckenburg et al. 2015, 3–4). The benefit of this type of model is that the community does not necessarily need de jure authority to implement it. In other cases, a restorative system may be used in collaboration with a more conventional justice system. The Navajo Nation's Peacemaking Court, for example, handles both criminal and civil cases that have been transferred from the Navajo court as well as any dispute among family, neighbours, and friends upon agreement of all parties.

Furthermore, when creating a separate restorative system communities can develop collaborative relationships with state and local authorities to transfer cases involving tribal citizens to a tribally sponsored restorative court, such as tribal wellness courts. In the United States, tribes such as the Snoqualamie, Chippewa, and Sisseton-Wahpeton Oyate have wellness courts that have entered into memoranda of understanding (MOU) with local authorities to have tribal members convicted in the state or local court transferred to the tribal drug courts who oversee their rehabilitation. These tribal wellness courts incorporate traditional healing methods such as language, drumming, and other ceremonies to help provide offenders with the tools they need to re-enter society (Makepeace 2018, 27:49). Incorporating culturally appropriate approaches to rehabilitation is one way Indigenous communities can better serve their citizens.

Conclusion

The United States and Canada developed unique Indigenous criminal justice systems. The US model evolved into a system of invidious colonialism resulting in the hegemonic moulding of Indigenous justice systems to comport

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with the Western colonial model. To put this simply, even when the colonial power is respecting tribal justice systems through comity of judicial decisions and equality of tribal court convictions, the colonial system still operates to reduce the ability of tribal nations to use restorative justice approaches without negative impacts such as increased chances of tribal citizens being convicted under "three strikes," which treat any prior felony level conviction as a strike leading toward a mandatory life sentence.

The Canadian model of Indigenous criminal justice, on the other hand, does not purport to provide Indigenous self-determination in criminal justice. Rather, this model operates in a way that ignores the cultural differences between the larger Canadian community and that of Indigenous people. As a result, Indigenous people in Canada have been forced to work within the larger judicial system creating incremental changes and Indigenizing the entire criminal justice system rather than just focusing on their reserve. While these efforts have had mixed success and only recently started to produce results in terms of incorporating innovative culturally focused approaches, these efforts have the benefit of reaching a larger population of Indigenous people since most Indigenous people in North America interact with the colonial criminal justice system.

Recognizing the restorative foundation of traditional Indigenous justice systems is the first step to creating a judicial system that works for the entire nation-state. The reality is that neither the US model nor the Canadian model works perfectly for Indigenous communities. Creative approaches to integrating a restorative approach within the colonial judicial system should be considered by US-based tribal nations. Similarly, Indigenous Canadian nations should consider exercising de facto sovereignty and creating a separate restorative judicial system that would support their citizens. Much can be learned by Indigenous people crossing the colonially fashioned border to explore methods and models to resist colonialism and increase Indigenous well-being.

Notes

1 This new ethic of political accountability brought about the US War of Independence in 1775.

2 It should be noted that the clauses that dealt with depredations committed by Indians were preempted in 1891 by the Indian Depredation Act (1891, chap. 538, 26

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United States Statutes at Large 851). See also *Tsosie v. U.S.*, 825 F. 2d 393 (Fed. Cir. 1987).

3 *Worcester v. Georgia*, 31 U.S. 515, 517 (1832).

4 *Ex Parte Crow Dog*, 109 U.S. 556 (1883).

5 Major Crimes Act (as amended), 18 U.S.C. 1152 et seq.

6 Murder, manslaughter, kidnapping, maiming, felonies under chapter 109A, incest, felony assult under section 113, assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and felony under section 661 are currently enumerated under Pub. L. 114–38.

7 There have been some recent efforts to try to mitigate this complexity by expanding tribal jurisdiction in specific cases, such as domestic violence. See *Tribal Law and Order Act*, 124 Stat. 2258 (2010); Violence Against Women Act, 124 Stat. 54 (2013).

8 *DeCoteau v. District County Court*, 420 U.S. 425 (1976).

9 It is important to note, however, that these numbers only consititute crimes that occur on reservations or other federal lands. If an Indian commits a crime off-reservation the crime would be prosecuted in state courts and, if sentenced, would serve in a state prison. To a certain degree we expect to see a higher percentage of Indian offenders in federal prison because the federal government is the primary prosecutor for all felonies committed by Indians on tribal lands; however, this percentage is more than double the population at large. In fact, in 1997, of all incarcerated Indians only 3% were in federal detention. Local jails, state prisons, parole, and probation accounted for 18%, 26%, 7%, and 47% of the population, respectively (Chaiken 2000, 5, 37, 86). No accurate data on Indian or Native Hawaiian inmate population are being collected and most data obtain is cross-referenced with US Census data, which allows self-reporting of race. Better data collection is needed to understand the complex issues surrounding indigneous overrepresentation in state and federal prisons.

10 *Worcester v. Georgia*, 31 U.S. 515 (1832).

11 *National Farmers Insurance Company v. Crow Indian Tribe*, 471 US 847, 857 (1985) noting that Plaintiffs must exhaust tribal court remedies before bringing an appeal to federal court. See also Major Crimes Act (as amended), 18 U.S.C. 1152 et seq.

12 An enhanced charge enables a judge to impose a more severe sentence than would otherwise be the case, typically on the grounds of an aggravating factor of some sort, such as prior convictions. Enhanced charges are allowed under some state criminal codes when an offender is charged with specific crimes, such as those involving firearms, or is considered a "persistent offender." To take Washington state as an example, see RCW 9.94A.030 at 42(b) and, for context, RCW 9.94A.535 ("Adjustments to standard sentences").

13 See, for example, *U.S. v. First*, 731 F. 3d 998 (9th Cir. 2013), which allowed a prior firearm conviction despite lack of counsel; *U.S. v. Shavanaux*, 647 F. 3d 993 (11th Cir. 2011), which admitted a prior tribal domestic violence prosecution for sentencing purposes. "Three strikes" laws state that individuals who were twice

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convicted of a serious offence (such as felony) would receive a mandatory life sentence if convicted for a third offence. Notably, it does not matter whether the prior offences were violent or not. "Three strikes" laws were first implemented at the state level, especially in Texas and California, before they were promoted by President Clinton at the federal level in the Violent Crime Control and Law Enforcement Ban.

14 *U.S. v. Bryant*, 136 S. Ct.1954 (2016).

15 *U.S. v. Lara*, 541 U.S. 193 (2004) (affirmed that Congress recognizes and reaffirms tribe's inherent criminal jurisdiction over its tribal members).

16 Roozeh (Rudy) Baker, "Proportionality in the Criminal Law: The Differing American Versus Canadian Approaches to Punishment," *University of Miami Inter-American Law Review* 39, vols 3–4 (2008): 483, 485.

17 The author notes that Québec utilizes a Civil Law Code that traces its origins to its French heritage rather than the common law that is used throughout the remainder of Canada. However, this difference does not extend to the criminal law arena.

18 Correction and Conditional Release Act of 1992, http://laws-lois.justice.gc.ca/eng/acts/C-44.6/20021231/P1TT3xt3.html.

19 Seven generations is an Iroquois Confederacy concept that acknowledges that the decisions that one makes today will be felt by those seven generations from now. Thus, it is a reminder to think in terms of long-term sustainability.

20 Judges may collect evidence and hear from family and Elders. In addition, Rangatahi Courts or Marae Youth Courts are available to youth offenders who wish to be sentenced in a more traditional setting.

21 *R. v. Gladue*, 1999 CanLII 679 (SCC), [1999] 1 SCR 688. The Canadian Criminal Law Code, s 718.2(e) requires judges to consider "all available sanctions, other than imprisonment, that are reasonable in the circumstance and consider with the harm done to victims or to the community . . . for all offenders, with particular attention to the circumstances of Aboriginal offender."

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Part IV

Creative Resistances and Reimagining Settler-Colonial Justice

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17 Countering the Legal Archive on the Death of Neil Stonechild

Analyzing David Garneau's *Evidence* (2006) as an Aesthetic Archive

Josephine Savarese

He wasn't a man, he was just a kid, he was my little boy.

Stella Bignell, mother of Neil Stonechild
(quoted in CBC News 2005)

I had been told by an Indigenous artist and fellow professor that I shouldn't show the work because of the Cree prohibition of showing images of the dead. I thought the painting and issue too important not to show it. It was not just about Neil but also about the policemen who did this. As a part way measure, I thought about showing it with a veil over it. I consulted two Elders. They said that sometimes artists had to break protocols for a greater good. One said that artists aren't necessarily shaman or contraries, but they may act like them from time to time, guided by more than human requirements.

David Garneau, email message to the author,
June 2021

This chapter examines possible reasons why recreating a post-mortem portrait of an Indigenous teenager, Neil Stonechild, that magnified suspicious

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facial markings consistent with police handcuffs was an urgent project for David Garneau, the acclaimed Métis artist and Saskatchewan-based visual arts professor. I analyze this painting by drawing from various sources, particularly writings by David Garneau, who has described Indigenous creative works as gesturing toward renewed, more sovereign futures for Indigenous communities and nations. In 2013, Garneau stated that art "can be a way for the marginalized, refused and repressed to return" (16). *Evidence* (2006), Garneau's painterly enlargement of Stonechild's face depicted the youth with his eyes closed in death. The slashes across his nose silently rebuke the legal archive's minimization of the damaging actions that contaminate current relations. The chapter theorizes the ways Garneau's painting operates as a counter to the colonial archive, thereby offering a visual reframing of past and current events, including incidents of police violence.

In "Imaginary Spaces of Conciliation and Reconciliation," Garneau examined ways art can generate deeper realizations about colonialism's disruptive, genocidal legacy (2016, 21–41). Garneau's argument that art offers an alternative space where Indigenous and settler communities can unite by "sharing in a discourse" about "histories, responsibilities, and transformation" is important to this chapter (39). For Garneau, art and authentic human relations commingle in the third space in ways that undermine "the colonial desire for settlement" (39). While not referencing archives specifically, Garneau has denounced the "colonial attitude" that drove archival practices (23). He rebukes the "scopophilia" or the colonial "drive to look," characterized by the "urge to penetrate, to traverse, to know, to translate, to own and exploit," which motivated the effort to create archival collections (23). *Evidence* operates as a counter to the colonial archive, thereby offering a visual reframing of past and current events, including incidents of police violence. Joscelyn Jurich states that remembrance-focused artistic endeavours "create haunting lessons for the viewers," rather than merely serving as memorials (2016, 450)—which resonates with statements by David Garneau.

In a May 2009 interview with the Dunlop Art Gallery, based in Regina, Saskatchewan, Garneau invited viewers to see *Evidence* as something beyond a memorial; it was a reminder, "a memory, a more permanent memory of an actual event." He noted, too, that there was something about the autopsy image that "resonated" beyond the fact that Neil Stonechild was an Indigenous youth. Garneau reported that he was struck by the fact that "there was a young man in the snow," presumably referring to the youth's vulnerability

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juxtaposed with the severe conditions (Garneau 2009). For Garneau, there was something visceral—something felt rather than thought—about freezing to death. His embodied reaction was partially based on the knowledge that most Prairie residents were familiar with being very cold and lost at night. He was compelled to draw the image immediately, to preserve it on a large scale.

Garneau's painterly enlargement of Stonechild's face, with his eyes closed in death and with the slashes across his nose prominent in *Evidence*, silently rebukes the legal archive's minimization of the legacies of violence, dispossession and displacement that linger into and haunt the present. While the painting depicts one death, its significance goes beyond a singular fatality. As this chapter reasons, it gestures toward the damage resulting from the destruction of Indigenous sovereignty, including the depletion of lands, resources, cultures, human spirits, and the targeting of Indigenous bodies, brought home in 2021 by the discovery of suspected children's remains in British Columbia and Saskatchewan. By July 2021, more than one thousand possible unmarked graves had been discovered on the grounds of three former church-run residential schools (Austen and Bilefsky 2021).

In *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (2009), Laura Ann Stoler emphasized the centrality of the archive in the political, social, and economic domination of Indigenous peoples and in their disenfranchisement from their lands. In an earlier article, Stoler explored the "logos and pathos of empire" to "read /along/ rather than / against/ the archival grain" (1992, 35). In this chapter, I engage with Stoler's curiosity about attending closely to "the rough interior edges of governance" that open to reveal the "displaced histories folded within them" (1992, 35). I trace these rough edges by examining the two differing responses to Neil Stonechild's death: the judicial inquiry and the more gestural commemorative painting, *Evidence*.

Photography, Art, and the Archive

Sometime in 2000, David Garneau learned from a news report that an autopsy photograph of a deceased Indigenous youth, Neil Stonechild, was circulating on the internet (Garneau 2009). The photograph was originally taken as part of the police investigation conducted in November 1990, when Neil's frozen body was discovered at the outskirts of Saskatoon, Saskatchewan. While shaken, Garneau immediately made a charcoal drawing of it on a large, light

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blue canvas slotted for a landscape painting, as he felt "a great injustice" had occurred. Garneau worried that "ideas," or notions about unnatural deaths and "events," like Stonechild's death, would be "swept under the carpet and forgotten" (CBC News 2009).

In the painting, Neil is larger than life while clearly deceased. It is a technique that, as Shawn Michelle Smith notes in *Photographic Returns: Racial Justice and the Time of Photography*, leaves the subject of the photograph "both absent and close at hand" (10). Like the artists Smith studied, Garneau reinterprets the autopsy image to "trace, bend, pierce, truncate, extend, and fold time" (1). He compels us to take up what Smith calls the "unfinished work of racial justice" (14).

In *Evidence* (see figure 17.1), Neil Stonechild's face, his body stilled in the quietude of death, is magnified to the size of the 4 feet by 5 feet frame. He is shown with his eyes closed, his face cut, marred. Garneau notes that the decision to meticulously recreate Neil's frozen and marked appearance in the autopsy photograph was driven by a need to reclaim the colonial image taken of Stonechild. The deep grooves across Neil's nose, visible in the autopsy image, are particularly noticeable in the enlarged work. He is the sole figure in the frame, emphasizing his solitude and loneliness at the time of his death, his unnatural disconnection from his family and community. The fact that he was rendered silent, without even the capacity to cry out, is clear from his sealed lips, which may be read as symbolic of the silencing of Indigenous peoples, more generally. As part of his act of reclamation, Garneau decided to recreate Stonechild's image with a protective Indigenous screen in the form of an overlay of red dots to symbolize Métis beading (Garneau 2014)—a detail that marks his painting as different from the original photograph.

Even though he was hesitant to display *Evidence* because he was "concerned that the depiction of a First Nation person in death would violate cultural norms" (CBC News 2009), he ultimately did so to ensure that we remember Stonechild's story. Because Neil's circumstances moved from being a relatively obscure, local incident to being international news, Garneau observed that Neil Stonechild led a "second public life or a social life" due to the media attention. (CBC News 2009). The Neil Stonechild depicted by Garneau helps us mourn the young man remembered by his family—the athlete, beloved brother, son, and cherished friend who died alone in a barren field in 1990 (Reber and Renaud, 13–24).

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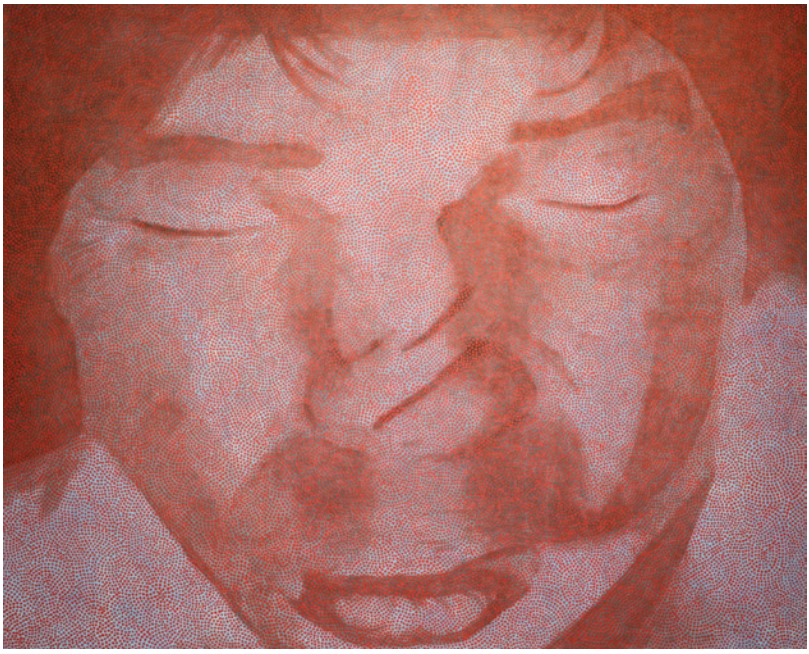

Figure 17.1. David Garneau, *Evidence* (2006)

For Garneau, the painting was important as "the evidence of this act," the harm done to a young man (Garneau 2009). *Evidence* is a smaller scale marker of the violence experienced by Neil Stonechild and other Indigenous men that mediates that public life his death engendered.

Garneau's painting has importance beyond the meticulous artistic rendering. It becomes a decolonial archive that engages with the "larger story," the multiple deaths of Indigenous men and, by extension, erased and disappeared Indigenous women, the destruction of Indigenous societies, life-worlds, languages, dreams, cultural practices, and connections to ancestral lands (Garneau 2009). In interviews, Garneau has stated that he was motivated by a refusal, an unwillingness, to characterize Stonechild's death as a concluded event. While *Evidence* was "a history painting" that depicted "something that happened in the past," Garneau has stressed that Neil's death had not been "fully digested," a finding that remains true even to the present day (CBC News 2009).

Evidence records feelings and facts that lie outside of the colonial styled archival record created by the courts and judicial inquiries. Martine Hawkes

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reminds us that the court is not the "only place for creating and holding memory" (31). Hawkes cites the International Criminal Tribunal for the former Yugoslavia to illustrate how inquiries reinforce certain forms of testimony that correspond with the linear fact-finding process favoured by lawmakers. Even in the "cut-short testimonies" of the judicial hearings Hawkes references, it is clear that "the event continues" in memories, stories, and other forms of haunting (29). Her conclusion that the stories of "living with the losses" excluded from legal processes can be found elsewhere in "memoir, film, and art" is significant to this scholarship (31). As Hawkes reminds us, the physical remnants preserved in archival collections are not the complete record—there is much that is "invisible or lost" (2). For Hawkes, creative works correct the obscured and hidden details omitted from traditional archives that affirm state power.

Because *Evidence* stands as a record of the violence experienced by Neil Stonechild and other Indigenous men, it serves as a bridge or pathway to greater acknowledgement and reparation. According to Garneau, works like *Evidence* that resist easy resolutions have the potential to forge "new" relationships, knowledge, and works, including the "performances, texts, works of art" that comprise the counter-archive (Garneau 2016, 39). Such products invoke open-ended and complex readings that both "require decoding" and "resist decoding," which may ultimately foster "further personal transformations." When conciliation is the aim, these transformations are experienced by both Indigenous and non-Indigenous persons. Through such decoding, settlers are able to acknowledge their privilege, become freer of their colonial attitudes, and take steps toward the "non-colonial" practices that Neil Stonechild's death and other suspicious fatalities, including the recent discoveries of suspected remains, remind us are urgent priorities (24).

The inquiry report into Neil Stonechild's death documented harsh truths about Indigenous–settler relations. In "From Stonechild to Social Cohesion: Anti-Racist Challenges for Saskatchewan," Joyce Green argues that the 2004 Stonechild report brought home the point that "racism kills" (2006, 515). The inquiry process and the report findings provided "a moment of opportunity" and issued a "call to arms" to confront biased, racialized policing (515). At the same time, the failure to link deadly policing practices with deeper structural issues led the Commissioner to see Neil Stonechild's death as "an incident, decontextualized from the political and institutional culture of racism and the specifics of colonialism in Saskatchewan" (519).

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Here, I also expand on Juliane Collard's argument that legal inquiries that are meant to offer an opportunity for open testimony in fact reproduce the "exclusionary and discriminating patterns" that serve to silence the dissonant (2015, 780). I pinpoint the colonial logics embedded in the inquiry process and findings, thereby muting its liberatory potential. I agree with Collard that the testimony introduced during an inquiry is often problematic in muting "the sounds, scars, shouts, screams, enacted sayings, gestures, and ritualized performances of witnesses" that provide authenticity (790). Collard doubts that the inquiry format is an appropriate vehicle for the aims of "reconciliation and collective memory making" in judicial investigations that probe "systemic gender and race violence" (781). For Collard, the inquiry process exerts control over Indigenous memory and constrains the writing of history by excluding legally "irrelevant" evidence.

Evidence offers potential remedy to these inadequacies of the archives generated through colonial truth finding forums, including the propensity to mute Indigenous claims, knowledges, and historical accounts. Drawing on the work of Marianne Hirsch and Leo Spitzer that challenges "conventional notions that the archive" is only "a series of evidentiary documents," and drawing on their own research in Colombia and Uganda, Pilar Riaño-Alcalá and Erin Baines maintain that the archive "is living" because it is "embedded in the day-to-day lives and surroundings of the survivor-witness and inscribed on the bodies of tellers and listeners" (2011, 413). Riaño-Alcalá and Baines extend beyond formal documentation to examine "performative (poetry, song, drama and dance); embodied (scars and physical illness or injury and emotions) and memoryscapes (landscape and material markers of memory)" (413–14). Their study of "emplaced acts of witnessing" (413) presents a shared interest in ways artists and community workers create safer spaces where bodies can relax and experience ease.

In *On Photographic Violence* (2009), Canadian human rights and visual scholar Sharon Sliwinski affirms Garneau's decision to grant enormous significance to a solitary image. For Sliwinski, the defacement of a family portrait photograph by scratching out the faces, the only personal item a Muslim family reclaimed when they returned to their home after the Bosnian War, contains a powerful undertone of violence and dehumanization. Sliwinski's finding that images provided a "uniquely moving testimony of the catastrophe's reach" echoes some of what Garneau's reworking of the autopsy photograph accomplishes. *Evidence* transports the viewer to the frozen fields

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where Neil's injured body lay for several days (312). For Sliwinski, "the wager" of her paper was that "attending these registers—thinking through this 'acting out' of genocide in pictures—sheds new light on the nature of human violence writ large" (305). Sliwinski argues that "spectators meet the painful, piecemeal work of mourning head-on" when they view the war images she surveyed (312). Her belief, following Judith Butler, that the grief resulting from even a single image may suggest "an alternative ground for imagining community" helps build the case for *Evidence* as a disturbing tribute aimed at unsettling indifference and fostering more heartfelt responses. Neil Stonechild lives on in *Evidence* as a ghostly, steadfast witness to the growing record of casualties from state violence.

Garneau's artistic documentation of Neil's death promotes a deeper reckoning beyond the formal, legalistic pre-occupations of the inquiry process. The painting is a reminder that witnessing, remembering, and the likelihood of closure are uncertain after genocide, like the one that Indigenous peoples in Canada experienced (Hawkes 2018, 7). In this chapter, I argue that the Stonechild Inquiry is an archive of sorts that granted authority to colonial procedures and truths by amplifying concerns about Indigenous–police relations thereby minimizing the broader context of racialized injustice.

Legal archives, like Western archives in general, are imbued with the colonial truths that advocates are disrupting and challenging (Collard 2015, 789–90). In citing *Evidence* as an aesthetic counter-archive, this discussion works to further expose some of "the blind spots" that Rona Sela, a researcher of visual history and a lecturer at Tel Aviv University, critiques in "The Genealogy of Colonial Plunder and Erasure–Israel's Control over Palestinian Archives" (2018, 202). With Sela, it is possible to explore ways that archives, including legal archives, underscore what she calls a "Western colonial world view" that perpetuates "the writing of colonial history for the benefit of the colonizer" (202). Sela's description of archival collections as "imagined sites of institutions that create histories using mechanisms of erasure and concealment" applies to archives created during legal investigations, like the Stonechild Inquiry (215). Her observation that Western archives treat colonized people with "tactics of silencing, fabrication and false image of the non-Western" corresponds with this endorsement favouring a creative response to Neil Stonechild's death (210). For Rona Sela, an alternative reading of historic events has merit because it "alters our knowledge about the past, providing new tools to confront the present, an 'archival turn'" (216). In a

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similar way, *Evidence* neutralizes some of the "colonial biases," the domination of settler narratives, in the archives by making room for other stories, such as the immense grief and demands to end state-sanctioned violence from Neil's untimely death (216).

Sela's finding that the "archives of Western knowledge" used to document colonized people are not examined by "indigenous criteria" informed this chapter. I assert that Western legal norms shaped the Stonechild Commission findings, muting Indigenous truths about the scale of police violence (210). Sela's reminder that archives are "measured, evaluated and categorized according to criteria of the Western World" was important to this chapter's quest to penetrate the alternative truths and visions hidden in a painting (210). Featuring Neil Stonechild as a deceased victim and an incapacitated witness undermines the regimes of colonial truth, made plain in Sela's work.

Marking Epistemic Absence in the Archive

Writing in a North American Indigenous context, Ashley Glassburn Falzetti, a scholar from the Miami Nation of Indians of Indiana, underscores the importance of research that works to undermine the "colonial powers" that maintain the archive (2015, 137). Falzetti favours "pushing against the epistemic role of indigenous erasure in the settler imaginary" (113). The obscurity of the Miami Nation in historical accounts of the colonial occupation of Indiana prompted Falzetti to ask, "What might it look like if we began marking epistemic absence in the archive?" (113). In an article she co-authored with Melissa Adams-Campbell and Courtney Rivard, Falzetti promotes further exploration of the "unique role of archives in supporting state power" (Adams-Campbell, Falzetti and Rivard 2015, 109). Falzetti and her co-authors question the absence of Indigenous communities in the archives and insist that they "are somehow incorporated into the national narrative, even as Native peoples' sovereign rights are fundamentally denied" (110).

This erasure, or absence, from the archive that these authors underscore is relevant in the context of Neil Stonechild's death and Garneau's painting. When Garneau scrutinized the troubling autopsy photograph, Neil's story was relatively unknown outside his community. After the discovery of other frozen bodies of Indigenous men, a Royal Canadian Mounted Police task force was established in 2000 to examine the suspicions about police involvement in these cases. Due to the task force probes and mounting public pressure, the

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Commission of Inquiry into Matters Relating to the Death of Neil Stonechild was established in 2003 (Reber and Renaud 2006, 273).

A prominent judge, Mr. Justice David Wright, presided over the lengthy public hearings that lasted for over 43 days (Chartrand 2005, 262). During its tenure, the Commission heard from 63 witnesses and reviewed 197 exhibits. The transcripts comprised over 8,000 pages of text. Justice Wright's 2004 *Report of the Commission of Inquiry into Matters Relating to the Death of Neil Stonechild* is the most comprehensive record on the events leading to Neil's death. In conclusion, Justice Wright expressed "profound sympathy" for Stella Bignell, Neil's mother, and his family (Wright, 2004, 211). Justice Wright worried that "a chasm" separated "Aboriginal and non-Aboriginal people" in the City of Saskatoon and in the Province of Saskatchewan (208). For some, this observation minimized the troubled racialized histories in Saskatchewan described in J. W. Daschuk's in *Clearing the Plains: Disease, Politics of Starvation, and the Loss of Aboriginal Life* (2013). More recently, Erin Morton described Canada as existing in the "pervasively colonial present, secured by the wealth this white settler state and its white settler citizens possess through land exploitation, histories of slaveholding and anti-Blackness, and Indigenous elimination and erasure" (2019, 455). Morton reproaches the "targeted violence against Indigenous peoples" and the assertion of settler privilege to title over Indigenous lands (455).

Garneau briefly commented on the Stonechild Inquiry in a 2009 interview, describing it as a "good thing" given that "the events of the [judicial] inquiry" had transformed policing institutions (CBC News 2009). Garneau has, however, criticized another legal proceeding, the Truth and Reconciliation Commission. In 2016, he questioned its methods for gathering evidence from Survivors (23–24). For Garneau, promises of healing and forgiveness were used to compel Survivor testimony even though these concepts are rooted in Christian rather than Indigenous belief systems (24). Garneau affirmed those who opted not to participate were exercising what he called "indigenous refusal" (2016, 23). Garneau's call for rebellion against performative and confessional forms of testimony affirms the Indigenous persons who opposed the inquiry and its preoccupation with Survivor stories rather than systemic change (29).

In writings over the last decade, Garneau has argued that actions aimed at social change in the form of art of advocacy can generate results that cannot be "easily appropriated, measured and contained" (2016, 39). While

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art making is not a cure-all, it can be a catalyst for change. In his 2018 talk, Garneau elaborated on the more facile reconciliation currently in play in Canada, stating "If we are not careful, reconciliation light will ease past difficult truths to focus on the palatable reconciliation" (Garneau 2018, 38 min, 54 sec). In this context, *Evidence* may foster meaningful "conciliation," an "extra-judicial process" that Garneau links to harmony and Indigenization (2016, 30). For Garneau, conciliation is a viable exit from settler colonialism—this is so because it is "not the erasure of difference or sovereignty" (2018, 19:41). Furthermore, conciliation "is not assimilation" (2018, 19: 44). A small act like pausing to reflect on a painting like *Evidence* might serve as an opening for settler guests to access respect and to touch into accountability.

While *Evidence* is better known, it is part of a series the artist created in response to the Saskatoon law enforcement practice of deserting Indigenous men in remote, often unsurvivable locations. Garneau's 2008 collage painting, *Starlight Tour* (see figure 17.2), assembles images that relate to other, similar

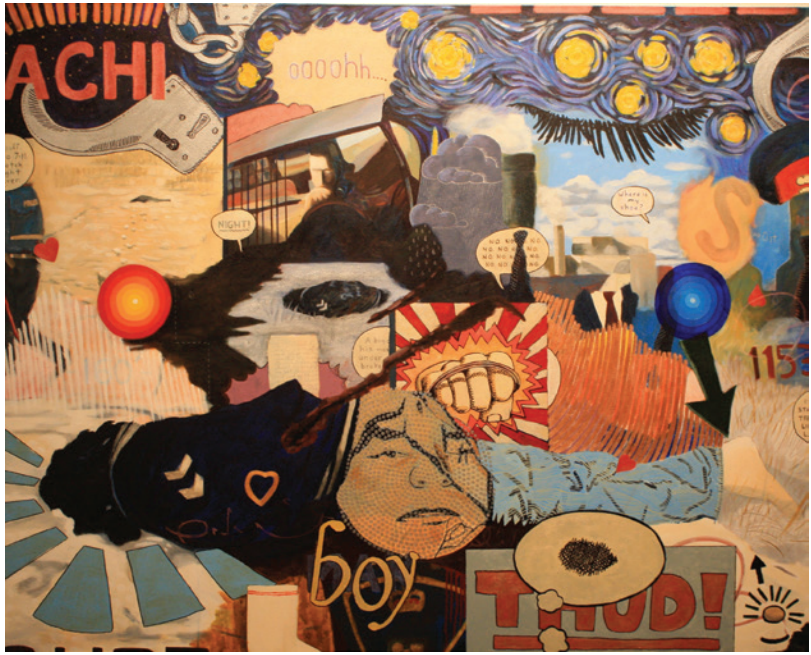

Figure 17.2. David Garneau, *Starlight Tour* (2008)

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deaths of Indigenous men. The inclusion of the word "boy" may be intended as a reminder that Stonechild was still a youth when he died. He was often described as a man, a description that positions him as more threatening.

Another painting in the series, *Lost*, shows Neil Stonechild's frozen corpse in the centre of the painting. He is depicted stretched out, face down in the snow, showing the youth as he was discovered by two construction workers five days after his disappearance. *Lost* is based on a photograph also taken during the original police investigation.

David Garneau's series is a touchstone for this discussion of the limitations of Western archives produced by courts and legal inquiries. While intrigued by the entire collection, I conduct a more exacting examination of *Evidence* to determine its importance as a counter-archive that troubles the more clinical, legally based approach of the judicial inquiry. The painting gestures to the absences and omissions within the historical documents, including police files and the record created by the Commission of Inquiry that investigated Neil's death. In interviews, Garneau expressed hope that persons who

Figure 17.3. David Garneau, *Lost* (2008)

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viewed the painting would see it as "more than a post-mortem portrait" (CBC News 2009).

By presenting the public with this series of images, in which *Evidence* is an anchoring piece, Garneau places Neil Stonechild's death and the deaths of other Indigenous men on record in ways that the inquiry and the subsequent report did not. In this way, these paintings, which reflect painful Indigenous stories and experiences become part of the "national narrative," as Adams-Campbell, Falzetti and Rivard (2015) insist they must.

Archiving Loss

For Martine Hawkes, it is important to consider what is present in the archives created after difficult events as well as what is omitted from official records, thereby encouraging a level of forgetfulness. To remedy archival shortcomings, Hawkes presents art works as an important resource to store and share memories that defy straightforward expression. She reminds that we "must sometimes go outside of the archive machine to find and to tell what we lose in the archive and in the events that the archive records" (2018, 112). In a 2006 essay, "Transmitting Genocide: Genocide and Art," Hawkes reasoned that creative work disrupts minimizing or forgetting genocide, thereby making its repetition less likely. Hawkes endorses aesthetic productions that expose some of the hidden layers of tragedies that elude traditional archives. In her 2006 article and her 2018 manuscript, Hawkes cites the installation *Što Te Nema*, or "Why are you not here?," created by Bosnian-American artist Aida Šehović. The installation is a tribute to the Srebrenica Genocide in 1995. In *Što Te Nema*, delicate porcelain coffee cups, or fildžani, donated by Bosnian families are assembled in urban centres and filled by passers-by with strong Bosnian coffee. Šehović's display is dedicated to the disappeared persons who cannot participate in daily activities, like sharing coffee with loved ones. The "full cups remember and welcome those who are no longer present to drink the coffee and to share in the conversation" (Hawkes 2018, 122).

For Hawkes, art performs an important commemorative role by challenging the normativity of genocidal violence. Artistic works, in contrast to legal exhibits and witness statements, provide "a mode of giving testimony and providing catharsis about events which are not easily approached or discussed" (2006, para. 8). Hawkes's examples range from Picasso's *Guernica* to the children's artwork from the Rwandan genocide, the "War Rugs" of Afghanistan

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and larger installations such as Peter Eisenman's Holocaust memorial in Berlin (para. 5). For Hawkes, art can address the gaps in understanding that remain even after the conclusion of a legal tribunal. As a result, art has been proven to be "a powerful medium for representing such atrocities and attempting to find healing after genocide" (Hawkes 2006, para. 5). Artistic expression disrupts more clinical documentation of acts of violence, which is important because such events are intrinsically "difficult to comprehend" (para. 8).

Hawkes suggests that we might become motivated to alter our methods of approaching and remembering tragedy if the impact of creative work is felt. In 2018, Hawkes asserted that the art archive functions in laudable ways, as a "gate-opener" rather than the "gatekeeper," as a "facilitator of storytelling and memory-keeping" (109). David Garneau's painting, *Evidence*, serves as a memory-keeper that resists the erasure of Neil Stoneshild's story from the archive by acknowledging and welcoming Neil Stonechild into public spaces where audiences honour his absent presence and present absence.

Shui-Yin Sharon Yam's scholarship also helps theorize ways that artistic works like *Evidence* reject the "moral codes" that "abject and alienate" Indigenous people (Yam 2019, 84). Drawing on Julia Kristeva, Yam reminds us that the role of artists like David Garneau is not to "sublimate the abject, to elevate it" but rather to "plumb the abject" (84). In Yam's words, this means that the "rhetor" or, in this case, the painter, can "more provocatively challenge the dominant patriarchal social order," which I argue is also racialized and based in colonialism (84). In its seemingly deliberate focus on difficult subject matter, *Evidence* embodies what Shui-Yin Sharon Yam calls a "subversive counterdiscourse" in her analysis of censorship by social media platforms against images of physiologic births (81).

The Importance of Cultural Interventions

In "'They Give Evidence': Bodies, Borders and the Disappeared," Australian scholar Suvendrini Perera affirms the power of Indigenous testimony in redressing injustice:

> In the face of ongoing regimes of racialised punishment, Indigenous people across Australia have opened ways for the rest of us to think about the responsibility of giving evidence. The tenacity of their

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> insistence holds the present accountable to the past and reminds us of the duties of the living to those who have died. (637)

Perera's comment underscores the importance of David Garneau's art and his writing on art's role in calling upon settler and Indigenous communities to acknowledge colonial wounds. Garneau's written commentary helps discern what *Evidence* accomplishes, even though the painting was finished prior to some texts cited. Writing in 2013, Garneau identified a special role for the artist as a "provocateur" or "agent" who moves playfully "between and among disciplines and cultures to create startling non-beautiful, needful disruptions, and to build hybrid possibilities that resist containment by either colonial designs or Indigenous traditionalism" (Garneau 2013, 15).

Evidence invites alternative truths beyond the neat and more tidy findings generated by the Commission of Inquiry. As a result, *Evidence* holds space for new understandings and new relationships shaped by a more politically, culturally, and economically sovereignty. *Evidence* invites us to resist the drive toward an oversimplified reconciliation. In a 2018 lecture at the University of Saskatchewan, Garneau rejected what he labelled "reconciliation light" and its erasure of "difficult truths" to make a "palatable reconciliation" attractive (2018, 38:55–39:03). For Garneau, the mainstream version of reconciliation is based on the "myth that there was a time of Native-settler conciliation" (2018, 39:09). A truer reconciliation would "emphasize truth" (2018, 39:11). It would encourage "perpetual comprehension of the historical facts and living legacies of the First Peoples under colonization, the land dispossession, the aggressive assimilation of children into foreign ways of knowing and being" (2018, 39:15–39:27). It would "embrace conciliation as a continuous communion, negotiation, trust, and treaty, which includes reparations and Native sovereignty" (39:28–39). Without these traits, reconciliation, for Garneau, is a "non-Indigenous thing, a colonial thing" that fails to displace settler entitlement or to reshape relationships (2018, 39:41–44).

Evidence visually gestures toward alternative truths that go beyond official accounts of the Starlight Tours, including the more benign findings of the judicial inquiry. In contrast, by showcasing a deceased Indigenous teenager with suspicious markings on his face, the painting symbolically hints at the historical and ongoing state violence described by scholars in this collection. In her examination of white settler colonial violence, Erin Morton asserted that

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> the white settler state needs Indigenous peoples, especially women, to disappear in order to maintain its sovereignty, and it also constantly apologizes for past violences to "reconcile" its present and move on with its "simultaneously murderous state of affairs," in order to show that settler statecraft also constantly needs to rearticulate what whiteness means and does—and even, indeed, should do, in terms of what constitutes "violence" that is necessary to preserve state order. (2019, 438)

Given that documentation of the historical factors that propel these disappearances and erasures is largely absent from or reframed in historical archives, it is understandable that writing against traditional archives has become a pressing decolonial project for scholars.

Canadian Scholarship and the Stonechild Archive

For a Canadian socio-legal scholar, Renisa Mawani, the current interest in the shortcomings of the archives, was "animated by the cultural turn and shaped by the challenges of poststructuralism, subaltern, and postcolonial studies" (340). It has also prompted interest in the development of alternative or oppositional archives that convey truths based on the lived experiences, stories, and knowledges of persons and nations who withstood and are withstanding the destruction rendered by Western imperialistic expansion. Mawani's finding that "law's archive" is a location from which law "derives its meanings, authority, and legitimacy," holds significance for this analysis (2012, 341). Mawani argues that "Law's authority, albeit shaky and uncertain, is founded on the proliferation of documents and documentation that renders law not merely proximate or similar to the archive but as the archive" (352). This reasoning extends to inquiries, including the Stonechild Commission.

For Nicole Lugosi, the Stonechild Inquiry exemplified the hegemonic forms of truth-telling relied on by law. While ground-breaking, she notes, the inquiry muted the racism behind the deaths. In avoiding harder discussions, the report granted Neil's family and supporters with a type of "phantom justice," which Lugosi describes as "an apparition of redress without material substance" (312). While acknowledging that "an inquiry [was] fundamentally a good thing and a step towards redress," Lugosi wanted stronger recommendations to counter discriminatory policing (312).

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In 2014, Sherene Razack noted that the inquiry was remedial, what it truly confirmed was that the "frozen fields of the prairie" were "a space where reality [was] up for grabs, a space where law . . . authorized its own suspension" (61). For Razack, the fatalities were not accidental. They legitimated settler colonialism and its biopolitics. She argued that "the structural relations of settler colonialism produce and sustain ongoing, daily evictions of Aboriginal people from settler life—evictions that are inevitably violent" (53). Rather than galvanizing reform, the inquiry exposed the "widespread collective indifference to Aboriginal death" (61). In *Dying from Improvement: Inquests and Inquiries into Indigenous Deaths in Custody*, Razack further emphasized that Indigenous peoples are routinely exposed to a "paradigmatic and foundational violence" (2015, 79). Her view that violence is obscured and denied in the "terrible silences" of formal narratives and legal proceedings is important to this chapter (2015, 79).

In an article capturing a conversation with Indigenous filmmaker Tasha Hubbard, Razack evaluated *Two Worlds Colliding*, a documentary on Neil Stonechild's fatality, among others. Sherene Razack reasoned artists were better placed to bring attention to state-sponsored violence. While disappointed the film failed to firmly connect the "freezing deaths" to residential schools and to violence by the police, Razack praised filmmaking as a decolonial aesthetic resource (326). Hubbard agreed that films should better expose the "intended outcome of the violence: continued appropriation and access to the land" (329). Hubbard acknowledged that "The layers of violence need to be exposed, understood, and written into Canada's national narrative" (322). She hoped her film fostered some of these ends.

While lukewarm on the end-product, Razack stressed that art and filmmakers can effectively bring troubling findings about Canada's colonial past and ongoing violence to the forefront. Filmmakers and researchers were empowered to confront "settler society's overwhelming investment in a story of cultural difference rather than a story of the violence of colonization" (329–30). Aesthetic work challenges "the desire to look away and to stop counting the bodies found in the snow" (330). Razack urged filmmakers and creative workers to explore colonialism more deeply. Garneau's effort to, at the very least, gesture to the systemic factors that propel colonial violence align with her vision. In the exchange with Hubbard, Razack held that artists must:

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> Find a way to get us back to the issue of the occupation of the land, and what white settlers must do to dispossess Aboriginal peoples. Find a way to remind us what the lynching of Blacks accomplished, and what the brutalizing of Aboriginal peoples and their extermination secures. Remind us that this is not simply two (culturally different) worlds colliding but a collision between colonizers and colonized, a violent, deadly collision. (327)

Reading along the grain, Razack's statements help identify the gaps in the formal records of the freezing deaths, even within the more creative filmmaking approach. The conversation between Hubbard and Razack expose some limitations of formal records, affirming artistic responses or the significance of the counter-archive, particularly if cultural works fully expose Canada's ongoing colonialism. In Razack's view, the film was a corrective to the inquiry process which was limited in its capacity to expose the "sociopathology of state-sponsored colonialism" (331).

Evidence as a Counter-Archival Intervention and as Archival Mobilization

Garneau's *Evidence* seems to gesture to what Perera (2006, 653) calls "the dynamic of invisibility/visibility." Using art as a counterpoint, Perera addresses the SIEV X tragedy, the sinking of a poorly maintained fishing vessel in international waters between Indonesia and Australia on 19 October 2001. Nearly four hundred asylum seekers from Iraq, Afghanistan, and Iran who were trying to unite with family members in Australia disappeared into the sea when the boat capsized, resulting in Australia's surrounding waters becoming "awash" with "phantom bodies" (638). Official responses were muted, referring to the catastrophe as a "maritime incident" while rejecting calls for a judicial inquiry. Perera's focus on how this "maritime space of exception" was created and her look at the ways the "nameless bodies of the dead and disappeared" in this troublesome space come to be manifest "as evidence, as political bodies" is insightful to this scholarship (638). When Perera writes that "The meanings of these wounded, fragmented and scattered bodies will not be contained and incorporated by necropolitics," she seems to affirm ways the bodies of the dead ooze and leak, refuting benign, de-politicized scripts of disappearances (649).

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Perera examines an installation *They Give Evidence*, created by Dadang Christanto, an Indonesian-Australian artist. Perera cites Christanto's series of standing naked figures, with outstretched arms holding the remnants of burnings, drownings, beatings, and other mutilations as an entry way into her examination of the "ways in which nameless bodies of the dead and disappeared are made present in contemporary Australia as evidence, as political bodies" (638). The generic figures are stripped of indicators of identity. They are, however, marked "in an order of contemporary political violence" (638). Christanto's bleak work caused Perera to reflect on factors also inherent in Garneau's work, namely, "the relations between the bodies of living and dead, between modalities of bearing witness and giving evidence, and the role that the bodies of the dead play as border or threshold spaces marking separation and connection and functioning as ongoing bearers of powerful political meanings" (638).

For Perera, the bodies lost during the SIEV X operate "as at once shameful spectacle and shameful national secret" (653). Her comments may also be relevant to the freezing deaths of Neil Stonechild as well as the fatalities of the other Indigenous men deposited in remote areas, often in freezing temperatures. When the Federation of Saskatchewan Indian Nations (FSIN) opened a hotline for members to report police wrongdoing in April 2000, they were flooded with calls (Barnsley 2000). The volume of reports was cited as proof that there was something systemically wrong with the justice system. Neil Stonechild, seen in *Evidence*, and Garneau's *Starlight Series* more generally, show the human faces in the hidden record of violence that the FSIN exposed.

Danielle Taschereau Mamers's work examines art by a self-described Cree/Halfbreed, German/Polish artist, Cheryl L'Hirondelle.[1] In examining L'Hirondelle's project, *Treatycard.ca*, Mamers describes L'Hirondelle's work as a "counter-archival intervention that destabilizes settler colonial law's claims to authority" (2018, 48). Mamers asserts that art undermines "the colonial knowledge-power project"—an observation that seems to have application to Garneau's painting (56). *Evidence* portrays settler violence, reversing the more prominent narrative of Indigenous threat. The painting draws into question assumptions about Indigenous perpetrators by showing an Indigenous victim, presumably injured by state violence. *Evidence* might be seen as a visual archive that gestures to "truths" outside of and beyond colonial findings, including those that appear in legal archives generated by the Commission of Inquiry. While Garneau did not originally create the painting for public

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viewing, his interest in showing the work as a "counter-archival disruption" developed over time (48).

As is the case with L'Hirondelle, Garneau insists on probing less comfortable, less sterile truths. While Garneau set out to record a disturbing image, his immediate response was largely visceral because the impact of the gruesome was felt at a bodily level. While somewhat prepared for the gruesome post-mortem image he located online, Garneau acknowledged that he found the picture "stark" (CBC News, 2009). The autopsy image evoked negative emotions; Garneau found it "ugly," "sad," and "depressing" (CBC News, 2009). In interviews, Garneau described the painting as "jarring" and "upsetting." Garneau reported that he was disturbed by the painting. In fact, he was "constantly in knots" when considering his creation (2009). While some gallery viewers described Stonechild as at "peace," Garneau questioned whether it was his role to "determine whether he's at peace or not" (CBC News, 2009).

While determined to document the tragedy, Garneau has reported that he initially created the art piece for his private collection, as it was "too brutal, ugly, to exhibit, to be art" (2014, n.p.). He also wanted to uphold Indigenous cultural norms that prohibit the display of a deceased person. However, a few years later in a sweat Garneau saw "dancing little flashes of light and Neil" (Garneau 2010, 30). Guided by this vision, Garneau was inspired to lay "a field of red dots over [Neil Stonechild's] cool face" (30). The red dots were an intuitive gesture. Later, he showed the work to a Knowledge Keeper, Rodger Ross, during a conversation about exhibiting the work. Ross described the screen of dots as a protective veil keeping Neil's unrest safe from the living. This protective cover allowed for the portrait of Neil to be exhibited. *Evidence* was first displayed at the Dunlop Art Gallery in Regina, Saskatchewan in 2009 in the group show titled *Diabolique*. The painting was later exhibited in other Canadian venues, including Galerie de l'UQAM in Montréal in 2010 and Oakville Gallery in Ontario in an exhibit curated by Amanda Cachia (also in 2010).

From the vantage point of this scholarship, it is significant that *Evidence* is currently part of the permanent collection of the Saskatchewan Arts Board, now SK Arts, an organization that supports Saskatchewan artists through funding and advocacy. At the end of the *Diabolique* exhibition tour, the Saskatchewan Arts Board asked to retain the work. A former employee, Carol Greyeyes, was instrumental to the process. She developed a written contract, or a "keeping protocol," that outlined the terms (Garneau 2014). In the

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protocol, it was agreed that the painting would only be loaned to or exhibited by an Indigenous curator. Furthermore, the Stonechild family would be notified in advance of any exhibitions. Notably, the Saskatchewan Arts Board collected the painting under the Cultural Property Export and Import Act (RSC, 1985, c. C-51). The painting was proclaimed under s 32(b) to be "of such a degree of national importance that its loss to Canada would significantly diminish the national heritage." It further meant that the painting's "[outstanding] significance and national importance" exceeded "the collections and mandates of individual organizations." Given the unique arrangement, it is not surprising that the process for the transfer took over three years. In his 2014 conference presentation, "Strange Evidence," David Garneau disclosed that no other works of contemporary art were afforded this treatment, to his knowledge (n.p.).

Garneau points out the significance of the inclusion of the painting in the Saskatchewan Arts collection where it exercises a shadow presence as a marker of state violence. In an email, he stated the recognition by a reputable organization meant the piece would "'haunt' the official archive for some time to come" (David Garneau, email message to author, 7 May 2017). Garneau wanted the work "in such a collection/collective memory" (Garneau 2017). Its inclusion in this esteemed collection was "as important as the work itself in terms of the larger project of trying to reverse Indigenous erasure" (Garneau 2017). For Garneau, works like *Evidence* and the inquiry into Neil Stonechild's death have achieved something important in making him "visible" (Garneau 2017). Adding the painting to the collection of a non-Indigenous institution was significant. It resulted in "a small change to policy, a little shudder, a precedent that may influence the collection and status of other works, and the need to have appropriate custodians—Indigenous bodies, minds, protocols, and relationships to manage them" (Garneau 2014). Reflecting in 2021, Garneau stated that he tries to have his more significant paintings placed in important collections, so that they augment, disrupt, and challenge institutional archives (email message to the author, June 2021).

Making Visible Indigenous Presence

Given its notable status, *Evidence* disrupts what Danielle Taschereau Mamers describes as "settler colonial ways of seeing" that minimize colonial harm (2017, 5). For Mamers, the "aesthetic force" of the various artworks she

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analyzed presented "clear lines forward, and away from the delimited, eliminationist gaze of the state" (2017, 180). Following Judith Butler, Mamers reasons that we need "ways of framing that will bring the human into view in its frailty and precariousness, that will allow us to stand for the value and dignity of human life, to react with outrage when lives are degraded or eviscerated without regard for their value as lives" (2017, 183). In exposing settler violence, *Evidence* performs a role that is similar to the Indigenous artworks Mamers studied. The creative work and stories by Indigenous artists honouring Neil Stonechild, including Garneau, reinforces Mamers argument that aesthetic works show "the incompleteness of sovereign frames by making visible the Indigenous presence that persists in spite of the colonial politics that envisions erasure as an inevitable conclusion" (18).

Statements by Saskatoon artist Jeff Crowe, Neil's best friend at the time of his passing, affirm ways that Neil haunts colonial spaces and is remembered by friends. In 2015, Crowe attended an event marking the 25 years since Neil's death. Crowe stated there was always a memory of Neil wherever he went in the City of Saskatoon. For Crowe, it was "like he's still here" (CBC News 2015). The artwork that Crowe creates is dedicated to and stamped with a symbol for Neil. Crowe reports that he feels his friend's presence when he paints; for him, Neil is "there" (CBC News 2015). Crowe's devotion to his best friend, even long after his death, affirms the importance of acknowledging what Mamers describes as methods of seeing that reject "the narrow frames of settler colonial agents and instead [marked] Indigenous life as fully present, mattering, and self-determining" (180). In authorizing Indigenous losses, *Evidence* contributes to the space of remembering and to the felt encounters with Neil by his close friends, like Jeff Crowe. More recently, an Indigenous artist, Kevin Wesaquate, working with youth from Artistic Minds, created a mural in Saskatoon that depicts Neil Stonechild. The aim is to change the narrative to focus on Neil's capacity and positive legacy (Eneas 2021).

Jeff Crowe's recollections and other remembrances may help us see ways that *Evidence* makes space or retains openings for factors, findings, emotions, and memories that extend beyond the lengthy legal proceeding. As a visual source of more hidden truths, *Evidence* gestures toward the as yet unrealized and more deeply Indigenized futures that might, at least, end the genocidal actions perpetuated against Indigenous men, like Neil Stonechild, and against Indigenous women. These two topics are united by scholar Joyce Green who discusses the murder of women and men as comparable tragedies (2006).

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Garneau's painting points toward what Natalie J. K. Baloy calls the "hard but important work of dismantling spectacular and spectral settler colonial conditions" (2016, 228). For Baloy, efforts like Garneau's artistic work challenge us "to reorient ourselves relationally to each other and the Indigenous land we all live on" (228).

Conclusions

Throughout this chapter, I explored whether *Evidence* might be read as a counter to or a reframing of the legal archive. I reasoned that *Evidence* is a lasting record of the harms to individuals and communities and a rebuke of the inadequate documentation of Indigenous histories. I tracked ways that Garneau's oversized reproduction of Neil Stonechild's face goes beyond acknowledging individual tragedy to reminding us of the collective harm of the ongoing genocide that reverberates daily in Canada and other Western nations.

Garneau's disturbing painting serves as an alternative to formal documentation on the case, such as the inquiry report and the evidence collected during the original investigation, which the Commission re-scrutinized. Additionally, I addressed two main research concerns relating to the archives. To begin, I revisited the Stonechild Inquiry as a legal archive based on the evidence gathered during the inquiry. While important, researchers have pinpointed the shortcomings of the Stonechild Inquiry including the ways it skirted structural racism. Writing about archival limitations more generally, scholars, including Hawkes, Sela, Falzetti, Mamers, and others, offered critical insights on Western archives that informed the chapter. Scholarship specifically written in response to legal forums, specifically the Stonechild Inquiry, helped pinpoint some of the limitations in the inquiry record. Secondly, and perhaps more significantly, this chapter examined *Evidence* as the type of creative archive I endorse to remedy archival inadequacies, including the propensity to mute Indigenous claims, historical accounts and lived experiences. While legal truth-telling forums feature in human rights discourse, this chapter established that these mechanisms often fail to capture the victim accounts and experiences often made prominent in aesthetic responses.

By displaying Neil's wounds, *Evidence* forces us to see the hidden "white settler violence" that "remains a persisting condition in the practice of Indigenous elimination and erasure" even while "barely recognized" in the

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stories of settler valour shared in families and transformed into "national texts" (Morton 2019, 456). Garneau seems intent on ensuring that Neil Stonechild's death remains an open wound, continually raw, always festering, until the time when the colonial harm that propelled his death is acknowledged and remedied. By creating a painting meant to have lasting impact, Garneau invites Neil Stonechild back to occupy and haunt settler spaces. The ephemeral, ghostly presence Neil Stonechild exerts in *Evidence* may galvanize settler society toward what the artist calls "non-colonial activity" by stretching beyond the legal archive to make the harms of structural inequity even more real and apparent (Garneau 2016).

Garneau's writings and texts guided this reading of an artwork as an alternative record—even those written after the *Starlight Series* paintings, including *Evidence*, were finalized. Taken together, the interviews and articles by Garneau cited here underscore the need to creatively envision the historical present while also remembering past harms. In "Apology Dice: Collaboration in Progress," written with Clement Yeh, Garneau shared a perspective on art's role in helping us imagine and act beyond colonialism and violence: "What art does do—and what is difficult to measure—is that it changes our individual and collective imaginaries by particles, and these new pictures of the world can influence behaviour. Queer pride parades and Idle No More do change how we see and treat each other and ourselves" (Garneau and Yeh 2015, 76).

Art making, in general, has merit as a path toward something beyond a forced and seemingly impossible reconciliation (2016, 30). Garneau's caution that "we should not be in such a rush to let our words imagine a reconciled, healed future" seem particularly relevant in the contemporary context where Indigenous deaths continue. They also may help us discern what the careful study of a visual image may reveal (2016, 39). Namely, it offers an opportunity to reflect and move carefully against the backdrop of spiritedness, anguish, hopefulness, and brutality that Garneau appears to reference (39). Garneau reminds us that what is needed is "the expression and production of non-colonial thought, action, relations, and objects centered in [Indigenous] bodies, experiences, communities, and territories" (Garneau 2018, 39:57) as well as modes of being that coincide with "living well in shared territories managed according to principles that arise from this land" (40:15).

In a 2009 interview with Amanda Cachia, then curator of the Regina-based Dunlop Art Gallery, Garneau stated: "*Evidence* was just that, a piece

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of evidence. It's someone from the community saying: 'Let's not forget this.' The end result of the inquiry was that there was insufficient evidence to make a determination so in many ways it's an open wound. It's there!" (Garneau 2009) *Evidence* may, therefore, affirm what Hawkes states is the most important teaching from the "testimony-without-testimony" of Survivors who struggle to coherently share their stories. This lesson is made plain in the narrative fragments left after tragedies, which, for this chapter, includes the stories and tributes to the freezing deaths, including the loss of Neil Stonechild. The lesson, according to Hawkes, is: "Loss. Loss eludes the archive" (2018, 86).

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Note

1 See "Cheryl L'Hirondelle: Bio," http://www.cherylllhirondelle.com/bio.html, accessed 13 December 2022.

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18 Ethics of Representation / Ethics and Representation

Dads Doin' Time, Incarcerated Indigenous Writers, and the Public Gaze

Jillian Baker

In September 2017, I helped to facilitate workshops for and curate a multimedia exhibition in a local Saskatoon art gallery that featured the works of more than twenty currently and formerly incarcerated artists and writers ruminating on the intersections of fatherhood and incarceration. *Dads Doin' Time*, a multimedia display, included works of creative writing, visual art, music, and sound bytes. The artists were varied, not only in age, interests, and level of literacy, but also in the nature of the connections between fatherhood and their own incarceration. Many of the participants chose to create pieces about or for their own children, while others contemplated their own fathers' incarceration and the effect this had had on their childhood. *Dads Doin' Time* was the product of more than eight months of collaborative discussion, writing, and editing that began in a classroom at the Saskatoon Correctional Centre (SCC), a provincial prison for adult men on the outskirts of the city. Everything from the inspiration for the art show to the majority of the artwork on display came from participants in *Inspired Minds: All Nations Creative Writing*, a community-based program that has been running out of the SCC since 2011.[1] Although the program is open to everyone, most of the participants are First Nations or Métis.

The unanimous decision amongst the twenty writers to bring the final outcome of this particular workshop into a public gallery space was one that

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extended what would otherwise have been an eight-week series of workshops. In what ways can creative and educational workshops like the ones run by Inspired Minds enable incarcerated Indigenous writers to reclaim or perhaps establish a sense of autonomy and self-determination through their work? What decolonial potential does this shift in agency have both for the writers themselves and for the institutions they create into and out of? This chapter will focus on these two questions to highlight the potential of goals-based arts programming in correctional facilities to destabilize the colonial underpinnings of the institution by enabling writers to determine for themselves how their stories and experiences will be shared and understood, particularly by their families.

My approach is informed by an understanding of both Indigenous research methodologies as outlined and modelled by Margaret Kovach (2009), and the community-based research frameworks established by scholars like Paul Kivel (2000) and Adam Gaudry (2011). It is also an approach that, like the Inspired Minds program itself, forefronts the significance and legitimacy of the experiences of the incarcerated writers I work with, as we collectively "think about approaches to combating their overrepresentation" in the criminal justice system (Piché 2015, 197). As a white settler scholar working and living on Treaty 6 territory, I engage with the varying complexities of the issues presented in my research but also with the ethical obligations I have as a researcher when I assume the responsibility of handling the creative outputs of others. I am therefore grateful for the many community-based partnerships with people like Diann Block, the cultural coordinator at the SCC, and organizers from Str8UP, an organization that seeks to aid those trying to voluntarily exit the gang lifestyle, as well as to my academic colleagues at the University of Saskatchewan and the University of Alberta, all of whom have contributed to the completion of the particular project.

The City and the Story

That the majority of the writers who took part in the *Dads Doin' Time* project were of Indigenous heritage is representative of the fact that in 2016–2017 in Saskatchewan, nine out of ten male admissions to detention centres were Indigenous (Zakreski 2018, para. 1). This is a statistic that has risen by more than 20 percent in the province in the last twelve years, indicating not only a significant disparity in policing and the severity of charges being laid against

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Indigenous people, but also a growing issue specific to Saskatchewan provincially, as well as to Saskatoon more specifically (para. 6).

As Jana Grekul and Patti LaBoucane-Benson (2008, 68) note, for Indigenous youth in the Prairie provinces, "the gang acts as, or promises to act as, a substitute for family, filling the void left by family backgrounds marked by violence, substance abuse and crime." They continue that for many Indigenous youth and families in the prairies, "gangs are real, youth are being recruited into this lifestyle on the streets and in prisons, leaving school and family behind to take on the gangster identity" (65–66). Allison Piché (2015, 204) gestures to a kind of "fluidity between the prison and the community" for Indigenous youth in Saskatchewan, who "linked absent fathers to misguided masculinities which too often result in gang involvement." Piché's observation accounts for the cyclical nature of gang involvement—a generational invocation that many of the writers in the Inspired Minds program had an intimate familiarity with—and also draws attention to the connections between gang involvement and the disruption of Indigenous familial structures, a topic that permeated and indeed provided the basis for the entire *Dads Doin' Time* project at large.

Writing in Confining Spaces

Understanding the decolonial significance of an installation like *Dads Doin' Time* can only be achieved through acknowledging colonial circumstances that have influenced or mediated the reception or presentation of artwork, particularly writing, that comes out of carceral spaces. Fights over an incarcerated writer's right to publish and profit from the publication of their work have been largely fought in public arenas over the years, with writers often unable to advocate for themselves or their work. Nevertheless, there exists a body of literature from which examples of the socio-political reality of Indigenous prison writers can be gleaned. To this end, the poetry of Leonard Peltier, a member of the American Indian Movement (AIM) jailed for life for the murder of two police officers during an incident on Pine Ridge Reservation, is invaluably illuminating on a number of levels.[2]

While the verdict in Peltier's case is often viewed as controversial (Nation Talk 2015), the writing he has produced during his incarceration tells of injustices against Indigenous people that are irrefutably true for many—such as targeted over-policing, racial discrimination both in and outside of carceral

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facilities, the toxic nature of colonial-national identity, and the multifaceted repercussions of being deemed "criminal." His poetry in particular is seen as being concerned with a history that encompasses more than his own personal experience, and his responses to the charges and biases under which he operates daily reflect not only a rationalization of his own criminal actions, but a larger rationalization for anti-colonial resistance efforts as well. In his poem "Aboriginal Sin" (1999, 16), Peltier gestures to the complications of public perceptions of Indigenous people: "We Indians are all guilty/ guilty of being ourselves. / We're taught that guilt from the day we're born. / We learn it well." His writing from the carceral institution in which he is serving his life sentences aims to destabilize notions of "guilt" and the shame that comes with it, casting his rhetorical gaze back out at the systems which have confined him throughout his life rather than focusing on some inherent moral inadequacy in himself. It is worth noting that beyond the anti-colonial potential of Peltier's poetry to provide him with the agency to share his own story on his own terms, and to reveal the realities of his marginalization even within the prison system, the nature of his work also actively disrupts a generic expectation of prison writing wherein confession, reformation, and forgiveness are prioritized concepts. Many engagements with the writing of currently or formerly incarcerated writers, even in the city of Saskatoon specifically, have been rooted in the sharing of redemptive story arcs that narrate a criminal's fall from grace and eventual reformation and vindication.

The Inspired Minds program similarly asks its participants to think critically about, and question, the circumstances of their incarceration, including an awareness of their own implications in the system, rather than foregrounding a singular need for personal or public atonement in their writing. Enabling and encouraging this flexibility in the contents of participants' written works insists that the finished products reflect a lived experience with the carceral system which is as nuanced and unique as each of the individuals that produced them, essentially refuting monolithic stereotypes regarding Indigenous peoples and incarcerated individuals alike. This said, while creative writing and arts-based educational programming does have the potential to offer counternarratives or points of departures for new ways of thinking and doing differently, Piché (2015, 210) notes that such programming cannot "in and of itself meet the diverse and changing needs of First Nations, Inuit and Métis offenders." Piché instead insists that, short of restructuring or dismantling the entire carceral system, one must at the very least strive for a restructuring

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of what constitutes "success" for inmates as well as the institutions. Rather than relying on recidivism rates alone as a measure of prosperity, Piché (2015, 210) suggests a "need to recognize that less measurable returns, such as self-confidence, healing, skills, and understanding, also make a difference to individuals and community" in carceral settings.

With the spirit of this alternative kind of success in mind, the participants in the *Dads Doin' Time* project were encouraged to engage critically with questions about the colonial underpinnings of their confinement and rely on one another to provide varied perspectives on complex theoretical topics. For instance, Nancy Macdonald's (2016) article in *Maclean's* magazine, in which she notes that criminologists have begun to consider Canada's prisons as "new residential schools," led to fruitful discussion not only about the ongoing relations that exist between settler colonialism and the criminal justice system but also about the effects of the residential school system and carceral system alike on the establishment and maintenance of the Indigenous family structure. Many of the writers in the program were able to draw direct and personal connections between the residential school system and their current imprisonment, with topics such as lack of access to cultural materials and ceremonies, the inability to speak traditional languages, and the loss of familial connection figuring heavily into the discussions. Specifically, the physical separation of parents and children, not just through incarceration but through the insistence of no-contact visits at the SCC was a parallel with residential schools that hit close to home for many writers.

The men also talked about how the problem of physical separation is compounded by the intrusion of the child welfare system into Indigenous families—a system that, as Kanien'keheka law professor Patricia Monture-Angus observes, "feeds the youth and adult correctional systems." Both institutions, she points out, "remove citizens from their communities, which has a devastating effect on the cultural and spiritual growth of the individual," while it also "damages the traditional social structures of family and community" (1995, 194). Deena Rymhs (2008, 4) cites Monture-Angus in her assertion that "the child welfare system creates future offenders while eroding the social and cultural fabric of indigenous communities"—a point that echoes Jessica Ball's statement about the paradoxical relationship between the carceral system and the transmission of "father roles" (2009). Rymhs invokes Michel Foucault's theory of carceral institutions as the source of delinquency and hence of imprisonment to position the trajectory of Indigenous individuals

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and families—from residential schools into the child welfare system and onward to correctional centres—on a carceral continuum embedded in "the multiple and often overlapping sites of discipline that define delinquency and that naturalize the power to punish" (2008, 4).

The intersections of race, class, gender, and parenthood ended up becoming key sites of creativity as well as resistance and mobility for the writers in the Inspired Minds program. One of the contributions to the show included a writer's letters to his own father alongside letters to his child, who by virtue of his incarceration, he had never met or interacted with. The positive relationship illuminated between the writer and his own father (as indicated by talk of pride and love in the letter), alongside his non-existent relationship with his own child, indicates a break in the chain of knowledge transmission. This was illustrated just as much in the letters as by the physical presentation of the letters alongside each other in the gallery space. The artists' use of this public platform to share direct messages to his family members initiates a dialogue, showing the dialogical potential of prison writing.

Much like Peltier, it is not merely a discussion regarding their own confinement that the writers of the Inspired Minds program contribute to in the creation of their individual works; their eventual outputs can be seen as contributing to a much larger conversation directed by the production of prison writing in Canada. Rimstead and Rymhs (2011, para. 4) note a history beginning in the 1960s wherein Indigenous prisoners in Canada have used the penal press, among other things, "to raise the intellectual and political consciousness of other prisoners." They cite letter-writing campaigns undertaken by Indigenous inmates to both support Indigenous land claims in Brazil and to advocate for Peltier's release, as constituting "a political imaginary that exceeds the boundaries of the nation-state" (2011, para. 5). The act of writing then becomes a practice through which inmates can grapple with the ramifications of the crimes they have committed. Writing in this context has intellectually liberatory potential that can be seen as both a decolonial and an anti-carceral process.

Writing and Community

The Inspired Minds program contributed to anti-carceral efforts by offering writing workshops to incarcerated men as a way to facilitate creative expression and critically reflect on their circumstances and socio-politics both in

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and outside of the carceral space. One of the most significant initial elements of any Inspired Minds class was making the space, wherever it was located, into one where people felt safe sharing and being vulnerable. Unlike most Inspired Minds classes, which typically took place in a single unit, including writers only from that unit within the prison, this particular set of workshops invited participants from all across the facility, allowing for potential community building to transcend the boundaries and borders put in place by the institution. This choice constituted a remapping of community boundaries on the terms of the writers, rather than communities constructed by the makeup of the prison itself.[3] Doran Larson (2011, 5) claims that promoting community building among prisoners in correctional facilities has the potential to force the prison itself to "undergo radical metamorphosis into a civil institution that serves as an engine of progressive civic engagement."

The classroom that housed the creative workshop of the *Dads Doin' Time* pieces was meant to mimic Ludlow's concept of a "contested space," or one "that is not necessarily defined by conflict, but which includes room for conflict" (2004, 5). The space was meant to provide room to challenge and encourage individual ideas and understandings. This is not always easily accomplished in carceral contexts, and so one of the many ways that a sense of community was achieved in the classroom was through an activity that asked the men to anonymously share their hopes and fears about the project with the intent of revealing that many had shared concerns. In the exercise, some worried about the reception of their works by their families, while others expressed insecurities about their levels of education in relation to their peers, but the most common response was a fear of vulnerability and facing judgment from the others in the room. Unlearning this sense of distrust among peers, particularly when participants were only offered a "safe" but "contested space" once a, was aided in part by the creation and implementation of a set of community guidelines written by the participants themselves and based on the hopes and fears laid out by members in the initial activity. What resulted was a group of men holding themselves and each other accountable not only for their behaviour, but also for the production of genuine and thoughtful messaging for their children.

The editorial model, both informed by Inspired Minds' already established practices as well as additional steps specific to the project and the writers personally, aimed to make any necessary alterations to the pieces as enabling as possible to the writer. This largely involved writers choosing the content

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of their writing in the tone, genre, and voice that they pleased, with only very minor interjections for clarity. All changes suggested were reviewed and accepted by the writers themselves during a lengthy series of editorial sessions that included working with the original piece, transcribing the piece into a digital format, and continuing to bring the artwork or writing back to the artist for approval. The goal was to ensure that the final products would be far more representative of the writers' experience than of the editor's literary expertise, and to allow the writers to have more control over how (visually as well as compositionally) their work would be seen in the gallery.

This last piece became important to *The Dads Doin' Time* project—while a public gallery space meant wider visibility, as well as family accessibility to the writing, it did inevitably mean that the writers would not be able to attend the show to represent themselves or their work to the viewing audiences. In keeping with Andrea Walsh's (2002, 250) assertion that meaningful cultural dialogue in a gallery space could not occur until "the dominant perspective was dismantled," a conscious attention to everything from the paper, font size and typeface of the displayed works, to the gallery we chose to display the works in, became significant aspects of our editorial model. While it remains true that a writer, regardless of demographic, cannot entirely control the reception of their works by inherently subjective audiences, the particular public risk for speaking out remains very real for incarcerated writers.

Making the Space

In determining where the show would be held and how we would go about presenting it, we benefited from connections with the Saskatoon Community Youth Arts Programming (or SCYAP), which owns a gallery space in the heart of downtown Saskatoon and operates on aims very similar to those upheld by both Str8UP and Inspired Minds. As a part of their mandate, SCYAP (2011) seeks to "offer street-level, youth-centred solutions to crime, unemployment and youth homelessness by utilizing youth's artistic interest and inclination as a tool for personal development and redirection toward healthier, happier and more productive lives." It was already a space that functioned at a community level to provide opportunities to many Indigenous artists and youth across the city. It was and remains a space that regularly validates the legitimacy of Indigenous voices and Indigenous art and provides a broader audience for the distribution of that art than would usually be achievable by individual

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artists on their own. Walsh (2002, 254) asserts that "the relation between legitimacy and visibility becomes a fundamental part of the politics of seeing and representing" Indigenous art. The utilization of formal gallery space aids in providing both a sense of legitimacy (in an artworld and public context) and also a significant level of visibility, both in that the stories and intimate experiences with the criminal justice system are being widely viewed, and in that the art show acted as a catalyst for media coverage on the project, as well as the systemic issues that led to the need for the project, by local news outlets such as the *Saskatoon StarPhoenix*.

As Walsh (2002) argues, however, everything from who is invited to display art in Canadian galleries to how and why artwork is made public has been largely determined by governmental or institutional processes steeped in ethnocentric bias—including a deep colonial history. The gallery, as a space, is dominated by what Walsh (2002, 247) refers to as a Eurocentric "scopic regime" that is "manifest through social power structures that restrict and enhance the physical or cultural processes of sight" operating in "spaces of difference." Often these aesthetic expectations dictate what is not considered art, illuminating what Walsh suggests; art is considered stylistic *only if* it adheres to particular principles. Under this scopic regime, art that differs from what is considered the central subjective "norm," is either not considered to be art, or is art which does not meet the expectations of those select few who circulate it. The valuing of Indigenous creative works by the reductive scope of ethnocentric definitions of "quality" is a practice that Creek-Cherokee literary scholar Craig Womack (1999, 17) argues pulls the Indigenous works from their deeply entrenched political and historical contexts and assesses them instead through a lens which lacks any kind of cultural specificity.

In much the same way that Indigenous writing was largely excluded from the field of literature until the 1950s and 60s, Indigenous artworks in Canada's gallery and museum scenes were for decades relegated to the realm of artifact or examples of "primitivism." Echoing the marginalization of prison writing, the insistence of a "primitive" aesthetic in Indigenous art suggests a limited range or capacity on behalf of Indigenous artists, rooted in reductive historical and colonial interpretations of Indigenous peoples and cultural practices. What constitutes "good," or "gallery-worthy" art is determined, decided upon, and enforced primarily by institutions that have not always been forthcoming to Indigenous writers and artists, and it is easy to see the gallery as a space that also upholds colonialism, even if not as overtly as

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the prison system. Rather than focusing on Indigenous art as a product or object lacking the defining markers of "quality" from a Eurocentric perspective, *Dads Doin' Time* challenges well-accepted historical narratives while also shifting attention from the "Aboriginally-produced object" onto "Euro-North American spectatorship and beliefs." The pieces ask the audience to be critical of their own experiences while engaging actively with those they cannot relate to.

Sto:lo scholar Dylan Robinson (2017) points out that the material and physical structures of the modern gallery (which he refers to as "starchitecture") work to "apprehend Indigenous belongings with their gaze" (98). He further argues that the gallery is a space that has "oriented the settler colonial palate toward a cornucopia of ethnographic salvage and 'informant knowledge,'" which make exhibitions like *Land, Spirit, Power* (1992), *Indigena* (1992), the works of artists like Rebecca Belmore, and even our much smaller *Dads Doin' Time*, sites that repudiate the expected narratives surrounding the writers personally, and also challenge the externally imposed limitations on their artistic capacities (Robinson 2017, 98). The work of illuminating the lived experience of being in a carceral institution, and the concomitant images or realities which often remain opaque or inaccessible to those whose privileges allow them to avoid physical or even intellectual engagement with prisons and their inhabitants, can be in some ways read as a remapping of the space.

Doreen Martinez (2012, 546) discusses the disruption of the "tourist gaze" on Indigenous traditional territory and suggests that the insertion of Indigenous language and writing into previously understood places as one which forces its readers to participate in the "recognition of new maps, that is, new ways of understanding locations of culture." The writing of the men involved in the *Dads Doin' Time* project asks readers to engage in remapping the prison and their understandings of the reality and social identity of the writers whose experiences they have been granted access to. As a general rule, galleries function as neutral spaces within which viewers acknowledge, whether consciously or not, the artist as a human being like themselves. Yet this fundamental awareness of a shared humanity is not always a given in relation to works produced by incarcerated artists, who are, to again borrow Rymhs's (2008, 49) terminology, not on a "neutral footing" with those who view their work.

The project at large was concerned with the role of art in the contestation of identities externally defined but subsequently internalized. What is art's role in

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contemporary cultural revitalization? And in what ways do culturally specific representational practices and receptions challenge mainstream assumptions? The contributors to *Dads Doin' Time* produced works that spoke to these very broad questions. Discussions around the definition of "fatherhood" as a concept but also a lived role allowed the writers to explore their feelings around an identity that is imposed on them from the outside but also generated by their experience of themselves as fathers. The overwhelming association of pride with parenthood, even when the writing otherwise indicates a perceived failure or shame, speaks to what Rymhs (2008, 10) describes as the "collective enterprise and struggle" that Barbara Harlow has associated with prison writing. The resultant sense of solidarity has the potential to encourage writers and, by extension their audiences, to question normative understandings of literature, as well as of love and parenthood.

Asking the writers to reflect on their experiences of parenthood and incarceration also allowed them to see themselves as having meaningful advice or knowledge to share, even though their circumstances may have led to the perception that they were lacking in some way. Additionally, when one considers the Eurocentric bias implicit in mainstream expectations regarding art, we can see the role this writing has to play in both the disruption of the perceived public identities of Indigenous incarcerated writers, and the establishment of a discursive space that advocates for Indigenous autonomy. And certainly, the idea that the show is taking place at all, on such a large scale, with media coverage and at a legitimate gallery is indicative of challenging mainstream beliefs.

Community in Writing

The writers involved in the *Dads Doin' Time* project encouraged each other to conceptualize fatherhood on Indigenous terms, and to consider what threatens to be lost in the breaking up of Indigenous families. Positioning themselves as experts and purveyors of knowledge to their children and to the wider public contradicts misconceptions, not only about Indigenous peoples, but about prison writers more broadly. Repudiating what Gerald Vizenor (1990) deems the "terminal creeds," or the settler beliefs that the core structure of the Indigenous family is damaged, shows the disruptive power of carceral writing workshops and educational programming.

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Brainstorming sessions in early workshops included a series of questions to aid in finding a place to begin the work together as a group of facilitators and participants. "Sound bytes" of wisdom about parenthood were also recorded during workshops and played intermittently throughout the exhibition: What does it mean to be a father? When you get out of prison, what is the first thing you would like to do with your child? And what is the difference between a father and a dad? All questions intended to engage critically with the realities of incarceration, and also see beyond its sometimes totalizing influence. The sound bytes produced interesting ideas or concepts from which some of the men in the class took inspiration.

The artwork created workshops held at the SCC, some of which went on to be displayed in the *Dads Doin' Time* show, took various forms and meanings. Some participants wrote letters, others took up beading pieces both for display and to be given away to members of the workshop to acknowledge their participation. Devon Napope's poem for his daughter, "1 Broken ♥ to Another," addresses the poet's child directly: "To my beautiful daughter, my butterfly . . . / I'm sorry Daddy wasn't around / Always in jail or out of town. Gone without a sound / I was a kid having a kid. Please forgive me for what I did." Napope's poetry commands a sense of autonomy over the relationship he has or hopes to have with his daughter, but also stands to illustrate Ball's 2009 claims regarding the socio-cultural transmission of father roles ("I was a kid having a kid"). Without directly naming the system, he can be critical of the role that various political processes have played in his own lack of guidance on how to become an engaged parent.

Other contributors chose to speak about parenthood and their carceral experience more conceptually, like Steven Loewen, whose poem "Vultures" accumulated the most visitor feedback. Loewen used the image of vultures circling their already injured prey to describe the interactions he has had with the criminal justice system, as well as the effects that that interaction has had on his family. He describes his life as a "game / The vultures love to play." Loewen's metaphor is telling for a few reasons: the suggestion that his life is a game to be played by others is one that highlights the lack of agency he feels in his interactions with the criminal justice system—the feeling of being preyed upon—and is also critical of the flippancy with which crimes in Indigenous communities are often handled. He warns: "Beware of vultures / Wearing suit, uniform and robe / They cultivate lies, to remove man from home / In the name of tough-on-crime, family suffers till end of time" (ll. 8–11). Loewen's

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use of extended metaphor throughout the poem to draw connections between the systems he must regularly navigate and survive and ruthless carrion eaters picking away at a speaker could just as easily be representative of Loewen as of any other man in the workshop. The final lines of the poem might even inspire critical self-reflection in their audience: "Vultures are bred, the jails are fed / Society turns a blind eye / They believe in crime not survival / Punishment and not revival" (2016, ll. 46–49). The poem implicitly asks readers to question their own role in this metaphor. This poem, like many that ended up in the gallery space, had informative qualities by sharing a lived reality with the public as it asked that same public to consider themselves in relation to it.

Scholar Rey Chow (1991, 3) writes that "metaphors and other apparatuses of 'seeing' in writing become overwhelmingly important ways of talking, simply because 'seeing' carries with it the connotation of a demarcation of ontological boundaries between the 'self' and the 'other,' whether racial, social or sexual." Loewen's use of metaphor as a mechanism of expression enables writers to engage in critical discourse without necessarily facing the immediate repercussions of outright criticism of the institution in which they are obliged to live.

The dangers of engaging in prison writing or artwork are many. Prisoner-author Gregory McMaster (1999, 51) identifies the "constant dilemma" of the incarcerated writer, namely, to figure out "how to effectively educate and inform the public about lived prison realities, without insulting or alienating the very people we are trying to encourage." In tracing the history of prison publications, Robert Gaucher (1989, 7) notes that editors experienced similar problems: "Confined by the isolation of incarceration, faced with the prospect of pleasing both administration and fellow prisoners, constrained by often unintelligible censorship demands . . . editors had to walk a tightrope of conflicting demands and expectations in a situation where failure could have serious consequences." Gaucher is speaking of the "golden age" of the prison press, during the 1950s and early 1960s—but, as he points out, these difficulties have not gone away.

There is an interestingly fraught parallel here between the dangers that prison writers face, and the scrutiny faced by those who attempt to publish that writing. It is fraught primarily because, as non-Indigenous academics, Nancy Van Styvendale, Allison Piché, and I are by no means as vulnerable to the "serious consequences" that Gaucher invokes for our participation in the project, as the writers are. An ethical editorial approach has to account for this

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hierarchized difference—in race, culture, gender, and class. Rymhs (2008, 53) also adds "the physical and ideological limitations the prison places on the incarcerated writer" that also complicates the position from which they write, as well as their relationship to those who intervene (ethically or otherwise) in the presentation of their writing publicly.

Conclusions

While we cannot make sweeping claims to any kind of transformative or universal response or impact that involvement in the project may have had on participants, or on the members of the viewing audience, or the prison system at large, we can look at the *Dads Doin' Time* show as a marker of the capacities of educational programming in correctional facilities across the country.

Our means of judging audience responses to the exhibition were limited, but included gathering oral testimonies, and having visitors fill out feedback sheets. The feedback we received was encouraging. One local educator wrote that "exploring the effects of incarceration on fatherhood was incredibly eye-opening and an amazing force against racism, prejudice, and continued colonial violence"; another viewer assured the writers that their words conveyed "much power and love for your children"; and many commented on the need for more regular cultural programming of this nature in Saskatoon. We cannot draw a direct correlation between this one art show, or one set of workshops, or even one group of writers, and a reduction of recidivism rates in the city, which has previously served as the most tangible marker of "successful" passage through the criminal justice system in a variety of contexts. However, we can read the overwhelmingly positive responses to the exhibit, which, in the words of one viewer, had the ability to make viewers "re-think the value of presence [and] care [and] intention in regards to family and kinship." This response points to the power of the exhibit to alter public perceptions of prisoners, if not specifically their capacity as parents. What this indicates is that the writers from the SCC and *Str8UP* succeeded in finding and establishing a footing in a discursive space that has transformative potential—one that asks its readers to "re-map" their understandings of incarceration, as well as fatherhood behind bars (Martinez 2012). To reiterate, simply participating in a program is not enough to meet the diverse needs of the growing Indigenous inmate population in Canada. To this end, however, the function of educational programming as a means of drawing out

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relationships between people, as well as relationships between author's and their own experiences is invaluable.

In "Abolition from Within: Enabling the Citizen Convict," Doran Larson (2011, 6) argues that one of the benefits prisoners value most about writing classes "is simply the time they spend in an environment of mutual support and respect among other inmates," adding that "men in prison have to work daily at establishing and maintaining their reputations, preserving allegiances, and watching for new dangers." The responsibility that these writers bear, particularly when thrust into the public sphere, to represent themselves and also a mounting population of criminalized Indigenous peoples across the country, is immense. Rymhs (2008) sees prison writing as having the ability to incite exponential social change. The *Dads Doin' Time* show revealed the intricacies of realities that many do not know about, while humanizing and legitimizing those experiences to the public.

The scopic regime conceptualized by Walsh and upheld by the gallery and art industries is one that could be seen as a kind of readable paratext in spaces displaying Indigenous artworks that actively engage in challenging the very parameters that seek to inhibit them (2002). It is significant to note, however, that seeing the colonial framework of the artworld as a paratext still relies upon the very politics of difference. Although the scopic regime remains present, it was actively and purposefully usurped in order to create space for Indigenous voices to be privileged. The *Dads Doin' Time* shows the impactful potential of programs where incarcerated fathers see themselves as fathers and encourage a creation or maintenance of familial bonds despite institutional interventions, through the insistence of things like no-contact visits.

Prison writing has the power to urge readers—as novelist Thomas King (2003) does repeatedly in his 2003 Massey lecture, "The Truth About Stories"—to own the stories presented to them. King tells his own version of a familiar Indigenous creation story, about a woman who fell from the sky. "It's yours," he ends. "Do with it what you will. Tell it to friends. Turn it into a television movie. Forget it. But don't say in the years to come that you would have lived your life differently if only you had heard this story. You've heard it now" (2003, 29). The works displayed in the gallery asked the same of their viewers. The writing of participants in the Inspired Minds and Str8UP programs similarly display the ravaging effects of public and institutional narrative and insists, on its own terms, that the "story" regarding Indigenous prisoners and their intellectual and familial capacities be rewritten.

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Notes

1 The Inspired Minds program was founded by Nancy Van Styvendale and the SCC's Cultural Coordinator, Diann Block, in collaboration with Allison Piché, then a master's student at the University of Saskatchewan. The program has since brought on countless volunteer facilitators and has produced at least two collections of writing and drawings under the title *Creative Escape*.

2 It is necessary to acknowledge that Leonard Peltier has been implicated in the murder of Anna Mae Aquash, a fellow AIM member who was killed in the same year he was arrested. A recognition of his potential involvement casts his self-proclaimed innocence, as well as the notoriety his perceived innocence garnered for the publication and dissemination of his autobiographical writing, in a new and far more complex light.

3 Returning to my previous assertions about Saskatoon's particular gang violence issues can gesture toward the many elements that factor into the strategic positioning of prisoners in certain units and can also illuminate some of the cultural and social lines along which the residents are made to be divided.

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19 In the Name of the Native Brother and Sisterhood

James Delorme

As the elected chair of the Aboriginal Wellness Committee (AWC), it is part of my duty to bring the concerns for Indigenous people in prison forward in a respectful manner as possible. Lately, in respect to concerns raised, the only response that I have been receiving from administration is "We are working on it." Even after months of waiting, the response is often the same. I outline below the general nature of some of these concerns in the hopes that we can "work on it" sooner.

A significant concern for the Indigenous population is with the lack of respect that is given to the First Nations Elders who are working with us in prison. According to the Correctional and Conditional Release Act (1992, henceforth CCRA):

> **Spiritual leaders and elders**
> 83 (1) For greater certainty, Indigenous spirituality and Indigenous spiritual leaders and elders have the same status as other religions and other religious leaders.
>
> **Advice**
> (1.1) If the Service considers it appropriate in the circumstance, it shall seek advice from an Indigenous spiritual leader or elder when providing correctional services to an Indigenous inmate, particularly in matters of mental health and behaviour.
>
> **Obligation**
> (2) The Service shall take all reasonable steps to make available to Indigenous inmates the services of an Indigenous spiritual leader or elder after consultation with

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(a) the national Indigenous advisory committee established under section 82; and
(b) the appropriate regional and local Indigenous advisory committees.

Instead of adhering to the legislation, Elders are not consulted or respected and, further to this, are told how to do their jobs, despite all of their spiritual training, especially compared to any correctional service employee. In other words, the institution has its own version of the Sacred Red Road, deciding what and how ceremonies will be conducted. When Elders inform corrections of proper traditional protocol, they are told that they must do it in the way that the Correctional Service Canada (CSC) directs, or they will find someone else to do the ceremonies. It is intrusive and inappropriate for correctional management to tell Elders how they must run ceremonies. In addition to this, some CSC staff also expect the Elders to submit written accounts of what they are discussing with the participants in the privacy of a one-on-one discussion. As a result, some of us have stopped going to the Elders to discuss personal matters.

We need to hear from the Elders the challenges and frustrations they have in their ability to perform their work under CSC. Elders are often ignored when they try to bring forward legitimate concerns related to the progress of the Indigenous population. Many others in the prison population have also remarked how management and administration "look" and "talk" down to the Elders and others who are there to help them successfully reintegrate back into society. It is as though Elders and Indigenous Liaisons are only there as tokens.

Despite sections 81 and 84 of the CCRA whereby Indigenous peoples can serve their sentences or parole in the community, there are very few instances where this occurs. Part of this is the result of warehousing the Indigenous population (Chartrand 2019) and making it virtually impossible for them to cascade to lower-level institutions as a result of onerous high-risk assessments and security classifications; this makes it difficult to even cascade to a minimum-security setting let alone into a community. One individual, who gave me permission to use his situation as an example, has long been in the medium-security facility at the Mission Institution on a parole violation. He was brought back for unsubstantiated allegations, all of which were thoroughly investigated by the RCMP without a charge. He has completed his correctional plan and has done everything that was asked of him, yet he cannot seem to do

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anything to obtain approval from his Case Management Team to move to any minimum-security institution. This contradicts the correctional principles of "safe and humane custody and supervision," and it does not facilitate a helpful approach to rehabilitation. This same individual has even visited from the medium-security section at Mission Institution over to the minimum-security area to participate in Sweat Lodge ceremonies and other cultural activities such as the raising of a Totem Pole, all of which were considered incident free. Sadly, this is the same story for numerous other Indigenous people in prison who are trying to cascade down to a lower level of security.

There are also a large number of difficulties trying to obtain Section 84 or 81 assistance. Most institutional parole officers are not prepared or trained as to what these are and how to apply. I myself have been told on more than one occasion that a Section 84 was no different than regular parole. It almost seemed as though I was being deliberately discouraged from attempting to go that route. As noted above, with the large numbers of First Nations in prison that are continuing to be warehoused, it would stand to reason that there should be more training and focus on sections 81 and 84 of the CCRA. In addition to this, those of us who can do the research and take the time to apply are being made to wait for long periods of time to simply be notified that our application has been received. I myself waited for well over one year before being told that my application was being reviewed; but no other information has been forthcoming.

Research shows that Indigenous people within the criminal justice system stay longer (Zinger 2020, 20). Some of the Indigenous population are encouraged by their Institutional Parole Officers to wave their hearings rather than go before the parole board without their support. This type of behaviour is reflective a modern-day version of the residential school that seek to keep you separated from your families and land. Indeed, residential school survivors in prison have acknowledged how easily they were able to transition into the correctional system having already been institutionalized.

Once out, Indigenous people are also more likely to be returned to prison than non-Indigenous people. They are also more likely to return on what are known as "administrative reasons" or breaches, rather than from committing new offences (Clark, 2019, 2). This means that most of the Indigenous population return to prison because of allegations or other minor concerns which could have easily been worked out in the community. They are quickly

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returned to the correctional system and forced to jump through all of the same hoops again and again.

Indigenous people in prison are still dealing with the fallout from residential schools, segregation, and the church; all attempts for years to forcibly eradicate the First Nations cultural and spiritual teachings and connections. These are the very same teachings which CSC are trying to control and limit within their institutions. In prison, we are required to talk in the church to our Elder about abuses that happened in places just like this; the abuse that continues in spaces like the prison. We cannot continue using the prison as a remedy.

If we, as First Nations people, are ever going to succeed at reintegration, we need to reconnect with our people and ways, and supported in our efforts. As a residential school Survivor, I find that the First Nations teachings which we receive through our Elders are important and essential components to our Healing journeys. Having these cultural and spiritual teachings limited or denied has an adverse effect on those who are already vulnerable. For most First Nations people who are incarcerated, these teachings are the only thing that help them make it through each day without hurting themselves or others. For some, like me, these teachings are the only thing that has kept them substance-free over the years.

Despite this, we have to fight extensively to get institutional permission to access our traditions like wild meat and ceremonial medicines, both of which are significantly limited in prison today. We are only allowed to purchase wild meat from government-approved sources at very high costs and then only if the institution agrees with our choice of supplier. Various Indian bands have offered to contribute wild game and fresh fish for various ceremonies, only to be told that this is not allowed. When we inquire as to why, we are told that CSC does not know who "these" people are or if "they" can be trusted to only send meat and fish. For example, I was discussing with an Elder who has worked with CSC for many years about the lack of traditional medicines and availability of wild meat. He agreed to help by donating a large box containing various medicines, all of which were clearly labelled. He was, however, not permitted to donate ceremonial medicines to the institution. Things like sweetgrass, willow fungus, sage, bear root, rat root, kinnikinnick, and bear grease are medicines that are rare in the Pacific Region. To find someone who is employed by the CSC and willing to donate them is extremely rare. Our current Elder, who is retiring this year, offered to donate

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a number of library books from his own home library. These books pertain to First Nations and Métis history and culture. Despite that this Métis Elder is a very well-respected man in the community, he was told that he could not donate these books because the institution does not know what messages the books contain, and it may be inappropriate material. These are just a few examples of the difficulties and challenges that we face on a daily basis while doing our best to remain "pro-social."

In 2017, our minimum-security institution went nearly six months without an Elder or Native Liaison. The CSC justified this by advising that the Elders from the medium-security site were available to us. The only time any Elder was brought to our minimum institution was when we required someone to do a Sweat Lodge Ceremony, which only occurred twice a month. Otherwise, we were left with no other possibility to consult with an Elder and receive support. It was not until we grieved all the way up to Commissioner at national headquarters, that an Elder or Native Liaison officer was made available.

Some of our First Nation members are being denied the right to assist their family financially. One member in particular who does wonderful West Coast carvings and sends them out to his family members was prohibited from donating his artwork unless the recipients signed a waiver indicating that they will not sell his work. Considering that he is paying for all of the materials that are going into these hobbies, it should be up to him to decide to whom he offers these gifts. According to CSC's Commissioner's Directive 702, which outlines issues facing Indigenous people who are incarcerated, an individual can offer a gift such as a hobby or craft as a sign of respect, appreciation and honouring as it is "integral to Aboriginal culture." Given that carving is considered to be very sacred to his people and is a way to heal. The administration should be supportive of him following his cultural teachings.

With respect to family, to the Indigenous people family is sacred and spiritual and an important part of any healing journey. Family and community are both part of the sacred circle that defines who we are as a people. Because of the damages to the families that the residential school system caused, it interfered with that sacred circle. How is the prison any different when it keeps us separate from families and loved ones?

As the currently elected Chairman of the Aboriginal Wellness Committee (AWC), it is concerning to hear members of the institution's upper management making remarks that could be interpreted as racist. The Indigenous population have heard remarks like, "If you want to play Indian then go to

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Kwikwexwelhp," a healing village on the Chehalis Indian Reserve near Agassiz, BC. In addition to the racist intonation, it must also be noted that all of CSC's facilities must be able and prepared to meet the needs of any Indigenous person, and not just those who transfer to that facility. It was also recorded in the minutes of one of our Inmate Committees meetings with upper management that we should be "trying to get ourselves out" rather than "trying so hard to make things better for ourselves in here." This was the answer we received when we were starting our AWC, a committee instituted in the Commissioner's Directives.

When we tried to put together an Aboriginal Day Celebration on June 21st, we were told that we were not allowed because no Elder was available on site. The AWC membership took it upon themselves to make a stew and some bannock so that they could get together with their drums and sing. Only after we went ahead with our own Aboriginal Day Celebration were we notified that an Elder had suddenly become available. The next day following this, changes were made to an existing Standing Order to prevent us from doing any future ceremonial cooking in our houses, in addition to already not being allowed to cook on Sacred Grounds. This would mean that we could not do any of our ceremonial cooking at all. Only after grieving to Regional Headquarters and Commissioner's Office were we once again allowed to cook in our houses.

With the CSC, everything that has a positive meaning for us as Indigenous people has to be turned into a long and drawn-out process before it can be grudgingly approved. Right now, we have at least a dozen different Indigenous projects and proposals that have all been on the table for well over six months. We continue to bring up the same things at every meeting, only to be told over and over again "we are working on it." Despite that everything we are asking for is clearly outlined in the Commissioner's Directives, the administration, and staff tend to put a personal interpretation on it, turning almost all requests into a drawn-out struggle.

The AWC is often encouraged to submit fundraising proposals. When we do submit something, it rarely goes anywhere as there is always something new that prevents us from doing it. For example, the AWC is told that we are entitled to put on two special events per year. This year we were looking at putting on a mini powwow. Unfortunately, it could not take place as a result of a lack of funding. The same applies to gift-giving and ceremonial offerings. CD 702 clearly outlined in Annex E:

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> All items given or received by offenders during a ceremony will be added or removed from their personal property record as required. Trading items among offenders is not permitted pursuant to CD 566–12—Personal Property of Offenders.
>
> Items given to Elders/Spiritual Advisors, staff, contractors, community members or volunteers during a ceremony will be subject to the requirements established in CD 566–8—Searching of Staff and Visitors, when leaving the institution.

Despite this, we still run into roadblocks whenever we try to do something as simple as presenting a gift to a visiting Elder for coming into the institution and sharing teachings with us. Those in charge tend to believe that there is an ulterior motive to gifting, such as working under the table or exchange for payment. As a result, visiting Elders often leave with the impression that they are not trustworthy and feel disrespected. At the moment, we are having many difficulties and challenges trying to convince people from the local community to come in and do volunteer escorts. Some of these volunteers have made all the effort to take the necessary training, only to feel unwelcome by staff members. Attitudes like this send a negative message to volunteers and the people who are willing to come in and work with us.

There is also a lot of concern from our membership as to why it is nearly impossible to get cultural and spiritual passes from a minimum-security institution. The institution will tell you that there are hundreds of escorted temporary absences (ETA) going out every week, but when we inquire as to how many of these are Indigenous, we get no response. This is likely because there are few Indigenous cultural/spiritual passes going out every month. It could be argued that no one is applying for them, but when you ask, many from the Indigenous population say they are often told that they must withdraw their application for one reason or another such as it will not be supported since it might conflict with other activities or programs, it is a waste of effort, or they require additional information. Some have waited for up to five months just to get a response regarding their ETA application. We are discouraged from applying by the very people who are supposed to be helping us move forward.

The Office of the Correctional Investigator (Zinger 2020, 20) pointed out that the federal incarceration rates of Indigenous People sit at 30% of the federal prison population, despite that we make up less than 5% of the Canadian population. According to the Parliamentary Budget Officer (Fréchette

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2018, 1), it costs on average $114,587 a year to incarcerate someone. The community placement option is priced at $18,058 a year (4). These numbers alone should be enough for people to demand change within the CSC. I also hear that it costs more to incarcerate an Indigenous person because of all the extra programs and staff required to meet these program needs. However, I still cannot figure out what programs they are talking about, because we have little here. There is not even office space available for the AWC, and the Elder is forced to use the chapel.

The bottom line is that not enough is being done to help Indigenous people reintegrate back into society with any kind of hope for success. There should be some effort made to help residential school Survivors deal with the trauma of colonialism that led to their abusive lifestyles. If we are ever going to put an end to this revolving door that brings us back time after time, we need to act. I write this to give a better understanding of the concerns that Indigenous people in prison endure in prison on a daily basis. Our intent is not to cause trouble or try to embarrass CSC. We are only trying to improve the way things are done. After all, the purpose of the correctional system is supposed to be primarily to rehabilitate individuals and send them back to their communities better than when they arrived. This can only be achieved if CSC is willing to make the necessary changes that are required to meet the goal of successful reintegration. We recommend that Indigenous people have:

(1) access to cultural and spiritual music
(2) access to ceremonial medicines
(3) indoor space for conducting cultural and ceremonial activities
(4) access to wild meat and fish
(5) cultural activities such as Drum making
(6) visiting Elders to teach singing and drumming
(7) someone to do Medicine Wheel Teachings
(8) have the ability to build relations with local reserves and community
(9) more cultural ETAs—Powwows, medicine gathering, community service, etc.
(10) a visiting Elder program
(11) access to First Nations books in the library
(12) full-time Elders for all sites

It is up to the government and the public to ensure that CSC is doing more than just always "working on it."

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20 Spirit of the Stolen

MMIWG2S+ People and Indigenous Grassroots Organizing

Vicki Chartrand

I acknowledge the traditional custodians of this land now called Canada; the mother earth. As a settler, I am thankful that Indigenous lands, traditions, and experiences exist as a source of vital knowledge and energy for this world.

The murders and disappearances of Indigenous women, girls, and Two-Spirited + people in Canada are central to understanding a program of colonialism today. More than a logic of elimination (Wolfe 2006), it is the wholesale dispossession and denigration of body, mind, and spirit of Indigenous people through the women—the knowledge holders; the carriers of the waters; the protectors of the land; the creators and givers of life (Kermoal and Altamirano-Jiménez 2016). This wholesale violence is further detailed in the final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls (2019) that concluded that the long-term and ongoing murders and disappearances of Indigenous women in Canada is genocide (see also Woolford 2019). Central to the murders and disappearances are the families and communities who are at the heart of the struggle against colonial violence (Chartrand et al. 2016; Million 2013). Despite carrying the violence on their backs, the work of the families and communities in their struggle for justice and protecting Indigenous women has been given little public or academic consideration (see Hargreaves 2017; Palacios 2016). Drawing on conversations with Indigenous families across Canada, this chapter documents and

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gives witness to Indigenous strength and resource in their grassroots initiatives and strategies to address the murders and disappearances; a work that is central to understanding and dismantling colonial violence today.

In this chapter, I first map out the cross-country journey in the land now known as Canada to document some of the work of Indigenous families and communities. Then, drawing on the works of Indigenous and cultural studies scholars, I reveal how colonial systems are designed to forget and repress the violence in its wake, including the women themselves. I then outline some of the grassroots initiatives and their importance against a backdrop of the Canadian criminal justice system's inability and unwillingness to acknowledge and address the violence. Finally, I show the problematic character of the government's Inquiry and public attention and how it is the families and communities who are central to the struggle for change. I conclude that it is only through the grassroots work that colonialism's violence is exposed and that the women's spirits are kept alive.

As this chapter shows, where settler processes disappear the women and hide an ongoing colonial violence, they similarly also erase the vast and important work of the families and communities, along with their internal strength and resilience. The stories and conversations gathered and heard during this cross-country road trip reflect the deep-seated and intimate quality of a grassroots work that not only keeps the spirits of the women alive through acts of remembering witnessing but works against a colonial violence by connecting families through grassroots resources and supports. As Bernie Williams from Haida Nation says, "We are the ones who mop up the blood."[1] Indigenous grassroots are part of fashioning the Canadian landscape and as this chapter shows, although often hidden from view, have significant impact and importance for those with the day-to-day experiences of colonial violence that continues today.

A Land Now Known as Canada

Since the Native Women's Association of Canada (NWAC) launched the public campaign "Sisters in Spirit" in 2004, the murders and disappearances of Indigenous women have been given significant national and public attention. Today, research studies, media, and government reports, including the National Inquiry into Missing and Murdered Indigenous Women and Girls, established in 2016, have all documented how the endemic problems

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of colonial poverty, sexism, racism, and government neglect heighten the conditions for violence against Indigenous women to occur (see National Inquiry into Missing and Murdered Indigenous Women and Girls 2018). This literature and other scholarship shows how the intersections of systemic colonialism, racism, and sexism (e.g., Carleton and Green 2014; Lawrence 2003), criminal justice, police, and government inaction (e.g., Harper 2006; Jacobs, and Williams 2008), media complacency (Gilchrist 2010; Jiwani 2009), and portrayals of the women as underserving "prostitutes" and/or "drug addicts" (Eberts 2014; Razack 2000) make Indigenous women more vulnerable to violence. As Marlene Jack from Carrier Nation, and relative to the four disappeared Jack family members out of Prince George in 1989 states, "there is a hating on First Nations women."[2] In the same vein, Cheryl James points out how people target Indigenous women because in a settler society, they are not safe or protected and are considered accessible:

> Forty years ago, when I was nine, my mother was murdered. My dad eventually remarried and, some years after, my stepmother was murdered and left on the ice of the Assiniboine River. For many years, my sister was sexually exploited and heavily drug addicted. Growing up, I could not understand why all of this was happening and I was angry and confused. So, I also went missing a lot. One time, I was with my sister at the ice rink, and two men came up to us and began to rub themselves against us. I could not imagine what they were thinking to believe that they could do this. With some time through school though, I began to learn about colonialism. I then understood what these men and others had learned; they learned this behaviour long ago brought by the settlers when they first came here.[3]

Indigenous women, children, and Two-Spirited throughout Canada and elsewhere are woven into a colonial patriarchy of sexualized and racialized violence that continues well into Canada's colonial present (Amnesty International Canada 2004; Amnesty International USA 2006; Human Rights Watch 2013). This chapter builds on the above-mentioned scholarship as part of a large-scale initiative to document the work of the Indigenous grassroots organizing.

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Cross-Country Road Trip

The interviews presented in this chapter were collected on a cross-country road trip to interview families and community members who had been involved with different types of strategies and initiatives to address the murders and disappearances such as search support, raising awareness, or offering healing. In this section I outline various aspects and details of that journey and the methods involved.

In the summer of 2016, Gladys Radek, a Gitxsan Wet'suwet'en First Nations woman and anti-violence activist, my then unborn daughter, Charlie Chartrand, her father, Ari-Matti Kortelainen from Rovaniemi, Finland, and I, a white settler from Sudbury, Ontario, set out on a cross-country road trip to interview families and community members of the missing and murdered.[4] Beginning and ending in Québec, we traveled and camped at various locations across this land now known as Canada, visiting reserves and urban and rural centres. In total, we drove more than 10,000 kilometres over the course of seventeen days. The places we visited, in order, included Manitoulin Island, Ontario; Thunder Bay, Ontario; Winnipeg, Manitoba; Regina, Saskatchewan; Kelowna, British Columbia; Vancouver, British Columbia; Quesnel, British Columbia; Edmonton, Alberta; and Saskatoon, Saskatchewan. In total, we interviewed twenty-three Indigenous family and community members who shared stories and insights into their grassroots work and experiences concerning the murders and disappearances of loved ones.[5] The families and places visited on this journey trace Gladys Radek's own national walks across the country and the cities and families that hosted her and the volunteers as they walked to raise awareness of the murders and disappearances (see Chartrand 2014). In other words, these were the families and communities that Gladys had an intimate familiarity with, and who supported her anti-violence and awareness raising work.

Throughout our conversations with the family and community members, we considered the different approaches and experiences of their work, the impact it has had on them and their families and communities, and the struggles and challenges they encountered. None of the families and communities we spoke with were funded for the work they did. Their work was on a volunteer basis, out of necessity, often for years, and with few or little resources as they struggled against an apathetic and hostile system of justice and public. While the experiences of individual participants were substantially

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different, each conversation brought a unique and different quality and perspective to the work against violence, such as sex trafficking, endemic racism, bureaucratic apathy, and colonialism. Their stories collectively highlight the significance and importance of their work and what they do, such as coordinating search efforts, raising awareness, supporting and uniting each other, and keeping the spirits of the women alive.

The conversations and stories here reflect only some of the vast and extensive work carried out at the grassroots level. They nonetheless provide rich and valuable insight into the many ways that Indigenous families and communities are constellations of resource and supports. It is also through this grassroots work that the curtain of colonialism is pulled back to reveal the vast injustices and violence within the lands known as Canada.[6]

Willed Forgetfulness

Colonial systems are not designed to remember—they individualize, compartmentalize, and decontextualize. They are designed to shelve and forget. Warren Cariou (2006, 730) calls these activities part of a "willed forgetfulness"—a process whereby the politics and violence of colonial settlement are repressed, while settler culture shapes and limits the context of how Indigenous people can be understood or remembered. For the disappeared and murdered, this willed forgetfulness is reflected in the numerous reports that have documented the failings of police reporting and investigations along with many discrepancies, inconsistencies, and inadequacies in the recording, sharing of information, and acting on missing person's cases and reports of violence (e.g., Amnesty International 2009; Bennett et al. 2012; Native Women's Association of Canada 2010). This includes delayed investigations, not notifying families, failing to investigate or lay charges, failing to respond to complaints, and even perpetrating the violence (Native Women's Association of Canada and Feminist Alliance for International Action 2016; Palmater 2016; Human Rights Watch 2013; 2017). Even when policing practices and failures are investigated, such as with the Missing Women Commission of Inquiry (Oppal 2012), there is no direct accountability, Indigenous concerns remain largely unrepresented, and the investigation fails to systemically look at how policing intersects with colonialism, sexism, racism, and poverty (Bennett et al. 2012; see also Collard 2015). Willed forgetfulness is at the core of settler relations as it fragments a collective and shared approach to and memory of colonial

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violence and Indigenous struggles and, for the murdered and disappeared women, works to erase the magnitude of the problem while the families and communities compete to keep the cases and memories of the women alive.

As part of these activities of a willed forgetfulness, the police have a singular bureaucratic function of solving cases. Their work is narrowly drawn around finding perpetrators, building cases, and getting clearance rates. Families, on the other hand, have to advocate to have the police continue their investigations. As a result, families are segregated from the investigation and struggle to keep case files open. The families we spoke with often pointed out that the police would threaten to terminate the investigation if the families went public or spoke to the media. Some family members were threatened with obstructing justice and arrest if they continued actively searching for the missing. We were further told that many of the community members who were interviewed by police reported being ignored or considered unreliable sources when they provided the police with information. It was also pointed out that the police would release mug shots of the women rather than a family picture, making it hard to elicit public support. Often times, new officers were repeatedly assigned to the case, which resulted in lost information and missed leads. As Henri Chevillard, Muskegowok (Swampy Cree) noted, "the laws and practices are there to keep the existing colonial structures in place."[7] Policing protocols, legal and bureaucratic lingo, absence of information, and redacted documents keep families veiled from knowing or understanding what is going on in the investigations and are dependent on a system that is directly linked to an unacknowledged colonial logic and ongoing violence.

The violence and murders of Indigenous women not only destroy generations of families, but it also prevents Indigenous people from intimately connecting to each other (see also Simpson, 2014). This is evidenced in the many barriers faced by the families we spoke with who became their own advocates and investigators. Glendene Grant, who has been actively searching for her daughter for the past 10 years, points out how it consumes most if not all of her "time, money, resources, and emotion."[8] Self-advocating can include families continually waiting by the phone, constantly searching, putting their lives on hold, losing employment, turning to substances, or losing support. The accumulation of such factors ultimately tears families apart. As the sisters Bonnie Fowler and Cindy Cardinal note, "families are forced to compete for scarce resources and attention with the police or media, which further divides and separates the families."[9] In their attempts to advance policing

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operations and keep the cases open, families are isolated from each other and heavily taxed on time and resources. Their efforts are often individualized, displaced, and fragmented with the array of work required to learn and navigate a criminal justice system, work with the media, or taking care of the endless details necessary to pursue settler justice through a conventional criminal justice system. When Gladys Radek's daughter went missing, rather than call the police, she posted the disappearance on Facebook.[10] Her daughter was found within 48 hours by Gladys's online community. As Gladys points out, "It is community supporting community that is important—how is a criminal justice system able to respond in that way?" Alfreda Trudeau pointedly asks, "How will we ever find justice through all these systems that have colonized us?"[11]

At the heart of an Indigenous response to colonial violence is the grassroots work that recognizes the immediate need to not just simply solve cases, but to build a constellation of support, resources, and knowledge in a way that connects families and communities. This is evident in Bernadette Smith's Drag the Red initiative, which started when volunteers came together to drag the Red River in Winnipeg after a young woman's body was found in 2014. The initiative took root when the police refused to further search the river to help potentially find any other missing persons, with police stating it would be ineffective and dangerous. As Bernadette Smith points out, there is a disconnect between the support that is needed for the murders and disappearances and the support that is actually being offered. To drag the river, family and community members pool their resources to provide boats, financial support, mapping and navigating the river, identifying bones, and search and rescue training. The families also developed a Missing Persons Toolkit to help families navigate the media, build an investigation, log communications with police, and offer various ways to carry out searches. Other initiatives in supporting families in their searches include offering accommodation or paying for a hotel room, building banners and signs of the missing, providing gas and supplies for searches, offering food to volunteers, and carrying out fundraising initiatives, among many other things.

Although the criminal justice system is depicted in neutral terms of simply pursuing justice, Bernadette Smith tells us that, "there is much work needed for the system to develop in the area of community building and looking at the human side of that case."[12]

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Grassroots Re-Memory

Unlike the closed and fragmented discourses of colonial systems, the women's spirits and stories are not structured cases, but open, non-linear, and connected. Caught between the justice deficit and willed forgetfulness, Indigenous families and communities also carry out the act of remembering in a way that connects and supports families. Hargreaves (2015, 83) highlights that "the women are not isolated, culpable, or victimized figures but each belonging to, and now senselessly missing from, a broader network of familial and community relations whose present work it is to 'let it not be forgotten.'" Remembering occurs through connection and belonging and is evident in the magnitude of work carried out by the families to keep the women's stories and memories alive though walks, marches, vigils, art installations, theatre performances, concerts, gatherings, drumming, ceremonies, healing, searches, fasts, feasts, presentations, petitions, postcards, reports, and social media, among many other forms of resistance and remembering. As outlined below, the critical mass of energy created in this way not only highlights the vastness of grassroots resource, but the profound importance of relations and the value of each of the women stolen from their land and communities.

Integral to keeping the stories of the women alive is weaving families and community together. Gladys Radek is a carrier of stories. In her advocacy, Gladys has carried out five walks across Canada, each covering approximately 7,500 kilometres and lasting over three months. Throughout these walks, Gladys and other volunteers go from community to community, sharing stories and collecting the names and images of the disappeared and murdered. She remembers hundreds of women's stories and, as they walk from town to town, she recounts them to other family members and posts a picture of each woman on her "war pony" (i.e., vehicle). Through her walks, she connects families from coast to coast and keeps the stories, memories, and spirits alive.

Grassroots activities of remembering are also reflected in the practice of holding up pictures of the disappeared and murdered during meetings, marches, and protests, in a collage or sea of women who have been taken from their loved ones. These are strong heuristic tools that flash glimpses into the breadth and depth of the problem, while remembering and celebrating the beauty and gifts of each these women in life and in death. Remembering is a way for families to keep the searches going; to keep finding answers and justice; to (re)connect the people and land; and to keep the spirit of the

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women alive (see also Hargreaves 2015, 62). The act of remembering is an important anchor in the face of a system designed to forget.

Rowe and Schelling (1991) suggest that memory loss or erasure occurs when there is no collective sphere in which remembering can take place. Acts of remembering or re-memory capture an essence or structure of a feeling that remains blind to conventional approaches. During our own cross-country journey when we would arrive in Indigenous communities or reserves, many of the residents would approach the war pony (i.e., vehicle) to look at the women's images that were posted on the car. Some of the residents would know one or more of the women, and many more shared their stories of someone in their lives who was disappeared or was murdered. Unlike the distanced and voyeuristic gaze we received in settler communities, Indigenous communities would routinely support our journey by donating food and gas, providing information, offering a place to stay, and sharing their own stories of loved ones. This collective and shared support and understanding is reflective of a profound and intuitive awareness of what justice needs to address an ongoing and deep-seated colonial violence.

Unlike the singular policing function that trivializes and erases the collective memory of the murders and disappearances, Indigenous families and communities return the collective memory of the women to the land and people by connecting community, weaving the women's stories together, and creating continuity to the murders and disappearances. Goeman (2013, 154) points out that "speaking, telling, praying, and witnessing assures the power of story to decolonize spatial discourses by reminding us of the connections people have to each other and the life-giving force at work." Resistances emerge out of colonialism's repressive limits and willed forgetfulness and through the collective knowledge and wisdom that compete with colonial structures of land acquisition, resource depletion, hierarchies of commodity value, and patriarchal violence against women. Through grassroots activism, collective spaces are created, alternative justices are realized, and the spirits of the women continue. These grassroots actions result in the unearthing of colonialism's forgotten and hidden secrets and in revealing the stories of the land and people that have not yet been told.

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National Spectacle

Colonial systems continue to enact ways that block, repress, and disappear the spirits of the women not only through a willed forgetfulness that creates an invisibility and erases the collective memory, but also through a visibility that shapes and limits how the women can be remembered and their disappearances or deaths understood. This making visible is achieved through what Audra Simpson (2011, 206–07) describes as "spectacle." As she notes, spectacles do many things in the political and social arenas, but in settler societies they are particularly useful in distracting attention and possibilities from what is at stake in the lives of Indigenous people. In other words, the spectacle maintains a voyeuristic public interest that gives an appearance of state and public support or intervention, while allowing settler complicity in colonialism, racism, and violence to disappear. This colonial reality is evident in the way the deaths or disappearances of thousands of Indigenous women over years since contact can remain invisible even when in public view.

The recent public attention given to the disappeared and murdered Indigenous women has been rife with spectacle, portraying women and families passively or as victims, while failing to systemically investigate colonial structures. Hartman (1997, 34) underlines how liberatory discourses of enslaved peoples draw on white spectatorship of violence as the only measure for emancipation: "the humanity of the enslaved and the violence of the institution can only be brought into view by extreme examples of incineration and dismemberment or by placing white bodies at risk." It is a voyeurism whereby the audience is both "fascinated with and repelled by exhibitions of terror and sufferance" (Hartman 1997, 3; 34). The witness, or spectator, is called upon to participate in a macabre and sensational display of Indigenous "suffering" and "victimhood," as one of the few means that elicits state and public support. Cynthia Cardinal and Bonnie Fowler observed how during the Oppal Commission they were consistently referred to as the victims in written documents and when addressed.[13] This narrative of victimhood and dependence was also articulated by some of the families who, for example, did not want to fundraise or ask for money in their searches as "too many think we are trying to get money from people instead of seeing the good we are doing in raising awareness."[14] Families are often denied support unless they passively participate in such spectacles.

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While spectacle reifies a canon of stereotypes about Indigenous people needing some kind of support, help, or saving, victim discourses shape the context of how violence can be understood and how and when support and resources will be provided. Veracini (2007, 274) argues that victim discourses lend themselves to a certain historical amnesia that posits an "after the fact" compensation rather than rectifying current practices. Apologizing for residential schools, offering funding for the Sixties Scoop, or providing victim restitution to families of the disappeared and murdered are compensations that Gladys Radek refers to as "payoffs" that work to silence the families who are then often no longer invited to consultations. Suffering and victimhood become a necessary vehicle for legitimacy in a settler colonial context.[15] Spectacle thus offers a "colonial fantasy of Indigenous victimhood" (Hargreaves 2015, 103) whereby only certain forms of violence are made visible, significant, intelligible, and relevant.

For Hartman (1997), what is even more remarkable is the way spectacles of violence become naturalized and assimilated into the normal, while ignoring the everyday "quotidian violence" of colonialism. Culhane (2003, 595) shows how in Vancouver's Downtown Eastside (DTES) there is a media and public preference for exotic and spectacular representation of drugs, sex, violence, and crime rather than the ordinary and mundane brutality of everyday poverty. Tuck (2009) refers to this attention as a damage-centred focus that pathologizes and characterizes Indigenous peoples as broken and in need of help or saving, particularly by white settlers.[16] Ernie Crey considers the DTES to be a service trap and form of isolation and segregation for Indigenous people.[17] Bernie Williams points out that the DTES—as one of the economically poorest—is also the "largest reserve in Canada."[18] Noting how young urban males are "invariably portrayed as either victims or perpetrators," Tuck (2009, 413) further observes that "these characterizations frame our communities as sites of disinvestment and dispossession; our communities become spaces in which underresourced health and economic infrastructures are endemic." In a "damage-centered framework" such as this, "pain and loss are documented in order to obtain particular political or material gains" (412). This is also what Henry Chevillard refers to as the "Indian Industry, whereby government or public recognition largely results in Native exploitation and instituted poverty as resources and capital are used to service state officials, professionals, and the surrounding municipalities, but rarely make their way to our people."[19] Indigenous people on a whole gain very little from these

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processes or spectacles, whereas white settlers, or as Bernadette Smith notes,[20] those central decision makers who have the least amount of experience or, also stand to benefit the most in displays of benevolence and support that fail to change the colonial relation or the violence (see also Collard 2015).

This colonial relationship is akin to what Henri Chevillard further describes as "Native 101—where Indigenous politics and education occur in a white man's system that gives a bastardized version of who First Nations were and are in this country."[21] In many ways, new trends of decolonizing, reconciliation, or Indigenizing often occur within colonial institutions, primarily with white settlers who take on Indigenous teachings, advocacy, territorial acknowledgements, and sweats and ceremonies, with little or no Indigenous participation or consultation, or in any way that might otherwise benefit Indigenous people (see Wilson 2008; Tuck and Yang 2012). The processes and fallout from spectacle and victim discourses of recognition such as victim compensations, cultural sensitivity training, and apologizing for historical wrongs, change little for those who directly experience the day-to-day violence of colonialism, while neglecting to effect change—let alone absolve all sorts of obligations to Indigenous people.

For disappeared and murdered Indigenous women, even though the crisis has gained national and international recognition, the effects of this visibility rarely benefit the day-to-day lives of the women or the people. As Bernie Williams notes, "nothing has changed . . . there is still a war on our women."[22] Leah Gazan points out that Indigenous women are denied access to government meetings across the country where decisions are being made about their lives and well-being: "Individuals who hold colonial titles are allowed to participate, while excluding Indigenous women who have the wisdom of experience and traditional knowledge" (Chartrand et al. 2016, 258). It is within a visibility of spectacle and invisibility of willed forgetfulness that so-called modern, industrial, and civilized settler colonial states erase the day-to-day colonial violence, trivialize colonial projects over land, resource, and people, while fragmenting the critical mass of support that currently exists within the grassroots. Within a *visible invisibility* of the Canadian state, Indigenous people are both overdetermined and overlooked.

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Standing Witness

The National Inquiry into Missing and Murdered Indigenous Women and Girls has been both a source of spectacle and remembering. While supported by some families and community members as a national recognition of the systemic violence against Indigenous women and a move toward justice, others have dismissed it as erroneous and a waste of resources that are deflected from Indigenous communities (Gardner and Clancy 2017). The inquiry has also been rife with spectacle, with the media reporting on the lack of transparency, narrow scope of the inquiry, silenced family members, internal disorganization, and multiple resignations, including lawyers and "top-level officials" (MacLean 2018). As Aleck Clifton notes, the recommendation of the Inquiry will join the "stacks" of other reports with all of their recommendations that will likely continue to be ignored.[23] The reports, however, do not simply "collect dust." As Clifton further points out, they have a "few blood stains too 'cause all those reports are from the families who lost loved ones through violence—those recommendations already made by the grassroots people of this country." Within the visible invisibility of the state and its processes such as the Inquiry, and central to it, are the Indigenous grassroots families and communities who nonetheless continue to structure a presence.

In *Therapeutic Nations*, Dian Million (2013, 56), a Tanana Athabascan scholar, reminds us that the stories of the families and people are at the "heart of the struggle." Million explains how truth tribunals, such as those established for residential school survivors, require participants to draw on past "victimization" to adjudicate present grievances. This form of contained "reconciliation" and "healing" is created within pathology narratives that treat poverty, drug and alcohol use, and violence as historical colonial trauma and individual problems, while healing is seen as a form of capacity building and human capital. As the author notes:

> It is a Canadian nation-state discourse where truth tribunals look to international human rights narratives that Trauma requires all those positioned by its narratives to return to the site of the crime (the past as colonial history) to legitimate their claims. In the present, the victims of Canadian colonial abuse are compelled to "witness," to "tell" therapists, self-help programs, or tribunals about their trauma. This is an important discourse of our times in Canada and the United States, the arena where those who have been powerless attempt to take

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> their power by appealing to the moral discourse of the perpetrator. (Million 2008, 268)

Within trauma discourses, victimhood becomes one of the few means by which the public and the state are catalyzed to some action. As Million (2008) argues above, it is this Eurocentric trauma paradigm and the very attempts to contain and control the discourse, however, that produces the strength, resilience, and resistances to state and civic narratives and activities.

Dian Million further highlights that Indigenous women use the victim platform to advance their own experiences and narratives that challenge the racialized, gendered, and sexualized nature of their colonization, and thereby transform "the debilitating force of an old social control and shame, into a social change agent in their generation" (Million 2008, 54). For Million (2008, 64), these affective narratives

> denote important emotional knowledge that became available to individuals, families, and sometimes people but that did not always "translate" into any direct political statement. However, it is exactly this emotional knowledge that fuels the real discursive shift around the histories and stories of residential schooling. One of the most important features of these stories is their existence alternative truths, as alternative historical views.

Through the ongoing neglect, violence, and state abandonment, grassroots stories and spaces do not simply mirror state narratives, but use those narratives to advance an internal awareness, while they simultaneously create folds of what Derrida (1982, 18) terms *difference*, "the 'active' moving discord of different forces, and of differences of forces . . . against the entire system." It is an outside both formulated from and a threat to the inside. Although such narratives and grassroots activities are very much shaped from within boundaried arenas, they also find their own force and move in ways outside of colonial routines and fantasy. As Anderson (2000, 116) notes, "foundations of resistance, such as strong families, a sense of community and a close relationship with the land, provide the strength to defy the many oppressive experiences that an Aboriginal woman is likely to encounter." Such resurgence is fashioned both within and against a colonizing framework and through relations of support and counter narratives that, as outlined below, expose and challenge institutional arrangements, official discourses, and authority.

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By navigating between colonial systems and Indigenous knowledge, the grassroots unearth colonialism's present-day projects and operations and make us see what we would not have seen or understood otherwise—the untold stories of the land and people. "Land is more than the diaphanousness of inhabited memories; Land is spiritual, emotional, and relational; Land is experiential, (re)membered, and storied; Land is consciousness—Land is sentient," (Styres 2019, 27–28). It is through the grassroots—the work that is done at the level of the land—that connections, belonging, and re-membering occur and that strength, resource, and resurgence are found to shift the colonial violence. For Bonnie Fowler and Cindy Cardinal, it is the grassroots advocates who mobilize the information, while being on the same level of understanding and shared experiences.[24] For Cheryl James, it is through her walks, the honour of her mother's memory, and the drum that she finds her voice, speaks out, and supports others.[25] For Sharon Johnson it is the healing she finds in hearing and carrying the stories of other families when she hosts and supports walkers as they pass through the territory.[26] For the Iskwewuk E-wichiwitochik members it is providing support and creating opportunities for the families to tell their stories, while acting as shields from the media and public and protecting each other in their experiences.[27] Bernadette Smith reminds us that we need to know about the many Indigenous contributions that keep Indigenous women sacred. "We do not to see the women as sex trade or poor but loved and missing and we want to push these other issues out of the picture."[28] It is a work that stands in relationship with the people and land and the many disappeared and murdered. As long as the grassroots live on, so will the women's spirits.

Against the public voyeurism, discourses of victimhood, bureaucratic structures, and other colonial interventions, Indigenous people stand witness to their ancestors' histories, bear the experience of Canada's settler colonialism, and hold the stories to know what their land, communities, and people need. For Henri Chevillard, "change can only happen from the grassroots; the ones who institute difference and raise voice."[29] This is also what Leanne Betasamosake Simpson (2011, 52) refers to as a "presencing"—subtle and ongoing waves of disruption that affirm, nurture, and strengthen relationships and form spaces where the creation of new realties and different ways of being can flourish. But, as Bernie Williams notes, "people are doing the work, and have been for a long time, without acknowledgement or support."[30] The lack of support, racism, trauma, competing resources, lateral

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in-fighting, and violence all take a toll. Many of the families and communities are overwhelmed by the lack of resources and hardships in this work. Bonnie Fowler argues that this is an effect of colonialism where, "even within ourselves we are trying to be together but it's not always happening."[31] As Darlene Okemaysin Sicotte points out, although it is their independence that allows them to get the work done without political or colonial interference, more resources are needed to support their initiatives.[32] While we critically contextualize the disappeared and murdered Indigenous women and how colonial justice continues to obtain currency today, we must also continue to find and support these spaces of alternative knowledge, methodologies, and justices. As Chickadee Richard says, "when one of our women or children go missing, you are taking away from the strength of our community and all the potential of our women."[33] It is through the grassroots that the murdered and disappeared women find a field of visibility and strength, outside of and in relation to colonialism's erasures and spectacles.

Conclusion

Just as colonial violence is carved into our landscape and collective psyche, grassroots activism is foundational to any anti-violence work and antithetical to a colonial project as it creates multiple arenas for the women's spirits to permeate the colonial curtain. It is the grassroots that "creatively negotiate colonial traumas that seep into bodies, spirits, relations, structures, systems and places" (de Finney 2014, 9). This is what justices look like in their most organic form. As Jeff Corntassel and Cheryl Bryce assert (2012, 153), Indigenous strength resides in connecting with homelands, cultural practices, and people, and is centred on reclaiming, restoring, and regenerating homeland relationships. Indigenous resurgence and resource form important and vital pieces of knowledge and practice to rethink how the families and communities are central to addressing the violence and keeping the memories and spirits of the women alive.

Although very much a part of our social life and landscape, the murders and disappearances are not easily understood through modern channels of thought that continue to impose colonial models and technocratic systems of justice that fragment and forget. As Gladys Radek notes, the issue is expansive from health, child welfare, violence, to colonialism and it is "collectively and slowly killing our people."[34] As the families have also highlighted,

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while the government, the criminal justice system, and the Inquiry attempt to address the murders and disappearances, colonialism remains inherent in their structures, and that also determines and limits the contours by which the murders and disappearances can be remembered and understood. As a result, they reproduce the current colonial violence experienced by Indigenous people. As Chickadee Richard points out, "systems come from a white way of thinking—you were colonized before you colonized us—you need to fix your systems and your colonizing nature."[35] Any discussions, recommendations, and plans to address a violence that is endemic to Indigenous women and people must flow from the grassroots. As Marlene Jack highlights "Our First Nation's people are strong. [We] want what's rightfully ours."[36]

Notes

1 Bernie Williams, interview by Vicki Chartrand, 26 June 2016, Bishop's University.
2 Marlene Jack, interview by Vicki Chartrand, 26 June 2016, Bishop's University.
3 Cheryl James, interviewed by Vicki Chartrand, 22 June 2016, Bishop's University.
4 Funding for this project was made possible through a Fonds de recherche du Québec—Société et culture (FRQSC) Emerging Scholars research grant to 1) identify and document the initiatives of Indigenous family and community members to address the murders and disappearances; 2) illuminate the personal experiences of the families and communities from carrying out this work; 3) and assess how these activities inform a broader understanding of the experiences and contributions of Indigenous people in Canada today.
5 All 23 interview participants, except for one, indicated that they wanted to have their names made public.
6 The reference to disappeared and murdered Indigenous women is also inclusive of missing girls, trans and two-spirited persons. Although violence against Indigenous men and boys is significant, a gendered focus acknowledges that the violence experienced by women is fundamentally different.
7 Henri Chevillard, interviewed by Vicki Chartrand, 22 June 2016, Bishop's University.
8 Glendene Grant, interviewed by Vicki Chartrand, 25 June 2016, Bishop's University.
9 Bonnie Fowler and Cindy Cardinal, interviewed by Vicki Chartrand, 1 July 2016, Bishop's University.
10 Gladys Radek, interviewed by Vicki Chartrand, 1 July 2016, Bishop's University.
11 Alfreda Trudeau, interviewed by Vicki Chartrand, 19 June 2016, Bishop's University.
12 Bernadette Smith, interviewed by Vicki Chartrand, 22 June 2016, Bishop's University.

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13 Cardinal and Fowler, interview.
14 Anonymous, interviewed by Vicki Chartrand, 28 June 2016, Bishop's University.
15 Radek, interview.
16 This was the case for Bernice and Wilfred Catcheway who were asked by a lawyer from the Inquiry not to testify, so as to not jeopardize their daughter's case, despite their nine years of being vocal in their daughter Jennifer's disappearance (Taylor, 2017).
17 Ernie Crey, interviewed by Vicki Chartrand, 27 June 2016, Bishop's University.
18 Williams, interview.
19 Chevillard, interview.
20 Smith, interview.
21 Chevillard, interview.
22 Williams, interview.
23 Aleck Clifton, interviewed by Vicki Chartrand, 26 June 2016, Bishop's University.
24 Fowler and Cardinal, interview.
25 James, interview.
26 Sharon Johnson, interviewed by Vicki Chartrand, 20 June 2016, Bishop's University.
27 Darlene Okemaysin Sicotte, interviewed by Vicki Chartrand, 2 July 2016, Bishop's University.
28 Smith, interview.
29 Chevillard, interview.
30 Williams, interview.
31 Fowler and Cardinal, interview.
32 Sicotte, interview.
33 Chickadee Richard, interviewed by Vicki Chartrand, 22 June 2016, Bishop's University.
34 Radek, interview.
35 Richard, interview.
36 Jack, interview.

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21 Critique's Coloniality and Pluriversal Recognition

On the Care as the Ecological Ground of Justice

Mark Jackson

Questions of justice lie at the heart of contemporary debates concerning resurgence and reconciliation within settler colonial societies. How can modern colonial states address and redress the continuing injustices and harms they cause to Indigenous peoples? What constitutes just recognition? Whose standards of justiciability count? How can postcolonial states recognize precolonial law? How is justice under plurality possible? These are urgent and vital questions across settler-colonial societies facing up to their histories and responsibilities. As such, they are also shaping contemporary post- and decolonial responses to the inequities of Canada's justice system (see, for example, Johnson 2019). Yet, these questions themselves conjure arguments and debate about political legitimacy across different life-worlds,[1] including seemingly simple problems like how difference is recognized and subsequently parsed, or whether there *are* distinct life-worlds in need of recognition. Indeed, post- and decolonial responsibility increasingly circulates around a key problematic: paraphrasing the Zapatista vision, what is necessary for "a world of many worlds"—the pluriverse—to flourish?

Critique and criticality are often turned to as important epistemological grammars for adjudicating decolonizing questions of difference and legitimacy. Critique, that learned, reflexive capacity of modern subjects to be critical, is understood to be a key ingredient essential to assessment, judgment, and

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decision-making. This chapter argues, however, that the concepts of critique and critical subjectivity, which are often taken as the modern possibility for articulating political and legal legitimacy are *themselves* products of colonial geographies and contemporary colonialities. I argue that assuming critique and the critical attitude to somehow be inured from colonial reproduction and coloniality is short-sighted and mistaken. To make its case, this chapter invokes Indigenous legal theory drawn from recent interventions by Indigenous and non-indigenous scholars into questions of just recognition in the Canadian context of political responsibility.

The chapter argues two things: first, it problematizes the notion that cultivating a critical attitude—or critique itself—is somehow free from the effects of coloniality; second, it argues that ethical ontologies emergent from ecological life-worlds actually *condition* the possibility for critique. It reasons, further, that these ontological conditions—care, reciprocity, freedom, love, etc.—form the material ground and ecological basis for just recognition across pluriversal life-worlds. In other words, drawing from the decolonial contexts of Indigenous legal thought, I suggest that rather than invoking ever greater refinements and applications of criticality, political responsibility entails cultivating the relational, ontological grounds for the possibility of critique, which, I argue, is care.

A counterintuitive question thus motivates this chapter: is critique colonial? It seems an odd question to pose in the context of a book reflecting on Indigenous justice in Canada. It may also seem a problematic and ill-judged question. Because critique—the learned attitude and exercise of relentlessly reflexive self-analysis—is typically understood, by modern Western thought at least, to be an important conceptual means for *exposing* injustices and wrongdoing, especially regarding ideological edifices like colonialism and its legacies. Critique is the reasoned freedom to analyze *all* conditions for thought and action, and, in light of that analysis, to speak truth to power. As such, it is deemed necessary for first unveiling and then holding unjust and pernicious processes to account. How could critique's careful cultivation via modern structures like formal education, a free press, protected rights to free assembly, and a transparent judiciary reproduce some of the problems it seeks to overcome? This chapter seeks to address, if at least in outline, this conundrum.

The first section situates the problematic as it arises in the context of the failures of the Canadian justice system. The second section details the geography

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and historicity of modern critique, and shows how critique is, in part, central to the reproduction of coloniality. I then take up the problematic of the pluriverse, a problematic that exposes critique's coloniality, but which begs the question: what does it mean to be critical in a world of many worlds? I am not sure I have answers to this thorny problem, but I address the implications of a decolonized critique by drawing from a few thinkers who might offer alternatives. Indigenous legal discourses and their interlocutors argue for what in Amer-European parlance might be termed a "political ontology of care" (see, for example Escobar 2018; Puig de la Bellacasa 2017), or, in other words, a reciprocity of living with relations that materially subtends and makes possible critique (see for example, Simpson 2017; Dalmiya 2016; Qitsualik 2013). I end by situating "care-full" relationality within calls for the potential and possibility of multiple worlds, and hence processes to acting justly.

Why, then, am I questioning critique? Let me explain by way of a recent argument regarding the destructive nature of the Canadian justice system, together with its potential redress.

Reclaiming Jurisdiction and Indigenous Processes

At the end of his recent book, *Peace and Good Order: The Case for Indigenous Justice in Canada*, Harold R. Johnson—author, lawyer, and former crown prosecutor—declares that Indigenous peoples resident within the dominion of Canada's law need "to reclaim our jurisdiction, establish our own processes" (2019, 144). The argument that precedes and supports his book's avowal of Indigenous control over the exercise of justice is sobering and compelling. Johnson traces, in an autobiographical story that recounts his own legal education and subsequent work as a defence lawyer and later crown prosecutor in Northern Saskatchewan, a "justice system [that] is making our existence worse" (144). He cites dramatically increased rates of Indigenous incarceration, violence, suicide, disease, poverty, and alcohol and drug addiction among many Indigenous communities. And, he argues that one of the main drivers for this "trajectory of . . . hopelessness and death" (145) is Canada's destructive justice system.

The Canadian justice system, including the actors within it (i.e., lawyers, prosecutors, judges, parole officers, policy makers, etc.), Johnson argues, is destructive of Indigenous peoples because it knowingly perpetuates and reproduces practices and policies that exacerbate the circumstances it purports to

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ameliorate: "We do things over and over knowing we are making things worse while we tell ourselves we are making things better" (2019, 103). Johnson blames, amongst intersecting colonial legacies that include racism, dispossession, impoverishment, residential schools, and the industrial destruction of land, a "misguided over-reliance upon incarceration" (102) by the Canadian criminal justice system. Punishment as removal and separation perpetuates many of the harms affecting Indigenous communities. Incarceration, he shows, is systematically employed by a pernicious system because the Criminal Code enshrines deterrence as a key philosophical and behavioural presumption. By presuming autonomous subjects as free, individualized, rational actors, the colonial state presumes the threat of curtailed liberties, cautionary example, and, ultimately, fear, to be reasonable and expedient dissuasions for wrong action. But, in the seemingly hopeless circumstances within which many Indigenous communities and people find themselves—impoverishment, addiction, unemployment, poor housing, underfunded education and poor health services—deterrence simply does not work. "When you have no hope, no promise of a future," Johnson writes, "judicial principles of deterrence have no meaning" (132). Add into the mix racist legal education, enforcement, and judiciaries, which, if not intentionally discriminatory, are structurally blind to their biases and prejudices, and the result is a justice system that, as Johnson intones, "couldn't be any worse than what we have now" (147).

Fixing the many complexities of this broken and oppressive system will, of course, not be straightforward. Johnson suggests, however, that one initial means to redressing the Canadian justice system's cycle of perpetuating harm to Indigenous peoples is to replace the principle of deterrence with a principle of "redemption" (134). Redemption, he explains, would be apology-led; more fundamentally, however, it would be oriented to "making . . . whole again" offenders, victims and communities through earned contributions toward pride, dignity, and reparation as responsibility (134). Procedural principles like observing and listening to affected communities would be invoked as means for consulting on courses of action toward what offenders might do to redeem themselves and their wronged social relationships. Examples, Johnson notes, might entail listening to and renewing commitments with knowledge keepers and Elders, sharing knowledge and experience through reciprocities of teaching land skills, shared provisioning, and language learning. Indeed, redemption would be all these things exemplified in the everyday relational work of taking responsibility toward the care for others as a form of self-care.

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In other words, what Johnson recommends as a first step to changing the current harms of the colonial justice system is cherishing the principles of relationality at the heart of the justice system, rather than a rights-based retribution. Geographer Michelle Daigle defines the type of relationality Johnson commends as "everyday practices of self-determination rooted in Indigenous ontologies." These, she writes, are "constituted through Indigenous kinship networks" and often are "responsibilities . . . cultivated and transmitted through a direct and intimate relationship with the land" (2016, 261).

One might think that "redemption" sounds, for Johnson, much like the frequently invoked, and much discussed, discourses of "restorative justice" (see, for example, Elliot and Gordon 2011) or "justice as healing" (see, for example, McCaslin 2005). "Restorative" and "justice as healing" practices have been carefully critiqued (see, for example, Cunneen 2002; Napoleon 2004), not for the strategic good they can often bring to individuals and communities, like reducing recidivism or personal harm, but to the extent that, in seeking to restore whole what was not whole to begin with, restorative practices run the risk of simply relabelling, and thereby reconciling, people and practices within already unjust, colonial systems. At the expense of revitalizing Indigenous lifeways, restorative practices can actually preclude addressing the important work of decolonizing systemic and historical injustices (see, for example, Breton 2012).

Johnson (2019, 20), however, is quite clear. He means by redemption something much more than a restoration within colonial structures. His argument for reclaiming jurisdiction and for Indigenous process is more radical. For instance, he begins his book with the recognition that Canadian "law is deeply rooted in white Western thought." If reclaiming Indigenous jurisdiction with Indigenous processes is necessary for redressing cycles of harm caused by the ongoing colonialities of the justice system, then two possibilities follow: either it must be the case that decolonizing harmful Canadian justice practices entails, in fundamental part, decolonizing the deeply rooted Western thought that constitutes such practices; or, Indigenous worlds and processes can operate separately from, but equal to, modern colonial worlds. Johnson advocates the latter. Treaties, he argues, are the basis upon which the legal right already exists to resume jurisdiction over law in Indigenous territories. Historical treaties conferred authority in agreeing mutual consent to maintaining peace and good order. Johnson writes that "the promise to obey and abide by the law was a promise to obey the laws in force at the time, which

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were our own laws" (2009, 123). He continues, "we not only retained jurisdiction to maintain peace and good order amongst ourselves; the treaty [he refers specifically to Treaty 6 which pertains to territory] went further and granted the power to maintain peace and good order between ourselves and other[s]" (123–24) The effect of the treaty arrangement between the Crown and First Nations in treaty agreement, he concludes, is such that, "the Dominion of Canada and First Nation Peoples are recognised by the Crown as having equal jurisdiction over law-making" (124).

Johnson's is as much an ontological argument as it is a point about an historical agreement wilfully ignored by the Crown. Modern historical treaties between colonizers and Indigenous peoples recognized multiple and distinct political and legal worlds, and the equal legitimacy of each constituency to act within and from their worlds. As Johnson notes, "Treaty is the only legitimate source through which Canada received jurisdiction" (125). Indigenous peoples, thus, "do not need permission" (146) to create their own justice systems; they already have such systems and the right therein to live by such processes.

Much in the manner of *The Unjust Society: The Tragedy of Canada's Indians* (1969), Harold Cardinal's forceful rejoinder to the then Trudeau government's infamous "White Paper," Johnson's book is a contemporary clarion call, not a philosophical treatise. Johnson's book gains its force as an impassioned, non-academic critique of the harmful state of the Canadian justice system from his experience, his honesty and candour, and the directness of his diagnosis and its treatment. Johnson, of course, is far from the first to appeal for a non-retributive, relational, Indigenous approach to repairing the harms that the Canadian justice system perpetuates against Indigenous peoples. As he notes (2019, 142), the Aboriginal Justice Inquiry of 1988, and the Royal Commission Report on Aboriginal Peoples of 1996 recommended the same. Many scholars have also long advocated for similar reclamations of Indigenous jurisdiction and reconstitutions of legal process (see, for example, Asch 2014; Asch, Borrows, and Tully 2018; Borrows 2010; Christie 2003; and Napoleon and Friedland 2014). It is for these reasons, and the fact that the book quickly reached a wide and receptive audience, that I begin with it.

I begin with Johnson also for the fact that the simplicity of his compelling testimony and argument implicates a much deeper, conceptual problematic, one he intimates toward but does not address: the need to decolonize those aspects of Western thought that preclude recognizing the legitimacy of other

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worlds and their processes. Addressing these deeper thorny issues might help settler colonial apparatuses—Indigenous polities already know them well enough—to understand their conceptual harms and their subsequent responsibilities.

In what follows and in the spirit of questioning those aspects of "white Western thought" that root Canada's harmful justice system, I explore what kinds of thinking are implicated within how postcolonial justice needs to be rethought and repractised. As I will show, some of the most fundamental and cherished concepts integral to Western liberal thinking are questioned in appeals to change the way legal apparatuses hold people accountable. These concepts go to the heart of modern Western thought and its assumptions both about subjectivity and agency, and about the nature of our political worlds. Indeed, simple but important assumptions like whether humans and their kin live in one world or many worlds (i.e., uni-/pluriversality), or whether responsible thinking is a function of a carefully cultivated education toward reflexive self-awareness (i.e., critique) are questioned within the need to change a malfunctioning justice system. I argue that rethinking the exercise and practice of critique and rethinking the idea of political universality follow from invoking plural legal life-worlds. It might be for this reason that change has not, thus far, been forthcoming by the liberal Canadian state. In order for change to occur, deep, taken-for-granted assumptions about what people are and how thought functions need to be challenged and questioned.

It bears saying that it is not the responsibility of Indigenous people to do this fundamental work of reconstituting Western thought. What I offer here are reflections by a white, Western trained settler academic schooled in the philosophy, sociology, and geographies of modernity as to what is implicated by the demand to decolonize harmful modern assumptions and practices like deterrence. I think *a lot* is implicated, including some of the most taken-for-granted practices and values rehearsed by institutions like universities and courts, whose self-appointed job it is to root Western thought in the practices of the state and the everyday lives of its peoples. As such, much work is required by such institutions to unsettle, unlearn, and unthink these thoughts.

Critique's Coloniality

The attitude of being critical—critique—is assumed to be one of *the* key rational and political virtues and skills subjects learn in constituting themselves as part

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of the modern life-world. Indeed, the "constituent powers and constitutional forms" (Tully 2008, 464) of modern life-worlds shape people as individual, *critical* subjects. Critique is arguably *the* guiding formal ethos that constitutes the forms and means which instantiate modernity's legitimacy: global governance, international law, democracy, secularism, scientific reason, economic liberalism and transnational trade, sovereignty and its military protection, development, individualism, etc. Further, learning this critical attitude by becoming a critical thinker exercises itself across a number of formal modalities, including: modern educational systems like schools and universities; a free press and freedoms of speech; protections of free assembly; legal rights that enshrine due process and burdens of proof; state protections against discriminatory religious influence, etc. Critique is thus a key cognitive and lived grammar in the process of becoming a modern subject. Through it we learn to question the constitutive limits of modernity, its evident horrors, as well as its many benefits.

Importantly, critique reveals itself within *both* a rationalized global era of liberal, democratic nation-states governed by international law, which we label in part modern, *and* within the individual reflexive capacity and responsibility of a subject to analyze the constituents of its era. By doing so, subjects hold themselves and structures of power to account. Critique is a rigorous, interrogative self-analysis that "placed as an interrogative, it inverts its power of fixity and certainty; it undoes itself" (Brown 2009: 9). Attending to the problem of justice would seem to rely, then, on doing critique and being critical. Critique, after all, enacts and protects civil liberties. More than that, it is the basis for the very ideas of "civil" and for western notions of "liberty."

And yet, the modern world constitutes itself in an imperial paradox (Tully 2008); it has a darker side (Mignolo 2011); it enacts enormous and repeated violence often in its self-proclaimed effort to be civil and just. Consider, simply, the examples already invoked by Harold Johnson in his criticism of the Canadian criminal justice system: the overrepresentation of incarcerated Indigenous people; racialized poverty and discriminatory housing; inequality of health outcomes, etc.; one could detail many more such harms under the structural aegises of just modern/colonial responsibility.

Critique is ostensibly necessary for unveiling the hidden injustices of modern structural responsibility. However, it would seem critique is also never very far from the very things it seeks to overcome: violence; injustice;

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ecological harm; alienation; discrimination, etc. It is this contradiction James Tully terms the "imperial paradox" (2008, 461). Modern constitutional democracy, its global governance, and its legal and political prototypes, he argues, extend "formal and informal imperial means to subalternize non-European peoples" (464). An acute and honed criticality is essential, after all, to enacting or enforcing a piece of legislation, or to recommending a policy in the belief that it is just and civil, or as is unfortunately just as common, in the deliberate effort to discriminate and deceive. As Glen Coulthard writes, "Canadian courts have had no problems with interpreting in a way that subordinates the constitutionally protected rights of Indigenous peoples to the political economic demands of settler-state sovereignty and its constitutively predatory capitalist mode of production" (2019, xxix). Skillful critical interpretation is very useful for such predation, as much as it is also useful in holding such predation to account.

And yet, we, as critical scholars, cling to critique—and the over-riding imperative, to "be critical"—as *the* means to addressing social justice, to being just, and so to enacting better worlds. As if being critical is enough. It is our received wisdom within much of the modern academy that our work and responsibility is to criticism. Criticality entails, for a modern subject, a certain learned cultivation of independent thought and agency through the exercise of individual reason. All knowledge claims, or, indeed, claims of belief, are subject to reasoned interrogation. Nothing is immune from critique for a modern subject. Being critical distinguishes, or should distinguish, how secularism emerges as an organization grammar for the modern state. Universities teach and cultivate this critical grammar as one of modernity's highest epistemic virtues and as the basis for ethical action. For modern subjects, then, it is a reflexive ethic and skeptical responsibility to ask questions and to question authority, especially when that authority is ourselves.

Critique is a value or modern virtue, one aim of which is to foster living well and justly, both with others and toward truth-telling and truthful relations. It is the ethical and epistemic principle of always telling truth to power, but it is a value whose commitment, paradoxically, emerges only to itself. Its virtue, its value, lies in relentless self-analysis. Nothing, apparently, is beyond question; its modern attitude forms the reasoned right and responsibility to say no in the face of authority. The modern architect of critique, Immanuel Kant, puts it this way in *The Critique of Pure Reason*:

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> Reason must in all its undertakings subject itself to criticism; should it limit freedom of criticism by any prohibitions, it must harm itself, drawing upon itself a damaging suspicion. Nothing is so important through its usefulness, nothing so sacred, that it can be exempted from this searching examination, which knows no respect for persons. Reason depends on this freedom for its very existence. (1999, 643, A738–9, B 766–7)

For much of modern thought since Kant, critique is precisely the navigation of this self-awareness, in and for its limitations. In phenomenological and constructivist orthodoxies, a rational science and hermeneutic of perception and experience is possible, and from that, epistemological understanding about the experience of reason is also possible. Transcendental conditions, that is, conditions for the possibility of critique are those revealed in a science of the mind for a subject limited to, and separated from, the object world that gives itself as experience. Kant's phenomenalism enshrined this as an unbridgeable divide between what we experience (phenomena) and the world in and of itself (noumena). Subjects only have access to the contents of their experience, never the world itself. Critique is the cultivated attention to this fundamentally separated experience. What this means is that critique produces and depends upon an idea of the subject separate from nature. Critique reinforces a necessary distinction between a cultural subject and a natural object—between culture and nature. Political responsibility, and with it, justice, subsequently emerges as a reflexive attention to the rational subject's fundamental epistemic separation from the world. For modern critical thinking, word and world are riven and unbridgeable.

Critique depends upon a nature-culture distinction. It requires conceptualizing the subject as both self-reflecting and as separated in thought and culture from its worlds and what is constructed as nature. Critique and the learned capacity of being critical promotes, therefore, a universal subjectivity that constructs individual autonomy for all peoples, in a cognitive separation from its plural and relational causes or constituents (see Mills 2018, 151). Those who count as thinkers, as subjects, are those *who have learned to recognize themselves* within this modern conceptual apparatus.

Which is why Johnson's appeal for different, relational criteria for justiciability is so fundamental. Indigenous life-worlds *do not* construct notions of subjectivity as fundamentally separate from nature. What it means to be a

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reflexive thinker within Indigenous life-worlds is *not* represented by a modern model of critique. Expecting it to be so, as modern/colonial courts exemplify within their exercise of justice, imposes a retributive harm that fundamentally ignores Indigenous constitutionality. Now, Indigenous life-worlds are specific to places and contexts, but, as the Australian scholar, Mary Graham, writes, Indigenous life-worlds also exemplify two fundamental precepts: "The Land is the Law" and "You are not alone" (2008, 181). Reflexive constitution as a thinker is embedded in and from a relational responsibility with the Land. And, in light of that constitution, all life is relational. It is not possible to be a subject separate from Land, or what modern worldviews construct as "nature." Being a thinker and agent means being in the ontological and ancestral relations that Land makes possible (e.g., Kanngieser and Todd 2020). Being alone is therefore nonsensical. One is never alone. One's kin, human, non-human and ancestral, constitute reflexive possibility *and* responsibility. Such a worldview is precisely opposite to the one created via critique's main production of the modern subject.

My argument is not that we should cease fostering the rigorous forms of evaluation or the questions that criticality asks. Speaking truth to power is as important now as it ever was. My worry is that by assuming critique as the chief architect of this subject recognition, and of this holding subjects to account, we do two problematic things. First, we, perhaps unknowingly, reproduce problematic nature-culture separations and so promote, perhaps also unknowingly, problematic forms of "universal subjectivity" and individual cognitive autonomy, to use Mills's terms. And, second, in reproducing this cognitive exercise as the adjudicator of reflexive legitimacy, we crucially also foreclose the commitments of other life-worlds as political and legal possibilities. A particular, territorializing, modern regime of cognition thus *excludes* modes of life whose reflexivities cannot be parsed in the constitutive terms of critique's "systematic thought structure" (Hallaq 2018, 10). Universalizing, territorializing, appropriating, and excluding in the name of epistemic, ethical, and just action: these are classical tropes of coloniality. They are also precisely those reproduced at the sharp end of the modern stick that is the Canadian criminal court.

Indeed, the disposition of critique as a particular thought structure is itself part of an historical and geographical conjuncture commensurate with modern coloniality. Drawing from Quijano's (2000) notion of the "coloniality of power," I mean by "coloniality" that the injustices of modern power,

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evidenced in the modern life-world's paradoxical constitutional forms, are structured and upheld by colonizing processes, one of which is the learned constitution of a modern subject through an expectation of critique. These processes are, further, to use Maldonado-Torres's subsequent, evocative articulation of coloniality, part of the air that we "as modern subjects breathe . . . all the time and everyday" (2007, 243). As such, critique's thought structure also enacts important political categories of thought, speech, and action whose effects and consequences should be *queried* rather than assumed as inviolable. One of these structural categories is the autonomous subject whose criticality emerges in its reflexive awareness of its own limits as separation from nature, its aloneness. Another is the conceptual category of critique itself and its foreclosed capacities in othered peoples.

A similar process is ongoing when we are faced with the problem of constituting the political and juridical legitimacy of Indigenous "life-worlds." In order to enable these worlds, as with Johnson's appeal for Indigenous jurisdiction and process to become recognized *as real* rather than simply appropriated and epistemically represented within the liberal apparatus of justice, we need to query the ethical and cognitive foundations that give rise to their most cherished values and institutions, including the liberal subject and its constitutive grammar: critique.

A following question now emerges, however: if, as Indigenous, decolonial, and posthuman political ontologies increasingly aver, difference is not epistemic, but ontological; if difference is not a perceived or phenomenal peculiarity about one world, but a function of different worlds; and if the roots of difference emerge from, and manifest, different life-worlds, then how does critique operate? How might we adjudicate across worlds, and so act justly within difference?

It is to this problematic that I now turn. In reading critique's coloniality against the ontological commitments of life-worlds or pluriverses, my aim is not to be comprehensive, if that were possible. It is simply to think through some questions and problematics that emerge in the asking after critique in the pluriverse. It is also to highlight potential ways in which other scholars and scholarships have responded or might respond to the question.

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Pluriversality and "Earth-Bound" Reflexivity

Pluriversality has emerged in recent years as a "cornerstone notion" of decolonial thinking (Oslender 2019, 2). It correlates closely with the increased emphasis in the contemporary social sciences and humanities on the need to account for, and work with, ontological rather than epistemic difference. Difference, pluriversality argues, is not simply a function of epistemes, cultural perspectives, or interpretations on one world that lie outside human cognition but is constitutive of the multiple material worlds that human and non-human entanglements make and perform. Pluriversality is not abstract or esoteric; it is a practical concept that contests the reductive, extractivist logic of contemporary colonial territorialization. Its ontological emphasis resists what John Law (2015) terms the "one-world world": a world that privileges epistemic critique as the arbiter of explanation and reproduction, and which, rendering itself universally and self-reflexively legitimate, precludes the possibility of other horizons and ways of life. The analytic option here emphasizes plural ontological relations that constitute the grounding possibilities for reflective life emergent from the specificities of place. For example, Michelle Daigle (2016, 261) invokes pluriversal relational ontologies to situate the political significance of *awawanenitakik*, the Omushkegowuk Cree law upholding self-determining kinship responsibilities to ancestral land through everyday reciprocities of language, ceremony, food-sharing, and the like. Mignolo and Walsh (2018, 3) emphasize that the significance of the pluriverse is that it

> opens rather than close the geographies and spheres of decolonial thinking and doing. It opens up coexisting temporalities kept hostage by the Western idea of time and the belief that there is one single temporality: Western-imagined fictional temporality. Moreover, it connects and brings together in relation—as both pluri- and interversals—local histories, subjectivities, knowledges, narratives, and struggles against the modern/colonial order and for an *otherwise*.

Such a position is politically significant because it troubles the Western thought structure underpinning modern colonial constitutionalism. John Law (2015, 127–28) explains:

> If we live in a single container world, within a universe, in which nature has a definite and "natural" form, then we might imagine a

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> liberal way of handling the power-saturated encounters between different kinds of people and our interpretations of the world. But if we live, instead, in a multiple world of different enactments, if we participate in a fractiverse, then there will be, there can be, no overarching logic or liberal institutions, diplomatic or otherwise, to mediate between the different realities. There is no "overarching." Instead there are contingent, more or less local and practical engagements.

My foregoing argument concerned the need to decolonize the systematic thought structure of critique and its consequences, particularly the overarching, if also reflexive, individual and autonomous subject. It follows that if there are multiple worlds which are "an effect of contingent and heterogeneous enactments, performances or sets of relations" (127), then there is also no universal, individual autonomy whose subjective role it is to constitute inviolable epistemic limits imposed through things like universalizing rights-based conceptions of justice. What, in this pluriversal moment, would constitute critique? Without critical universality as epistemic limit, what counts as a means for thinking toward justice? This is a question not simply for those who might disavow the imperial paradox. It is also a question for decolonial thought and those who might avow pluriversality, life-worlds, or other similar "material-semiotic grammars of the *relation* among worlds" (De la Cadena and Blaser 2018, 4, emphasis in original). What is critique for a relational ontology, and can we continue to assume and appeal to its necessity? More specifically, as an attitude toward ways of being governed, how does critique operate within a commitment to pluriversality, when political agencies are other-than-human, when human and modern exceptionalism is problematized, and when interdependency is understood as an ontological condition (an example of which might be *awawanenitakik*) and not an epistemic limit or contract?

In addressing this question, I argue two things. First, how we think about critique must change with a commitment to pluriversality and relational ontology. Indeed, if relational ontology is both a cause and consequence of decolonial options like reclaiming jurisdiction and self-determining processes (as decolonial thinkers argue), then we cannot unproblematically assume critique's conventional grammars, nor its conceptual genealogies, in this new framework. This is not an argument, as I suggested already, against being critical or speaking truth to power. It is rather an attempt to look for how what we Amer-Europeans have learned to call "critique" operates as a political

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ontology in worlds that are constituted differently. Reflexivity is not best captured by critique or its universal model of separated subjectivity. Second, I argue that reflexive thought is an expression of underlying, lived ecologies of vulnerable connection and mobility. Relational interdependence is a feature of all conceptual life, human and other-than-human. Conceptual attention to the flourishing of relational interdependence reveals itself in what, in European thinking, might be named as "ontological conditions" like care, humility, compassion, mutuality. Reflexive material, or what John Borrows (2018) terms, "earth-bound" conditions, *not* contracts, emerge within relational ecologies of thought and action quite apart from, although not unconnected to, human centred concerns.

To illustrate my argument, I draw from Indigenous legal and philosophical examples, some of whose exponents have been introduced already, such as the well-known Indigenous legal thinkers like Borrows (2010, 2016, 2018, 2019) and Val Napoleon (2004), as well as Doug White (2018) and Deborah McGregor (2018), and wider critics and writers, including Leanne Betasamosake Simpson (2011, 2017) and Maria Puig de la Bellacasa (2017). In particular, I focus on pluriversally distinct concepts such as "*yaw-uk-miss*," which refers to the twinned conditions of love and pain in Nuu-chah-nulth (see Atleo 2011, 15); *zaagi'idiwin*, which refers to love as a law for the Anishinaabe; and *minobimaatisiiwin* and *dibenindizowin*, which conceptually are closely related Anishinaabemowin notions that describe living well within the freedoms arising from attending to the relationships with other beings in terms of situated life is constituted (see Borrows 2016, 2019).[2] These embodied praxes are examples of coexisting temporalities—different Indigenous legal worlds—that struggle against the modern/colonial order of the Canadian state and function as conditions of pluriversal constitutionalism. I seek to understand, in their invocation, different conditions of reflexivity about thought and action which evidence immanent capacities for constituting relational political life.

My question has been the following: if we jettison the nature-culture distinction, if we begin in a different ontological starting place, as decolonizing discourses emphasize, what then is this quality referred to as "being critical"? It cannot be a roving reflexivity that adjudicates at a remove across worlds, wary of dependence, eager to assert its separation and freedom. Yet our critical inheritance of this term, which I think operates very much as a taken-as-given practice in our everyday work, treats it as such, as though it

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can be, even pragmatically, a view from nowhere. If subjectivity is increasingly erased or distributed across its numerous and changing ecological relations, its "other-than-human" agencies, then what is reflexivity? How does it operate if not through attending to its self-reflective separation?

In a European tradition, and Foucault (1997) makes it particularly clear that a certain care or concern with the relations to others, with the differences that make it possible, underlies the work and responsibility of critique. My question then is: what is the source of this care? Where does this care come from? Is this care not itself a form of ethical constitution that comes from our pre-cognitive worlds, from the ecologies that make us agential as humans and other-than-humans? Does care not constitute the ontological possibility of a certain freedom?

On the evening of 26 November 2018, Doug White III, director of the Centre for Pre-Confederation Treaties and Reconciliation at Vancouver Island University, in Nanaimo, British Columbia, delivered the fourth annual Indigenous Speakers Series lecture. He titled his talk, "Re-Imagining Reconciliation: Confronting Myths and the Future of Canada."[3] Doug White, whose Coast Salish name is Kwul'a'sul'tun, and whose Nuu-chah-nuulth name is Tlii'shin, is a lawyer. He is also past chief of the Snuneymuxw First Nation, in which role he focused his tenure as chief on implementing the Snuneymuxw Treaty of 1854 in a reconciliation agreement with the Crown. In March 2013, in light of White's efforts, together with his people, a treaty agreement was ratified. One might expect that his talk would be about the legal discourses and practices Johnson, with whom we began, criticizes: the status of legal persons, human and juridical; Crown recognition of rights, human and land; treaty agreements; property, that kind of thing. This expectation might arise given the title of White's talk, and the fact that White is a professional lawyer, scholar, and teacher of jurisprudence, in addition to being past Chief of the First Nations Summit Task Group and advisor for First Nations across Canada. His talk was, indeed, about traditional legal matters. It was about love.

White characterized love as a fundamental value and capability for human beings. It is in terms of love, he argued, that we must both begin and end our interdependencies, relational interdependencies which are the processes for making decisions about living together. But for White, love is more than what a European political tradition might assume it refers to. For Euro-American, colonial constitutionalism, love is a sentiment that has little bearing on decisions; it is relegated from public discourse, and, especially, dominant legal

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discourses, as a private, intimate emotion that has no place within the apparatuses of liberal rights, protections, property, or reflections on justice, nor in evidentiary claims about how we might know about such things. Love does not have epistemic bearing for reason's freedom in critique.

An insight into what White means by love as Indigenous law comes from fellow Nuu-chah-nuulth scholar, E. Richard Atleo: *Yaw-uk-miss*. This concept, Atleo writes, partially and incompletely translates as "love" in Nuu-chah-nuulth—is "a great teaching or law" (2011, 159). *Yaw-uk-miss* grounds the four-fold constitutionalism of recognition, continuity, consent, and *iis?ak*, the latter being a form of sacred respect. In Nuu-chah-nuulth, *yaw-uk-miss* means "love," but it also means "pain." It refers to the interdependence of the polarity that necessarily accompanies each. Pain and love are "co-roots of one another" (160). Choices made with respect to their co-constitution shape "a design in life that may tend to create or tend to destroy" (160). The critical responsibility here is to learn the attitudes and practices of designing well from the ontological conditions that render flourishing possible. Responsibility, whether it be conceptual, ethical, or practical (notionally responsibility is the holistic enactment of all three) is a learning from the living physical conditions within which love and care constitutes us and our interdependencies with others: plants, animals, oceans, atmospheres, other people, human institutions, etc. Reflexivity therefore emerges as the learned attentiveness to interdependence, a bringing together in relations that come not from a separated subject, but from the conditions out of which any possible sense of subjectivity might emerge and to which it is therefore responsible.

John Borrows (2019) analyses, similarly, the significance of love (*zaagi'idiwin*) as an Anishinaabe law (*chi-inaakonigewin*) for understanding conditions of collective responsibility; conditions which are themselves guides for acting in harmony from and with the earth (*akinoomaagewin*). *Zaagi'idiwin* is one among a set of other related laws. The other *Niizhwaaswi-Miigiwewinan* or 'Seven Grandmother/Grandfather Teachings' are: *Debwewin* (Truth); *Zoongidewewin* (Bravery); *Dabaadendizowin* (Humility); *Nibwaakaawin* (Wisdom); *Gwayakwaadiziwin* (Honesty); and, *Manaaji'idiwin* (Respect). Together, as Borrows writes—citing his own Anishinaabe teachers—these seven gifts or laws constitute for Anishinaabe people "resource[s] for reasoning and acting" (2019, 22). They derive as laws from wider, constituting relations that condition specifically human guided actions, things like,

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> the behaviour of the sun, moon, stars, winds, waves, trees, birds, animals, and other natural phenomena. The Anishinaabe word for this concept is *gikinawaabiwin*. As Basil Johnston teaches [Borrows refers here to Basil Johnston's book, *Gift of the Stars*] we can also use the word *akinoomaagewin*, which is formed from two roots: *aki, noomaage. Aki* means 'earth' and *noomaage* means 'to point towards and take direction from.' As we draw analogies from our surroundings, and appropriately apply or distinguish what we see, we learn about how to love and how we should live in our lands (37–38).

The human grounds for reason and action thus emerge from the relational, earth-bound, and land-derived[4] constituents or conditions of thought and possibility, including love. For instance, Borrows discusses how *zaagi'idiwin* (love) and its understanding connotes the experience of a flowing expansiveness and suffusion, of being mutually carried, much like the flow of water at the mouth of a river (*zaugi*), or of extending oneself in love to risk and exposing oneself by "sticking out" (*zaagiin*), as might a root or branch in water or soil. *Zaagi'idiwin* also mirrors the feeling of opening from within out into the world and to others, as does a flower or leaf emerge from a bud or grasses from stalks (*zaagi'bagga*). These energies themselves are mobilized by the loving warmth cast by the sun's rays (*Zaagajiiwegaabawikwe*) (40).

Zaagi'idiwin, like *yaw-uk-miss*, is also a twinned concept. The experience of love can also bring "a kind of exclusivity, even stinginess" (39). We are keenly aware of love's temporality, and of the need both to focus love and to balance this focus with a generative openness. Love will end with death, decision, or dissipation, but will, if fostered correctly, also continue in forms of extended memory, changed comportment, and completed flourishing. For while love is also born with and cannot be divorced from pain, the "kindness, mercy, and aid" (40) that love extends in empathetic compassion comes in this recognition of inescapable co-constitution. *Zhawenim*, another Anishinaabe word for love, refers to this sense of empathy and compassion that arises from attending to "our relations with the world" (40). By attending carefully to these relations, which are learned *and* negotiated with animal and plant nations,[5] "[w]e will be nourished, sustained, and taken care of" (41).

Each of these notions pertaining to *zaagi'idiwin* (*zhawenim*, *zhawenijge*, *zaagi'bagga*, *zaagajiiwegaabawikwe, zaagiin, zaugi*) emerges from the relational forces and matters—the pluriverses—that make them possible. The ground and strength of these conditioning notions come from the land itself:

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water, rivers, sun, animals, leaves, flowers, but more significantly, from their dynamism, energy, and vitality. Water flows and mingles, flowers and leaves burst forth, sun warms, animals resist and give themselves—relation is change. Living within the variability and change of these forces is a matter of learning that "[l]iving in harmony is the first of laws" (Basil Johnston as quoted by Borrows, 46). Love, thus, is not a feature of some special human capacity, but is a shared relation of the earth. It comes from the earth and we, along with others who love, take our direction from it. The Anishinaabe word *akinoomaagewin* communicates this earth-bound sensibility of learning (Borrows 2018, 66). The word, Borrows writes, derives from *aki*, which means "earth" and *noomaage*, which means "to point towards and take direction from." This combination creates a compound in which "teaching and learning literally means the lessons we learn from looking to the earth. As we draw analogies from our surroundings and appropriately apply or distinguish what we see, we learn about how we should live in our surroundings. The earth has a culture and we can learn from it" (66).

The grounding of living with relations as the earth source of law and just living is referred to in the Anishinaabe legal tradition as *minobimaatisiiwin*. *Minobimaatisiiwin* refers to the idea and virtue or end of living a good life. The prefix morpheme "*mino-*" lends a positive motive in the engaged living of embodied relational attention to healthy interdependence. Freedom in this context, unlike Kant's notion of a reasoned critique and rationality of self-determination that transcends nature, entails acting *with* interdependencies that enable a general ecology of flourishing. It is not just acting with, but it is an embodied relation of, as the Anishinaabe geographer and legal scholar Deborah McGregor writes, "reciprocal responsibilities and obligations that are to be met in order to ensure harmonious relations" (2018, 15). The ground of conceptual reflexivity here is a physical, lived attention to freedom in care. *Dibenindizowin* refers precisely to this freedom in relation. As Borrows explains in his book, *Freedom and Indigenous Constitutionalism*, *dibenindizowin* "implies that a free person owns, is responsible for, and controls, how they interact with others" (2016, 7). But that "code of conduct, set of lessons, and Laws derives from the relations themselves" (McGregor 2018, 15); for "Anishinaabe law is observed in the waters, written on the earth, and reflected in the sky—as long as the rivers flow, the grass grows, and the sun shines" (Borrows 2019, 261, ft. 94). In other words, freedom is the recognition

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of the ontological, pluriversal conditions that constitute us, rather than separation from these conditions.

Thus, what is at issue in both the Nuu-chah-nulth and Anishinaabemowin worlds is a constitutionalism, a literal constitution of relational and ecological responsibility, that emerges in relations of care, obligation, flourishing. Constitutionalism is not agreeing a critical space of "freedom-from" within which difference flourishes but seeing in different pluriversal flourishings the health and vitality that cares for, quite literally, freedom as the inter-related interdependence of all living things.

The point for my own argument regarding the need to decolonize critique is that here, with the examples of *yaw-uk-miss*, *zaagi'idiwin*, and *mino-bimaatisiwin* as Nuu-Chah-nuulth and Anishinaabe laws, discrimination, reason, and action are learned capacities that derive not from subjective exceptionalism and judgment, but from an honouring of commitments within which we are *always already* enrolled and constituted. The ground of politics and action comes not simply in a removed ability to adjudicate or discriminate but from the relations that constitute the very possibility for discrimination's reason: love, care, flourishing, harmony, etc. Enacting just relations is not, then, a decision based on reflection in separation, emphasized by incarceration as rehabilitative retribution, but the actual original, situated, relational positions of living, breathing, eating, loving, disputing, etc. that come from earthly ecologies of care.

Earthing Care as Justice

For McGregor, Borrows, Johnson, and others, earth's *cultural* grounds—which, *qua* grounds, are laws for human and non-human action—are the basis for just relations between Indigenous peoples and the Canadian colonial state. Emergent from and attentive to the care and flourishing of human and non-human worlds, these relational ontologies or laws are ones that "can be used to make a better life for those we love" (Borrows 2019, 47). The problem with which we began, and which is insisted upon by Johnson's call for reclaiming Indigenous jurisdiction and process as a means to making whole what is continually harmed, is: what is the spirit of just recognition? What might a Canadian public sphere look like in which, for example, *yaw-uk-miss* and *zaagi'idiwin* are recognized as political virtues and laws, as life-worlds wherein responsibility and justice are enacted?

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It is not as though the ends of Indigenous law, as reflected in the very brief and imperfectly explained examples presented here, are necessarily different from the professed ends of the Canadian state: peace, order, justice and flourishing. Indeed, read through the lens of earthly belonging and from the perspective of *minobimaatisiiwin*, treaties already recognized the importance of acknowledging that all living things are inter-dependently bound and are interested in living well or the good life; in other words, they acknowledge peace and good order. It is simply that, and Johnson's forceful polemic emphasizes this, the liberal colonial state, capital, and industry simply do *not* represent or embody *minobimaatisiiwin*. This is evidenced by the violence of the imperial paradox, by extractivism, by the accelerating destruction of habitats, cultures, and by worlds who parse lived relationality differently. It is evidenced by both the shriek of our ecological present and by the ongoing, systematic, structural injustices that continue to harm Indigenous peoples and their lands. As Aaron Mills (2018, 137) writes, "Colonialism is a relationship requiring violence to Indigenous peoples and to the earth, and we are living it in Canada today." Such violence against Indigenous peoples and the earth is a violence against everyone, human and non-human, and fundamentally evidences love's lack and, hence, a lack of justice in our public worlds.

Conclusion

What I have endeavoured to argue is that the form by which the grounds for recognition, agreement, mediation, or decision might be possible need to change in order that publics and their worlds be extirpated from subtle and lingering legacies of coloniality. Critique is a model of thought and cognition that categorically forms the conditions of its freedom, autonomy, and rationality through an ontological separation of thought from the world. This is exemplified in modern criminal punishment regimes which emphasize incarceration as reflective rehabilitation, among other principles of justice. One consequence of this practice is the continuity of an imperial paradox: on the one hand, a capacity to hold to account, but on the other, a reproduction of a certain coloniality of power and action in an expectation of subjective autonomy. The result is a harmful separation from the ontological significance of the worlds that are the condition for action.

When interdependence is foregrounded as an ontological condition as, for example, in Johnson's appeal to redemption, or as I tried to show with others'

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more expert examples of *yaw-uk-miss* and *zaagi'idiwin*, concern endures as the fundamental recognition for acting responsibly. In other words, the care that comes from life's material concern for continuity might be seen as the "generic" condition of every social process—human and other-than-human—and its attempt to maintain, continue, and repair its worlds (Tronto 1993, 103). Love, care, and conviviality are the conditions of continuity within processes, because they come from the ecological and ontological relations themselves. Care is not something added to processes to render them valuable. "Interdependency is not a contract, nor a moral ideal—it is a condition," says Maria Puig de la Bellacasa (2017, 70). It is seen in a multitude of ways. An ant tends to its home, just as a plant attends to its futurity when it moves to avoid harm, just as humans attend to their young, just as body coloration and background preferences mimic one another as in a feeding moth's wings. Each of these practices of enduring depends on the complexity of an interwoven web of preexisting conditioning relationships or ecologically vital interdependencies. These are the ontological conditions of emergence of life, which include the cosmic, as well as the cellular, and the ideational. Ideas and matter are, after all, historically immanent within one another. Care, then, is not an epistemic imposition by a uniquely human, or nearly human, capacity, but a relational condition of material entanglement shared by all things, of which humans are also a part. As Puig de la Bellacasa writes,

> When we think about what we care for: one moment it seems it would be easy to remove our care; the moment after we begin to realise that our care does not belong to us, and that that or for whom we care, somehow owns, us, we belong to it through the ecologies of care that have attached what we learn to call "us." (167)

This is also why Johnson's appeal to redemption through emphasizing Indigenous relational ontologies of care is at once so sensible, so simple, and also so radically disruptive of colonial orders. It goes right to the heart of deeply rooted and deeply problematic aspects of white Western thought. Retributive carceral punishment operates from the dual assumption that reflexive self-awareness emerges in, and can be rehabilitated by, reflective, critical separation, and that separation will re-align subjects to a universal social order. It doesn't. Modern epistemologies that begin with nature-culture distinctions, and that are reinforced through emphases like critique, are wrong. Critique does not exemplify how subjects "habilitate," how they make their reflective

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lives. Reflexive thinking, the point of incarceration, is not shaped in rational, conceptual separation from the material conditions that make it. It is formed by the complex relational ontologies of place and care within which it emerges and is bound. The material, and therefore social, world is not a universe to which subjects must be commensurated by acts that claim universalizable rationales for justice. Subjects are formed by, and perform, pluralizing worlds of care and reciprocity. It is to and from these that responsibility must attend. Hence Johnson's appeal to redemption through reclaiming reclaimed jurisdiction and relational legal process.

Speaking truth to power as a form of criticism, and exemplified by Johnson, might therefore be better thought as "a disposition to being attentive to practices that make or produce ways of being, or even worlds . . . it is an opening toward a possibility that needs care" (de la Cadena and Blaser 2018, 5). Opening as care comes not from a reflexive subject, but from the many vulnerable, ecological relations that make up and constitute what become shared, and thus public, responsibilities. Reflexive attention simply is the relational ontology of care, or humility, or compassion. What Western thought has learned to call "critique" is, then, subtended and constituted in care directed from and then back to its constitutive others, the very convivial ecological relations from which it emerges; indeed, it would seem that these forms of being-with make possible the freedom to question.

What is interesting to me about pluriversality is that it pushes us to see in otherwise worlds that these grounds of reflexive relation, as care or humility, are not conditions that need to be worried about because they can't be adjudicated. Recognizing incommensurability as the impossibility of translating concepts across worlds emerges not from the problem of untranslatable difference but in the recognition of shared vulnerability. And it is here, perhaps, in shared vulnerability, where alternatives to normative models of transitional justice might begin otherwise.

One reason why current justice frameworks often perpetuate coloniality is because critique has circumscribed—*territorialized*, even—the conceptual limit of subjective reflection. In his reflection on Kant's famous essay in answer to the question, "What is Enlightenment?," Foucault wrote, in an essay of the same name, that

> the critical ontology of ourselves must be considered not, certainly, as a theory or a doctrine; rather it must be conceived as an attitude, an

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> ethos, a philosophical life in which the critique of what we are is at one and the same time the historical analysis of the limits imposed on us and an experiment with the possibility of going beyond them. (1997, 133)

I have argued herein that the "critical ontology of ourselves" has not been radical enough. Modern Western critique, part of the thought that deeply roots oppressive law, has accepted the enlightenment legacy of a conceptual form or limit to criticality, at the expense of the ontological possibilities offered by other life-worlds. The possibilities our pluriversal present place before us, however—those, for instance, embodied by Johnson's appeals to reclaiming Indigenous jurisdiction and process—ask of Western critical attitudes much more than reflexively tracing circumscribed limits. Were modern, Western political and ethical efforts as exercised by Canadian courts, to step into what these or numerous other worlds enact, I think, we would be surprised by the conditions of flourishing that would greet us in careful encounter.

Notes

1 Mills (2016, ft.6, 850) defines "life-world" as "the ontological, epistemological, and cosmological framework through which the world appears to a people." In this formulation, "Life-world" refers to the relations—practices, ideas, stories, values, commitments, materials, landscapes, etc.—by which peoples and wider kinships are constituted. Although he never uses the term "pluriverse," some scholars use this term to refer to what Mills means by "life-world" (see, for example, De La Cadena and Blaser 2018; Escobar 2018; Reiter 2018).

2 It should be noted that I do not speak Nuu-chah-nulth, nor am I an Anishnaabemowin speaker. A child of the 1970s, I grew up in rural Treaty 6 territory, a first generation, Canadian-born, white settler son of Scottish immigrant parents. All references to Nuu-chah-nulth and Anishnaabemowin words and concepts come from published sources. I do not in any way claim fluency or deep knowledge of them. I refer to them, doing my best, as I might refer to interesting words and concepts in German, Sanskrit, or any of the many Bantu languages, none of which I speak either, but whose life-worlds also present, if limited in translation, many fascinating possibilities for thinking and becoming otherwise.

3 See "Douglas White III Speaks on Re-Imagining Reconciliation in VIU's Indigenous Speakers Series," Vancouver Island University, 16 November 2018, https://news.viu.ca/douglas-white-iii-speaks-re-imagining-reconciliation-vius-indigenous-speakers-series. See also "Re-imagining Reconciliation and the

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Future of Canada," CBC Radio-Canada, 31 January 2019, https://www.cbc.ca/radio/ideas/re-imagining-reconciliation-and-the-future-of-canada-1.5000450.

4 Daigle describes land as "an animate being, a relative, a food provider, and a teacher of law and governance to whom we are accountable" (2016, 266).

5 Simpson refers to these negotiations across worlds as "treaties viewed as sacred relationships between independent and sovereign nations, including agreements between humans and non-humans" (2011, 109). She provides the example of twice-yearly human and fish meetings at Mnjikanming where treaty relationships are renewed.

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Conclusion

We are in this together. Okay.

Jenny Perley

This statement was made by one of the women members of the Indigenous circle that held space during a ceremony at the Old Burial Grounds in Fredericton, New Brunswick, on 24 June 2021. The ceremony was hosted by the governance agency, the Wolastoq Grand Council, and its companion organization, the Wolastoq Grandmothers, to honour and mourn the Indigenous bodies found in Saskatchewan at the former Marieval Indian Residential School that operated from 1898 to 1997. It is presumed that many of the deceased were children who were taken from their families and forced to attend the school (Austen and Bilefsky 2021) This ceremony reinforced the importance of action toward reconciliation and resource sharing. It brought attention to the need for a transformation of Indigenous and non-Indigenous relations, as articulated by the various contributors to this collection.

Overall, this collection sought to contribute to and expand on the body of writing scholarly, poetic, and experiential work that exposes the ongoing harm perpetuated by colonial states, their agents, and actors. In this concluding section, we highlight aspects of the authors' work to offer what can only be a partial and incomplete vision or action plan for transforming current problematic approaches to justice by the Canadian state. The avenues for change are manifold but contingent on the necessary involvement and leadership of Indigenous and other colonized peoples. While uncertainty remains, Jenny Perley's urgent call for collaboration to address the harms is an important reminder that decolonization and redress is a shared responsibility and a collective struggle. Like the chapters in this edited collection, Perley's earnest

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words underscore the importance of authentic solidarity, support, encouragement, coordination, and kindness.

Moving beyond Settler Justice

In the final chapter of this volume, Mark Jackson joins with many Indigenous scholars and writers who seek to subvert and disrupt colonialism. In outlining the continued injuries toward Indigenous peoples, Jackson points to the inherently anti-Indigenous nature of the colonial worldview, as "evidenced by the violence of the imperial paradox, by extractivism, by the accelerating destruction of habitats, cultures, and by worlds who parse lived relationality differently." He reminds us to listen for "the shriek of our ecological present" and suggests that we acknowledge "the ongoing, systematic, structural injustices that continue to harm Indigenous peoples and their lands" (389).

Some of what Jackson's provocative findings suggest can be found in a poem like Chevelle Malcolm's "Human to Human," as well as in the experiential writings of incarcerated persons living under carceral sentences. When Malcolm calls upon wider society to put down its stones, she seems to be issuing a call to the pluriversality that rejects the "truths" produced by dominant structures which present Indigenous disorder and crime as inevitable. She does so in favour of a world which honours a diversity of truths, including findings about the hideous nature of state crime and the value of Indigenous governance systems, which Jackson sees as necessary conditions for moving beyond our current impasse. One of the aims in this collection has been imagining and setting out parameters for a plural, multifaceted justice system that serves a diverse society where it is "safe to breathe," or acceptable to live outside of dominant scripts. As Clara Affun-Adegbulu and Opemiposi Adegbulu, state in their call to decolonize public health, we could begin by "acknowledging that there are many ways of being and doing, unlearning the universality of being and actively engaging with pluriversalities of being" (2020, 3). The authors' comments on the health system have a similar application to this call for changes to justice systems. "True decolonisation," they argue, "is based on demythologising the origins of the concept, desilencing/legitimising other systems of thoughts, practices and knowledges, and embracing the impossibility of objectivity in knowledge production" (3).

Lorinda Riley's call for united efforts echoes Perley's own remarks. In her chapter, Riley outlines how collaborations between the nations and peoples

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in Turtle Island, the Indigenous territories in lands known as the United States and Canada could enhance justice methods and models that resist colonialism and increase Indigenous sovereignty.

Acclaimed legal scholar, Val Napoleon, has published scholarship that also affirms Perley's words and that comments on the justice systems that were scrutinized in this text by Riley and others. In a 2019 text written specifically on the establishment of respectful relationships between the state and Indigenous legal orders, Napoleon writes that

> for reconciliation to be possible, there has to be awareness of the past, acknowledgement of the harm that has been inflicted to the legal order, acknowledgement of the causes, and action to change behaviours so that it is possible to build an ongoing mutually constructive and respectful relationship between legal orders into the future.

The host agency of the June ceremony in Fredericton, the Wolastoq Grand Council, is also worth noting as an example of a grassroots organization that is promoting work to achieve the reconciliation essential to the realization of justice, including criminal legal justice. The mandate of this organization—to connect right existence to the Indigenous laws, traditions, and languages of this territory—is inspirational and sets the tone for this concluding chapter. The Wolostoq Grand Council and Grandmothers hold visions for the future that echo those expressed throughout this edited collection that call for the end of colonization, particularly in relation to the structures of justice that are empowered to police, prosecute, imprison, and parole Indigenous peoples. The various chapters in this text have stressed the collective memory of the people, who can use those remembrances to foster action and build better approaches to justice.

The discovery of the suspected remains of hundreds of children at residential schools in Canada that led to the ceremony in New Brunswick and others like it across Canada affirmed the memories of survivors as well as the findings of the Truth and Reconciliation Commission. In response to the findings, Indigenous advocates and scholars, Cindy Blackstock and Pam Palmater stressed "Canada's continued failures" to take meaningful action on the ways its laws, policies, and practices have "created and maintained high rates of race and sex-based discrimination, including children in care, overincarceration, homelessness and violence" (Blackstock and Palmater 2021). These are issues addressed in the chapters in this text and, in keeping

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with this invitation to reveal the deep infiltration of Eurocentric ways into Indigenous lands and bodies, Andrew Woolford's chapter is directly on point. Woolford counters claims that the "good intentions" and perceived benevolence of some staff members disproves the genocidal nature of residential schools.

With Woolford's chapter, it is obvious that the small kindnesses of intimate colonialism are components of a strategy aimed at the "erasure of Indigeneity and the consolidation of Canadian settler colonialism" (67). An action that flows from this text is resisting this erasure. This type of resistance appears in "'You're Reminded of Who You Are in Canada, Real Quick': Racial Gendered Violence and the Politics of Redress," where Carmela Murdocca asks that we remain vigilant in our efforts to identify the extent of violence in settler colonial states. Her analysis of the documentaries produced by *Enquête* invites scrutiny of racial difference and its contents, and gestures toward the limitations of reparative justice. The collective testimonies ground and engender reflection on the historical dimensions of the role of racial gendered violence in settler colonialism.

While the discovery of the suspected remains has galvanized public sentiment and concern, the necessity for change to Canada's justice structures and institutions is long-standing. During her tenure in Parliament, Jody Wilson-Raybould was one of the advocates in Parliament who pressed for change. As the former Minister of Justice and the Attorney General of Canada, Wilson-Raybould provides a unique perspective on the ways the justice system might be altered and modernized to address the disproportionate number of contacts between Indigenous people and the justice system as well as the discriminatory impacts of this contact. In an address in 2018, Wilson-Raybould affirmed the call for unity that opens this conclusion:

> By being vigilant, honouring the sacrifices of generations of Indigenous peoples who have been fighting for justice in the face of colonialism, and re-shaping laws and policies based on the real meaning of recognition of rights, we will effect a fundamental and positive change in the relationship between Indigenous peoples and the criminal justice system. We all have a role to play.

In a 2019 lecture, Wilson-Raybould contended that the problems are evident across the gamut "of political, economic, cultural, and social issues" that Indigenous peoples face, and that the country confronts (9). She affirmed the

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importance of texts like this one when she stated, "Nowhere is this clearer than in . . . the relationship of Indigenous peoples with the criminal justice system" (9–10). In an earlier address in 2018 to the Johnson Shoyama Graduate School and the University of Saskatchewan, Wilson-Raybould called for a reconciliation with Indigenous peoples that was based on "real and fulsome recognition, affirmation, and implementation of the inherent rights of Indigenous peoples." In her view, repairing relations through Indigenous self-determination was an "urgent and compelling" issue (2018, n.p.). Notably, she stated that transforming the criminal justice system was an essential step "in the path towards reconciliation." For Wilson-Raybould, rebuilding Indigenous systems of justice and re-establishing systems and institutions beyond the structures created under the Indian Act are vital. Earnest efforts are needed to create a system with roles for Indigenous laws and governance. Although she noted a myriad of problems, Wilson-Raybould concluded her 2019 address by stating that she remained "optimistic and hopeful" that progress and change were possible (2019, 20).

While the Canadian state publicly expresses support for reconciliation, recompense, and respect, the criminal justice system continues to foster and justify the ongoing mistreatment of Indigenous and other colonized peoples, including the cruelties and casualties documented in this text. These cruelties range from the continued, underacknowledged trauma of residential schools (Woolford) to the overincarceration of Indigenous peoples (Pate; Palmater), particularly women, who are also missing in record numbers (Chartrand), sentencing disparities in the post *Gladue* and *Ipeelee* context (Balfour), harm-based policing (Shantz; Murdocca), and a host of disappearances. The injustices range across colonial records, museum displays (Walby and Piché), and legal inquiries (Savarese). The chapters in this book outline the need for experiential voices to be heard (Baker; McIntosh; Delorme; Hachey; Ewert; Jamieson). Both David MacDonald and Stands with the Wolves write with outrage on the murder of Colten Boushie. They ask us to see the ways in which settler law is valorized and how the responsibility for a homicide is placed on the deceased victim, Colten Boushie. MacDonald's efforts to contest this valorization resulted in the vicious online attacks that he outlines in his chapter. For Stands with the Wolves, there is heartbreak in the finding that "the judicial system shows that the whites can murder Indigenous / Without the consequences of living as federal prisoners!" (104). Writing on the topic of missing and murdered Indigenous women in Canada, Vicki Chartrand

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also urges that we bear witnesses to the losses and asks that we affirm the grassroots activism that offers a different vision of justice than that which is mobilized within a retributive, punitive system.

Another clear example of a chapter that sets out directives for change is Kim Pate's "Women in Prison." Pate is a well-known prison abolitionist and former executive director of the Canadian Association of Elizabeth Fry Societies. Senator Pate reminds us that "there are many positive ways that we can move forward" (248). Senator Pate's comments address the changes many of the writers in this text promote, either directly or indirectly, that would see to the human rights of Indigenous and all peoples—particularly those in prison—respected and upheld. Her recommendations are paralleled in "Gendered Genocide: The Overincarceration of Indigenous Women and Girls," by Pamela Palmater. Palmater is another contributor who sets out a clear plan of action on the national crisis of Indigenous overincarceration. In her chapter, she argues that urgent remedial action is required beyond surface-level recommendations. She offers several core recommendations that reverse the current trends. Palmater notes that her chapter cannot address every action on how to move forward to end this critical crisis within Canada's larger genocide against Indigenous women and girls. Importantly, she offers several core recommendations that reverse the current trends. In her conclusion, Palmater demands that Canada and its provinces, territories, and municipalities make full reparation and compensation for the harms suffered by Indigenous women and girls within prisons and youth corrections.

El Jones's poem "Shit" is dedicated to all incarcerated sisters and calls to women in prisons, jails, and carceral systems. She reminds them to resist the messages and practices of oppressive systems and invites remembrance of the fact that "out of cocoons come butterflies" and that one's "true value" cannot "be priced." The women are reminded not to let "shit demoralize." In fact, they are "the shit" [read awesome] and they "can never be denied" (259).

For Jeff Shantz, it is important that solutions to colonial violence be centred in an anti-colonial framework that results in fuller analysis and actions against lethal uses of violence. Within Canada, he argues that we must confront the colonial nature of policing and address the continuation of the colonial conquest, control, and violence that remains threaded into institutions of national identity and symbolism, such as Canadian police forces. Looking at policing from a somewhat different angle, Kevin Walby and Justin Piché analyze police museums to bring awareness to the ways museums depict and

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describe Indigenous and Métis peoples and policing in Canada. They argue that decolonizing police museums in Canada is a necessity that needs to occur in tandem with a concerted effort at decolonizing police agencies themselves.

In the opening chapter, "Memoryscapes: Canadian Chattel Slavery, Gaslighting, and Carceral Phantom Pain," Viviane Saleh-Hanna articulates a demand that Canada unearth its past and centralize it in "our understandings of colonialism and criminal justice" as a step toward "locating and articulating Canada's consequential carceral phantom pain" is an important one for this text. While Saleh-Hanna's focus is on chattel slavery, her call to make visible that which has been cut off and dismembered is one that resonates at a time when details about hidden remains come to the surface. For Saleh-Hanna, a starting point for change is acknowledging the hidden racisms and rewritten histories that mask historic and present injustice.

Concluding Thoughts

This conclusion outlines what the contributors imagine moving forward, what they pinpoint as necessary to plans of action. The various contributors work to hold the government to account for its failure to fully acknowledge those realities, the starting place toward reconfiguring the relationship between Indigenous nations, communities, and families and the Canadian state and those who act in allegiance with it. Hayden King and Shiri Pasternak have written about the proposed Indigenous Rights Framework, a legislation and policy initiative announced by Prime Minister Justin Trudeau in the House of Commons of Canada during a speech on 14 February 2018. King and Pasternak were concerned that the framework includes "nothing of the 'transformational' change the government has promised and certainly no indications of jurisdiction over traditional territory" (2018a). While couched in the language of human rights, this framework is only one of the more recent examples of a long-standing pattern of dominance and indifference in governing policy. This edited collection is grounded in further comments by King and Pasternak that it is the "institutional and structural changes" that are in need of examination and action given that these structures offer the greatest potential "to affect our collective relationship for generations to come" (2018b).

One of the key objectives of this edited collection has been to set out the extent of pervasive injustice when Indigenous and other colonized peoples

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are caught up in the Canadian justice system. We can change the system by making the problems more visible and urgent, and for this reason, the wide-ranging and robust examination of varied issues presented here was deliberate: it underscores the pervasiveness of systemic injustices. The text was aimed at a wide audience of academic and non-academic readers who share an interest in exploring the numerous fields in Indigenous justice issues, including law, criminology, sociology, and Indigenous studies. In addition to the chapters, the text includes poetry and the expertise of experiential writing to ensure that readers hear the broad range of voices calling for justice.

As Mark Jackson argues, scholars, policy makers, advocates, and those working in solidarity with colonized people should embrace an understanding of political responsibility grounded in the concept of "care." Critique must accordingly be founded on the "relational, ontological grounds" articulated in the work of Indigenous scholars (370). In Jackson's analysis, "violence against Indigenous peoples and the earth is a violence against everyone, human and non-human," a violence that betrays "love's lack and, hence, a lack of justice in our public worlds" (389). His call that we recognize this truth undergirds this text and its vision for change.

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Contributors

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Gillian Balfour is a professor of socio-legal studies and feminist criminology and vice president academic at Thompson Rivers University. She has published widely in areas of sentencing law reform impacts on Indigenous women, the lived experiences of incarceration, the implications of restorative justice in the context of gender-based violence, and the place of organized labour in Canadian women's prisons. She is currently writing about the rise of colonial carceral feminism in Canada, to explain the continuum between missing and murdered Indigenous women, and the mass incarceration of Indigenous women.

Vicki Chartrand is associate professor in the Sociology Department at Bishop's University, Québec, and adjunct professor in the Department of Criminology at the University of Ottawa. Her general research background and interests include penal and carceral politics, modern-day colonialism,

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grassroots justices, and collaborative methodologies. Chartrand recently received a Fonds de recherche du Québec—Société et culture (FRQSC) emerging scholars grant to collect and document the initiatives and strategies of Indigenous families and communities to address missing and murdered Indigenous women and explore alternative grassroots justices. Other research has included pedagogy and abolition, women and prison release, institutional violence, and prison education. She is a founding member of the Centre for Justice Exchange, a collective of academics, students, and other individuals who seek to advance more inclusive justices.

James Delorme is a member of the Cowessess First Nation, located in southeastern Saskatchewan in Treaty 4 territory. He is the chair of the Aboriginal Wellness Committee at Mission Institution, a correctional facility in Mission, British Columbia, where he is currently serving a life sentence. He has been working with Elders employed by Correctional Service Canada since 1989.

Jeff Ewert, a Métis, is currently incarcerated at La Macaza Institution, a medium-security federal penitentiary located in the Laurentian Mountains in Québec, where he is serving two life sentences simultaneously.

Paul Hachey, who is Métis, is presently serving time at Mountain Institution, a medium-security facility located near the town of Agassiz, in British Columbia's upper Fraser Valley.

Mark Jackson is an associate professor of human geography in the School of Geographical Sciences at the University of Bristol. He received his PhD in 2007 from the University of Alberta for his work on postcolonial modernity through the cityscape and histories of Calcutta, the work of Walter Benjamin, and postcolonial urbanism. In his current research, Jackson aims to rethink the political and ethical meaning of critique within relational ecologies and under the terms of decoloniality. More broadly, he is interested in how the postcolonial imagination and decolonizing intellectual and practical projects are influenced by, and influence, posthumanisms. Jackson is the series editor of Routledge Research in Decoloniality and New Postcolonialisms, the focus of which falls on emerging interdisciplinary postcolonial research in the social sciences and humanities.

Charles Jamieson is a Kanyen'kehà:ka (Mohawk) and a member of the Six Nations of Grand River, whose reserve lies in southwestern Ontario,

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near Ohsweken. He is imprisoned at Matsqui Institution, in Abbotsford, British Columbia.

El Jones is a spoken word poet, an educator, journalist, and a community activist living in African Nova Scotia. She was the fifth Poet Laureate of Halifax from 2013 to 2015 and, in 2016, a recipient of the Burnley "Rocky" Jones human rights award for her community work and work in prison justice. She is a co-founder of the Black Power Hour, a live radio show on CKDU that creates space for incarcerated people to share their creative work and discuss contemporary social and political issues. In addition, she has supported women in Nova Institution in writing and sharing their voices. In 2021, she joined the faculty at Mount Saint Vincent University, in Kjipuktuk/Halifax. She is the author of *Abolitionist Intimacies* (Fernwood Publishing, 2022). She would like to pay tribute to the many nameless and unrecognized women whose work makes it possible for her to be here today.

David B. MacDonald is a mixed race (Indo-Trinidadian and Scottish) political scientist from Treaty 4 territory and is a professor at the University of Guelph. He has held faculty positions at the University of Otago (New Zealand) and the Graduate School of Management (Paris, France). He has a PhD in international relations from the London School of Economics. His work focuses on comparative Indigenous politics in Canada, Aotearoa New Zealand, Australia, and Trinidad and Tobago. He has also worked extensively in the areas of international relations, American foreign policy, genocide studies, and critical race theory. He is the author of *The Sleeping Giant Awakens: Genocide, Indian Residential Schools, and the Challenge of Conciliation* (University of Toronto Press, 2019).

Chevelle Malcolm is a recent graduate of the University of New Brunswick, holding a degree in biology and philosophy. As a child growing up in Jamaica, her passion for reading classical and Caribbean literature cultivated a love of writing and storytelling. She began writing poetry at the age of ten and used her poetry as a means of self-expression. As a woman of faith, she is very passionate about social justice and morality, writing poetry to champion the cause of the marginalized groups in society. While studying at the University of New Brunswick, she became an award-winning poet and a frequent reader at community events supporting black communities and commemorating missing and murdered Indigenous women and girls. Chevelle finds pleasure

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in every opportunity to use her poetry to bring awareness, empowerment and healing.

Clint Augustine McIntosh is a man of mixed Scots and French-Cree heritage who has been convicted twice of armed robbery, reckless discharge of a firearm, unlawful confinement, and possession of a prohibited weapon. He received seven years for these offences.

Carmela Murdocca is the York Research Chair in reparative and racial justice and professor in the Department of Sociology at York University. She is appointed to graduate programs in sociology, socio-legal studies, and social and political thought. Her research examines the intersections of racialization, criminalization, and the social and legal politics of repair, redress, and reparations.

Pamela Palmater is a Mi'kmaw lawyer, professor, and Indigenous rights activist from Ugpi'ganjig (Eel River Bar First Nation). She holds the position of professor and chair in Indigenous governance at Toronto Metropolitan University where she focuses her research on Indigenous rights and sovereignty, police brutality and corruption, and human rights generally. She is also the award-winning creator and host of three podcasts: the Warrior Life podcast about Indigenous land defenders, water protectors, and advocates; the Warrior Kids podcast which seeks to educate young children about Indigenous cultures; and the Criminal on Patrol podcast, which exposes the dark side of policing.

Kim Pate was appointed to the Senate of Canada on 10 November 2016. First and foremost, the mother of Michael and Madison, and partner to Pam, she is also a nationally renowned advocate who has spent more than 40 years working in and around the legal and penal systems of Canada, with and on behalf of some of the most marginalized, victimized, criminalized, and institutionalized—particularly imprisoned youth, men, and women. Senator Pate strongly believes that the contributions of those who have experienced marginalization, discrimination, and oppression should be recognized and respected and she seeks to credit and empower all accordingly. She maintains contact with folks in prison through her numerous visits to Canada's federal prisons and strongly encourages other advocates, scholars, service providers, judges, and parliamentarians to ground their efforts in a similar way.

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Lorinda Riley holds a joint appointment with Native Hawaiian and Indigenous Health at the Office of Public Health Studies and Kamakakūokalani Center for Hawaiian Studies at Hawai'inuiākea School of Hawaiian Knowledge within the University of Hawai'i Mānoa. She is the acting head of the Native Hawaiian and Indigenous Health Specialization. Her research focuses on healing historical trauma, Indigenous research sovereignty, and laws and policies related to Indigenous wellbeing. Specifically, she is interested in the impact of the western criminal justice system on Indigenous communities and uplifting Indigenous restorative approaches in the justice system. Her work takes an interdisciplinary and community-engaged approach to working with and supporting communities as they find solutions to problems and strengthen their community.

Viviane Saleh-Hanna is professor in the Department of Crime and Justice Studies at the University of Massachusetts, Dartmouth. She is an author, professor, and scholar who for almost two decades worked with prisoners in Canada, the United States, Nigeria, Ghana, Gambia, and Egypt to support their struggles against legal, health, reproductive, racial, gendered, economic, and social injustices. At the turn of this century, she was living in Nigeria and researching the punishing architecture of slavery documented and preserved in European slave dungeons, detention centers, and prisons built in Nigeria, Benin, and Ghana. Her book *Colonial Systems of Control: Criminal Justice in Nigeria* (2008) was the first to make available first-hand accounts and daily experiences of people imprisoned in West African prisons. More recently, her work centers and articulates Black Feminist Hauntology (2015), Structurally Abusive Race-Relationships (2017), and Wild Seed Justice (2023). Guided by the teachings of the Center for Indigegogy at Wilfred Laurier University, she has been involved in collectives for north African language and cultural revivals that seek to bring north African Blackness into a space of empowerment for Indigenous north African Egyptians—ⲛⲓⲣⲉⲙⲛ̀ⲭⲏⲙⲓ—the people

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of the Black Soil. Her work with ma'at the remenkhmi Goddess of Justice is forthcoming.

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Jeff Shantz is a writer, poet, photographer, artist, and organizer with decades of participation in community movements and as a rank-and-file workplace activist. He is a full-time faculty member in the department of criminology at Kwantlen Polytechnic University (KPU) on the unceded traditional and ancestral lands of the Kwantlen, Musqueam, Katzie, Semiahmoo, Tsawwassen, Qayqayt, and Kwikwetlem peoples. He is the founder of the Critical Criminology Working Group and a co-founding member of the Social Justice Centre at KPU, where he is lead researcher on the Anti-Poverty/Criminalization/Social War Policing project. Shantz is the author and editor of more than twenty books, including *Cyber Disobedience: Re://Presenting Online Anarchy* (with co-author Jordon Tomblin, Zero Books, 2014).

Stands with the Wolves (Nolan Turcotte) is Plains Cree, from the Flying Dust First Nation, located not far from Meadow Lake, Saskatchewan, in Treaty 6 territory. He is presently incarcerated at the Millhaven Institution, a maximum-security facility near Bath, Ontario.

Kevin Walby is associate professor and former Chancellor's Research Chair in the Department of Criminal Justice at the University of Winnipeg. His research interests include representations of crime and criminality, as well as policing, security, and surveillance and freedom of information law. He is co-editor of the *Journal of Prisoners on Prisons* and a project leader at the University of Winnipeg's Cultural Studies Research Group.

Andrew Woolford is professor of sociology at the University of Manitoba and former president of the International Association of Genocide Scholars.

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Among numerous other publications, he is the author of *This Benevolent Experiment: Indigenous Boarding Schools, Genocide and Redress in Canada and the United States*. (2015), as well as the co-editor (with Jeff Benvenuto) of *Canada and Colonial Genocide* (2017). He is currently working on two community-based research projects with residential school survivors: Embodying Empathy, which will design, build, and test a virtual Indian Residential School to serve as a site of knowledge mobilization and empathy formation; and Remembering Assiniboia, which focuses on commemoration of the Assiniboia Residential School. He is currently engaged in a project on human and other-than-human relations within genocidal processes under the title "Genocide with Nature."

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