Contemporary Criminological Issues

Moving Beyond Insecurity and Exclusion

Edited by Carolyn Côté-Lussier, David Moffette, and Justin Piché

University of Ottawa Press

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Contributors to this edited collection were invited to present their chapters at a bilingual conference that was simultaneously translated, which we organized during the week-long celebrations of the anniversary. The discussions emanating from the conference helped further shape the content of the books. We thank the contributors, along with Anthony Doob (University of Toronto) who gave the opening remarks of this conference, and Gillian Balfour (Trent University) and Joane Martel (Université Laval) who gave the concluding remarks, for participating in this memorable event. We also thank the student volunteers (Anne Goodall, Alyssa Leblond, Joseph-Christopher Murat, Karley Carvalho, Kevin Hibbert, Maria Silva Roy, Katarina Bogosavljevic, and Renée Komel) and other members of the Criminology Graduate Students Association for their role in ensuring the conference ran smoothly.

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INTRODUCTION

Challenging Criminology, Insecurity, and Exclusion

Carolyn Côté-Lussier, David Moffette, and Justin Piché[1]

Drawing its early inspiration from psychology, law, anthropology, and sociology, criminology has been described as a rendezvous discipline (Downes in Young 2003, 97) and an interdisciplinary field of study (Cartuyvels 2007) that was primarily concerned with the development of research and teaching aimed at understanding the causes of "crime," its consequences, and the best means to suppress it (Hogeveen 2011). As the field has become further entrenched through the creation of new criminology programs across the world over the past half-century (Bosworth and Hoyle 2011), it has also drawn insights from an increasing number of other scholarly fields, including geography, history, political studies, socio-legal studies, and social work.

Given its plurality of disciplinary influences, it ought to come as no surprise that the empirical focus, theoretical and methodological orientations, and normative commitments of criminology have been subject to considerable discussion and debate. The mainstream of the discipline remains in lockstep with state institutions with its continued focus on the causes and consequences of "crime" and increasing concern with matters of "security" as officially constructed, so as to better inform government responses to perceived threats to "public safety" and "national security" (Zedner 2009). However, this mainstream criminological approach has been met with different approaches emerging from under the umbrella of critical criminology (e.g., left idealism, left realism, abolitionism, feminism, critical race studies, queer studies, cultural criminology, green criminology, convict criminology, zemiology, etc.), which aims to challenge criminological orthodoxy (Friedrichs 2009). Earlier critical criminological

interventions problematized the mainstream nucleus of the discipline as being subservient to the managerial and administrative concerns of the penal system and the state, and sought instead to demystify "crime" and devise other means of responding to social harm (Cohen 1988; Taylor et al. 1973). Many who position themselves as "critical criminologists" today continue this work by: (a) demystifying the processes by which certain acts and individuals take on the status of "crimes" and "criminals," and are punished (e.g., McLaughlin 2011); (b) redirecting attention towards acts of corporate and state violence that are often not recognized as "crimes" despite their wider and more harmful ramifications than smaller-scale interpersonal harms (e.g., Lynch and Stretesky 2016); and/or (c) pushing for a more expansive criminological agenda, including accounting for the plurality of ways in which social control occurs in the name of security beyond "criminal justice" (e.g., Zedner 2007).

No matter the substantive issues addressed—or theoretical and methodological tools used to make sense of them—critical criminologists tend to share a commitment towards understanding how class (e.g., Bittle et al. 2018), race (e.g., Peterson 2017), gender (e.g., Kruttschnitt 2016), sexuality (e.g., Woods 2014), and other markers of difference shape (a) catastrophic imaginaries that construct threats to security (e.g., Larsen and Piché 2009) and (b) actual instances of victimization (e.g., Spencer and Walklate 2016) that result in the exclusion of those deemed to be vectors of risk or culpability or both. This shared commitment to critically engage with issues related to insecurity and exclusion produces alternative ways of seeing "crime" and "security" matters appropriated by the state (Christie 1977), and opens the horizons to other ways of responding to them (Hulsman 1986) premised on equality and inclusion (Doyle and Moore 2011). In short, criminology as a discipline or field of study has been a site of intellectual conflicts between, on the one hand, scholars whose work informs and is informed by state institutions and, on the other hand, scholars who seek "to reframe the social world so that new visions of justice [and security] may emerge" (Hogeveen and Woolford 2006, 696).

As the Department of Criminology at the University of Ottawa celebrated its fiftieth anniversary in 2018, we wanted to reflect on the development of critical criminology and take stock of the type of research produced here. Founded with the support of federal government funding in 1968 as a research and teaching hub for future "criminal justice" professionals (e.g., parole officers), the Department of

Criminology at the University of Ottawa has too been the site of struggles over the future of the discipline (Strimelle and Vanhamme 2010). Over time, these struggles have translated into curriculum reforms and research that has allowed the department to gain a reputation for its interdisciplinary and critical criminological scholarship. Much of the work emanating from the department today continues to advance alternative ways of conceptualizing and responding to criminalized activities and social harms, which is exemplified in many ways, including through its commitment to maintaining courses on prison and penal abolitionism (see Chartrand and Piché 2019).

Alongside profound economic, social, and political disruptions owing to the further intensification of capitalist relations that consolidate wealth into the hands of fewer and fewer people by various means (McNally 2011; Piketty 2014)—including through the rapid development of technology (Lyon 2015; McGuire 2012) and environmental plundering in this age of global warming (White 2018)—exclusionary and punitive state policies and practices with respect to "crime" and "security" in Canadian and global contexts persist (Webster and Doob 2015). Against this backdrop, it is all the more important to have critical criminological scholarship aimed at understanding shifts and continuities in how social inequality and human conflicts are understood and handled. Criminology—alongside other academic disciplines—should be at the forefront of documenting and providing alternatives to the damage wrought by the existing capitalist order, as part of a larger movement working to address the challenges before us.

The present edited collection, which includes an English and a French volume, represents an effort to provide a snapshot of Anglophone and Francophone contributions to critical criminology. Anglophone work, largely influenced by currents in the United Kingdom, the United States, and Canada, and Francophone scholarship, often informed by disciplinary developments in criminology and sociology in Belgium, France, Switzerland, and Quebec, are often not brought into conversation with one another (Martel et al. 2006). Combining them into this two-volume collection provides unique insights on some global currents in critical criminology. Furthermore, this edited collection provides a "time capsule" reflecting on where critical criminology at the University of Ottawa has been and where it is going, showcasing the debates and discussions we have with collaborators from across Canada and elsewhere in the

world. Indeed, all contributions are co-authored by scholars affiliated with the University of Ottawa (i.e., as students and graduates, as staff members, and as professors) and collaborators from other departments and universities. It also provides insight into some of the key topics and trends in current critical criminology: challenging and destabilizing hegemonic definitions of "crime" and "security"; privileging the voices or making visible the material conditions of those pushed further to the margins by securitization, criminalization, and victimization; and locating social control within structures of power as a way to identify and transform understandings of interpersonal and structural harms. In short, these chapters were assembled as a means of locating current work tied to the University of Ottawa's Department of Criminology, but with a view towards critical criminology as a whole.

English Volume Overview

The English volume presents eleven original works, in four sections. In the first section—entitled "Rethinking Critical Criminology"—readers are presented works that draw on empirical analyses to demonstrate the ways in which critical criminological frameworks are being constructed and employed in areas related to "security" (e.g., governing of behaviour, policing, etc.) and the challenges faced by critical criminologists who attempt to disrupt hegemonic discourses that reproduce exclusionary practices. In this section, David Moffette and Anna Pratt (chapter 1) propose that criminology move beyond the traditional focus on "crime" and conduct research in the "borderlands." Drawing on interviews conducted in Canada regarding the binational Shiprider program and in Spain regarding the governance of immigrant street vendors, they draw a critical portrait of crime-centric approaches. In particular, they recommend research look beyond "crime," particularly for areas where jurisdictions, legal regimes, and academic disciplines intersect.

Next, Matthew Ferguson, Justin Piché, Gwénola Ricordeau, Carolina S. Boe, and Kevin Walby (chapter 2) draw on their study of police museums in Canada and France to discern the ways in which these cultural institutions works toward legitimizing the public police—an institution fraught by crises of legitimacy. They also explore the role of these heritage sites in reifying "nation building" in such a way that absolves law enforcement organizations and officers

of their roles in violent and racist endeavours of land and cultural expropriation.

Finally, Maritza Felices-Luna and Anouk Guiné (chapter 3) ask that we turn our attention to how mainstream criminology produces exclusionary discourses. This work draws on their efforts to hold a symposium about the Peruvian armed conflict—focusing in part on women's involvement—that refused to engage and reproduce a dichotomous view (i.e., bad / guilty / wrong side of history vs. good / justified / right side of history). They call upon criminologists to disrupt hegemonic discourses, while also documenting the many hurdles they encountered in that very process.

The next section, entitled "Critical Criminology in Practice," reveals the many ways in which critical criminology is dispatched in the current "criminal justice" context through work with and/or for criminalized individuals, their families and communities. Jennifer Kilty, Sandra Lehalle, and Rachel Fayter (chapter 4) present readers with an overview of the Walls to Bridges initiative, which provides a university-level course to "inside" (i.e., incarcerated) and "outside" (i.e., not incarcerated) students to create deep conversations on issues of "crime," justice, freedom, and inequality. They draw on journal entries by students and the authors to demonstrate the many challenges and dynamics, as well as the emotional work involved in participating in the course. They recommend a co-teaching approach and a willingness to discuss emotion to establish a learning environment that transforms structural practices of exclusion and marginalization.

Next, Christine Gervais, Matthew Johnston, Serenna Dastouri, Leslie McGowran, and Elisa Romano (chapter 5) provide original empirical evidence of the many challenges faced by youth who engaged in sexual harm and their families. They provide a valuable reference point for readers interested in conducting research that is inclusive and involves participants respectfully and productively in multiple phases of the research process. The findings paint a paradoxical picture of efforts by penal system actors to avoid formal legal processes in some instances, while contributing to exclusion and insecurity for youth and their families in others.

Lastly, Kathryn Campbell and Stephanie Wellman (chapter 6) give renewed attention to the issues of reconciliation and the mass incarceration of Indigenous peoples in Canadian jails, prisons, and penitentiaries. They provide both a historical overview, along with

an assessment of where and how governmental efforts at reconciliation have failed. They underscore how the penal system has not made substantive legal and policy changes, and how efforts must be directed toward greater social structural issues impacting Indigenous communities.

The third section of the English volume, entitled "Markers of Social Differentiation and Social Reaction," sheds light on current issues faced by populations pushed to the margins, such as Muslims in Canada, and women who experience interpersonal and state violence. The section also delves into how inequality and disadvantage come to impact policy developments as it relates "offenders" and/or "victims." Baljit Nagra and Jeffrey Monaghan (chapter 7) draw on interview data to examine how Canadian Muslim communities have experienced and been impacted by the "war on terror." They find that Canadian Muslims perceive these practices as contributing to the erosion of their rights, as well as to their stigmatization, alienation, limited religious freedom, and the erosion of their Canadian citizenship.

Next, Tuulia Law, Brittany Mario, and Chris Bruckert (chapter 8) bring into sharp focus the ways that feminist discourse can contribute to protectionist legal responses that work against women who fail to conform to the "ideal" woman victim stereotype. They consider the constraints faced by women in violent relationships, women who are sex workers, and women in prison. They argue that feminism, though advancing radical discursive change, can effectively perpetuate normative tropes that exclude women who fail to conform to ideal types.

Christopher Greco and Patrice Corriveau (chapter 9) look to demonstrate how, in a capitalist economic system, "criminal justice" and safety concerns can be set aside in the face of competing economic concerns. They draw on analyses of discussions in the Canadian Parliament, both in the House of Commons and Senate, about the threat of child luring and section 172.1 of the *Criminal Code*. They identify language suggesting a view of children in economic terms and a desire to avoid endangering Canada's internet service provider industry.

Finally, Carolyn Côté-Lussier, Katrin Hohl, and Jean-Denis David (chapter 10) present an overview of the current literature on how disadvantage impacts individuals who come into contact with the penal system as either "offenders" or "victims." They aim to demonstrate how traditional views of inequality in terms of poverty or

social class are limiting as such views focus especially on "offenders" and fail to consider the cumulative impacts of disadvantage for both "offenders" and "victims."

The English tome concludes with a section featuring "Reflections on Criminology." First, Irvin Waller, Verónica Martínez, Audrey Monette, and Jeffrey Bradley (chapter 11) provide an account of policy changes in the areas of prevention and victims' rights over the course of Waller's career. In the afterword, Gillian Balfour—a leading feminist criminologist in Canada and graduate of our master's program—draws inspiration from the chapters in this edited volume to discuss the development of critical criminology in Canada. She ends by charting the work that lies ahead for scholars who seek to document, resist, and build alternatives to the oppressive status quo.

French Volume Overview

The French volume contains ten original chapters organized in three sections. The first section, entitled "Remettre en question la criminologie, l'insécurité et l'exclusion" ("Rethinking Criminology, Insecurity, and Exclusion") brings together contributions that reflect on the possibilities of transforming and critiquing the penal system and criminology. The chapter by Richard Dubé and Sandrine Ferron-Ouellet (chapter 1) mobilizes "la rationalité pénale modern" (the rationality of modern punishment) theory—developed in the Department of Criminology at the University of Ottawa by Alvaro Pires and his colleagues—to analyze how Bill C-2, the *Tackling Violent Crime Act*, puts forth the goal of incapacitation to justify strict punitive measures that other theories of punishment (such as rehabilitation) no longer legitimize. The chapter offers a historical reading of the transformations of the rationality of modern punishment in the last fifty years, while revealing the difficulty of sustaining arguments for incapacitation in political discourse.

Martin Dufresne, Dominique Robert, Patrick Savoie, and Héloïse Tracqui (chapter 2) offer an original critical intellectual engagement by proposing to mobilize an analytical framework inspired by actor-network theory to study criminological objects and the ways in which these objects are constructed—materially and socially—with the effect of promoting or limiting various forms of the "social." Here, the criticism is for criminology to think "outside the box" and dare to shift its gaze toward material and conceptual objects.

The next two chapters focus on institutional mechanisms of penal system oversight and their limitations. Sandra Lehalle and Nicolas Fischer (chapter 3) offer a comparative reading of oversight mechanisms in prison systems in France (le Contrôleur général des lieux de privation de liberté) and in Canada (the Correctional Investigator of Canada). This chapter offers both a historical reading of the emergence of these institutions and a sharp analysis of the various visions of oversight, investigation methods, and media strategies of these institutions whose powers are very limited.

Finally, the chapter of Jean-François Cauchie, Patrice Corriveau, and Linda Michel (chapter 4) centres on Quebec's Bureau du coroner, which is in charge of investigating cases of killings by law enforcement officers. Their study of fourteen coroner reports leads them to a disturbing conclusion: interpretations favour a pro-police version of the events, while killed civilians and their loved ones tend to be portrayed as threats. In short, any critical understanding of the events that point to systemic problems do not translate into meaningful change, while the police officers involved are cleared of wrongdoing.

The second section, entitled "Criminologie critique en pratique" ("Critical Criminology in Practice") brings together various chapters that share a common theme of reflecting on the critical potential of criminological practices. Christophe Adam and Bastien Quirion (chapter 5) have drafted an ambitious programmatic text that promotes critical clinical practice. Predominantly discussed in literatures focused on explaining "criminal trajectories" and the course of "offending," clinical criminological practice has been largely ignored by critical approaches. However, the authors convincingly propose that it is possible to develop a humanist and procedural clinical practice oriented towards the needs of the criminalized and freed from institutional logic centred around recidivism and public safety. Christophe Adam, a colleague and friend of many in the department, passed away in December 2019 when the book was in the production phase. His substantial contribution to Francophone criminology, and his dedication to promoting a critical clinical practice, will be remembered. We are honoured to be able to include this posthumous chapter.

Geneviève Nault, Joanne Cardinal, and Claudia Fradette (chapter 6) examine the use of reflexive practice by criminology graduates from the University of Ottawa. This concept is at the heart of the department's pedagogical approach in the internship seminar. Yet the

authors conclude that in rare cases where graduates deploy a reflexive practice, it is largely to adapt to challenges encountered in the field and rarely involves questioning the imperatives of effective management and social control promoted by the institutions for which they work. The authors identify some of the structural elements that may limit the scope of graduates' reflexive practice, as well as areas for its further development in terms of university training.

Finally, the chapter by Claire Jenny and Sylvie Frigon (chapter 7) transports us to the world of the arts with the presentation of their work in developing and implementing dance programs in men's and women's prisons in France. The authors are interested in how the practice of dance brings forth, through work on and by the body, questions related to the expression of self, self-esteem, and becoming oneself. They argue that these dance programs and their approach may not only be liberating for participants, but may also force researchers to question and imagine other ways of conceptualizing and practicing criminology.

The third section, entitled "Genre, race, âge et sexualité : violence, régulation et résistance" ("Gender, Race, Age, and Sexuality: Violence, Regulation, and Resistance") brings together chapters that examine how criminalization and victimization are disproportionately distributed among individuals and aligned with various markers of social differentiation. Isabelle Perreault, Michèle Diotte, and Simon Corneau (chapter 8) analyze the historical transformations of the logics, discourses, and practices that inform the regulation of pornography in Canada. Their rich analysis is based both on a historical study of four major phases of the regulation of "obscene" material since the nineteenth century, as well as on the study of twenty-four briefs submitted to the Standing Committee on Health, which was tasked in 2017 with the review of the legislative framework surrounding access to pornography on the Internet. The authors argue that when the discourse on pornography as a moral problem began to lose credibility, we saw the emergence of an alternative problematization of pornography as a harm to public health.

Alexis Hieu Truong and Isabelle Côté (chapter 9) focus on sexual violence committed in a "live action role-playing" (LARP) game community in Quebec. They argue that the play context contributes to blurring the line between fiction and reality with respect to "in-game" actions and "out-of-the-game" consequences, and contributes to the expression and trivialization of gender-based violence. Their

contribution aims to provide a better understanding of the phenomenon, and is also part of a broader educational project aimed at transforming these play spaces developed by younger and older people.

Finally, Eduardo González-Castillo and Martin Goyette (chapter 10) provide a critical analysis of community interventions among young people in Montreal using a Gramscian analysis. On the basis of ethnographic interviews and observations carried out in the borough of Montréal-Nord, the authors describe a heterogeneous milieu of interventions and document the ways in which various civil society actors contribute to state control mechanisms through paradoxical community interventions, which aim to be helpful but are nonetheless stigmatizing. Though rooted in an ideal of justice, these interventions reproduce various inequalities and social divisions. The authors interpret these tensions in the context of the neoliberal management of insecurity.

The French volume ends with an afterword by Philippe Mary, a central figure of Belgian and Francophone criminology, and a great friend of our department. Mary traces the history of critical criminology, beginning with the second World Congress of Criminology, held in Paris in 1950, followed by a summary of the debates at the sixth World Congress of Criminology, held in Madrid in 1970, and a presentation of the contributions of neo-Marxists, interactionists and of the anti-correctionalist positioning of Ian Taylor and colleagues (1973) in Great Britain. With this inspiring review of the great moments of critical criminology—but also of its decline in recent decades—Mary closes the French volume with a call to renew our critical engagement as we face a social context marked by an increase of insecurity and exclusion.

Conclusion

This bilingual endeavour has brought many voices together and pressing issues to the fore. In so doing, we hope to make a modest contribution towards pushing against and beyond the boundaries of criminology in the pursuit of a more just, inclusive, and safe world.

Notes

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SECTION 1

RETHINKING CRITICAL CRIMINOLOGY

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CHAPTER 1

Beyond Criminal Law and Methodological Nationalism: Borderlands, Jurisdictional Games, and Legal Intersections

David Moffette and Anna Pratt

Criminology occupies a peculiar place among the social sciences as it adopted as its unifying object of study that which is predefined in and created through law. Indeed, the jurisdictional distinction between acts that are subject to criminal laws and others that are regulated by administrative laws was, to a great extent, adopted by criminologists. And despite early encouragements to move criminology beyond its traditional boundaries by expanding its guiding problematic from crime to ordering (Shearing 1989), much of the criminological scholarship produced in the last fifty years has continued to privilege the study of crime—socially constructed or otherwise—and the criminal justice system over that of other ordering practices and regimes.

Studying the complex intersections between the domains of criminal justice and immigration regulation forces us to challenge this crime-centric approach. This field of study is rather new. The Chicago School of sociology—so influential in criminology—had of course paid attention to immigration, but it had done so with a problematic assumption that migration is a cause of social disorganization, a claim that has now been challenged empirically (see Lee et al. 2001). However, it was only in the late 1990s that scholars began researching the intersections of immigration and criminal legal regulation, a field initially dominated by legal approaches (e.g., Kanstroom 2004; Miller 2005), with but a few criminological exceptions (e.g., Pratt 2005; Welch 1996).

For the most part, the regulation of immigrants by various state and non-state actors has not been the object of much criminological inquiry until recently.

While alternative framings exist, a great deal of recent scholarship analyzes these dynamics through the concept of "crimmigration" (e.g., Chacón 2015; Stumpf 2006; Van der Woude et al. 2017). As explained by Stumpf (2006, 376), this concept highlights the way that "immigration law today is clothed with so many attributes of criminal law that the line between them has grown indistinct." While this focus on convergence is a useful endeavour in many regards, we find it limiting. Indeed, despite some key works that have sought to specify the nature of the intersections and divergences (e.g., Aas 2014; Chacón 2015), or that have attended to the "asymmetric incorporation of criminal justice norms" into immigration law (Legomsky 2007, 469) and the "ad hoc instrumentalism" that characterizes actors' decisions to cherry-pick the legal categories they deploy (Sklansky 2012, 157), much of the scholarship insists on documenting the many points of convergence instead of attending to the gaps, cracks, and fissures that run through the interactions of immigration and criminal justice regimes. This preoccupation with convergence hides from view the heterogeneity, contingency, and multiplicity of ordering and bordering practices, including the important ways that jurisdiction brackets and authorizes different legal powers and practices (Blomley 2014). The guiding focus on the merging of criminal justice and immigration law also pushes into the background the many other legal and quasi-legal regimes that are engaged in bordering practices and that contribute to the regulation and punishment of immigrants. In this chapter, we avoid metaphors of "merger" and "convergence," choosing instead to study what we think can be most helpfully understood as an assemblage that comprises the "legal borderlands" of the domains of immigration and criminal justice: sites of interlegality filled with "nonsynchronic, unequal, and unstable interplays between various laws, techniques, and normative regimes" (Moffette 2018a, 156).

The notion of legal borderlands brings us to a second and closely related limit of criminology. We hope that the project of doing criminology at the borderlands can help us to avoid and challenge the often unquestioned "default scalar setting" of much criminological research: the nation-state (Valverde 2010, 240). This is important analytically and politically as the methodological nationalist trap often

leads to the "ongoing re-production and re-fetishization of those same naturalized 'national' formations" (De Genova 2013, 251; see also Wimmer and Glick Schiller 2002). And yet, despite efforts by scholars contributing to the growing fields of global and transnational criminology (e.g., Bowling and Sheptycki 2012; Larsen and Smandych 2007; Sheptycki 2000) and green criminology (e.g., Brisman 2015; Lynch and Stretesky 2010), working on crimes and harms of globalization (e.g., Franko Aas 2013; Rothe and Friedrichs 2015) or producing research on local-level legal regulation (e.g., Goodman et al. 2017; Valverde 2011; Varsanyi 2010), the nation-state remains firmly embedded in criminology. The focus on the state as the singular holder of sovereignty, even if for the purpose of its critique, often hides from view the ways that sovereignties are always plural, partial, contested, and incomplete (Aoki 1998; Sassen 2009). In this chapter, we draw from our experience studying bordering practices, including at physical borderlands (Moffette 2013; Pratt 2016), to propose ways to help avoid the discipline's methodological nationalism and privileging of crime and criminal justice.

This programmatic chapter suggests ways to develop scholarship located in the "borderlands" where different jurisdictions, legal regimes, and academic disciplines intersect. In the following subsections, we define what we mean by doing criminology at the borderlands and present the notion of jurisdictional games (Valverde 2009, 2015) as a conceptual tool that is useful in this endeavour. We then provide two empirical vignettes that illustrate the kind of research that we have in mind: (1) the Canada-US Shiprider program that allows binational boat patrols to operate at and across the US-Canada border and (2) the multi-scalar governing of unauthorized immigrant street vendors by port authorities and municipal, regional, and state police in Barcelona. The first vignette is based on document analysis and interviews conducted by Anna Pratt with officers working for the Royal Canadian Mounted Police (RCMP), US Coast Guard (USCG), and US Customs and Border Protection (CBP), and with members of the community in Akwesasne Mohawk Territory. The second vignette is based on ethnographic observation, document analysis, and interviews conducted by David Moffette with municipal civil servants at the Barcelona Security Commission and the Immigration, Interculturality, and Diversity Commission, as well as with a city councillor and a member of an advocacy group working with street

vendors. Both of these vignettes raise questions of sovereignty, jurisdiction, and discretion.

In the conclusion, we return to the notion of borderland criminology to make recommendations for future research. The chapter contributes to the book by arguing that to move beyond insecurity and exclusion, criminologists need to move beyond a focus on crime, criminal law, and the nation-state.

Doing Criminology at the Borderlands

While our research owes much to what has been called "border criminology" (Bosworth 2017) or the "criminology of mobility" (Pickering et al. 2015) since we study bordering practices and the governing of immigration, our call for doing criminology at the borderlands should, in part, be taken metaphorically as an invitation to all criminologists to locate our work in an intellectual space that sees the boundaries between disciplines, legal regimes, and states as blurry, uncertain, and shifting.[1]

Borderlands are physical, geopolitical, legal, linguistic, and cultural third spaces bridging the lines that officially separate countries, people, cultures, and identities. Gloria Anzaldúa (1987), Akhil Gupta and James Ferguson (1998, 18) propose that we understand borderlands as "a place of incommensurable contradictions" and that "the term does not indicate a fixed topographical site between two other fixed locales (nations, societies, cultures), but an interstitial zone of displacement and deterritorialization that shapes the identity of the hybridized subject." Borderlands are also sites for the performance of contested sovereignties (Donnan and Wilson 2010; Dudziak and Volpp 2006) and the dramatic manifestation of state power and racialized violence (Rosas 2006), yet they are always fragile (Rosas 2006). The governing of mobility in borderlands also relies on discretionary acts and non-acts (Heyman 2009), on racialized risk knowledges (Pratt and Thompson 2008), and on jurisdictional games (Moffette 2018b; Pratt 2016). Our call for doing research in the legal borderlands thus evokes a joint commitment to interdisciplinary, interlegal, and post-national inquiries. As such, border research that endeavours to decentre formal law and the nation-state promises to furnish findings and insights that will be useful and applicable to criminological research undertaken in a variety of other contexts as well.

Jurisdictional Games

One way to denaturalize state sovereignty and the distinction between different types of legal regimes is to look at jurisdiction as an ongoing practice of governing through legal bracketing (Blomley 2014; Ford 1999; Valverde 2009, 2015). Indeed, not only are crimes historically and socially constructed, but the whole division of law into different realms is also the product of an active process of boundary-making. As Mariana Valverde (2009, 141) explains, "the allocation of jurisdiction organizes legal governance, initially, by sorting and separating" objects and realms of law in a way that eventually seems natural and hides from view the tensions and contradictions inherent to legal orderings. This work of jurisdiction is an ongoing performance. As Shaunnagh Dorsett and Shaun McVeigh (2012, 4) explain, "jurisdiction is derived from the Latin *ius dicere*—literally to speak the law … it declares the existence of law and the authority to speak in the name of the law." The enactment of jurisdiction is thus a matter of asserting legal power—or refusing it—continuously and in various concrete local instances.

To understand jurisdiction as performative means that we need to study it as discourse and as a set of practices. In his work on territorial jurisdiction, Richard Ford (1999) likens jurisdiction to a tango, a type of dance with a set of rules that defines the role of each partner to negotiate when one should step forward and when one is to let their partner make the move. Jurisdiction therefore must be enacted; it encompasses practices whereby legislators, courts, and anyone who wants to summon the law make claims about the "where," the "who," the "what," the "when," and the "how" of law (Valverde 2009), and provide rationales for why an act or a person, in a particular place and time, falls under the authority of a particular body and should be treated according to this or that kind of procedure. The game of the jurisdictional distribution of authority is thus always performed through negotiations over what belongs to immigration law, criminal law, or other legal regimes; negotiations over what falls under municipal, provincial, or federal authority; what is American and what is Canadian; and so on. Studying "jurisdiction as a bundle of practices" (Ford 1999, 855) means looking at the ways that various actors—from judges to street-level bureaucrats, zoning bylaw inspectors, police officers, coast guard officers, Indigenous activists, and

anyone claiming that they have rights or that their neighbour's fence is too high—are continuously making jurisdictional claims. It also means that in most situations, a variety of laws, regulations, and authorities could apply, and actors are able to deploy different kinds of legal or quasi-legal resources depending on the outcomes that they are hoping to achieve, using what David Sklansky (2012, 157) might describe as a kind of "ad hoc instrumentalism."

We suggest that research focused on these jurisdictional games can be productive in three ways. First, "thinking jurisdictionally" (Dorsett and McVeigh 2012, 42) can help us make sense of the multi-scalar, multi-actor, and multi-jurisdictional socio-legal regulation of people and things in many contexts today. Second, it allows us to shift our focus from crime, criminal law, and formal criminalization to instead look at how the recourse to aspects of criminal law is but one of the many options that actors have in the multi-jurisdictional ordering of people and things. Third, looking at jurisdictional games also helps us to move away from an understanding of sovereignty as seated solely at the heart of the state and instead invites us to study jurisdictional claims to multiple forms of both territorial and non-territorial sovereignty as they are made and unmade in everyday practices. Indeed, this approach works well with a pluralist notion of sovereignty, understood as "the discursive [and practical] form in which a claim concerning the existence and character of a supreme ordering power for a particular polity is expressed," an ordering which asserts "to provide a continuing source and vehicle of ultimate authority for the juridical order of that polity" (Walker 2003, 6). In order to illustrate the analytical potential of our approach and concepts, we now turn to two empirical vignettes from our respective research.

Governing Waterways: The Canada-US Shiprider Program at the Maritime Borderlands

Introduction to the Shiprider Program

> A few years ago the U.S. Coast Guard snapped a photo of a Great Lakes smuggler smiling at their camera with his middle finger in the air, "flipping us the bird," as one frustrated officer defined his contemptuous gesture. The smart-ass smuggler knew the

> Coast Guard was powerless to retaliate. They had pursued him at high speeds, but he had managed to make it into Canadian waters—and he knew exactly where the borderline was … So the Coast Guard, observing the rules of national sovereignty, was unable to pursue this guy, and he knew it. (Kenny 2007, 1)

The iconic image of the cocky criminal flagrantly mocking the USCG while speeding across the international border into Canada captures the kind of scenario that the Canada-US Cross Border Maritime Law Enforcement Program—known more commonly as Shiprider—officially aims to prevent. First introduced on an occasional basis in 2005 to respond to cross-border maritime crime and security threats, Shiprider recrafts binational cross-border maritime law enforcement through an unprecedented reconfiguration of jurisdictional practices that effectively "removes the international maritime boundary as a barrier to law enforcement" (RCMP 2014: n.p.). Shiprider vessels are jointly crewed by designated and specially trained RCMP officers and USCG officers who all have the authority to enforce both Canadian and American laws on either side of the international border under the host country's direction and laws. Under the consequential amendments to the *RCMP Act* contained in the 2012 *Integrated Cross-border Law Enforcement Operations Act*, specially trained USCG officers are designated as supernumerary special constables in Canada who enjoy the same enforcement powers as RCMP officers. In turn—though not entirely equivalently—Canadian officers are designated as US Customs officers working with the USCG, under the enforcement authority of the US *Code of Federal Regulations*. Whereas traditional cross-border jurisdictional practices require maritime law enforcement authorities of one nation to stop and if possible "hand off" a pursuit at the border, a Shiprider vessel can pursue and interdict vessels with "seamless continuity" across the border.

We are now quite used to preclearance programs that deterritorialize sovereignty by creating spaces of US sovereignty in Canadian airports, effectively extending the US border into Canadian space (Salter 2006). Shiprider goes even further. By empowering US officers to enforce Canadian laws, and vice versa, on either side of the border, Shiprider disconnects enforcement authority from both national territory and national sovereignty. Traditionally, national jurisdiction—understood as the authority to speak the law (Dorsett and

McVeigh 2012)—is deeply embedded in the continuously constituted relations of the legal trinity of nation-statehood: sovereignty, territory, and jurisdiction (Ford 1999; see also Pratt and Templeman 2018). Shiprider is a jurisdictional game-changer. It repackages this authority into a portable resource that travels with the shiprider through space and time within, across and beyond the territorial borders of the two participating sovereign nation states, as it patrols the marinescapes of the Canada-US borderlands (Pratt 2016). So, in contrast to the extraterritorial deployment of national sovereign powers in designated preclearance zones within another country's territorial border—as in international airports, for example—when American shipriders cross over the international border into Canadian territory, they effectively become Canadian RCMP officers who are empowered to enforce Canadian federal legislation for the duration of their presence in the country. Conversely, when Canadian shipriders cross over the international border into US territory, they effectively temporarily become American Customs officers who are empowered to enforce US Customs legislation. With Shiprider, not only is authority a portable and mobile resource but—simultaneously—sovereignty assumes a kind of spatial and temporal convertible quality like a cloak to be cast on and off by shipriders as they enter different national territories.

Scaling Up: Shiprider and the Unsettling of National Sovereignty

Different dynamics come into view depending on the scalar lens of the analysis. If we "scale up" our analysis to understand Shiprider in relation to national, transnational, and international developments, Shiprider's unprecedented reconfiguration of jurisdictional practices can certainly be regarded as a North American example of emergent transnational security arrangements within a shifting topography of border control that begins to decouple territory and sovereignty. It is by now well established that a new geography has accompanied globalization. Scholars have examined the emergence of sovereignty without territoriality (Appadurai 1996), spatial "boundedness" (Paasi 2009, 213), and "geographies of exclusion" (Hyndman and Mountz 2008, 250) that push borders beyond their official boundaries. Understood within the wider context of globalization and securitization, Shiprider's binational jurisdictional practices appear to be yet another example of transnational policing

arrangements that are escaping "from their earlier frame within distinctive national regimes" (Walters 2009, 2).

While distinctly one-sided Shiprider agreements between the US and Caribbean and Latin American nations have proliferated since the early 1990s (Brown 1997; Ferguson 2003 Robinson 2009; Watson 2003), USCG and RCMP authorities have offered reassurances that the Canada-US Shiprider Agreement is fully reciprocal and leaves the sovereignty of both nations intact (RCMP interview 2014; USCG interview 2014, 2015). Nonetheless, the steady expansion and securitization of increasingly integrated Canada-US border policies since the 1990s has often been regarded as signalling the erosion of sovereignty or the emergence of "new," "merged," "shared," or "dispersed" forms of sovereignty, effectively "conceding sovereignty to gain sovereignty" (Kent 2011, 803). Critics regard Shiprider as a threat to Canadian and US sovereignty insofar as it extends and connects the crime and security mandates of both nations, raising troubling questions, at the scale of the nation-state, about accountability, privacy and information sharing, due process, and civil rights (Gilbert 2007; Kitchen and Rygiel 2015). These are of course important and pressing concerns. However, were the analysis and the critiques to end here, much would be missed.

Scaling Down: Shiprider and the Local Enactment of Jurisdiction in Akwesasne

While Shiprider certainly displays globalizing and securitizing features, neither of these two broad paradigms shed much light on Shiprider's operations and effects in the local waterways of its patrols. To do this, we must "scale down" in our analytical focus. In 2006, on the west coast of Canada and the United States, the Shiprider program was piloted and now permanently operates in the Strait of Juan de Fuca and the Georgia Basin, waterways that flow through the Salish Sea and surrounding basin. Here, the traditional territory of Coast Salish peoples covers 72,000 km^2, which was divided in 1848 by the Canada-US international boundary that many Coast Salish people still refuse to recognize (Miller 2012).

At the same time, Shiprider was also piloted in the waters of the St. Lawrence River that flow through and around Akwesasne Mohawk Territory. In stark contrast to the language of "seamless continuity," here 140 km of waterway, including three rivers—the St. Lawrence, the Raquette, and the St. Regis—flow around some 432 islands through

Canada and the United States. These include the provinces of Ontario and Quebec and the state of New York, multiple municipalities within those, as well as 80 km² of reserve land that is part of the territory of the Akwesasne Mohawk Nation that extends across the St. Lawrence River and the international border to include the St. Regis Mohawk reservation in New York State. While often represented in policy and in mainstream media as a kind of lawless "black hole" (Kershaw 2006: n.p.), this region is actually thoroughly intersected by a host of varied and deeply contested socio-spatial boundaries, legal and quasi-legal regimes, and jurisdictional practices. Here, diverse national, sub-national, and transnational authorities—including both the settler-imposed elected band council and the traditional First Nations' governing bodies—operate at different overlapping and frequently conflicting scales.

These complexities require an approach that does not focus narrowly on the nation-state—the "default scalar setting" of much criminological and legal analysis (Valverde 2010, 240). The concept of interlegality (De Sousa Santos 1987) shifts attention toward the coexistence of multiple legal and quasi-legal regimes that operate at different scales (local, national, global, private, public) in the same spaces. To understand the nature, operations, and effects of Shiprider in this local "multi-layered jurisdictional patchwork" (Varsanyi et al. 2012, 138), it is necessary to attend to the "scope" of border governance effected through Shiprider, which includes both the "unpredictable interactions of governing orders working at different scales" (Valverde 2010, 240), as well as the jurisdiction that is deployed or claimed. The delicate nature of balancing these issues of governance and jurisdiction were cautiously alluded to by a CBP officer in 2017: "Akwesasne … it's just a very … it's a unique area. It has its own challenges in terms of jurisdiction and depending on what understanding you have of who, you know, who controls the particular waters or what laws are to be enforced in those areas—from whether it be a provincial, state or federal—so, I would say, conversations continue with the First Nations" (CBP interview 2017).

Were the analysis to end at the scale of the nation-state, or were it to be scaled up further to examine Shiprider as an example of emergent transnational policing arrangements and international governance regimes, it would be insufficient. Such an approach would effectively remove from view the specific ways that Shiprider's mobile patrols enact Canadian and American sovereign settler authority in

local contexts where binational border enforcement strategies transect Indigenous territories in which local communities contend with and refuse imposed colonial-settler boundaries that relegate their sovereignty to the historical past (Feghali 2013; Luna-Firebaugh 2002; Pertusati 1997; Singleton 2009). Shiprider was introduced at the level of national policy to combat the problem of cross-border smuggling in the marine environment. However, "smuggling" has long provided the occasion for the assertion, defence, and contestation of different versions of sovereignty through the deployment of jurisdiction (Simpson 2008). In contrast to the view that Shiprider represents a threat to Canadian (or American) sovereignty, when we scale down our analysis and endeavour to think jurisdictionally, we can begin to see the way that Shiprider patrols operate as a mobile marine jurisdictional technology of settler sovereignty that not only asserts but prioritizes state national and binational sovereign jurisdictions over and against Indigenous ones in the ongoing effort to order Indigenous people in space and time (Ford 2010). As summed up bluntly by one member of the Akwesasne community: "The only reason they wanted the Shiprider program was to figure out how they could get the native people" (Akwesasne Community Member interview 2016).

Finally, when we scale down and begin to unravel the jurisdictional games that are at play in the local terrain of cross-border maritime law enforcement on the St. Lawrence River, we can see how Shiprider is but one relatively small player. These games have been ongoing and involve a multitude of diverse national, subnational, and transnational land and marine settler authorities and partnerships, as well as varied forms of Indigenous governance systems, all of which operate at different, overlapping, and conflicting scales.

In the case of the Shiprider program, it is clear that "doing criminology at the borderlands," as we suggest, can help to produce accounts that unsettle our well-established methodological nationalism by scaling down to bring into view multiple and contested sovereignties.[2] In addition, the recognition that jurisdiction is not simply an abstract and technical legal construct but rather a collection of practices, directs important attention to what might be described as a dynamic, spatiotemporal "mash-up" (Valverde 2015, 50) of multiple actors and multi-scalar forms of knowledge, mutable powers, and dynamic practices that intertwine to enact jurisdiction in the daily frontline work of cross-border maritime law enforcement.

This sensitivity for doing research that decentres those categories and that pays attention to the interlegal and messy actualities of governance can also be productive in contexts that may be less easily understood as borderlands. In the next section, we turn to the multi-actor, multi-scalar, and multi-jurisdictional governing of unauthorized immigrant street vendors in Barcelona to show how a city itself can, in some ways, be a borderland.

Governing Street Vending: Urban Policing and the City as Borderland

Presentation of the Barcelona Case

> [Stopping street vendors from selling in the Port of Barcelona] should belong to the Port Police, but it's obvious that they don't have the effectives to do it. So they ask for help and the [municipal and Catalan police] go, and what we do is what is called "saturating." What does it mean? If [police] set up here, [street vendors] don't go, but they go there. Is it a solution? No … It's being always on the move, it's like a balloon that you squeeze here and it balloons there. But in a way it's about not leaving zones of impunity. (Barcelona Commissioner of Security interview 2016)

At first glance, urban policing of unauthorized street vending—a simple violation of municipal bylaws regulating the use of public space—seems much less spectacular and far more straightforward than chasing people defined as "smugglers" across international borders, as in the case of the Shiprider program. But Barcelona, much like any big urban centre, is crisscrossed by a number of symbolic, material, and jurisdictional boundaries, and much can be gained by studying the practices of the various actors involved as ways of performing the border, that is, as forms of borderwork.

Since 2015, unauthorized street vending has become a political issue in Barcelona after conservative journalists, the police, and some business people denounced the progressive municipal government for not effectively dealing with the presence of some four hundred to one thousand immigrant street vendors who make a living selling fake luxury purses, Barça football jerseys, brand-name sneakers, and

other goods to the nine million tourists travelling to Barcelona every year (Ajuntament de Barcelona et al. 2016). As a response to the criticism, elected officials devised a strategy aimed at dealing with what they saw as a problem of public order and public perception: a "tough-on-street-vending" discourse backed by a crackdown on Barcelona's street vendors—also called *manteros*, a nickname that comes from the blanket, or *manta*, on which they display their goods. While officials maintain that this policing work has nothing to do with immigration, the self-organized Union of Barcelona's Street Vendors has described these practices as manifestations of racial profiling, immigration control, and enacting borders.

Indeed, while selling products without the proper licensing is managed as a municipal bylaw violation, the issue is multilayered. Many vendors are recent immigrants from Senegal living in Spain in violation of the *Alien Act* (*Ley de extranjería*), and many sell knock-off copies of luxury-brand products, which is a criminal offence. To rid the city of its street vendors, authorities require the help of (a) Urban Police officers (Guàrdia Urbana) to repress bylaw violations, but also of (b) Catalan Police officers (Mossos d'Esquadra) to act as judiciary police and criminally prosecute the selling of counterfeit goods, (c) National Police officers (Cuerpo Nacional de Policía) to apply the *Alien Act* and prevent the import of counterfeit merchandise, and (d) Port Police officers (Policia Portuària) to intervene on the territory they control. *Manteros* thus find themselves at a juncture where various legislative frameworks intersect to govern their presence in the city and in the country.

Three Sets of Legal Intersections

As mentioned, the governing of street vending is primarily a matter of municipal law. The unauthorized selling of goods in a public space is a violation of section 70 of the *Bylaw on the Use of Streets and Public Space of Barcelona* and section 50 of the *Bylaw on Means to Encourage and Guarantee the Civic Sharing of the Public Space in Barcelona*.[3] So when municipal police officers claim that their work has nothing to do with immigration control, they are right: they have officially no authority over foreigners as foreigners. And yet they regularly set up checkpoints at the turnstiles of major subway stations to intercept African immigrants circulating with big blankets, tied up in the shape of a bag, which they use to carry their merchandise. *Manteros* have pointed out the material and symbolic similarities between

identity controls that are specifically targeting Black people at the exit of a transport hub leading to the downtown streets and traditional forms of border control. In fact, the Commissioner of Security for the City of Barcelona explained: "Now, in the first place, immigration is not … the *Guàrdia Urbana*'s responsibility, so we don't go around looking for people without status to deport them. This is a problem for the state. But it remains true that if in the course of our activities we find someone who's wanted or who doesn't have papers we bring this person to [the National Police's Alien Affairs Brigade] for them to do what they have to do. Most of the time. Every time there is a criminal offence, for instance" (Barcelona Commissioner of Security interview 2016). Here we can see the first set of intersections, between the Barcelona Urban Police applying bylaws and the Spanish National Police enforcing the *Alien Act*. While city administrators present themselves as pro-immigrant and critique some of the harsh consequences of the *Alien Act*, municipal police officers can nonetheless rely on the cooperation of their National Police colleagues to enforce this law as a strategy for intervening in a problem of everyday urban policing.

The fact that the Urban Police more readily contact the National Police's Alien Affairs Brigade when there are aggravating factors such as the commission of a crime is important, because the selling of counterfeit goods (such as fake Gucci bags or Nike shirts) is a criminal offence under Section 274 of the Criminal Code. This, technically, brings in a third police force as it is the Catalan *Mossos d'Esquadra* who are supposed to act as the main judiciary police and are brought in for the criminal prosecution part of the multilayered legal ordering of *manteros*. However, according to the Commissioner of Security:

> Those who should take care of this right now are the *Mossos*. But in fact, 90 percent of those interventions are conducted by the *Guàrdia Urbana*. Why? Because it's also a problem of public space, the commission of a criminal offense in a public space. … But it's like if you told me that someone is selling illegal substances in a public space and that it's a problem of street vending. It's not a problem of street vending. It's the commission of a crime! (Barcelona Commissioner of Security interview 2016).

Therefore, what the activity is called has an impact on who should be in charge of prosecuting it and, based on interest, police forces can

decide to bounce the "problem" to their colleagues or to claim jurisdiction over it. Asked by the city administration to refrain from criminally charging *manteros*, municipal police officers nonetheless train their own experts in identifying counterfeit goods because, while merchandise for sale without a permit can be seized until the owner pays a fine, counterfeit products will be destroyed as goods proceeding from criminal activity—and thus taken off the streets. The second set of intersections can be seen here, between the Barcelona Urban Police, applying bylaws and at times the Criminal Code, and the Catalan Police who are asked to be more active in exerting their authority as judiciary police.

Finally, there is a third set of jurisdictional intersections at play, one that is more territorial. At the bottom of the pedestrian street La Rambla lies the Port of Barcelona, an area where fancy yachts—small floating spaces under the jurisdictions of the flags they fly— and international cargo boats lower their anchors and where tourists go for sunny strolls. Ports are governed by the Spanish state, a power that is often delegated to autonomous communities, such as Catalonia, except in the case of "ports of interest to the state" such as the Port of Barcelona. Here, the Port Authority (Autoritat Portuària) and the Port Police are in charge. This geographic and jurisdictional border—separating the two sides of the street adjacent to the port along much of the seaside in the downtown core—means that the side of the street on which a *mantero* decides to sell their merchandise will determine who has the authority to intervene. This was strategically exploited by street vendors who, after being pushed out of La Rambla and the subway in 2015 and 2016, moved to the port area where the municipal Urban Police could not intervene without engaging in multi-corps interventions alongside Port Police officers. This strategy of evading control shows that *manteros*, too, are able to engage in jurisdictional games and make use of this border in the city to temporarily escape the authority of the municipal police—a strategy that reminds us of the example mentioned in the Shiprider case study of the "smart ass smuggler" mocking the US Coast Guard as he speeds into Canadian territorial jurisdiction (Kenny 2007, 1). This strategy only worked temporarily, however, until these multi–police corps operations were eventually deployed to force *manteros* to move again.

The Study of Interlegal and Multi-Scalar Terrains

For criminologists wanting to do work "at the borderlands" there are three important lessons that can be drawn from both of these vignettes. The first is that what we described cannot be captured simply as "crimmigration"—a criminalization or securitization of immigration (Stumpf 2006). Instead, both cases neatly display the analytical force of Boaventura De Sousa Santos's (1987, 288) observation that "socio-legal life is constituted by different legal spaces operating simultaneously on different scales and from different interpretive standpoints," so that "one cannot properly speak of law and legality but rather of interlaw and interlegality." This has consequences for how we think of legal—and non-legal—regulation and should encourage us to decentre criminal law.

The second lesson is that the traditional legal understandings that map jurisdiction in largely spatial terms—for example, as either municipal, provincial, or federal—hide the multiplicity and variety of spatio-temporal dynamics, authorities, and practices of governance that enact jurisdiction in the everyday. For example, when investigated more closely, Shiprider's jurisdictional practices are much messier than is implied by such representations of legal lines of authority. Similarly, while municipal law does play a role in the ordering of Barcelona's street vendors, we cannot simply reduce the city to the municipal. As suggested by Valverde (2009), the scale of the "urban" promises to better capture the complexity and heterogeneity of governance at play. Indeed, "[t]he urban is a myth, a desire and an ideal as well as a set of experiences; it is a kind of place, perhaps, but one that has a distinct temporalization; it is also a legal assemblage that has always been shot through with non-urban knowledges and powers and rationalities, both public and private" (Valverde 2009, 153). Like the waterways patrolled by Shiprider, the urban is also a site that is crisscrossed by dynamics that unfold at local, national, regional, and global scales, where governance is profoundly interlegal and, at times, transnational. Understanding both cities such as Barcelona and international waters such as those patrolled by Shiprider as multi-scalar terrains can help us to avoid the pitfalls of methodological nationalism without denying either the importance or the complexity of state power and violence.

Finally, the third and closely related lesson that we draw from our vignettes relates to the richness of empirical detail that derives from the local study of jurisdictional games at the borderlands. Investigations of the local enactments of jurisdiction round out our understanding of the complicated dynamics of governance at work in different contexts. For example, Akwesasne is commonly represented by a multicoloured map that displays the spatial bracketing of the different scales of federal, provincial, state, and First Nation's jurisdictions over the territory.[4] This spatial representation of legal lines of authority "from above" effectively conceals the dynamic mash-up of spatio-temporal jurisdictional authorities, powers, and practices that enact jurisdiction on the water. As explained by Valverde (2015, 84), as an "anti-politics machine," the legal technicality of jurisdiction hides from view "the substance and qualitative features of governance." What this means in the local terrain of Akwesasne is that urgent and hotly contested questions about the nature and effects of colonial territorialization, dispossession, and displacement are transformed into "seemingly mundane and technical questions about who has control over a particular spacetime" (Valverde 2015, 85).

In the example from Barcelona, the empirical investigation of local enactments of jurisdiction reveals the practices of dispersal policing (Walby and Lippert 2012) and forced mobility (Tazzioli 2018) in the everyday bordering practices of local actors. We often think of borderwork as a set of practices that aim to contain and immobilize. In many instances, this is the case. Border fences, identity checkpoints, immigration detention, all work in that way. But, as Tazzioli (2018) argues, borderwork can also rely on strategies of forced mobility. In the case of Barcelona, since it is not possible to fully eliminate *manteros* as there is a demand for what they sell and a lack of other jobs for many of them, authorities adopted a strategy of dispersal policing to limit big gatherings and to make street vending as invisible as possible, especially during the high seasons of tourism. The city official we quoted at the start of the Barcelona vignette compares the practice to squeezing a balloon: you put pressure on *manteros* in the subways, they must eventually disperse, and later they resettle on the Rambla. You then pressure them there and they end up going to the port. Eventually, he explains, you try to saturate the space with officers of various corps so that there is nowhere to set up for more than a few minutes. This is certainly a strategy of limiting access, but the dispersal policing on the streets and in the subways of Barcelona

is also premised on imposing a frenzied pace (Griffiths 2014) of forced mobility on *manteros* through multi-scalar and multi-jurisdictional moves involving multiple actors.

Conclusion

In this chapter, we argued that criminologists should try to decentre both criminal law and the nation-state to unsettle the "default scalar setting" of much criminological and legal research (Valverde 2010, 240). We suggested that this could be done by engaging in what we called "borderlands criminology"–that is, doing research that is situated at the crossroads of different legal and quasi-legal regimes, scales, and jurisdictions, which is careful not to reify any of them, while also being attentive to the interlegal and multi-scalar jurisdictional games at play in governance. This call for doing criminology at the borderlands emerges from our own work in "border criminology" (Bosworth 2017) and we offered two brief empirical vignettes from cases that we studied to illustrate what we have in mind. Even as our vignettes discussed the work of police officers who may mobilize criminal law, they also illustrated how municipal bylaws or immigration law may be more central to some strategies of legal regulation, how actors such as port authorities or custom officers also need to be considered, and how state sovereignty is a concept much less obvious than it appears.

As a contribution not only to this book, but to the field of criminology more broadly, this chapter can be read as an invitation to heed the encouragement, articulated some thirty years ago by Clifford Shearing (1989, 175), that criminologists cast off the "straight jacket of crime-ology" and its trappings to promote the broader enterprise of criminology as the study of social ordering. This is a clear challenge to criminology, but not one that questions its relevance. Instead, we should consider with Shearing (1989, 117) that "[c]riminology, in this sense, is a label like pottery. A potter makes pots and pots are an important feature of her business. But pots are not all she throws and no one who calls her a potter would think they are or should be." We invite criminologists to step outside the bounds of their disciplinary label to investigate the (b)ordering practices and processes that are at play beyond the national criminal justice system.

Notes

1 In this, our approach shares some common ground with Randy Lippert and Kevin Walby's (2019) approach to the study of "policing and security frontiers."
2 For a detailed discussion of the operations and effects of Shiprider patrols in Akwesasne Mohawk Territory, see Anna Pratt and Jessica Templeman (2018).
3 Respectively Ordenança de ús de les vies i els espais públics de Barcelona and Ordenança de mesures per fomentar i garantir la convivència ciutadana a l'espai públic de Barcelona.
4 For an example, see: https://blogs.mcgill.ca/humanrightsinterns/files/2015/07/Map.png.

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CHAPTER 2

Police Museums, the Naturalization of Colonial Conquests, and the Legitimation of Law Enforcement in Canada and France

Matthew Ferguson, Justin Piché, Gwénola Ricordeau, Carolina S. Boe, and Kevin Walby

As Stuart Hall (1997, 15) has argued, "representation is an essential part of the process by which meaning is produced and exchanged between members of a culture," shaping what is visible or invisible, what can be said or not, as well as what is remembered or forgotten (Bonnes and Jacobs 2017). These depictions maintain institutional hegemony, particularly in times of crises of legitimacy, when alternative ways of acting in the world that challenge dominant relations gain credence (Hall et al. 1978). Crises are a regular feature in "criminal justice" (Foucault 1975), prompting near-constant calls for reforms, accompanied by equally pervasive forays in representational work (Mawby 2014) to legitimate the public police, judiciary, and "corrections."

The latter has been the focus of much criminological research. Some working under the banner of "cultural criminology" have sought to demystify the naturalization of "criminal justice" to work toward other ways of conceptualizing and responding to criminalized acts (Brown 2009). Recognizing that images offer frames through which to make sense of phenomena, "visual criminology" has focused on how state and popular culture depictions of criminological issues (Brown and Carrabine 2017) structure ways of (not) seeing the material work of "criminal justice" (Schept 2014). Whereas much attention in criminology has been paid to cultural representations of

"crime" and "justice" in the news and entertainment media over the past half century (Doyle 2006), the study of depictions in museums and other penal tourism destinations is still developing (Wilson et al. 2017).

Our research examines the cultural work of police museums at a time when law enforcement work is more visible due to the rise of sousveillance and social media (Goldsmith 2010), and when police officers have again come under fire for longstanding practices such as use of force and the killing of residents (Lee et al. 2018), harassment of marginalized groups (Owusu-Bempah 2017), and corruption (Gutierrez-Garcia and Rodríguez 2016). Drawing on fieldwork done in Canada and France, this chapter explores narratives produced within national police force museums. The objective of this chapter is to examine these representations and explain what they tell us about how state agencies and related entities communicate about their past and present work. We compare sites in Canada and France because these museums are sites where the history of the police of two countries that are colonial powers—in one case related to state formation and the other related to the extension of power over other countries—are represented. As our analysis reveals, the similarities between the narratives in police museums from both countries are striking, which we argue reveals significant continuities in how law enforcement is legitimated, irrespective of jurisdictional focus.

Building on insights from penal tourism scholars, we argue that police museums attempt to quell crises of police legitimacy, foster solidarity between officers and citizens, and provide justifications for law enforcement work within the communities they claim to serve. We do so with an emphasis on how the museums' content reifies colonial violence enacted in the past and present as part of nation building in both countries. The content in the museums communicate prominent themes: the threatening "other," who is subject to control, and pacification meted out by heroic, mostly masculine figures. We conclude by proposing paths for the field of penal tourism to challenge the naturalization of "criminal justice" that legitimates insecurity and exclusion in the name of law and order.

The Criminological Significance of Penal Heritage Museums and Tourism

Museums emerged alongside other governance institutions, intended as nation building (Douglas 2017) and civilizing projects (Bennett 1995). Today, there is more substantive variation in museums as interest in heritage and tourism has grown (Harrison 2012), which some link to the technological and social changes of late modernity (Lennon and Foley 2000). While the viewpoints that inform and are conveyed through the content shared with visitors have also proliferated, museums tend to be conservative owing to their reliance on official narratives (Gordon 2008; Wilson 2008). Curating or staging content as authentic is a primary way of naturalizing the past into the present (MacCannell 1973).

The premises above apply to penal tourism sites, "where representations of those in conflict with the law and those employed to uphold it inform public understandings of 'criminal justice'" (Piché and Walby 2016, 7). The content and displays in these settings—whether focused on policing, the judiciary, or confinement—are staged, like other tourism sites, to be authentic (Walby and Piché 2015). This sense of authenticity is amplified when the penal heritage venues are located in decommissioned or operational police stations and headquarters, courthouses, or carceral institutions through encounters with the architecture, spaces, and objects integral to the past, present, or future of criminalization and punishment.

Like other tourism destinations, one of the drivers of penal tourism sites is the need to generate funding, including through attracting new guests (DesRoches 2015), which can result in content being oriented more toward entertainment than education (Ricordeau and Bugnon 2017). Such pressures can generate distorted depictions of phenomena by advancing reductionist representations of past events (Mendenhall 2010), offering accounts that emphasize sensational cases and the violence of the criminalized while downplaying the brutalities of the penal system (Wilson 2008), which are normalized by official accounts of state agents of social control (Pemberton 2008). By doing so, these destinations encourage voyeuristic engagements with penality (Ross 2015) that reproduce ideas about the necessity of imprisonment (Brown 2009). Like other cultural sites (Valverde 2006), these entities can thus serve to legitimize political and institutional

systems that reproduce existing power relations. It follows that representations are worth documenting, creating, and fighting for (Brown and Carrabine 2017), since they reflect and shape how people think (Brown 2009).

To date, most penal tourism research focuses on prison museums (Wilson et al. 2017) and the ways in which these settings make sense of punishment (Welch 2015). Yet there are also many other heritage sites where meanings of penality circulate, such as police museums. Ayana McNair (2011, 19) defines these sites as "museums dedicated to the recounting of police history and the preservation and exhibition of artifacts relating to policing." In these locales, visitors learn about past and present law enforcement, often encountering narratives that portray the work of police as heroic, legitimizing their role in society and assuring visitors of their competency, all without reference to scandals or corruption (McNair 2011). While these sites tend to disseminate pro-police narratives, of the many different types of museums around the world, some challenge such narratives by illuminating how police agencies participated in and carried out human rights abuses in previous eras. Numerous museums in Eastern European, Asian, and Central and Latin American countries are critical of authoritarian histories of the police under previous dictatorial regimes. For example, the Museo de la Memoria y los Derechos Humanos (Museum of Memory and Human Rights) in Santiago, Chile, draws attention to the atrocities committed by the Chilean state between 1973 and 1990 during the rule of General Augusto Pinochet (Opotow 2015). There are also museums that are critical of the history of policing under communism, such as the House of Terror in Budapest, Hungary, which is located at a former secret police headquarters, serving as a memorial to those who were interrogated, tortured, and killed in the building (Jones 2011).

Like prison museums, police museums have been described as "dark tourism" sites (McNair 2011). Dark tourism refers to sightseeing, vacations, and museums associated with macabre themes, such as death and suffering (Lennon and Foley 2000). McNair (2011, 4) suggests that police museums are sites of dark tourism because many use "implements of violence as a means of attracting visitors" and contain displays of weapons, holding cells, and shackles (also see Ferguson et al. 2019). McNair (2011) observes that many police museums are located inside police stations, which are often experienced by the criminalized as spaces of violence and suffering. Set

against the darkness of the past, such sites tend to be pro-police when they are affiliated with or founded by organizations that are currently in power (McNair 2011), which thus stand in contrast or opposed to defunct entities associated with the maintenance of authoritarian governments. Amy Chazkel (2012, 128) refers to police museums as "curious institutions [that] present the police and their contravention of illegal activity, past and present, to the public," while Amy Tyson and Andy Urban (2012, 8) suggest they "desire to display the personnel and physical institutions of law enforcement and to make visible and validate their social function." Chazkel (2012, 132) asserts that, "explicitly designed not to call the law into question," these police museums often omit perspectives that would cast police in a negative light.

While police museums exist "on every continent except Antarctica" (McNair 2011, 20), research exploring the representations found within these sites remains rare (Ricordeau and Bugnon 2018). The only region where police museums have been the subject of concerted discussion is Latin America, where police museums opened following the removal of authoritarian regimes (Milton 2015). Chazkel (2012, 1) explains that many Latin America sites were created at the beginning of the twentieth century to acquaint recruits and officers with the history and world view of their organizations. For instance, the Museo de la Cátedra de Medicina Legal de la Universidad de la Habana (Museum of the Chair of Legal Medicine of the University of Havana) in Cuba was established in the early twentieth century to train police officers by showing them the "tangible products of illicit behavior" (Bronfman 2012, 135). They were taught how tattoos, skin colour, and African-derived beliefs might serve as markers for someone engaged in suspect practices. The museum "contributed to a self-justifying and self-perpetuating logic that legitimized an enduring association of blackness with criminality" among police officers (Bronfman 2012, 135), who were the primary audience and suppliers of objects to the site.

Some police museums opened to the public during a period of twentieth-century police reform and professionalization to enhance the image of law enforcement (Chazkel 2012). In the process, these sites became another form of commercialized public entertainment and education for those interested in "crime" (see also Huey 2011). Lila Caimari (2012) explains that the century-old Museo de la Policía Federal Argentina (Federal Police Musuem of Argentina) in Buenos

Aires opened to the public when confidence in the police began to dwindle, providing visitors with a glimpse into the "hidden life" of officers so their actions could be seen favourably. Using staged relics of uniforms, guns, and illegal objects, the museum positions police officers as integral in the "triumph against the darkest forces" (Caimari 2012, 153) and fails to present "ways to understand deep sources [of 'crimes']" (Caimari 2012, 148). Similarly, three police museums in Mexico, established in 1985, 1991, and 2010 respectively, emerged to combat longstanding views held by the public that officers are corrupt, lazy, ignorant, and brutal (Buffington 2012). Rather than concern themselves with historical accuracy, the museums "seek to obliterate a too-well-remembered past that troubles the present and threatens to overwhelm official attempts to give birth to an unencumbered future" (Buffington 2012, 158) through multiple strategies, such as displays of institutional competence and officer sacrifice.

Among the few scholars who have studied police museums outside of Latin America, Jean Comaroff and John Comaroff (2004) argue that the now-closed Pretoria Police Museum in South Africa exemplified a key technique used to produce social order and present the state as a legitimate entity. Opening in 1968 as a "haphazard collection of relics" (Comaroff and Comaroff 2004, 811), the museum presented the history of "crime" and punishment to conjure up terror among visitors. In the 1990s, the museum created an event called Night Tours, which was "part amateur theater, part fairground haunted house" (Comaroff and Comaroff 2004, 813), seeking to induce horror among patrons by sensationalizing "crime" and having the police "save" them from the dangerous people said to stalk Pretoria streets.

While existing research on police museums highlights the role these cultural institutions play in legitimizing law enforcement and nation building, little attention has been paid to depictions of internal and external colonialization involving land expropriation, displacement, resettlement, civilizing projects, the imposition of law and of economic orders, and criminalization and punishment (Ypi 2013) in these settings. By comparing police museums in Canada and France, we study cultural representations of policing relating to different colonial conquests. In Canada, colonization was integral to its founding as a nation and remains an ongoing process (Nettelbeck and Foster 2013), whereas France's colonial conquests outside of its borders have diminished, though still having important consequences today.

Police Museums in Canada and France

There are at least forty-eight museums in Canada containing exhibits on police. Among these are seventeen museums located inside or nearby police stations that are fully dedicated to police history, such as the Toronto Police Museum and Discovery Centre (Ferguson et al. 2019). There are also at least thirty-one historic police outposts that have been transformed into small heritage sites, including the Rotary Museum of Police and Corrections in Prince Albert, Saskatchewan, that also addresses the city's history of confinement (Chen et al. 2016). Additionally, while not labelled as police museums, there are at least ten multidisciplinary museums and interpretive centres containing exhibits dedicated to law enforcement, such as the Duck Lake Regional Interpretive Centre in Saskatchewan where policing, imprisonment, and other themes are explored (Fiander et al. 2016).

The number of police museums in Canada is tied to the role law enforcement played in nation building. Over thirty of these sites showcase the history of the Royal Canadian Mounted Police (RCMP) and its precursor, the North West Mounted Police (NWMP), founded in 1873, six years after Canada's founding. The NWMP was integral to the expansion of the nation's territory beyond its founding provinces (Nova Scotia, New Brunswick, Quebec, and Ontario), enforcing colonial order as new provinces and territories joined the confederation. Their "March West," represented in historical sites across western Canada, is examined by Amanda Nettelbeck and Robert Foster (2013), whose work highlights the emergence of a "critical historiography" gaining prominence in recent decades, which challenges the national narrative of the NWMP conquering the West through co-operation, rather than violence. This critical history emphasizes the role of the NWMP as a "colonial instrument of Aboriginal surveillance and containment" (Nettelbeck and Foster 2013, 77). The sites they explore include the RCMP Heritage Centre in Regina, Saskatchewan and Fort Dufferin in Emerson, Manitoba, along with many murals in public settings. Nettelbeck and Foster (2013, 87) found that in the vast majority of these locations, the history of Indigenous communities is shared together with the NWMP "as part of an enduring story of cross-cultural negotiation and mutual respect." The only sites they studied that incorporated aspects of critical historiography were the Glenbow Museum (an art and history museum in Calgary, Alberta) and the

interpretive centre at the Fort Walsh National Historic site (in Maple Creek, Saskatchewan). The large number of police museums that "confirm rather than challenge the national mythology of gentle occupation" (Nettelbeck and Foster 2013, 89) suggests that most of these sites whitewash the harms of Canadian state formation and colonialism.

France has few police museums, in contrast to Canada and North America, as well as its neighbours in Europe (notably the United Kingdom). Although the country has many museums of all kinds, only a few sites are dedicated to memorializing the history of policing and the judiciary. Among these, one is the Musée de la Gendarmerie et du cinéma (Museum of the Gendarmerie and Cinema) in Saint-Tropez, which focuses more on cinema and the comedic movie series *Le Gendarme,* than policing itself. Another museum is dedicated to the Compagnies Républicaines de Sécurité (Republican Security Companies), which is a specialized unit of the national police dedicated to the maintenance of security and public order. A few military museums also touch upon law enforcement, including the Musée de l'Armée (Army Museum) in Paris and the Musée des Transmissions (Signal Museum). However, only two museums in France can be truly labelled as police museums, as they are both fully dedicated to policing organizations: the Musée de la Préfecture de police de Paris (Paris Prefecture Police Museum) and the Musée de la Gendarmerie nationale (Museum of the National Gendarmerie). To date, research on the former has been limited to a brief mention in one publication (Sinoquet 2014) and to a review of its collections (Fuligni 2015), while no studies have, so far, been conducted concerning the latter.

In studying French and Canadian police museums together, we identified, through a thematic analysis of the textual and visual exhibits observed during site visits, a few museums which are committed to showcasing how police contribute to the extension of their respective nation states and the safety of citizens. We selected two Canadian sites—the RCMP Musical Ride centre in Ottawa, Ontario, and the RCMP Heritage Centre in Regina, Saskatchewan—in addition to the two previously mentioned French sites—the Musée de la Préfecture de police de Paris, and the Musée de la Gendarmerie nationale, in Melun—where themes of nationhood and colonialism are prominent. In so doing, we aim to demonstrate how police museum narratives and the aspects of law enforcement that they represent or obscure in fact echo how law enforcement is rooted in nationalism.

(In)visibility of Law Enforcement Harms in Police Museums across Canada and France

Below, we examine trends in four police museums or information centres in Canada and France, based on "walk-through" descriptions. Notably, public police are represented as national heroes, champions of citizens, and upstanding characters. However, just as important are the missing representations of colonial violence and state power.

The RCMP Musical Ride centre is situated on the grounds of the Canadian Police College, a large training academy and educational centre for members of the Canadian and international policing community operated by the RCMP in Ottawa. Short tours of the centre and grounds are available and often taken by tourists of all ages from Canada and abroad. Children and youth are a central audience at the site, and the numerous recruitment posters found in different sections of the centre that encourage applications to the force seem to be directed at this audience. The posters emphasize belonging to the storied tradition of the organization (e.g., "A uniform with your name on it is waiting for you") and the many career specializations afforded to its officers. Tour guides also lead groups into the large indoor arena where training occurs for the Musical Ride, popularized as "ballet on horses" (Daro 2015), which involves RCMP officers performing routines meant to show off their cavalry skills. Performed for public audiences in many cities across Canada every year and occasionally elsewhere in the world for special events such as Queen Elizabeth II's ninetieth birthday (Cotnam 2016), the Musical Ride further adds to the storied tradition.

Operating year-round with no charge for admission, visitors enter the centre through "The Mountie Shop," which sells RCMP-themed items and Canadiana, including stuffed animals and other toys, clothing, figurines, and mugs. The kiosk in the centre of the room is emblazoned with an RCMP crest that is also the current regimental badge. A crown denoting Canada's membership in the British Commonwealth is positioned at the top of the crest. Below, an oval shape frames the head of a buffalo, symbolizing the country's "March West." The RCMP's motto, *Maintiens le droit* (Uphold the law), surrounds this central image, and the organization's name is written across the bottom. Next, visitors come across a large stuffed toy caribou that is dressed in the forces ceremonial red serge, black pants, and brown boots; it sits on top of a large

stuffed horse. Beyond the gift shop is a room dedicated to discussing, as the signage reads, "The RCMP Today and Beyond." Poster boards and photos line the sides and middle of the room, which also contains a few display cases with mannequins in operational and ceremonial police uniforms, as well as a bomb disposal suit made by a local manufacturer. Among the poster boards is content dedicated to "Air Services," "Marine Services," the "National DNA Data Bank of Canada," "Crime Scene DNA," "CBRNE [Chemical, Biological, Radiological, Nuclear, Explosive] Operations," "Protective Policing," "Fingerprinting," "Behavioural Sciences," the "Police Dog Training Centre," the "Emergency Response Team," "Human Trafficking," "Border Integrity," "Drug Initiatives," "Inside an RCMP Counterfeit Investigation," "Technological Crime," "National Aboriginal Policing Services," "International Policing," the "National Youth Strategy," "National Security," and "Organized Crime." The displays convey that the world can be a dangerous place and that the RCMP has the means at its disposal to keep Canadians safe. Pasted all across the room on the bulkheads near the ceiling are the words "Responsibility," "Honesty," "Accountability," "Respect," and "Professionalism." Nowhere in this exhibition room or elsewhere in the centre is there any mention of the many controversies that the RCMP have been or are currently embroiled in—such as recent revelations about its misogynist and toxic work culture (McKay 2014).

In the next room visitors are drawn to a television that plays a video of the RCMP Musical Ride in action. On either side of the television, computer screens roll out a slide presentation about the RCMP's work and photos of a member on horseback with a Canadian parliament building in the background. Besides these focal points, there are also more poster boards, including one dedicated to the "Musical Ride Tour," and a display about the "RCMP Foundation" that works with "youth at risk." Two display cases work as dedications, one to Commissioner S. Z. T Wood, who started the RCMP Musical Ride, and the other commemorating the life of Constable Bruce Denniston, who died of cancer in 1990 (this display notes that the Bruce Denniston Bone Marrow Society was founded to raise awareness and money to find matches for bone marrow transplants). Visitors entering this sparser exhibition space are surrounded by symbols of nationalism, while being exposed to the charitable work of RCMP members. This content works to soften the image of the organization, avoiding its more contentious history (Monaghan 2013a, 2013b) and camouflaging its paramilitary structure.

Displays about the RCMP Musical Ride continue in a fourth exhibition room. A timeline of the RCMP and the origins of the Musical Ride contain several pictures (one of Mounties working with horses) that convey the deep connections the organization has to the land, while obscuring its role in the often violent colonization of the territories that became part of Canada at the expense of Indigenous peoples. As with historic RCMP and NWMP sites in Western Canada studied by Nettelbeck and Foster (2013), the Ottawa information centre plays up Canadian nation building as a project of peace and cooperation rather than of force and violence. This is captured in a painting by an exit door of two Indigenous men and a male NWMP officer, all riding on horseback, seemingly in friendship, through a prairie field. Visitors also learn about "The Royal Connection" between the Musical Ride and Canada's current monarch, Queen Elizabeth II. Tourists encounter the halter and replica of a horse named Burmese, which the RCMP gifted the Queen, and which she rode for a number of years. Horse-drawn carriages used for foreign dignitaries are also on display, including "The Landau" near the back of the building, which remains in use. Canada is rendered synonymous to its connection to the British Crown, just as Mounties on horseback are positioned as the quintessential symbol of the country (Sangster 2015). The collections within the Musical Ride centre connect the RCMP's present role in protecting the nation-state and its citizens to its past role in settling "our home and native land" (or rather: "our home on Indigenous land").

The RCMP Heritage Centre is located on the grounds of the RCMP Training Academy, "Depot" Division, established in 1885 in Regina, Saskatchewan. Like other museums tied to police academies that are meant to generate loyalty to the organization and solidarity between its members in training (see Chappell and Lanza-Kaduce 2010), the centre's principal audience is made up of RCMP cadets, who are educated about the national police force's legendary past and its present operations. The public has limited access to the site through a small bus tour showcasing select areas and the Heritage Centre, which is thus the main area where visitors engage with representations of RCMP officer work.

The main hall of the centre features a total of six exhibition spaces. The first gallery focuses on the establishment of Canada and (as the signage declares) "Creating a Mounted Police." The second gallery addresses "Maintaining Law and Order in the West," with a

focus on the NWMP, and Indigenous and Métis peoples on the prairies. One wall is dedicated to the Métis Resistance of 1885, while another addresses the relationship between Canada's railway and the NWMP. The third gallery, titled "Protecting the North," addresses the period of the gold rush era in the Northwest Territories (1890s to early 1900s), along with the role of the RCMP in the North in the latter half of the twentieth century. "Serving All of Canada," as the fourth gallery is named, covers the years of the First and Second World Wars, as well as the changing nature of Canadian society and the RCMP throughout the twentieth century. The fifth gallery, "Preserving the Tradition," focuses on the Musical Ride and the role of horses in the RCMP. The sixth gallery, titled "Cracking the Case," invites visitors into a mock "crime scene" investigation and depicts how RCMP investigators use forensic techniques. At the end of the long hall, there is a virtual-reality training car, a mock depot bunk for the cadets, and a dressing room where people can try on Mountie coats and hats. In these final displays, visitors are invited to position themselves as RCMP officers and to take pride in doing so. There is also a gift shop near the entrance where visitors can purchase RCMP-themed sweaters, shirts, hats, and cups, as well as Mountie costumes, fake police badges, and plastic riot gear helmets for children.

The Heritage Centre is organized to preserve the legacy and boost the image of the RCMP. The first large mural visible when one enters the space is of a Mountie on horseback overlooking a great expanse. This image not only reproduces a pervasive colonial trope used to justify dispossession and violence perpetuated against Indigenous people: the idea of *terra nullius* (empty land) to be tamed and settled by newcomers. It also symbolically positions the red-coated Mountie as "standing on guard for thee"—perpetually vigilant to protect the nation. The signature red coat-on-horseback has long circulated through Canadian lore in multiple cultural forums, which romanticize and naturalize the colonial experiment and mindset, rather than focus on the colonial violence present in NWMP and RCMP control of Indigenous peoples. In a study of novels and other texts, Candida Rifkind (2011) asserts these materials are colonial and imperial in intent.

In the Heritage Centre, the pitfalls of the militaristic orientation of the RCMP are downplayed, mirroring other cultural, mythical representations of the Mountie, including movie posters and other relics on display in the museum. The narratives are almost entirely positive.

Even when controversial issues are addressed, the RCMP officers are portrayed as upstanding. For example, while the Front de libération du Québec (FLQ) crisis is mentioned in one plaque, the RCMP's involvement in political policing, infiltration, planting fake bombs, and other questionable practices is omitted (Brodeur 1983; Hewitt 2018). The dissolution of the RCMP Security Service is not described as such. The professionalism of the RCMP is never called into question. Similarly, when it comes to the 1885 Métis Resistance, the Mounties killed are described as heroic nationalist patriots, while the Métis are described as creating the uprising. There is no description of Indigenous and Métis rights, such as that of self-determination. RCMP officers are most often depicted as upstanding citizens, as keeping people safe, as impartial, or as fallen heroes.

According to the curator on site during our fieldwork, a goal of their heritage work is to imbue in new Mounties and their families—the primary audience of the museum—a sense of pride and *esprit de corps*. After a tour, cadets are tested via the "Blues Challenge"[1] on their historic knowledge of the RCMP. The main audience of the museum, who are at the beginning of their careers in the RCMP, provides a core explanation of why the displays are overwhelmingly positive and devoid of any problematic details. These representations mirror longstanding depictions of Mounties that have international resonance. Sangster (2015) suggests that cultural productions such as movies and television shows reproduce Mountie myths, as well as notions of masculine bravery and order (see also Hewitt 1996). The RCMP have sometimes been involved in advising on these cultural productions and the messages that they convey (Sangster 2015). However, these productions tend to misconstrue colonialism, along with the violence and control that the RCMP have and continue to exert against Indigenous peoples. While the museum claims that the RCMP protects Canadians, many citizens—especially Indigenous communities—do not share this interpretation (Comack 2012). The myths depicted are as much to convince Mounties-in-the-making of the RCMP mission as they to convince the public of the organization's legitimacy.

Stephen Perrott and Kevin Kelloway (2011, 120) argue the RCMP is "arguably the most revered and iconic of all Canadian institutions." However, a crisis has befallen the RCMP because of a militaristic and authoritarian management structure, along with an identity crisis with respect to Mounties' roles, including whether they are primarily

a national police force or an entity principally oriented around providing contract policing in certain municipalities, as well as provinces and territories.

The arrangement of the narratives at the RCMP Heritage Centre mirror those at other police museums. Officers are portrayed as upstanding heroic persons. There are no representations of any historical wrongdoing by the RCMP—the lawsuits against the force by its own members over sexual harassment and bullying (Houlihan and Seglins 2018), the questionable deaths that its officers have been involved in (Oriola et al. 2012), or the wrongful convictions that they have generated (Anderson and Anderson 2009). RCMP malpractices and crises are avoided as topics. From the pithy content at the RCMP Heritage Centre and the RCMP Musical Ride Centre one would never know that, in the twenty-first century, public trust in the RCMP is low (Sherlock 2011). Both centres fail to reveal the fuller story.

The two French police museums, like their Canadian counterparts, also focus on the histories of prestigious policing institutions through exhibits that silence controversies related to past and present policing practices. The origins of the Musée de la Préfecture de police de Paris can be traced back to the 1900 Paris World's Fair, where the force shared its techniques with visitors. In 1909, the Lépine administration established a museum, which later came to include several new private collections assembled by former police officers. In 1974, the museum was housed in the headquarters of the Préfecture de police located in the centre of Paris. Today, access to the Musée de la Préfecture de police de Paris requires visitors to pass through the reception area of a police station, still in use and located in a precinct in the centre of Paris. The visitors are then directed toward a flight of stairs leading up to the collections in the rooms above the station. The site was renovated in 2013, following the move of the police archives to the Paris suburb of Le Pré-Saint-Gervais. In this period of transition, the museum itself became smaller, downsizing from two floors to one. As part of its public engagement efforts, the museum produces and distributes free brochures, a guide to "crime" novels centred in Paris, and a booklet for children. It also includes a small gift shop.

In contrast to the smaller and older site of the Paris police museum, the Musée de la Gendarmerie nationale in Melun opened recently, in October 2015, and is located in large, newly renovated buildings. Priding itself on featuring the largest suspended showcase

in Europe that is publicly accessible, the museum is organized chronologically on two floors, one dedicated to the historical period from the Hundred Years War to the nineteenth century and the other from the nineteenth century to the present day.

In the first section, most objects on display were made later than the pre–nineteenth century period they are meant to illustrate (e.g., modern models of historical events, watercolours and lithographs from the late nineteenth or early twentieth century), and no original documents are on display, only photographs or other reproductions. By contrast, the objects found in the Musée de la Préfecture de police de Paris are mostly original pieces that were donated by former police officers, many of which are more unusual and sometimes even of a sordid kind—such as a paperweight made with debris from the anarchist attacks of the early twentieth century or a lock of hair taken from the head of Jules Bonnot, an anarchist killed in 1912 during a police raid at his home. Like the Musée de la Gendarmerie nationale, the museum dedicated to the Parisian police also reaches back through history, but does so across five themes: "History of the Parisian police,"[2] which traces the early history of the police to thirteenth-century urban militias, "Crime and punishment," "Paris at war," "Jobs at the police prefecture," and "Police science and techniques." Some parts of the museum address past facts with the implication that they are no longer relevant. For instance, the differentiated management of illegalisms (Foucault 1975) or the fact that the judicial system deals unequally with litigants is mentioned in the section dealing with justice under the old regime, which arguably continues to this day. Another example is content concerning the guillotine, which is exclusively associated with the revolutionary period despite its continued use in France until 1977 and the persistence of the death penalty in the country until 1981.

Both museums highlight individual and collective exploits. At the Musée de la Préfecture de police de Paris space is dedicated to the memorialization of police officers who proved honourable during the Nazi occupation and to the liberation of the police headquarters by its officers in August 1944. Similarly, the Musée de la Gendarmerie nationale highlights the participation of gendarmes in the resistance and in the many battles they fought during the revolutionary and Napoleonic wars.

Both the French museums also highlight the scientific expertise of their respective forces. The Musée de la Gendarmerie nationale

focuses on assistance and rescue functions of its officers, and displays scenarios of mannequins dressed as gendarmes taking scientific samples at an accident scene or wearing gear that allows them to listen to emergency calls received by the Centre d'opérations et de renseignement de la Gendarmerie (Operations and Information Centre of the Gendarmerie), also known as the CORG. Museum staff place considerable emphasis on this mission of the Gendarmerie. During our fieldwork, a research team member was approached by a volunteer at the museum, a reservist constable, who repeated several times, "For us, it's important to show that we don't just give tickets."

The Musée de la Préfecture de police de Paris does delve into its participation in the ordering of the Parisian urban world through content dedicated to the less sensational aspects of police work, such as the harmonization of street signs. However, both sites highlight less mundane facets of the policing profession with displays dedicated to infamous cases or characters, whether they be officers, "criminals," or "terrorists" who inspired many novels or film productions. The Musée de la Préfecture de police de Paris also offers a section dedicated to the excellence of the technical and scientific aspects of policing dating back to Alphonse Bertillon and the development of judicial anthropometry at the end of the nineteenth century. Yet there is silence about the use of these techniques to identify and repress or deport certain populations (e.g., Roma and Jewish people).

As in the Canadian case, both museums in France tend to render invisible the repressive functions of police. When these are addressed in the Musée de la Préfecture de police de Paris, it is through sections dedicated to the repression of infamous "criminals" and anarchist groups of the nineteenth century, or, in the case of both the French museums, the civil unrest of May and June 1968, "establishment narratives" (Wilson 2008) justify police action. This is evident in the titles of two lists included in one of the exhibits at the Musée de la Préfecture focusing on the costs of political resistance, entitled "May '68: The balance sheet and costs of depredation" and "Those wounded in the service of order during the demonstrations of May and June 1968." While the costs of political insurgency are noted, the consequences of political repression by police stemming from three major episodes in France's history—colonization, the Second World War and the Algerian War of Independence—are left unaddressed.

The Musée de la Gendarmerie nationale is characterized by an almost total absence of criticism of colonization, along with the

minimization of the force's participation in it. Instead, the focus is on the geographical areas—labelled simply "Asia" and "Africa"—in which they operated. In the case of "Asia," this minimization is clear because of the two anecdotal stories shared with museum visitors. In "Ursula and Camille: Love and the national interest," reference is made to Salima Machamba (1874–1964), also known as Ursule, Queen of Mohéli, an island in the Comoros archipelago. While her story is compared to those who "marked history with their mythical passion," the fact that she was forced by French authorities to give up her kingdom to be able to live with the Gendarme Camille Paulo and never obtained the compensation she had been promised, ultimately dying in poverty in the countryside of metropolitan France is omitted (for her biography, see Nivois 1995).

The Gendarmerie's participation in French colonization in Africa and Algeria follows a similar storytelling pattern. One display is dedicated to Gendarme Gilbert Godefrois, who died in 1958 in the south of Barral as part of the war waged by the Algerians. The museum honours his dog, Gamin, the first animal decorated with the medal of the Gendarmerie, thus evading the human responsibility for waging war to quell political liberation efforts, while casting Algerians as "outlaws" instead of people seeking their freedom and autonomy.

In addition to these individual stories, spaces devoted to the colonial period dwell on the adaptation of clothing to the often tropical climate of colonized countries. For instance, when focusing on the evolution of the kepi, there is no discussion on how this item symbolized colonial power. Yet the evolution of outfits is presented as steps forward and to the credit of the institution. The exhibited photographs often show gendarmes surrounded by locals or deputies, peaceful scenes that do not overtly reveal colonial violence. The fact that the white-skinned gendarmes were often given a seat while the darker-skinned colonial subjects were required to stand for the photographs, goes unmentioned.

Overall, the exhibition documents lack critical contextualization. The number of gendarmes who died during the Indochina War is counted, but not the number of colonial subjects who lost their lives fighting alongside them. Similarly, the "Indigenous supporters" and other local collaborators of the gendarmes occasionally mentioned in the texts featured at the museum are not the subject of biographies. While the temporary exhibition "Gendarmes of the World," (October 2017–July 2018) clearly showed how the gendarmeries

operated in places subject to French colonization, such as Algeria, Burkina Faso, Cambodia, Djibouti, and so on, there is no mention of the ways colonization contributed to the institution's development of policing practices.

The two museums' treatment of another historical period deserves special attention: the Nazi occupation of Paris during the Second World War. Several strategies are deployed by the Musée de la Gendarmerie nationale to minimize the gendarmerie's and its officers' responsibility during this period. Indeed, the museum text downplays the gendarmerie's active role in the deportation of Jews and other marginalized populations during the period by insisting that they merely complied with orders (e.g., "The gendarmes were ordered to search for resisters"). The only mention of their Nazi complicity in the museum is made through the mention of President Jacques Chirac's speech on July 16, 1995, during the commemoration of the Vel d'Hiv arrests, when he acknowledged that French authorities were responsible for the deportation of Jews.

The museum offers little reflection on the incorporation of difference (in terms of class, gender, race, or sexuality) within the gendarmerie, apart from a section on the social mobility of the poor who were able to enter the force and the section that explains how colonial subjects were recruited to become gendarmes. The policing profession as presented seems predominantly male. Only a single small sign in the last dark corner of the Musée de la Gendarmerie nationale recalls that women were incorporated into the organization starting in 1983—which is very little visibility for thirty-five years of official involvement. Disappeared from view, except through the story of Ursula, are the contributions of the wives of gendarmes, who also faced the hazards of a life in the barracks punctuated by regular moves. This contrasts with the exhibit of a Black female mannequin near the ticket office and entrance of the museum, who was dressed in the clothes of the Dutch gendarmes as part of the temporary exhibition Gendarmes of the World.

Like the RCMP museums discussed above, both French sites target young audiences. Not only is space made for children of police officers, including posters showcasing the works of the orphans of the prefecture, the staircase that leads from the Paris police station to the museum is decorated with children's drawings of police in action. The iconography presented resembles that of American cinematographic representations of law enforcement, with a focus on their

uniforms and cars in the French policing context. These museums welcome and are popular with school groups; at the time of this research, there was a minimum three-month waiting period for school groups to access the Musée de la Préfecture de police de Paris. The gift shop at the Musée de la Gendarmerie nationale targets kids and adults alike, with items for sale that underscore the scientific aspect of the policing profession, through kits, games, and books. Sometimes these toys are presented alongside figurines of pink-clothed princesses targeted toward little girls in a way that suggests they are less likely to become gendarmes than boys, revealing the underlying and unproblematized gendering that policing organizations replicate. The orientation toward youth illustrates how police organizations use museums to secure their future by preserving selective aspects of their respective histories.

Resisting the Cultural Production of Insecurity and Exclusion

In our analysis of four national police museums in Canada and France, we observed an absence of representations that call into question the expansion of territory and the role of law enforcement in such violent and racist expropriation endeavours (Nettelbeck and Foster 2013). Likewise, the paramilitary structures of the organizations are revered despite their role in stifling police reforms (Deukmedjian 2008). These sites focus on changing police technologies, as if the integration of scientific discoveries necessarily translates into better policing outcomes for affected communities. Moreover, all the sites examined focus on public safety threats and how law enforcement works to neutralize them, attempting to establish legitimacy for policing while erasing the crises plaguing their respective police forces. For anyone aware of the many scandals facing these organizations, including the under-representation of women who endure discrimination and other abuses within the profession (Kringen 2014), the silence is deafening. In these cultural spaces where police officers are depicted as honourable there is little to no room made for individuals and marginalized groups victimized by law enforcement.

Given the representations made (in)visible in police museums, we echo Ian Taylor's (1986) call to demythologize policing. We have done so by drawing attention to how these heritage sites attempt to build legitimacy and sympathy for law enforcement through museum displays. While descriptive work informed by cultural and visual

criminology is necessary, criminologists studying cultural representations need to also find pathways to engage in critical punishment memorialization that privileges the voices of the criminalized and reveals the perils of punitive ways of responding to "crime" (Fiander et al. 2016). Criminology can contribute to activism against police brutality, such as many forms of cop-watching (e.g., Comité vérité et justice pour Abdoulaye Camara 2019), by broadening its focus to memorialize and commemorate victims of policing. Another way to achieve this is by supporting the creation or promotion of exhibits that privilege these critical perspectives. For example, an exhibition titled "Shame and Prejudice: A Story of Resilience" is currently on a three-year national tour across Canada, which the curator referred to as the "dark side" of this country's history (Hendra 2018). Among the text, objects, and artwork on display is a painting called *The Scream* by Cree artist Kent Monkman, which depicts Indigenous children being violently ripped away from their mothers by RCMP officers. This dark side of law enforcement, which police museums often ignore and therefore make disappear, require others to shine some light. In this way we can disrupt the forms of insecurity and exclusion all too evident in the lives of those targeted by police forces and their officers.

Notes

1 The reference to "Blues" references to police officers serving as the thin blue line between order and chaos.
2 We refer to content that was originally in French in the museum exhibitions in Paris and Melun. For the purposes of this paper, we have translated short passages into English.

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CHAPTER 3

Speaking Out of Turn: Cutting through Monologues of Exclusion and Partisanship

Maritza Felices-Luna and Anouk Guiné

Critical criminology in its many forms (e.g., feminist, anarchist, radical, Marxist, post-structuralist, pragmatist, etc.) positions itself as a critique of power; works against practices of individualization, differentiation and normalization; and expands the confines of the discipline beyond crime and punishment (Frauley 2008; Garland 1992). Critical criminologists offer up counter-discourses to hegemonic discourses[1] produced by mainstream criminology[2] and, in doing so, often face attempts to undermine their research. Although there is an extensive literature on mechanisms used within academia to police the production and circulation of counter-hegemonic knowledges, there is little discussion on how other institutions contribute to such policing.

To dismantle the ways in which counter-hegemonic knowledges are silenced we need to describe and analyze the manners and mechanisms through which it takes place. Researchers working on sensitive or controversial topics that challenge hegemonic knowledges have experienced backlash from within academia; they have been confronted with the possibility of legal action, and have even received threats to their personal safety. While researchers tend to share these experiences with colleagues and students informally, this chapter seeks to move such discussions from a private forum to a public one and reframe what is taken as anecdotal conversational pieces to empirical material. This chapter is therefore an invitation to reflect on how practices of knowledge dissemination are hindered and how researchers are policed when producing counter-hegemonic knowledges.

The chapter builds on Joane Martel's (2004) analysis of her own challenges in disseminating the results of her qualitative research on women in prison by identifying formal and informal ways academia, media, NGOs, interest groups, and the state attempted to disrupt the dissemination of counter-hegemonic research on women's involvement in the Peruvian internal armed conflict that began in May 1980. It draws on personal recollections and field notes, newspaper articles, and social media publications, as well as formal communications with diverse institutions, organizations, and individuals with whom we communicated during the organization of a series of events geared towards the dissemination of counter-hegemonic knowledges on women's involvement in political violence. Knowledges shared during the events challenged two distinct hegemonic discourses on the Peruvian armed conflict and questioned the way most researchers tend to study women's involvement in armed conflict.

The first section presents the hegemonic discourses surrounding women's involvement in armed struggle we wanted to challenge through the organization of a series of knowledge dissemination events. It problematizes the way in which mainstream scientific literature[3] (re)produce essentializing tropes that disregard insurgent women's agency and their politics, while excluding them from the conversation (Felices-Luna 2007; Sjoberg 2013). The second section presents the opposing hegemonic discourses on the Peruvian conflict and analyzes how they encumbered attempts at open dialogue and hampered the production of critical analyses regarding the Peruvian conflict through the marginalization, stigmatization, and silencing of non-aligned researchers. We conclude by highlighting that successfully disrupting and decolonizing hegemonic monologues requires researchers to continue generating spaces for dialogue and public discussion, despite the potential for state repression and academic repercussions.

Marginalizing and Exclusionary Tropes within Scientific Literature on Women in Armed Struggles[4]

Since the 1980s, the mainstream scientific literature has studied women's involvement in armed struggle as a new phenomenon on the rise[5] where women's roles are shifting from support to combat.[6] These researchers tend to explore three distinct but interrelated lines of inquiry.

The first one implicitly relies on the premise that women's use of violence is an abnormality, and explained this premise through the lens of their gender identity or "femininity." Most researchers resort to deterministic theories[7] to explain why and how women join armed struggle. Some researchers explain women's involvement by focusing on their characteristics or traits and the role played within the organization as either traditional or non-traditional based on a context of sexual division of political labour. In doing so, researchers rely on another set of tropes which construe insurgent women, on one hand, as cold, hard, authoritarian, aggressive, virile, asexual, lesbian, or promiscuous, and whose masculine traits explain their involvement or, on the other hand, as kind, caring, soft, maternal, ladylike, romantic, and nonviolent, and whose feminine traits explain being duped, manipulated, forced, or used by men within the organization (Sjoberg 2010). Other researchers explain women's entrance in armed struggle due to their socio-demographic characteristics[8] and personal experiences[9] or through cultural factors.[10]

By establishing such naive causal relationships, by refusing to connect personal experiences of violence and discrimination to political structures, and by oversimplifying cultural contexts, researchers perpetuate patriarchal constructions of womanhood as intrinsically non-violent and lacking agency (Deylami 2013; Gentry 2009). In doing so, researchers depoliticize women's involvement. Moreover, by focusing on deterministic elements instead of analyzing the decision to resort to political violence within the historical-political context of social movements and social struggles, the scientific literature further entrenches the idea that it is unreasonable and/or abnormal for women to join an armed struggle. The fact that very few authors presume that women might opt freely and conscientiously to engage in political and military actions demonstrates how researchers contribute to the (re)production and injunction of social roles through the abnormalization of these women and, consequently, the essentialization of all women (Gentry 2009; Henshaw 2016; Sjoberg 2010).

The second line of inquiry relates to why an organization would accept, recruit, or want women in their ranks.[11] Researchers never ask this in regard to male membership, which demonstrates that researchers not only think of women's involvement as anomalous, but of little use to politico-military organizations. The answers provided by these researchers rely on the following tropes: the organization is in a desperate situation due to low membership; the organization sees the

exploitative potential of women; the organization uses its recruitment of women as a means to convey a message to the rest of the population or to present themselves in a particular way.

Finally, the last line of inquiry focuses on the short- and long-term consequences of women's involvement in armed struggle for the women themselves, for their organizations, and for society (Auchter 2012).[12] By debating whether or not a specific armed struggle is a source of liberation or oppression, or whether a particular organization is truly feminist or reproduces patriarchal relations, these researchers are confining and reducing women's involvement to a matter of "gender relations."

These three lines of inquiry fail to look at how women's involvement and experiences can contribute to the understanding of political violence and social movements at large. Moreover, by focusing solely on gender, they oversimplify a complex phenomenon and obscure the different ways in which a variety of subjugating positions and positions of privilege—such as class, race, ethnicity, sexual orientation, and ability—intersect in and through armed struggle.

Despite being interested in insurgent women, few researchers actually rely on oral or written first-hand material produced by them. This is due in part to the difficulties of accessing current or past members of insurgent organizations, as well as the security risks it entails for both participants and researchers. These facts notwithstanding, there seems to be another factor at play: the legitimacy and credibility ascribed to the women (Deylami 2013; Gentry 2009; Henshaw 2016). Insurgent women's apparent nonconformity to the naturalized view of what being a woman entails—combined with their direct and indirect attacks of social and economic order—provides implicit justifications to undermine and delegitimize their voices and to silence them. Consequently, many researchers do not conceive them as social and political agents actors capable of providing relevant information emanating from their situated knowledges and intersecting perspectives. Researchers therefore tend to exclude insurgent women from knowledge-production activities about themselves and their political projects. These methodological choices result in women's views and understandings of their experiences and of the conflict being (at best) ignored or (at worst) silenced and demonized.

Without implying that conducting interviews with or researching materials produced by these women is the only legitimate way to explore this phenomenon, we believe that the limited use of women's

accounts, narratives, analysis, and ideological productions generate significant blind spots in the scientific literature. These blind spots minimize the numbers and roles played by women; ignore their contributions to women's emancipation (particularly in regard to poor and racialized women's rights); disregard their involvement in the social, political, and economic transformation of society; and construe them as objects to be researched in order to combat and criminalize them.

Researchers challenging the mainstream scientific literature attempt to produce alternative knowledges that eschew common tropes and disrupt the hegemonic framing of insurgent women. These researchers do not assume that women's involvement is an anomaly or abnormality. They draw on theoretical and methodological approaches that recognize women's agency and see analytical value in what they have to say. They expand beyond the emancipation/oppression conundrum and the limitations of causal analysis and they may acknowledge the intersectionality of subjugating positions, as well as positions of privilege. In attempting to de-marginalize and de-stigmatize female combatants, these researchers face their own marginalization and exclusion. As exemplified by Arlette Farge's account of her own experiences,[13] researchers who engage in counter-hegemonic discourses face marginalization and silencing in an attempt to reduce the potential disruptive effects that the alternative knowledges produced might have on current forms of sociopolitical orderings and gender relations. Not only are the knowledges they produce policed and, in some instances, silenced, the reputation, credibility, and even the safety of these researchers can be at stake. In the next section, we analyze the ways in which producers of hegemonic discourses have attempted to silence and stigmatize alternative knowledges about insurgent women's involvement in the Peruvian conflict.

The (Im)possibility of Academic Dialogue in a Public Forum

The Peruvian conflict has produced two rival hegemonic discourses. One is tightly controlled by the PCP-SL (Partido Comunista del Perú—Sendero Luminoso; Communist Party of Peru—Shining Path) and mainly focuses on class struggle. The other is more subtly disciplined by a particular set of researchers recognized as "experts" within the Peruvian academic world. The discourses these experts produce align

with what has become the "official" history of the conflict. This history was primarily produced by the Truth and Reconciliation Commission which, although critical of the state and state actors, is considered by some as presenting only a partial analysis of the conflict or a "victor's narrative." These opposing hegemonic discourses have framed the way in which the Peruvian conflict can be spoken about, the questions that can be asked, who is entitled to answer them, and the lenses through which the conflict must be seen.

In 2014, Anouk Guiné from the Université Le Havre Normandie (France) co-organized with local human rights institutions,[14] a graduate student history group from the National University of San Marcos (Lima),[15] and a French research group,[16] an international colloquium on gender, class, and peace building to focus on the Peruvian armed conflict in Ayacucho (Peru). She rallied a scientific committee of local and international researchers who had published on the conflict, most of whom shared the will to challenge hegemonic discourses on the conflict and, specifically, on women's involvement in armed struggle. The colloquium sought to open up a dialogue between researchers working from different disciplines, perspectives, and approaches using first-hand empirical material. It took place in a non-academic space because the main human rights organization in Ayacucho was able to convince a popular Jesuit house of study to host the event when mainstream universities in Lima backed out. Despite being successful and drawing a large audience, the colloquium and subsequent scientific activities[17] faced boycotting attempts and other adverse reactions from academia, political groups, civil society, the media, and state institutions.

The knowledge-disseminating activities sought to challenge the hegemonic discourses in Peru, as well as the hegemonic discourses produced by academia in the global North regarding women's involvement in armed struggle. Through the call for papers,[18] and every other event and publication we organized, we set out to open up new ways of thinking and speaking about the conflict by refusing to take up the premises, parameters, and frames of any of the competing hegemonic discourses. We aimed to have a conversation about the conflict and women's involvement in it through an intersectional lens that refused to recognize, engage, or reproduce the dichotomies of guilty vs. justified, evil/bad vs. good, or wrong vs. right side of history. Consequently, we framed the conflict and the people involved as political actors, not as criminals or terrorists. We abstained from

declaring one party to the conflict as carrying more blame or as being "worse" than another one. We refrained from attributing labels of guilty/innocent, victim/perpetrator, or stigmatized/worthy to all those involved. We aimed to understand the conflict and peoples' experiences and perspectives of it, instead of explaining why and how people were wrong or right in their beliefs and actions. We sought to confront essentializing discourses about women, in particular their perceived natural peacefulness or non-violence. We also sought to expand our analytical tools to look beyond gender by also focusing on class and race. Finally—adopting a perspective of situated knowledge—we deemed that what people have to say, regardless of their past and current position regarding the conflict, is worth listening to and represents a potential source for a better understanding of the conflict.[19] Hence, we sought to explore members' artistic creations, which also tend to be invisibilized, marginalized, and/or demonized.

To disrupt hegemonic discourses on the Peruvian conflict, we needed to ensure the enrolment of researchers from the local scientific community and of the public to ensure a network of support that would legitimate the knowledge claims presented (Callon and Law 1989). Even leaving aside the existence of institutionally ingrained modes of gatekeeping through hiring, publication, and funding practices (Morgan and Hough 2008; Piron 2005; White 2002), not every knowledge producer is seen as legitimate or as valuable within academia (Bourdieu 1969). The knowledge produced is evaluated according to internally produced "scientific" criteria deemed neutral and objective (Bourdieu 1975, 1976; Latour 1987, 1999), as well as political, social, historical, and economic factors (Foucault 1972, 1979, 1980) in such a way that certain knowledges are legitimized, while others are subjugated, distorted, ridiculed, undermined, de-legitimized, and even demonized. Producing and disseminating alternative knowledges about the Peruvian armed conflict outside the premises, parameters, and frames established by hegemonic discourses is challenging because institutional agents can place significant hurdles to the production and dissemination of these knowledges and is risky because the researcher's career, reputation, and personal safety can be at stake.[20]

The colloquium was the first one to do an open call for papers on the Peruvian armed conflict and, as a result, the event gathered a large audience who actively participated during the discussion

period.[21] However, instead of being an open public dialogue across different perspectives, it ended up being a conversation between like-minded individuals, repeatedly interrupted by those protecting either of the two competing hegemonic discourses.

In the following pages, we describe the strategies deployed by a variety of institutional agents that undermined the knowledges produced and de-legitimated those who produced them. We are not implying that this was a concerted "attack," nor do we want to individualize these incidents as being simply the spontaneous action of a few disgruntled individuals. What we are highlighting is how agents from different institutions set out to actively hinder the dissemination of alternative knowledges to protect the existing hegemonic discourses on the Peruvian conflict.

Despite our intentions of opening up a public dialogue across diverse academic perspectives, we failed to secure a significant enrolment of the scientific community. They refused dialogue with those producing alternative knowledges and did not engage with the alternative knowledges disseminated. Furthermore, academics worked in subtle and surreptitious ways to undermine the events and defame the organizers. Aside from personally boycotting the colloquium, members of academia attempted to convince—sometimes successfully—other members of the academic community to not participate in the events by attacking the legitimacy and credibility of those organizing and participating in the events. They claimed our call for papers justified the armed struggle and represented the PCP-SL version of the events. They also asserted it was the PCP-SL organizing the event and that we were sympathizers and mouthpieces acting as a front. These researchers never confronted us directly or made their accusations publicly, which prevented us from being able to defend ourselves or attempt to engage with them in an actual discussion on the conflict. Consequently, although there was a high level of interest and support from members of the international and national scientific community, this interest dwindled as the call for papers circulated and the different events took place. Emails and phone calls inviting researchers went unanswered; others showed some initial interest, but became unavailable when we attempted to follow up; others accepted, but cancelled at the last minute without providing an explanation; and still others participated in one event, but refused to respond to further invitations. Those who did not heed the warnings found themselves ostracized and saw their reputations tarnished.

These unwarranted accusations endanger the career of young and upcoming researchers, and put those who participated in the events at risk of retaliation by state agents.

To our knowledge, state agents played a role in attempting to silence the dissemination of alternative knowledges. Police and intelligence agents were present at all the events and filmed not only the presenters, but the audience as well. It was a simple tactic of fear and intimidation, which did not appear to influence the audience or the presenters. In fact, during the colloquium, local residents, members of MOVADEF,[22] dissidents from Abimael Guzman, youth connected to political parties with close ties to the MRTA,[23] elder citizens who participated at the beginning of the conflict, as well as a lawyer representing members of the military, discussed openly from their respective positions and called for further events of this sort.

The more blatant hindrance happened when the publishing company made a request to host the book launch of *Gender and Armed Conflict in Peru* (Guiné and Felices-Luna 2018) at the Lugar de la Memoria, Tolerancia e Inclusión Social (LUM; Place of Memory, Tolerance and Social Inclusion). After several unanswered letters, we received an official response indicating that the LUM would not host the event as it went against the principles and mandate of the institution. The LUM has a mandate to promote dialogue and reflection on the intrinsic value of respecting human rights, citizen civic engagement, and the construction of a culture of peace.[24] In a letter to the publishing company organizing the book launch, they justified their refusal by indicating that our "book uses terminology that does not dialogue with the content presented in the LUM nor with the goals it has set of building a society that recognizes the responsibilities and the facts that occurred in 1980–2000 in order to advance processes of reflection and victim reparation" (Zavaleta, 2018). This is a clear case of a hegemonic discourse demanding adherence to its parameters, premises, and frames as a precondition to engaging in any dialogue.

Our events had had limited mainstream press coverage prior to our attempt at holding the book launch at the LUM. However, soon after receiving the letter from the LUM, right-wing press reported on it. One can only assume that someone at the LUM leaked the letter, as the first newspapers to report the news published a copy of it (La razón, 2018). Contrary to surreptitious attacks by academia and the state, the mainstream press did not shy away from public personal attacks that challenged our legitimacy and demonized us. Using

headlines such as "'*Intelectuales' querían hacer evento proterrorista en Lugar de la Memoria*" ("Intellectuals wanted to host a pro-terrorist event at the LUM"; Rojas 2018) and "*Apología Proterruca*," ("In defence of fucking terrorists", *Expreso* 2018), the articles attacked the credibility, legitimacy, and identity of the researchers in remarkably similar ways. These reporters based their attacks on the terminology we used, which does not correspond to the accepted vocabulary of the "official" history. Here are some excerpts: "people that presented themselves as social science researchers wanted to use the LUM to portray terrorist criminals as social justice warriors" (Rojas 2018); "the text never calls terrorists, terrorists" (La razón 2018); "they call blood thirsty Elena Iparraguirre a political prisoner"[25] (Expreso 2018); "they use terms such as militants, ex-combatants, insurgent organizations" (Rojas 2018). Aside from using our words out of context to undermine our credibility and question our intentions, one of the articles falsely reported that in one of the public events "the presenters even called PCP-SL and the MRTA 'our armed groups' in a clear association with criminals who murdered, tortured, kidnapped, raped and generated huge amounts of material loss" (La razón 2018).

Although the publishing house defended the book, the reporters also presented the publisher as being supportive of "the terrorist organizations" (Rojas 2018). The fear generated by this type of accusation led the printing company to cancel the contract at the last minute. Similarly, some student groups who had invited us to present the book ended up internally splitting and refusing to host any event in connection to the book. However, through the intervention of non-hegemonic and independent feminist researchers, seven presentations were successfully organized and attended between July and August 2018, and the book has sold out since.

Hegemonic discourses on the "official" history of the Peruvian conflict contain disagreements and even strong debates. However, this is possible only if those who speak do so within certain parameters (Angenot 1988). Based on our experience, to avoid being undermined, attacked, and silenced in mainstream debates, critical researchers must acknowledge the greater responsibility and guilt of insurgent organizations; recognize the intrinsically evil nature of these organizations; frame the conflict as criminal and not political; partake in the stigmatization of the organization and its members as terrorists; and admit that visible forms of violence are inherently worse than any other form of violence. Within these parameters of

imposed polarization, the only people deemed to hold useful information and legitimate knowledge or the only ones whose experiences are valuable and worthy of interest are the victims, state actors, members of civil society that battled insurgents, and those engaged in armed struggle who have repented. We can only use the voices of those who have not repented to challenge what they say or to use their words against them. Those who do not abide by theses parameter, or dare to challenge them, find themselves excluded from the conversation and declared "terrorists" or a "terrorist sympathizers."

Probably because we refused to speak according to the rules established by one of the hegemonic discourses, the PCP-SL appeared to welcome the colloquium. However, it quickly became obvious that they were attempting to co-opt the event. In fact, female prisoners asked Anouk Guiné to read and circulate a political text during the colloquium. She responded by clearly stating that the event was not meant for that. At the end of the colloquium, she was told that one of the former female leaders of the PCP-SL had said "Anouk did not comply," as if the researcher had been expected to submit to the will of the PCP.

Precisely because we refused to let the event be co-opted by the PCP-SL, and because we do not write about the conflict in alignment with the official version of the PCP-SL, when the journal's special issue was presented in 2016, members or sympathizers of the organization attempted to silence the dissemination of alternative knowledges by sabotaging the event. A number of individuals placed themselves throughout the audience and pretended to be interested in a dialogue, but after asking provocative questions they did not let presenters respond; they interrupted, threatened, and humiliated them.[26] When a former member of the PCP-SL attempted to speak, these individuals yelled, literally silencing him. After the presentation of the journal's special issue, personal attacks through social media and other internet forums continued. Interestingly enough, the accusations hurled at the presenters were that they were reactionaries, CIA agents, representatives of the bourgeoisie, or imperialist puppets. Aside from these attacks, certain members of the audience also misrepresented the published work by accusing the presenters of perpetuating the myth that women are victims of men and not ideological beings in their own right.

Our experiences demonstrate that within the parameters of the hegemonic discourse produced by the PCP-SL, only those who have been directly authorized by the organization or those who are willing

to repeat the information and the analysis of the PCP-SL can legitimately speak. No alternative interpretations, lenses, or questions are permitted within this hegemonic discourse.

Throughout these events, both sides lambasted us precisely because we sought to challenge all hegemonic discourses on the Peruvian conflict. While one side accused us of being "terrorists" and having been financed by the PCP-SL during the proceedings, the other side accused us of being financed by "imperialism" (claiming that Guiné had an NGO) and of being "reactionaries," "imperialists," "feminist bourgeoisie," and "CIA agents." Either way, the vehemence of these attacks showed that we were successful at disrupting both hegemonic discourses; we were able to speak out of turn.

Interrupting Hegemonic Discourses

Unsettling hegemonic discourses requires interrupting marginalizing and exclusionary monologues taking place within and outside academia regarding the Peruvian armed conflict and women's involvement in it. Our experiences bring into sharp focus two reasons we cannot interrupt these monologues from the ivory tower of the academic world. First, the internal functioning of academia generates limited possibilities for actual dialogue between researchers who knowingly or unknowingly contribute to the (re)production of hegemonic knowledges and those producing alternative knowledges. As noted by Martel (2004), it also makes it easy for alternative knowledges to be excluded from academia under accusations of not being scientific or to be pushed to the fringes of academia by attacking, ignoring, or silencing these knowledges and their producers. Hence, researchers producing alternative knowledges dialogue mainly with similarly positioned researchers. Although these might be very fruitful discussions, they will not succeed in dismantling hegemonic discourses precisely because the critiques are circulating within a closed circle from which hegemonic discourses have made themselves impermeable.

This leads us to the second and main reason for stepping outside of the ivory tower. Hegemonic discourses are not circumscribed to academia. On the contrary, they are (re)produced in a multiplicity of social institutions and circulated within a variety of forums. By limiting ourselves to the academic forum, we are not engaging with the public and we are allowing for these other institutions to misrepresent our research and challenge our academic rigour and scholarly

competence, or silence it altogether by refusing to acknowledge its existence. Dismantling hegemonic discourses therefore requires a dialogue in an open and public forum[27] with those willing to hear about and engage with alternative ways of seeing and thinking about the world.

However, engaging in dialogue with state institutions and the public is complicated. Regarding her research on women in prison, Martel (2004) describes how institutional agents refused to engage with the knowledges produced: they cancelled private meetings between the researcher, civil society organizations, and state institutions' representatives; they declined to discuss publicly the results of the research or their segregation practices; and they avoided contact with the researcher and her team. Researchers working for Correctional Service of Canada (CSC) and mainstream media policed and silenced alternative knowledges by arguing that the methodologies used and the author's reliance on the women who had experienced imprisonment themselves as legitimate sources of information rendered the conclusions invalid. Martel (2004) further describes the challenges faced in disseminating to the public knowledges that challenge and destabilize common discourses on the use and experience of prison segregation by pointing to the media's lack of interest in the press package and the conference her team organized. Whereas those policing Martel presented her and her team as bad or incompetent researchers for not adhering to positivistic parameters of science and not respecting the hierarchy of credibility,[28] those policing us presented us as bad people or terrorists due to the language we use and our refusal to adhere to either of the hegemonic framings of the conflict.

Conclusion

This chapter has demonstrated the different ways in which PCP-SL, mainstream academia, and other institutions interfered with our work that aims to create spaces for public dialogue on the Peruvian conflict. Interference included attempts at co-optation and threats of retaliation. We see these attempts as indicators of an actual success in interrupting the hegemonic monologues, in generating a dialogue outside the parameters established by hegemonic discourses. In fact, the events and publications we organized between 2014 and 2018 geared toward writing a new historiography of the Peruvian armed conflict have produced an emulating effect as other researchers are organizing

new events. However, we must bear in mind that the sites where the events took place and most of the public who participated in them were like-minded individuals who are also challenging hegemonic discourses on the Peruvian conflict within their own institutions. Consequently, the event remained on the fringes of mainstream public debates. Although these events were important in their own right, our experience shows that there are still many hurdles to organizing events that attempt to disrupt hegemonic discourses and immense challenges in having people who are influenced by the hegemonic discourses on the conflict attend or participate in these events.

The pressure not to squander any opportunity to speak and be heard burdens critical criminologists and feminists who endeavour to disrupt hegemonic discourses because what we have to say needs to be internally sound and must chip at those hegemonic discourses that marginalize, exclude, and demonize. The challenge for critical criminologists is therefore to be persuasive to those whose points of view are shaped by the hegemonic discourses we are attempting to dismantle because when we fail, our failure further entrenches and validates them.

Notes

1 Hegemonic discourses reinforce and reify a mode of knowledge production that serves as an instrument for power (Ogbor 2000). They present certain discourses as right, just, scientific, and objective (Nazir 2010) in an attempt to make us speak in a particular way on specific issues (Angenot 1988). Counter-hegemonic knowledge and discourses create conditions for resistance and unveil how hegemonic discourses attempt to exclude or silence them (Milliken 1999).

2 This term is used to encapsulate a criminology that is supportive of the status quo and the moral order of society and, therefore, is directly or indirectly part of the normalizing project of the state (Garland 1992; Morrison 2006). This type of criminology evolves from two different schools: classical or administrative criminology, which is primarily concerned with crime control (Cohen 1992; Morrison 2003) and positivist criminology, which adopts an etiological perspective concerned with the causes of crime (Cohen 1992).

3 We use "mainstream scientific literature" to refer to positivist and liberal approaches that think of science as means of identifying social problems detrimental to society or hindering its progress, in order to find the root

causes of those problems and then propose ways to tackle them to prevent or eradicate the issues. The solutions envisaged seek to preserve the social order and therefore do not entail any significant transformation of society.

4 References listed in the chapter notes are examples of the type of research described in the text; references at the end of a sentence indicate authorship of the idea presented. The references are proof of trends in the literature and show their continuity across time and place in English, French, and Spanish publications.

5 See: Berkoet al. 2010; Bloom 2011; Cunningham 2003; Duiker 1982; Luciak 1999; Harmon 2000; McKay and Mazurana 2004; Ness 2005; Reif 1986; Taylor 2000; Tétreault 1994; Weinberg and Eubank 1987.

6 See Blee 2001, 2008; Bloom 2011; Cook 2005; Cunningham 2003; Eliatamby 2011; Laster and Erez 2015; Mahmood 1996; Pape 2005; Sixta 2008; Weinberg and Eubank 1987.

7 See Balbi and Callirgos 1992; Berkoet al. 2010; Bloom 2005; Cooper 1979; De Cataldo Neuburger and Valentini 1996; Ezekiel 1995; Galvin 1983; Georges-Abeyie 1983; González et al. 2014; Hasso 2005; Marshall et al. 1986; Marway 2011; McCauley and Moskalenko 2011; Nacos 2005; Sixta 2008; Speckhard and Akhmedova 2006; Zedalis 2004.

8 Such as having a university education, being poor, or being racialized.

9 Such as having been victims of domestic violence or rape.

10 Such as the idea that different cultures have different constraints on women's use of violence.

11 See Alison 2009; Berko et al. 2010; Bloom 2011; Cook 2005; Dalton and Asal 2011; Davis 2013; Gonzalez-Perez 2009; Gutiérrez and Carranza Franco 2017; Israelsen 2018; Kalinowski 1979; Khelghat-Doost 2018; Sixta 2008; Stack-O'Connor 2007; Thomas and Bond 2015; Varon 2004; Wood and Thomas 2017.

12 See Ali 2006; Alison 2009; Andreas 1985; Araujo 1980; Ashe 2009; Becker 1977; Berko and Erez 2007; Blee 2002; Bloom 2011; Danforth 1984; De Cataldo Neuburger and Valentini 1996; Ezekiel 1995; Faré and Spirito 1982; Hasso 2005; Jayawardena 1986; Laster and Erez 2015; MacKenzie 2012; McClintock 1993; Nagel 1998; Puechguirbal 2005; Randall 1981; Seitz, Lobao, and Treadway 1993; Taylor 2000; Sixta 2008; Speckhard and Akhmedova 2006.

13 During the colloquium "Penser la violence des femmes" held by the *Groupe européen de recherche sur les normativités* (GERN) in Paris on 17 June 2010, Farge publicly discussed the virulent reactions she encountered in 1997 after the publication of a volume she co-edited (see

Dauphin and Farge 1997). The book was a collection of historical analyses of instances where women had been violent actors as opposed to victims of violence. Colleagues and friends hurled accusations towards her as having letting down the feminist movement, undermining the cause, and betraying women by presenting them as violent. Her career suffered and close friendships were broken. She became an outcast from feminist circles to which she had contributed throughout her life. Although seemingly "merely" anecdotal, many researchers speak of similar experiences behind closed doors but are unwilling or unable to discuss publicly, which demonstrates the silencing power of hegemonic discourses.

14 Asociación Nacional de Familiares de Secuestrados, Detenidos y Desaparecidos del Perú (ANFASEP), Movimiento Ciudadano por los Derechos Humanos de Ayacucho, Casa Matteo Ricci.

15 Analicemos Historia, Grupo Universitario de Estudios Histórico-Sociales.

16 Groupe de Recherche Identités et Cultures (GRIC), University of Le Havre Normandie.

17 These activities included the publication of a special issue, "Gender and Armed Conflict in Peru," in the peer-reviewed journal *Epistemological Others, Languages, Literatures, Exchanges and Societies* (EOLLES) (2016); public presentations of the journal (in Lima and Ayacucho 2017); the publication of the journal in a book format with two added chapters (in June 2018); and public presentations of the book (from July to September 2018).

18 See https://pcdnetwork.org/blogs/call-for-papers-class-gender-and-peacebuilding-in-peru-1964-2014/.

19 This event was the first academic roundtable to invite "non-repented" ex-combatants.

20 On multiple occasions, we have been subtly threatened by police and intelligence agents while conducting separate fieldwork projects in Peru. Other researchers producing anti-hegemonic discourses describe similar experiences (see Silke 2001; Smyth 2001).

21 For a report on the event see Guiné 2014.

22 Movimiento por amnistía y derechos fundamentales is considered part of the PCP-SL.

23 Movimiento Revolucionario Túpac Amaru is a leftist insurgent organization.

24 According to its website: "It is a space created by the Ministry of Culture for cultural, pedagogical and remembrance events seeking to dialogue on human rights and the violence that occurred between the years

1980–2000 in Peru initiated by the terrorist groups" (*Lugar de la Memoria, Tolerancia e Inclusión Social* n.d.; our translation).

25 One of the leaders of the PCP-SL.

26 For a report of the events, see Guiné 2017. For a response to the events from one of the presenters, see Maldonado 2017. For a response by members of the audience, see *Fenix Peru* 2017a, 2017b, 2017c. This is not an uncommon occurrence; it is a tactic that the PCP-SL and its support organizations have used in the past and continue to use, see Realpolitik 2017.

27 Public criminology calls for a similar approach and "involves generating controversy, opening up and extending debate, challenging and provoking received public 'opinion' and political postures" (Loader and Sparks 2011, 132). However, because the call to dialogue with the public about fundamental values (Zussman and Misra 2007) does not automatically translate into challenging marginalizing, exclusionary, and demonizing practices, and because it tends to focus more on influencing policy (Piché 2016), we question its usefulness and relevance at dismantling hegemonic discourses and knowledges.

28 Becker (1967) explains that some people are believed more than others based on their social location.

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SECTION 2

CRITICAL CRIMINOLOGY IN PRACTICE

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CHAPTER 4

Collaborative Teaching and Learning: The Emotional Journey of the University of Ottawa's First Walls to Bridges Class

Jennifer M. Kilty, Sandra Lehalle, and Rachel Fayter

Walls are put up when curiosity ends.

—Inside student (n.d.)

A Brief History of Walls to Bridges

There is a long history of offering educational opportunities in prison, although these initiatives vary in context and focus. For example, in 1972 incarcerated men and women in the United States became eligible to apply for Pell Grants, subsidies provided by the federal government for students with financial need who have not earned their first bachelor's degree or who are enrolled in certain post-baccalaureate programs at participating institutions. Their eligibility was revoked in 1994, however, when Congress passed the *Violent Crime Control and Law Enforcement Act* that prohibits anyone who is incarcerated in a state or federal institution from receiving Pell funding, something Mark Yates and Richard Lakes (2010) describe as a "neoliberal assault on prisoners." At the executive level, in 2015 President Obama supported the Second Chance Pell pilot program, which allowed for a limited lifting of the ban for some prisoners. More often than not post-secondary education efforts in correctional institutions are initiated by individual educators and, as such, are typically grassroots in nature. For example, Karlene Faith (1993) describes

her work in the California Institution for Women in the late 1970s, which was sponsored by the History of Consciousness graduate program at the University of California and the Santa Cruz Women's Prison Project, as a form of education-as-empowerment.

In 1981, J. W. Cosman (1981, 40) described prison education in Canada as being "characterized by a general lack of interest in genuine educational achievement, by inadequate standards of teacher selection and training … a lack of discipline and structure, and by a complete lack of educational research." Much has changed over the past forty years; notably, the *Journal of Prisoners on Prisons* has made a significant effort to document experiences of prison education, dedicating four special issues to this discussion: in 1992, volume 4, issue 1; in 2004, volume 13; in 2008, volume 17, issue 1; and in 2016, volume 25, issue 2. Long-time prison-education scholar Stephen Duguid (1997, 2000) has charted the ups and downs of education in Canada's federal penitentiaries, noting that these efforts are often configured as a task to incite moral reformation, moral rehabilitation, and recidivism reduction, and as a framework for teaching prisoners how to engage in better decision-making. Duguid (1997, 60, 2000) contends that Correctional Service Canada's adoption of the risk-needs-responsivity model of correctional management in the early 1990s was the end of an era in Canadian prison education, where university efforts were "now being asked to adopt 'correctional goals' and to identify the criminogenic factors that it thought its courses addressed." The effect of this shift was that "the evidence that authoritarian realms can evoke only compliance, that the imprisoned will not accept keepers as models, and that rehabilitation succeeds only when linked to the 'real' community" (Duguid 1997, 61) was ignored. Due to space constraints, we are unable to review the history of post-secondary educational efforts in the United States and United Kingdom, and instead zero in on the direct history of the Walls to Bridges program in Canada—which is the focus of this chapter.

The Walls to Bridges (W2B) initiative indicates that there has been some important ground regained in the universities effort to design post-secondary curriculum for incarcerated students in ways that promote security, inclusion, and the creation of ties to and bonds with the broader community without having to focus on correctional goals. The origin story of W2B begins with the Inside-Out (I-O) Prison Exchange program, which grew from a single course taught by Lori

Pompa at Philadelphia's Temple University in 1997—precisely when Duguid (1997) published his article on the demise of prison education programs in Canada. The I-O program enables university professors to teach post-secondary courses inside a carceral institution. This transformative teaching model is an example of experiential education within a community-based model of teaching and learning (Butin 2013). Classes are made up of both "outside" university-enrolled students and "inside" incarcerated students, on the premise that both groups will benefit and learn from one another by examining social issues through the "prism of prison." As an alternative model of community-engaged learning and released from paternalistic notions of "charity" or "service," the I-O model is grounded in dialogue, reciprocity, and collaboration (Davis and Roswell 2013).

In 2011, the I-O program was adapted for the Canadian context by Shoshana Pollack and Simone Weil Davis. Its first course was offered at the Grand Valley Institution for Women, a federal prison in Kitchener, Ontario. Subsequently renamed Walls to Bridges, the now autonomous W2B program similarly adopts a transformative approach to education and justice, and aims to generate deep conversations about crime, justice, freedom, and inequality between inside and outside students. There are, however, several key distinctions between the Canadian W2B and the American I-O program.

First, there is a profound difference in the scale of incarceration and average length of sentence in Canada compared to America, indicating a particular need for programs that address community re-entry and offer a continuity of academic support in the Canadian context (Davis 2013). W2B has worked to extend course offerings in halfway houses and on university campuses. Second, as Indigenous people are grossly overrepresented in the criminal justice system relative to their numbers in the general Canadian population (Balfour and Comack 2014), W2B built relationships with the Indigenous communities in Canada, inviting Elders to facilitate a session as part of the annual five-day instructor training and incorporating Indigenous pedagogy into its practice (discussed in greater detail below). Third, unlike I-O, W2B is more inclusive in the sense that it does not discriminate based on an individual's criminal conviction and permits individuals with sexual offences to participate. Fourth, W2B utilizes a feminist approach, striving for connection and empowerment through non-judgmental openness, critical thinking, and an anti-oppression lens (Follett and Rodger 2013).

Fifth, W2B students are granted university credits for successfully completing a course (Pollack 2014); for I-O, credit-granting varies from site to site. Finally, W2B engages in advocacy and public education concerning issues of criminalization, education, and social justice (Pollack 2016a).

The overall purpose of this chapter is to describe the W2B process and the experiences that Jennifer Kilty and Sandra Lehalle shared as they arranged, designed, and co-taught the first W2B course offered by the University of Ottawa, which was held inside a provincial detention and remand centre in the province of Ontario (we are not permitted to identify the specific institution). To accomplish this goal, we mobilize the critical reflection journals written by students in the course, as well as the experiences of Rachel Fayter, who participated in several W2B courses while incarcerated in a federal prison in Canada.

The First Walls to Bridges Experience at the University of Ottawa

It took over two years to organize the Department of Criminology's first Walls to Bridges class at the University of Ottawa. The journey began by securing a small university grant earmarked for innovation in education and pedagogy that was spearheaded by the department director at that time, Bastien Quirion. Although it was a long and arduous process that involved multiple meetings with representatives from the correctional institution, as well as consultation with the university's Office of Risk Management and the legal teams for both the university and the Ontario Ministry of Community Safety and Correctional Services, the two parties solidified a legally binding memorandum of understanding (MOU) in October 2017.

This chapter details professor and student experiences of the inaugural Walls to Bridges class in the Department of Criminology, University of Ottawa. It highlights the unique and challenging pedagogy, and the transformational aspects of this collaborative teaching and learning initiative. Participant observations, journal entries written by professors and students, and anonymous course evaluations are mobilized as autoethnographic narratives that provide sources of knowledge and ways to illustrate our arguments.[1] Inspired by reflexive ethnography that allows the authors to "scrutinize, publicize, and reflexively rework their own self-understandings as a way to shape

understandings of and in the wider world" (Butz and Besio 2009, 1660), we intend to share our understanding of the emotional journey of our first Walls to Bridges class.

Part 1 outlines the value of Indigenous and circle pedagogy, which emphasizes the importance of an anti-oppression framework that destabilizes hierarchical power relations and structures as a way to promote security and inclusion. Part 2 describes how the carceral class setting and dynamics structure the learning experience and exemplify the exclusionary politics that the circle pedagogy mobilizes us to critique. Part 3 considers the role emotions played in course content, design, facilitation, and management, and in our efforts to foster a safe, secure, equitable, and inclusionary classroom space. Notably, this course involved a great deal more emotional labour for students and professors than traditional lecture- or seminar-style classes. It included more creative and innovative methods of communication and mechanisms of appraisal and evaluation, as well as course oversight and student "check-in" that stretched far beyond the standard thirteen-week semester structure.

Part 1: Circle Pedagogy and Transformative Learning

Circle Pedagogy: An Alternative and Challenging Approach

The uniquely Canadian W2B approach utilizes Freirean principles; Indigenous pedagogy; decolonizing and intersectional analysis; and critical, feminist, anti-racist practices (W2B 2016). W2B courses use egalitarian circle pedagogy, emphasizing respectful and inclusive dialogue, experiential learning, and shared inquiry. So that no individual is perceived as having more power or expertise than another, and to thus promote feelings of security in the performative space of the classroom, W2B classes are structured with all of the inside and outside students, as well as the teaching assistants and facilitators/professors sitting in a circle formation. In a "circle of trust" we speak our own truth, while listening receptively to the truth of others, using personal testimony without affirming or negating another speaker (Palmer 2004, p. 114). Circle pedagogy involves deliberate, reflective communication, with each participant taking a turn to speak and actively listen so as to contribute authentic responses to the dialogue when it is their turn. The circle symbolizes interconnectedness within diversity, equality, and a joint responsibility for

the conversation (Pollack 2014). W2B's pedagogy is a unique approach to education and can be challenging for those trained in traditional academia:

> My place in this class is so different from what I am used to. Forget about "having control of the content of the course," here my goal isn't to transmit specific content to the student in a specific order within a specific time frame. To succeed, I need to unlearn my years of teaching experience in order to forget the game plan and be flexible, forget the clock and trust the process. I am slowly discovering that doing only 2 of the 5 activities planned for a day just means that we succeeded at learning from what was happening and what was brought by each student that day. (Sandra Lehalle 2018-02-27[2])

Contrary to the traditional academic, hierarchical, unidirectional, "banking model of education" that most university courses employ (Freire 2003, p. 12), a W2B classroom conceives of teaching and learning as collaborative, inclusive, and experiential (Pollack 2016a). W2B pedagogy transforms the one-way transmission of information into a reciprocal relationship where students become teachers and vice versa. This model requires students to become active participants in their education, rather than passive recipients of information, which enables them to become more invested in the learning process (Turenne 2013). These pedagogical practices analyze and reject structures of oppression, injustice, and inequality that create insecurity and exclusion, while empowering the voices of students who are typically marginalized and silenced (Perry 2013). Circle pedagogy is premised upon notions of interconnectedness, equality, respectful listening, and the shared exploration and acceptance of multiple perspectives (Graveline 1998). The circle format gives the space and time for everyone to have a voice and speak from their own experiences. No single perspective is considered to be more accurate or valuable than another (Palmer 2004). This is especially important for marginalized people who may rarely have opportunities to be heard, which promotes what Freire (2003) referred to as "conscientization," a liberatory education for oppressed groups.

Circle pedagogy requires holistic learning: participants are invited to bring their whole self into the process. Corresponding

with the Indigenous medicine wheel, participants incorporate their physical, emotional, mental, and spiritual "selves" into the classroom (Graveline 1998; Hart 2002; Pollack 2016a). Indigenous circles are essential for equalizing power relations and for community building, learning, and decision-making because the focus is on synthesis and integration, through self-reflection, attentive listening, and the collaborative construction of knowledge (Cowan and Beard Adams 2008). Pollack (2016a) found that students benefitted from circle work as the process assisted in shifting power imbalances between inside and outside students, as well as with the facilitator. The circle process values, humanizes, and respects the voices of all circle members; this degree of security and inclusion can often be a first for incarcerated people (Fayter 2016; Freitas et al. 2014; Pollack 2016a): "Being imprisoned, I was stripped of my identity, labelled an 'offender', and forced to silence my opinions or risk repercussions. But within the W2B circle I was a student who was valued for my perspective, supported in sharing my beliefs, and was able to reclaim my voice" (Rachel Fayter 2018-06-22).

A sharing circle requires a skilled facilitator to act as a "conductor" (Hart 2002), who must create a safe environment in which participants can share. This "engaged pedagogy" (hooks 1994, 15) involves teaching in a manner that respects and cares for the wholeness of each student—the union of mind, body, and spirit. The learning process involves not only sharing and receiving information, but contributing to one another's intellectual, emotional, and spiritual growth (hooks 1994).

Transformative Learning: Tools and Unexpected Moments

Facilitating and participating in a Walls-to-Bridges course can be a transformative experience in ways that teaching or attending a traditional lecture- or seminar-style university course is not (Fayter 2016). According to O'Sullivan and colleagues (2002, 18):

> Transformative learning involves experiencing a deep, structural shift in the basic premises of thought, feelings, and actions. It is a shift of consciousness that dramatically and irreversibly alters our way of being in the world. Such a shift involves our understanding of ourselves and our self-locations; our relationships with other humans and with the natural world; our understanding of relations of power in interlocking structures of class,

> race and gender; our body awareness; our visions of alternative approaches to living; and our sense of possibilities for social justice and peace and personal joy.

Adopting one of the tools discussed during the facilitator training, we asked the students to collectively create guidelines for the class. We were pleasantly surprised to see that they drafted mindful rules that were inclusive, rather than specific to inside or outside students. They discussed the importance of being respectful and appreciative of other peoples' thoughts and opinions, and of trusting the safety of the circle and space. They decided together to avoid being quick to speak or to feel forced to participate; to not give advice or try to fix something for someone else; to not assume things about people; and to not leave the class without talking about something if they felt it needed to be discussed. This exercise was a great way for students to get involved, learn about each other, and start the process of building a community that would eventually extend outside the prison. Using icebreakers at the beginning of each class was surprisingly useful to these ends:

> I had serious doubts about using ice breakers. How will the students react when we asked them if they are more like a bowl of soup or a bowl of ice cream; a river or an ocean? I had a lot of fears. But as soon as they began taking turns explaining how their choice between these two options reflected their vision of their personalities, their perceived self or their life struggles, we all started to learn about each other. They weren't sharing their maiden name, GPA or criminal record, but their vision of the world and their place in it. I cannot remember the last time I asked myself such deep, insightful questions. (Sandra Lehalle 2018-01-28)

We began to see and feel the transformative potential of the W2B format very early on in the semester. This was particularly striking when we tried to address the orange jumpsuits as an obvious marker of exclusion, insecurity, and stark division between inside and outside participants, and proposed the idea of the outside students and facilitators wearing an orange t-shirt as an act of solidarity. Both facilitators wrote about this discussion in their journal entries for week three:

> After laughing for a minute, the inside students kind of realized that we weren't joking about wearing an orange t-shirt. They gently said if we wanted it, they would be ok with it but that they were tired of orange and that seeing normal clothes on normal people gave them a sense of being human. Although we thought of it as sign of solidarity, they said they didn't need a t-shirt to feel it. (Sandra Lehalle 2018-01-24)

> Despite hating the orange jumpers they are forced to wear, they said it was nice to see "real people" not just prisoners in orange and correctional staff in their uniforms—the "blue shirts and white shirts." I was surprised by our failure to see how important that small view of normalcy could be for an imprisoned person. Here we thought we were being allies, even in a symbolic way, and all the inside students wanted was a window to something beyond the prison. Apparently, even our clothes can be a part of the bridge. (Jennifer Kilty 2018-01-23)

This was a transformative teaching moment for the outside students and facilitators. Although we did not wear orange t-shirts as an act of solidarity, we did have the outside students hand-write their assignments to mirror the inside-student experience. While the unavailability of computerized tools such as proofreading helped to homogenize the student experience, it cannot create an equal working environment. In the next section, we describe in greater detail the challenges to engaging in transformative learning in a correctional environment, along with the interpersonal dynamics and tensions that can arise in this setting.

Part 2: Unique Class Setting and Carceral Dynamics

Holding a university course in a carceral setting creates a unique classroom environment and has an undeniable impact on the interpersonal dynamics at play—among the students, between the students and the facilitators, and between the group and the institutional officials encountered each week. In this section, we discuss how the carceral tour, panoptic surveillance, and staff presence during opening and closing circles impacted our classroom and interpersonal dynamics. We also discuss the importance of doing "boundary work" with staff and how this unfolded as a work-in-progress.

The Carceral Tour: Turning an Institutional Requirement into a Teachable Moment

We began the semester by holding separate meetings with the inside and outside students to prepare everyone for the journey we were about to embark upon together; this also allowed institutional officials to do a security lecture with the outside students and to give them a tour of the jail. As recounted by one of the facilitators:

> As we walked through the pods where the inside students live, the max and min units, the women's unit, and segregation, the UO students were quiet—a few of them asking me the odd question or making the odd comment as we walked through the dreary concrete hallways. "I didn't realize the 'yard' would look like that." "How can they not give them winter clothes so they can go outside during the winter?" "I can't believe he was making jokes about the cells in that one wing being so cold that there was frost on the wall." "Is it normal to call prisoners 'clients'?" "I thought only American prisons would have bunkbeds and rooms where so many [36] guys lived." I was glad to see they were thinking critically already. Afterwards, we talked as a group for about ten minutes in the parking lot. S [Sandra] and I realized that the next time we do this course we will need to schedule a debrief session with the outside students to directly follow the security lecture. Despite studying criminology for four years and hearing their professors describe what the inside of a jail is like, seeing it is a different beast. They were nervous; perhaps even a little afraid. (Jennifer Kilty 2018-01-09)

The carceral tour became a major point of discussion. The first few joint classes revealed that the initial apprehension the outside students expressed stemmed from the image of prisoners that the security lecture and tour conjured for them (i.e., that they are all dangerous and manipulative), a point that is well documented in the literature on carceral tours (e.g. Piché and Walby 2010). Interestingly, and ironically, the "security lecture" created feelings of insecurity for the outside students. The inside students did a lot to assuage those fears, which allowed us to refocus the carceral tour discussion around what it means to come in to look at

prisoners where they live and what it means to be looked at (Mulvey 2009).

A number of the inside students were upset by the fact that carceral tours are so scripted. We had a long discussion in class about this, with inside students making reference to "fakery" and what it feels like to have people come in to where you live just to look around, often "without acknowledging that we're here." Correctional staff direct visitors not to engage with prisoners during the tour (Piché and Walby 2010), despite the fact that they are walking through their residence without permission nor prior consultation. Rachel Fayter, co-author and a former prisoner, who was subjected to many such "tourists," agrees with critics of carceral tours who assert it is a voyeuristic, dehumanizing practice to observe prisoners like zoo animals (Huckelbury 2009; Minogue 2009; Wacquant 2002). As one of the facilitators documented in her journal:

> Prisoners regularly experience a lack of dignity and privacy. This discussion made me think of when we went inside over the Christmas break to recruit students and had to address prisoners housed in the pod in the open space common room while one man stood about 10 feet away shielded only by a half-wall as he showered in plain view of everyone. An everyday experience for the inside students that was shocking to the outside students when we recounted it. (Jennifer Kilty 2018-01-30)

Unequal power relations are inherent within the tour process. In a special issue of the *Journal of Prisoners on Prisons*, Craig Minogue (2009) outlines a consultative process for carceral tours that could shift prisoners' voices from the margins to the centre; however, we agree with Piché and Walby (2010) that it is not possible to grasp the relational dynamics and complexities of prisoners' experiences in such a limited time. Even if tours were co-led by prisoners chosen by their peers, it is likely that correctional discourse would continue to frame this experience. For example, despite the fact that a more democratic process is used for some institutional positions, such as the Inmate Committee in Canadian federal penitentiaries where prisoners work as peer advocates, prison authorities still have the final say in terms of any decision-making.[3]

Having critical discussions about topics like the carceral tour facilitated the development of the empathy and trust among the

students and facilitators that is required for this course to succeed (Graveline 1998; Palmer 2004; Pollack 2014, 2016a). They also enabled us to challenge the perception of and discourse pertaining to prisoners that was advanced by corrections. It is important to note, however, that carceral tours themselves are not necessary to build empathy and trust, as these develop naturally throughout a W2B course due to the experiential nature of the program. Therefore, when students or facilitators are uncomfortable with the tour practice, it should be avoided, especially given that the epistemological limitations of the tour are as numerous as the ethical implications. While recognizing that carceral tours are often an institutional requirement, W2B is collectively opposed to them, which necessitates the development of measures to mitigate the harms they can cause. It is critical to brief outside students prior to the security lecture and tour, and equally important to spend time debriefing this experience following the tour, preferably within a W2B circle format to ensure the inclusion of the voices of prisoners.

Carceral Dynamics

Panoptic surveillance and a confrontational environment had become normalized for the inside students, and we were impressed with how they coped. As the one course facilitator documented in her journal (Jennifer Kilty 2018-01-30), one inside student stated that he responds to antagonisms from guards in a particularly enlightened way: "I will disarm these guys with a smile. They can never get me angry, even when they want me to be pissed. That's my secret." On the contrary, those of us going inside each week were unnerved by the hypervisibility we experienced passing through security at the perimeter gate and again upon entry into the main lobby of the institution. We also walked past the "bubbles" where guards watch the closed-circuit camera footage throughout the building on our way to class and watched as staff constantly walked past the classroom, which had a half-wall of windows along the hallway, meaning we were always visible—"eyes on" (as is the expression inside)—to correctional guards stationed just feet away. This created a kind of "fishbowl" feeling that became a source of empathy and acted as a foundation from which to build some mutual understanding of what it means to live in an environment where you are the object of an unmitigated correctional gaze. This in turn stimulated critical discussions about visibility, privacy, and security.

Interactions with staff were consistently a point of concern because we did not want to do anything to jeopardize the future of this initiative. The pilot project could be discontinued if something went awry. As research demonstrates (Pollack 2016a, 2016b; Pollack and Hutchison 2018), it is imperative to have at least one institutional staff member act as a "champion" for the program. We experienced the importance of this during our champion's absence in the final weeks of the semester. While all staff members received a memo about the course prior to our first class, having hundreds of employees in a large institution inevitably means that some will forget about or fail to read the memo and that some will express concern about the initiative or respond unsupportively. Without a point person shepherding the process on the inside, we experienced security delays (e.g., on three occasions we were made to wait for an hour at the security gate, which cut our class time down by a third); snide commentary (e.g., "they [the inside students] don't pay tuition and I am still paying my student loan!"), and misplaced and lost classroom resources (e.g., art and final-project supplies). One journal entry by a course facilitator gives a sense of the gaps in communication and our caution:

> When entering the facility today one of the CO's told us in a friendly and smiling way: "Oh, you are from the Bridges to Walls program." We all looked at each other and didn't know how to react. We didn't even correct him. We couldn't just laugh at what was a simple mistake because for us it was the symbol of the fact that the main core and message of the program was lost to some staff. (Sandra Lehalle 2018-03-30)

Nonetheless, we were grateful that no lockdowns occurred on the days that we were holding class and that we were never denied entry into the institution.

One point of contention with our champion did emerge: when they sat in, uninvited, for parts of the opening and closing circles in a few of our early classes. This usually only lasted for a few minutes and the circles became more engaged upon their departure. On one occurrence, however, they sat in for a lengthier period of time, which caught us off guard. Since we did not want to confront them in front of the students, and it was impossible to have a private discussion at the time, we said nothing. This staff member then responded to

comments made by the incarcerated students about the lack of programming opportunities and to their frustration that the Ministry is claiming to offer programs and services that they have never had access to.

These unexpected occurrences, in which jail staff enter the W2B classroom, present opportunities for a teachable moment. Sometimes it is necessary to have a circle discussion following this "invasion" into the space, since they created feelings of insecurity, to allow students to debrief about the obvious power imbalance. As the circle is designed to be a safe space, a staff member's presence can make students feel uncomfortable to openly express their thoughts. While this was a rare occurrence—for the most part we were left alone while in session—it does signal the need for W2B facilitators to actively engage in what we describe as ongoing "boundary work" with staff. Having learned from this experience, we became more upfront about the importance of having closed circles in the future. We also responded more proactively when this staff member asked if they could read some of the inside students' journal entries. While this request was made out of a sincere interest in how the prisoners were engaging with the course, it would have been completely inappropriate to share journal content with staff. Journal entries not only reflected on course readings, they were often personal in nature, and when we took care to explain this and our need to protect the facilitator-student relationship, the staff member understood. Interpersonal boundary work can be tricky, especially when it is conducted between groups of unequal power relations, but it is often necessary in a climate where privacy is at a minimum and prisoners experience insecurity on a daily basis (Freitas et al. 2014; Pollack 2014, 2016a, 2016b; Pollack and Hutchison 2018). In the final section, we detail the role that emotions played in this class—in terms of course content, as a learning tool, and as a frame of practice.

Part 3: Emotions as a Framework for Learning

We mobilized emotions as a frame of practice and thus as a way to structure class activities, interpersonal dialogue, and engagement. Not only do different practices stimulate emotion, but emotions also act as culturally and contextually specific practices. Scheer (2012, 193) contends that "emotion-as-practice is bound up with and dependent on 'emotional practices,' defined here as practices

involving the self (as body and mind), language, material artifacts, the environment, and other people." This frame was omnipresent in every aspect of the course: reading material, discussion topics, pedagogy, student selection, and the ongoing relationships that were developed.

Walking the Line of Learning from and with Our Emotions

We built the W2B syllabus around the concept of "Othering" in the criminal justice system, and each week we worked as a group to unpack the divisive mentalities that, by creating feelings of insecurity and experiences of exclusion, pit groups in opposition to one another. The class activities, readings, group discussions, and journaling were aimed at deconstructing "the Other" in relation to race, gender, class, and poverty as they are experienced by different groups in their interactions with the criminal justice system and in the community. Students were asked to critically reflect on how they (individually and collectively) engaged in Othering, how Othering works, and what we are trying to protect or defend by Othering. We pushed the students to critically analyze their own emotions regarding how they are actors or subjects of Othering, and sometimes both. As the class urges participants to share knowledge about emotional and sometimes personal issues, we encouraged the students to find alternative and innovative ways to convey those experiences, and the results were powerful. As one professor noted in her journal:

> Today, we tried a different way of addressing the difficult topic of segregation. We already knew that most inside students had experienced time in the hole and were eager to talk about it. We divided them into small groups and asked them to co-create a tableau, a frozen image using their bodies to represent "segregation." It was eye opening to see how the three different groups physically expressed three different experiences of segregation. Even though we followed the exercise with a circle discussion, I am sure it is the visual images they created and experienced in their bodies that will stay in everybody's mind for a long time. (Sandra Lehalle 2018-03-27)

Sometimes we unexpectedly learned directly from the emotions revealed in circle:

> Today, two weeks before the end of class, one of the most serious and quiet students suddenly opened up about how the topic of the week (touching on community belonging and nationality) triggered thoughts about his past and present struggle with Canadian institutions (from child services to immigration and penal authorities). This was a difficult and powerful moment for him to open up to the group, to allow himself to be emotional and to express in a safe space a relevant and well-articulated critical analysis of his experiences as they related to the course content. (Sandra Lehalle 2018-03-27)

Without transforming this student's suffering into an academic gain, it is fair to say that this moment was transformative for many of us. As one student recounted in their journal, sharing this particular moment was a gift:

> As a criminologist, I had learn[ed] about these issues prior to taking W2B but no amount of reading, writing, documentary viewing or even guest speakers are as powerful as getting to know someone deeply and hearing their truth. This experience is felt deep within your heart and leaves a mark on your soul and spirit. The impact of these testimonies and sharing is not easily neglected or "shrugged off." Opening up and seeing someone else open up cannot be translated into written or spoken words but will remain with me far beyond any other course or reading I have experienced. (Student journal, n.d.)

Emotions truly became a valued tool as we learned from the emotions of others and from critical self-reflection. Students and facilitators shared knowledge on the process of Othering in past and present Canadian history, which helped us to develop a deeper understanding of how we mobilize our own privilege—consciously or not—to cast certain groups as different or dangerous. While this course was never about holding hands and expressing emotion in a cathartic sense, it was a safe place to bring our whole selves, including our emotions, as sources of knowledge because processes of Othering are produced by, and result in, strong emotional reactions. Consequently, emotions were always welcomed and addressed in class, leading us through what can certainly be qualified as an emotional journey.

Our Collective Emotional Journey

There was a collectively felt emotional arc over the course for the whole semester. At the beginning of the course everyone was somewhat insecure, apprehensive, and anxious about what they could expect from each other and what was expected of them within the class. For the facilitators, every aspect of the course was new and challenging. Inside students were particularly nervous about their academic potential and their ability to keep up with the university-level readings and discussions, while outside students were apprehensive about what they would bring to the table given that they had academic knowledge about criminal justice but little to no experiential knowledge of criminalization:

> We thought we were all going to be different. We were all fearful and anxious about this course. (Final project time capsule, n.d.)

> I had my doubts, I felt like it was going to be some really conservative, judgemental students. (Inside student course evaluation, n.d.)

Pollack (2014, 294) uses Butler's (2006) notion of "rattling" or shaking things up to describe the important political dimension of W2B courses—namely the "reconstitution of incarcerated women (and men) as knowers, as university students rather than 'offenders' and 'inmates.'" We found that the classroom discussions "rattled" a number of the assumptions upon which insecurity—as well as cultural and socio-political attempts to exclude particular groups—rests. Despite their apprehensions, students were excited to participate in this unique learning opportunity. As the semester progressed emotions shifted to exhibit a growing sense of compassion, empathy, and respect for one another that was gleaned from ongoing efforts to promote active listening and shared meaning-making that was devoid of judgment and attempts to try to "fix" things for or provide advice to one another (Palmer 2004)—something the group discussed and committed to in the first week. The class developed a comfortable and supportive dynamic—a sense of cohesion and a care ethic that was wrought from this supportive listening approach. The facilitators were careful to steer students toward meaningful and respectful relationship development within the context of the course. For example, we went on a first name basis only and prohibited the students from

sharing their personal contact information (something the institution also requires).

As the end of the semester loomed, feelings of sadness became evident and the group expressed a sense of loss that we were coming to the end of our weekly time together. This is a consistent experience across W2B classes. Notably, three of the inside students were transferred to different institutions two to three weeks before the class ended because they were sentenced and moved to serve their remaining period of incarceration in another institution. Their departure weighed heavily on the group, and as a symbolic reminder of their importance to the classroom dynamic, we kept three empty chairs in all of our future circles. The effects were noted in this journal entry:

> Today, group C was missing two inside students and it was obvious that the two outside students from the group were affected. They looked at their project and they didn't have the drive and joy to work on it the way they did in previous weeks. I realized that this happened a few weeks ago in group A when one inside student was in court and missed class. Only this time, for group C, it is a different feeling as they realized that they might never see or hear from their group partners again. Not even a chance to say goodbye after sharing so much. (Sandra Lehalle 2018-04-03)

The professors provided all of the course material to these students prior to their departure, and two of the three mailed in their final essays and journals to finish the class and earn their certificate of completion. This shows that an exceptional level of commitment was fostered through the interpersonal connections the group built over the semester. The example also supports findings in the existing literature that document the importance and value of prison education for incarcerated students (Duguid 1997, 2000; Fayter 2016; Freitas, et al. 2014; Pollack 2016b).

The Difficult Task of Caring for the Emotions of the Group: From Initial Screening to After Care

The screening process to select the university students we would admit into the course involved a written application and interview to identify possible concerns that could be detrimental to the class or to student well-being. We asked prospective students why they were interested in taking this particular course, how they anticipated

responding to tension or discomfort, how they anticipated reacting to students sharing personal and possibly distressing experiences, and what they expected to gain from the mixed-class dynamic. Despite our efforts, we quickly realized that, because the course requires participants to bring their whole selves into the learning process, there was no way to anticipate what students would feel safe to share in a particular moment or how they would feel about specific issues discussed in class. As such, it is imperative that facilitators are well trained and prepared to guide the group through what can be an emotional learning journey.

The regularity of the journal writing exercise[4] not only provided an ongoing account of each student's thoughts about the course material but also their personal thoughts and emotions about the issues we were discussing and how they were coping. This became one of the primary mechanisms for the facilitators to check in on student well-being. It is notable that students made multiple personal "reveals" in class and even more so in their journals about issues that they did not disclose during the interviews. Furthermore, the journals allowed the facilitators to witness the introspective ways in which the students were paying attention to one another's remarks. Many students included their reactions to comments made in circle and noted concerns about other students in their journal entries. Students who took responsibility for the emotional well-being of the group in this way demonstrated an investment in the learning community and shared with course facilitators the responsibility of managing the emotions of fellow students.

The fact that the students did not anticipate how this course might elicit certain feelings and memories demonstrates that facilitating and participating in a W2B course is a work-in progress. The inside and outside students who revealed difficult personal histories had a lot to process emotionally over the semester (and beyond) and they found that the course assisted in this regard, pushing them to critically reassess their views of past experiences and challenging them to find compassion for people they had strained relationships with. When certain outside students disclosed feeling some emotional distress, we encouraged them to connect with campus counselling services, and two did. It was a fine line between prying into the students' personal lives and checking in to see if they were okay, but it was important to follow up with and support our students outside of class time. We ensured flexible availability

so they did not have to wait to speak with us and organized a WhatsApp chat group so that the students could easily reach us and the group by chat or phone.

Commitment to supporting students was also why we co-taught the course. Not only did having two professors permit them to debrief and consult one another, it ensured that there were two people observing students, looking for any signs of triggering or distress; and it created a built-in sounding board and support system for the two facilitators/professors who met and spoke with each other multiple times each week. Unfortunately, limited access to the inside students prevented us from offering them the same level of support as outside students we could meet on campus. We could only hold individual meetings to check in with each of the inside students and to discuss their work in private over the mid-semester reading break and at the end of the semester.

Having the emotional safety net of co-teaching the pilot course was a privilege, as the university refused our request to continue the practice due to the financial cost. Although we now teach the course separately, the Department of Criminology approved our request to have a teaching assistant help students with readings and assignments. The university's decision to prohibit us from co-teaching is in line with the austerity measures that are taking place across universities in Canada (see Turk 2000, 2008) and abroad (Cheyfitz 2009). Characteristics of post-secondary educational austerity measures include greater bureaucratic oversight; corporate investment and governance; funding cuts; reliance upon precarious contract positions over the long-term investment in full-time tenure track professors; increased classroom sizes; and streamlined learning objectives (Cheyfitz 2009; Turk 2000, 2008). These hallmarks of the neo-liberal corporate university create significant barriers to trying to engage innovative pedagogical styles and initiatives that require specialized resources. While securing external funding can help to support these initiatives, the ethical pedagogue must consider where these funds are coming from. For example, our university approached us about securing funding from a prison catering-service provider that has been widely critiqued for offering poor quality food to prisoners in Canada (see CPEP 2016), which we rejected.

Conclusion: Education as a Way of Moving Beyond Insecurity and Exclusion

We found being involved in W2B to be a transformative teaching and learning experience for a number of reasons. The collaborative nature of the course design situates the professor as a facilitator in the development of critical thinking skills and reflexive thought, enabling students and professors to challenge their own normative assumptions, rather than being the authority and educator "with all the answers." The co-teaching model created a built-in mechanism of support and collaboration for the professors. Our decision to discuss the emotional nature of teaching and learning in a correctional environment facilitated the group's ability to create a safe space where everyone felt comfortable to speak their truth without fear of judgment. Establishing a learning environment built on trust, an ethic of care, and the development of sensitive relationships among participants led to shared experiences of meaning-making and feelings of security and inclusion while in an oppressive prison setting. These transformative qualities were made possible largely by the circle pedagogy that is the foundation of the W2B format (Fayter 2016; Graveline 1998):

> While I went into this course feeling uncertain about "having a voice" that was worth being heard[, w]hat I found instead was that it was not a voice I needed to find but a deeper ability to listen. (Student journal, n.d.)

> It has been very helpful to me and [I] believe [to] the others as well. I related to a lot of the readings. I have a better understanding of how society sees me as an incarcerated person, which will help me upon my release to break down potential walls with non-incarcerated people, such as my kids. This course has opened my eyes to a whole new understanding, meaning of life as a whole. It actually has given me hope to be accepted back into society as a normal person and no longer a number. (Student evaluation, n.d.)

The course content and circle pedagogy were important mechanisms to move beyond exclusionary academic practices, although the personal impact the course had on all of the participants is

insufficient in terms of transforming structural practices of exclusion and marginalization. This is why we feel it is critical to create an Ottawa W2B Alumni Collective. This will allow us to continue to communicate as a group, arranging lunches and maintaining the connection that is an important part of building a community-based collective (Freitas et al. 2014; Pollack 2014, 2016a, 2016b). Members of the alumni collective contact inside students though letters and mailing them literature to read. We cannot stress enough the value of developing a W2B collective: it would facilitate a way to maintain rather than abruptly end contact—which was distressing for some students. Collectives hold much reintegrative and advocacy potential (Pollack 2014, 2016a, 2016b), because they can be rooted in the supportive and non-judgmental interpersonal connections that are fostered in class. They are, quite significantly, the continuation of the bridge from the jail to the community that began to be constructed in the first class.

Finally, it is worth commenting on how this initiative has come to fit within the broader criminology program at the University of Ottawa, which, as this collection deftly reflects, has long been committed to the principles of political and community advocacy and civic engagement. To help our colleagues better understand the importance and structure of these courses, two of the co-authors (Kilty and LeHalle) produced an annual report in April 2019 that outlined the course's successes and the concerns they have after having taught the course three times (once as co-facilitators and once each as sole facilitators). This report, which was also shared with management at the detention centre, seemed to foster a deeper understanding of the importance of this initiative among the correctional administrators, as well as our colleagues who, like the participating students, expressed a heightened commitment to critical criminological praxis. Demonstrating this support, the department voted to ensure that W2B facilitators would have a teaching assistant, despite the small number of students in each class. This vote to alter departmental resource allocation was in response to the University of Ottawa's decision to deny us full teaching credits should we co-teach the course again in future. Our colleagues' acknowledged the importance and value of critical perspectives and pedagogy as praxis by nominating two of us (Kilty and LeHalle) for the Faculty of Social Sciences Excellence in Teaching Award, which the faculty bestowed upon us in April 2019. It is also notable that, as more students learn about this initiative, we have seen

a significant increase in the number of applicants—both inside and outside students. This illustrates how W2B opportunities can heighten student commitment to critical perspectives and engaged pedagogical practices that strive to foster inclusion.

Notes

1 The professors asked the students for permission to quote their journal entries once the grades for the course and anonymous course evaluations were finalized. All gave their consent to do so.
2 Reflexive journal entries, in which the professors documented their thoughts and feelings each week after returning home from class.
3 The Inmate Committee is responsible for "making recommendations to the Institutional Head on decisions affecting the inmate population, except decisions relating to security matters" (CSC 2008).
4 A significant percentage of the course evaluation consisted of reflexive journaling, with seven entries totaling 35 percent of the final grade.

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CHAPTER 5

Beyond Judgment: How Parents and Professionals Negotiate In/Exclusion and (In)Security among Youth Who Sexually Offend

Christine Gervais, Matthew S. Johnston, Serenna Dastouri, Leslie McGowran, and Elisa Romano

The resilient and complex ways in which parents navigate the criminal justice system (CJS) after their children have sexually offended are largely undocumented in critical criminological literature. With relatively few notable exceptions across academic disciplines (Baker et al. 2003; Gervais and Romano 2018; Hackett et al. 2014; Levenson and Tewksbury 2009; Pollack 2017; Romano and Gervais 2018; Tewksbury and Levenson 2009; Thornton et al. 2008; Worley et al. 2011), research is limited with regard to understanding parents' involvement in their child's rehabilitation; their deep concerns for victims' rights and recovery; and their various ways of coping with stigma, isolation, and challenging emotions in the aftermath of their child's sexually offending behaviour (Gervais and Romano 2018; Romano and Gervais 2018).

Based on an interdisciplinary study involving criminological and psychological analyses of children's rights, this chapter offers a counterpoint to some of these limitations. We demonstrate how ten families of youth who sexually offended negotiated various obstacles as they sought to prioritize inclusion and security throughout the accountability processes following their child's sexual offending. In line with critical criminological literature that recognizes how people who sexually offend and their families are often excluded from society and the rehabilitation process (Petrunik and Deutschmann 2008;

Viki et al. 2012), we further explore how the parents in our study were met with overwhelming institutional exclusionary practices despite some individual CJS workers' attempts to be more considerate of their children's rehabilitation and reintegration needs and rights.[1] To do so, we review the historical and recent scholarship on adult and youth sexual offending that steers many institutional responses to sexual violence. We then reveal two overarching themes that emerged from the family narratives: CJS-based exclusion,[2] and police and parental advocacy. Finally, we conclude this chapter by offering policy recommendations that advance knowledge about parents' successes and struggles in mitigating the detrimental effects of exclusion and insecurity in the context of youth sexual offending.

History of Sexual Offending Research

All acts of sexual violence violate—often recurrently—the physical, emotional, and psychological boundaries of victims (Kelly 2008). Given that women and children are among the least powerful people, they comprise the majority of known victims, and their perceptions and claims of abuse are often subject to heavy scrutiny and disbelief when confronted by powerful individuals and institutions (Naffine 2003; Saunders 2012; Wagenaar et al. 1993; Yarbrough and Bennett 2000). In response, critical feminist and victimology studies focus on mobilizing the traumatic experiences of sexual assault survivors into protests of passionate activism, and calls for more carefully considered research and commentary on effective responses to sexual violence on the part of governments and institutions (Brown and Walklate 2011; Farkas and Stichman 2002; Martin 2005; McGarry and Walklate 2015; Messman-Moore and Long 2000; Salter 2017; Walklate 2007; Walklate and Spencer 2016).

In Canada and the United States, early criminal justice reforms focused on the statutory and procedural responses to sexual violence committed by adults against women. These reforms included the replacement of the crime of rape with sexual assault offences classified by their gravity, and the enactment of shield laws that circumscribed the use of evidence related to the survivor's prior sexual history and conduct (Marsh et al. 1982). These policy changes aimed to advance the treatment, legal protections, and dignity of sexual assault victims in the CJS and, in turn, encourage more survivors to report offences to the police and increase the probability

of successful prosecution (Berger et. al 1994; Spohn and Tellis 2012; Stanko and Williams 2009; Wheatcroft and Walklate 2014). Despite these advances, much of the literature on child sexual violence has not moved beyond discussions about the accuracy of children's reporting (e.g. Carter et al. 1996; Granhag and Stromwall 2005; Hershkowitz et al. 2007; Quas et al. 2007; Quinn 1988; Wheatcroft and Walklate 2014).

Early work on adult sexual offending was primarily psychological and focused on typologies of offenders. Men who harmed women or children were generally characterized as sadistic, angry, manipulative, introverted, opportunistic, or antisocial, or a combination of these (e.g. Cohen et al. 1971; Gebhard et al. 1965; Knight 1992, 1999), while female-perpetrated sexual violence was understood to result from male coercion, teacher/mentor exploitation and dominance, or non-heteronormative sexualities or a combination of these (e.g. Blasko 2016; Mathews et al. 1989; Sarrel and Masters 1982; Vandiver 2006). The collective fear that sexually offending adults are permanently disordered and untreatable led to the creation of controversial laws to protect communities from them (Cross 2005; Petrunik 2002, 2003). These laws included community notification registries, long-term sentences of incarceration, GPS electronic monitoring, and surgical or chemical castration (DiCataldo 2009; Kleinhans 2002; Miller 1998; Pratt 2000; Scott and Holmberg 2003; Spencer 2009). Founded on the belief that no person is disposable, community volunteer-based programs eventually emerged to provide adult offenders, including those at warrant-expiry, with the necessary social support to help them rehabilitate, reintegrate, and learn accountability (Hannem 2013).

With respect to youth perpetrators, there is a more nuanced understanding of the circumstances that predate their sexual offending. Based on years of clinical research, Howard Barbaree and William Marshall (2006) identify some of the leading social and psychological risk factors associated with (but not prescriptive of) youth sexual violence, such as: childhood sexual abuse; substance use; impulsivity; sensation seeking; family separation and divorce; rejection of and conflict with the child; intimate partner violence; low levels of parental involvement, monitoring, and supervision; and inconsistent parental discipline (see also Cale et al. 2015; Farrington 1994; Loeber 1990; Martinez et al. 2007; Roberts et al. 2004). Questions aimed at determining who and what influences youth sexual violence have primarily driven the cited research, with findings often placing the

responsibility on the family for an inferior upbringing of the child, low economic status, lack of involvement in the child's life, and adverse responses to the offending behaviour.

Calls for more inclusive and restorative solutions to youth sexual offending propose that youth have the opportunity to reform their behaviour and to engage in reconciliation with the affected individuals (Bouhours and Daly 2007; Braithwaite 2002; Brown and Walklate 2011; Daly 2006; Daly et al. 2013; Gxubane 2015; Rossner 2011, 2013). In spite of the limitations of restorative justice,[3] we suggest that treating youth who sexually offend, within an integrated, holistic, and humanistic approach that takes into account their strengths, developmental stage, and childhood environment, requires a better understanding of how their families can be involved in the restorative justice process (Longo 2005). Our findings enlighten these frameworks with a more complex understanding of parents' roles and responsibilities in guiding sexually offending youth through their rehabilitation.[4]

Research Design

This chapter draws upon data collected between March 2011 and March 2017 among sixteen parents (ten mothers, four fathers, and two stepfathers) from ten Ontario-based families whose sons[5] (aged ten to fifteen years) had engaged in sexually offending behaviour that involved varying degrees of invasiveness, ranging from suggestive behaviour and sexual touching to penetration against female (n=8) and male (n=5) victims aged three to eleven years old who were primarily relatives (n=7) or neighbourhood children (n=6). Families were comprised of biological, adoptive, and step-parents within a range of married, divorced, and single contexts, and varied in size (one to five children) and location (nine in urban or suburban settings and one in a rural-based town). At the time of the interview, parents ranged in age from thirty-four to fifty. Ethics approval was obtained from the University of Ottawa and the hospital through which parents were recruited and the offending youth received mental health services.

While this project involved a mixed-methods approach that included semi-structured interviews and self-report measures with the parents, our analyses in this chapter focus on the interview data. Interviews were confidential, audio-recorded, transcribed by research assistants, and anonymized. We conducted a round of open coding,

beginning with the broad topical areas covered by the open-ended questions, and then moved toward the development of initial thematic categories (Berg 2007). Lastly, we conducted a round of analytic coding to align related themes with the existing literature on experiences of parents of sexual offending youth (Berg 2007; Jones 2015; Pierce 2011; Thornton et al. 2008) and on the best interests of the child (Gervais and Romano 2018).

We engaged in a collaborative and inclusive research process with families to ensure that they felt respected, consulted, and well-informed about the nature and implications of our study. To this end, the research team held pre-interview meetings to go over strategies that would help create a safe, non-stigmatizing, and non-judgmental interview atmosphere and that would safeguard participants from encountering distress or unease (Mander 2010; Pittaway et al. 2010). Following the interviews, we provided families with an extensive list of local mental health, counselling, wellness, and emergency resources, and we asked them several questions about their emotional state and stress levels.

The lead author, Christine Gervais, maintained supportive and empathic relationships with the parents for a number of years following the interviews and involved them heavily in the decision-making processes of the study. Specifically, parents shared their advice on how to best guarantee anonymity and confidentiality; provided valuable feedback about their research experience, which the research team incorporated into subsequent interviews; and gave direct recommendations that informed knowledge-translation activities, including the production and approval of a resource and rights pamphlet for affected parents, entitled *What Do You Do When Your Child Has Hurt Another Child?* (Gervais and Romano 2014). While time-consuming, the respect that such methodological sensibility afforded parents served to validate their voices, as well as the concerns and goals that were relevant and meaningful to them (Mander 2010; Pittaway et al. 2010).

CJS-Imposed Exclusion Experienced by Parents and Youth

This section exposes the repercussions of confusion and isolation resulting from punitive reactions and exclusionary restrictions imposed by the CJS on child perpetrators of sexual harm and their families.

Exclusion through Lack of Communication

The parents' accounts of CJS protocols revealed how the exclusionary practices that they and their offending youth experienced resulted in both physical and social repercussions. For example, while deeply troubled by the possibility of never seeing their child again, parents had to navigate informational barriers in order to act in the best interests of their child. One mother recounted the emotionally taxing impact of feeling forced to put her trust in criminal justice authorities to address her child's offending behaviour. The investigative process was not transparent and left her wondering if her child would be safe and treated appropriately: "As scared as he was … we went to the police station and we said, 'we'll see you later' … it was a children's aid worker and the investigator that went along. … So they took him and I didn't know if he was going to come back after" (Mother 1). Other parents and siblings experienced similar uncertainty and stress as they remained physically and mentally isolated in small, overcrowded waiting rooms while the youth were interrogated. As one parent put it: "It wasn't handled right … there was no assistance in this matter, it was just 'Sit in that room, wait, you're gonna go in that room next" (Stepfather 2). Another said: "It was very cold … we were six people … we had to sit on the floor … a long time to wait … it was quite traumatic for them [siblings] as well" (Mother 2).

Amidst great confusion, worry, and fear, parents found themselves negotiating their own internal suffering while protecting their child's rights. For example, since CJS officials did not appear to reassure the other children present that their sibling would come home again after questioning, parents were also tasked with comforting their other children in what became long, tiring, and intense periods of doubt, waiting, and fear.

The lack of procedural transparency continued during the interview phase and was a great source of unease, as some parents were advised by police officers not to retain legal counsel during their son's interview. Consequently, parents felt uncertain about how to effectively advocate for their child after being instructed not to exercise rights guaranteed to all Canadian citizens, which led them to seriously question the professional motives and rationales of police. Mother 1 explained that after legal counsel advised her and her husband to remain silent, they did not know whether it was a "trap"

when officers informed them that "disclosure … will go a long way to create a good will."

Other parents reported that some detectives impressed upon them that the criminal justice process could become adversarial if legal counsel were retained. The potential for a more hostile confrontation with police was undeniable and likely counterproductive to the police's intention to divert the youth out of formal criminal justice processes and toward a treatment referral at a local children's hospital. However, given that most parents were never told that such an outcome could occur, the presence of a lawyer would still have been instrumental to reassure families that a reconciliatory avenue was possible. We are also left questioning how legal representation could be seen to hinder youth diversion out of the criminal justice system, or if the issue reflects potential biases that some police officers and detectives have toward other criminal justice professionals.

Further confusion resulted from the presence of a child-welfare worker whose role was not clarified to parents during the youth's interview. Several parents assumed that the worker observing their son's police interrogation in the adjacent recording room was acting as a child-rights advocate. Consequently, these parents appeared less concerned about the lack of legal representation because they assumed that the child-welfare worker was acting in the best interests of their son. It was not until after the police interview that one mother realized the worker was actually conducting a parallel child-welfare investigation involving their son. She described her regret over how she handled that moment: "Don't leave people hanging … there has got to be a better way; there has to be better advocacy for the children, the offenders … because I didn't know that he [son] was not being supported in there. I assumed because the CAS [Children's Aid Society] worker was there that he would … If I had known, I would have had a lawyer in there with my son" (Mother 3).

This same mother wondered if the false confession by her son, who struggled with both anxiety and attention difficulties, resulted from the absence of both legal and child-welfare representatives during what she described as an intimidating police interview: "I don't know if [my son] just made up [stuff] because they were pressuring him, because there was nobody there advocating for him" (Mother 3).

These parents' accounts point to a number of non-transparent exclusionary practices employed against sexually offending youth; often what parents believed the situation to be was not aligned with

the practices of CJS authorities. Many CJS efforts appeared to equate accountability with extracting a confession from the youth, regardless of whether or not the confession was obtained in a transparent manner and respected children's rights. Furthermore, parents were not informed by the police that they had the right to be present in the adjacent viewing room during their son's interrogation. When asked if they knew this option was available, parents responded with disbelief and frustration: "No, no of course not! … I didn't even know until now that I could've … and … in hindsight, I should have asked for that" (Mother 2). Another set of parents were also confused when their son was whisked away: "Why couldn't we stay? I still couldn't figure that out" (Mother 9). The parents' testimonies reveal that in these instances it seemed unclear what processes, if any, were in place to include them in procedural steps to safeguard their child's rights.[6]

Given the youth's age and corresponding vulnerability, the legal and child rights–based omissions were problematic and disconcerting. One family expressed feeling "deceived" into accepting the criminalization of their son, and recalled their stress and frustration after they brought their child to the police station for questioning: "But we didn't know it was an arrest, right. The police [said] that they just wanted to talk to us" (Father 9) and "As he came out [the detective said] 'nothing's going to happen here today' and then my child was arrested … As soon as he stepped through the door, he arrested [our son] … the level of deception is enough to make you very angry" (Mother 9).

Not only did the police suggest these parents forego legal counsel during the initial interview, but the family also described how their son was "given the full treatment." This "process" reportedly involved the child being hand- and leg-cuffed, slammed into a wall, charged with eight different offences, jailed over a weekend because of difficulties connecting with a child-welfare worker who "refused to talk to [the judge]" late on a Friday, and ordered to provide a DNA sample. The parents expressed that the police were not sensitive to their son's obvious intellectual and developmental challenges, and that their son's interactions with the police were far more punitive and degrading than restorative because one of the alleged victims was a police officer's child.

Information barriers persisted well into the later stages of the criminal justice process. Mother 3 recounted her frustration about the lack of communication about changing and uncertain court

proceedings: "And on and on … and then the fact that ok you have to go to court in February … and then they cancelled out on me the night before and said that they would get back to me and they didn't get back to me till August!"

While in the end this mother was relieved that her son was not charged with a criminal offence, the lack of transparency regarding the potential delays and outcomes caused her enough stress that she turned to medication and professional counselling to help her cope (Romano and Gervais 2018). Several other parents recalled how abruptly the investigative process concluded, with one noting, "the only thing … and it's not the police's fault, is that, it was just sort of like 'ok that's it'. We did … the report, and … 'see you later' … no follow-up" (Mother 6). Mother 8 expressed frustration and bewilderment when she realized that she could not rely on professional assistance from either child welfare or police services. Instead, she had to "be the one to pursue them when [she felt] they should have been trying to pursue [her]."

In sum, families in our study reported experiencing a range of emotions—stress, confusion, deception, humiliation, and anger—from the lack of communication related to their sons' navigation through the CJS. They also noted that the lack of professional advocacy on the part of the police did little to further the rehabilitation of their children or promote inclusive measures of accountability. While a child rights advocacy approach may not have been explicitly prohibited or impeded by the CJS, the use of exclusionary tactics (e.g., lack of transparency about the investigative process, discouraging access to legal counsel) understandably forced parents into a position of raw advocacy and as adversaries against some members of the CJS. When considering the parallel need to prevent future offending behaviour, one questions whether these tactics promoted the sense of trust in the system that is needed for full rehabilitation.

Exclusion through Neglect of Individual Needs

Families also experienced exclusion due to the institutional CJS processes and protocols, including a limited acknowledgment of and accommodation for the individual needs of the youth. In our study, five families communicated to police officers that their sons had special needs[7] and each family experienced the CJS differently. While Mother 7 expressed that her son—who had severe anxiety and autism spectrum symptoms—was accommodated by police, two families

recalled the perceived lack of consideration and empathy for their son's mental health during the interrogation process. Mother 3 recounted her worry for her son, noting that despite explaining to officers "my son is 15 but … he's got anxiety issues" and attention deficit hyperactivity disorder, he was left isolated without mental health support during his time at the police station. The special needs of Family 9's son were also ignored when he was arrested with "child cuffs" that he reportedly told police officers hurt because they were too small and were not functioning properly.

These examples demonstrate how discretionary procedures used by criminal justice professionals significantly impact a family's experience. Moreover, how this discretion[8] is exercised can sometimes lead to exclusionary practices that impact the family's sense of security and trust in the system. The CJS has long treated child perpetrators of harm as security risks (Cross 2005; Petrunik 2002, 2003) and the societal approach toward youth who engage in sexually offending behaviour is similar. These youth seemed to be viewed with the same apprehension and suspicion employed against their adult counterparts (DiCataldo 2009; Kleinhans 2002; Miller 1998; Pratt 2000; Scott and Holmberg 2003; Spencer 2009).

Police and Parental Advocacy for Inclusivity and Security

Much of the data in our study emphasizes how families faced obstacles that led to feelings of exclusion and insecurity. Although there is considerable room for improvement in how the CJS approaches child perpetrators of sexual harm, in this section we discuss how these exclusionary practices were not universal, due in part to strong parental advocacy and individual officers who recognized that youth who sexually offend are still children in need of support, inclusion, and protection.[9]

Police-Based Advocacy for the Best Interests of Offending Youth

Some families, even ones who described negative experiences, recalled instances of striking empathy, non-adversarial attitudes and "good will" on the part of criminal justice staff. Some police and correctional officers were, in fact, compassionate child-welfare advocates dedicated to diversionary approaches that allowed young offenders to bypass the traditional CJS. In these instances, proper communication played an important role in alleviating anxiety and fostering an

atmosphere of trust. For example, Mother 9 noted that while it appeared that "nobody cared" when her son was being detained, she was temporarily relieved by the thoughtful actions of a correctional officer, "the person who called me from the cell block" to advise her that her son's medication was finally being administered for the first time since he was placed in custody; she described this officer as "the person who cared the most."

Another mother's initial gratitude towards investigating police officers, who created a secure environment for her son to acknowledge his own behaviour, fostered a sense of trust with one particular detective and helped the family form a supportive relationship that would last throughout their entire experience with the CJS: "[the detective's] been a godsend … my son kept denying everything to me; he denied everything and he went with the detectives and told them everything" (Mother 4). While the mother perceived her son's admission as positive because it fostered accountability and created a diversion-oriented avenue for treatment, other observers may interpret the context of incrimination as problematic or even coercive. Yet it is interesting how the son's confession was described as positive when interpreted as being made under what would become longstanding conditions of respect and empathy—a perception that was juxtaposed in our study with CJS accusations of dishonesty, deception, and unsupportiveness.

The same mother further explained how transparent the detective was in his communications with the family, as he continually clarified the entire criminal justice process. After describing the stressful decision to involve a lawyer, Mother 4 recounted the sincerity with which the detective helped her decide against engaging counsel: "I had so many people around me saying you need to get a lawyer … and I thought you know what, this guy has been nice, from the first day I spoke to that detective, I just had a good feeling, you know 'I'm going to chance this,' and he said, 'Had you involved a lawyer, this never would have been dropped … It would have become a power struggle.'"

Following the interview, the detective exercised his discretion, diverted the son out of the formal CJS process, and helped place him into community service and treatment. When the mother later learned that her son's name had been put on a provincial child abuse registry, she immediately sought advice from the same detective who expressed "that's the most ridiculous thing" (Mother 4) and he worked with the

mother to remove her son's name from the registry. The mother and the detective continued to have a positive relationship following the youth's involvement with police. The detective reportedly claimed he had "put everything on the line" for her son because of how diligently he had negotiated diversionary options for the youth among his superiors and colleagues who held more punitive views. Critical criminologists seldom find themselves aligning with police officers; however, the detective's actions demonstrate the potential of CJS authorities to be first responders in youths' rehabilitation and primary resources for struggling families who want nothing more than to see their children recover, reintegrate, and never recidivate.

As with Family 4, most of the cases in which police interviewed the youth resulted in diversion options beyond the formal criminal justice process.[10] In such diverted cases, police played a positive role in opting for pre-diversion avenues through referrals to treatment services at the nearest children's hospital. In so doing, officers appeared to recognize the risks of further exclusion, including self-harm and recidivism.

Another family, who claimed to have seen "both sides of the [criminal justice] system … work for [them]" and "against them," recounted that they were "really impressed actually with the police" and found that "their sensitivity to the situation was fantastic" (Mother 6). In this case, the police demonstrated consideration towards the family who, while advocating for their offending son's rights, also focused heavily on their victimized daughter's needs. The police reportedly reassured the mother that "she wasn't a bad parent"—support and encouragement which helped her to "trust the professionals" and to "[let] the system work its way through."

Another mother, convinced that a "scared straight" approach might have a positive effect on her son, persuaded an initially reluctant officer to interrogate the boy as she typically would other suspects. In this instance, the parents understood exactly what the interrogation would involve prior to being conducted: "[The officer said,] 'We actually don't have anything like that [scared straight program] but if you want, you can bring him in and I can interrogate him the way that I would do' and I'm like 'Yeah that's fine' and she's like 'are you sure?' and like 'Yeah. I want him to know how serious this really is, that it's not a joke, right?" (Mother 8)

Even after the parents agreed, the officer continued to seek their consent prior to proceeding with the interview: "So we did take him

in … she pulled us aside and said 'I'm gonna be very hard on him, I just want you to know. Are you guys okay with it?' And we're like 'Yeah,' so he went into the room. … she … interrogated him; he told us that he was scared" (Father 8).

While the interrogation was held at the insistence of the parents and did not result in their exclusion from the process, the parents inadvertently contributed to a potentially compromised outcome for their son. While they initially meant to impress upon their child the gravity of his behaviour, the father regretted that there now existed a recorded interview of his son in relation to sexually harmful behaviour, which posed a potential risk of incrimination. Nevertheless, while the end result of the interview could have been far more isolating, the parents were satisfied overall with how the officer co-operated and helped hold their son accountable. They felt the interrogation complemented the pre-diversion counselling services that the son was receiving at the local children's hospital. This scenario also counters existing literature that portrays some affected parents as lacking discipline and concern for their children's accountability (e.g. Cale et al. 2015; Farrington 1994; Loeber 1990; Martinez et al. 2007; Roberts et al. 2004).

In sum, the families who narrated positive experiences attributed them to supportive interactions with individual police officers. The parents' accounts demonstrate how empathy and child advocacy on the part of criminal justice staff can generate conditions of inclusion that are known to be beneficial in ensuring the safety of both potential child victims and youth offenders.

Parental Advocacy for the Best Interests of Their Offending Child

While the parents in our study were often highly critical of their experiences with the CJS and the child welfare professionals, many were also tolerant, to varying degrees, of the informational and physical barriers that they experienced. Some parents were willing to relinquish a level of control over their child's fate when faced with actions that privileged punishment over an inclusive resolution which benefitted the best interests of all affected parties. However, even in light of this acquiescence to exclusionary practices employed by CJS professionals, many parents were formidable advocates for their children. Though it is difficult to correlate CJS exclusionary practices to parental advocacy, the sustained efforts by parents to advocate for

their child's needs, as well as the needs of other children affected by the sexually offending behaviour, cannot be overlooked—particularly given how existing literature problematizes parental involvement in youth sexual offending behaviour (e.g. Cale et al. 2015; Farrington 1994; Loeber 1990; Martinez et al. 2007; Roberts et al. 2004).

For example, Mother 8 explained that she remained persistent when seeking information from authorities about resources for her son because she recognized how urgent it was for him to receive guidance and support. She was insistent and pragmatic as she sought immediate attention: "I'm like, 'You couldn't find another way to get my phone number?' 'You didn't think that … I'd been waiting around all day to try … and get [my son] help …'"; "I was like, 'Okay, so who do I call first? Can I have this number and this number and this number?' Like I … took charge of it because I care about [my son] … I needed someone to kind of guide me in what I'm supposed to do to help my child" (Mother 8).

A number of other examples demonstrate parents' efforts to advocate for their son's best interests with regard to the offending behaviour. The parents in Family 9 worked tirelessly with their lawyer and their son's hospital-based social worker to minimize the criminalization of their special needs-affected son to the point of using most of their life savings toward those ends. They fought to remove their son from a DNA registry,[11] and strongly advocated for his continued education and social inclusion among peers. When the bail conditions recommended his removal from school because of the presence of other children, his parents went to great lengths to reach an agreement that meant their son would "be under as strict supervision at the school as he would be if he were at home with us" (Father 9). Mother 4 displayed a similar tenacity when she reached out to the police detective about her concerns over her son's name being placed on the child abuse registry and then collaborated with the detective to have it removed.

Finally, conversations with many parents often centred around concerns over feeling isolated and excluded as they navigated various institutional systems following their son's sexually offending behaviour. An isolating context can serve as a risk for further sexually offending behaviour should the youth's mental health needs not be adequately addressed.[12] Despite these perceived obstacles, we found that all parents actively sought to secure and participate in their son's treatment to address the many offending-related effects, including

the youth's experience with the criminal justice and child welfare systems; the safety of affected children and the prevention of further offending behaviour; the youth's personal challenges that contributed to the offending behaviour; the youth's development of healthy sexual behaviour; and the development of a long-term safety plan for the youth and potential future victims.

One powerful parental advocacy effort included reconciliation attempts. In instances where the victim of the sexual offending behaviour was part of the extended family, some parents (Families 1 and 8) took an active role in initiating or facilitating forgiveness among the affected relatives (including the victims/survivors), as well as the non-judgmental reintegration of the offending child within the family. For instance, the parents in Family 8 insisted their son apologize in person to the victim and her parents before the next extended family gathering as a way to instill within their son a greater sense of responsibility toward the victim. The parents felt the conversation led to greater understanding and inclusivity among all relatives impacted by the initial sexual offending behaviour. Grandparents (in Families 1 and 8) also served an important role in reconciliation efforts by both encouraging and facilitating the apologies among the affected children and grandchildren.

Successful reconciliation efforts brought comfort to parents (in Families 1, 5, 6, 7, 8 and 10) and were indicative of the families' own resourcefulness in implementing beneficial restorative practices in the absence of criminal justice and child welfare efforts in this regard. By contrast, the deprivation of opportunities for apologies and forgiveness in Families 2, 3, 4, and 9 left parents with unresolved feelings of guilt and remorse that exacerbated their stress and sense of hopelessness. The emotional, often tear-filled, ways in which parents expressed the impacts of the deprivation of reconciliation revealed the extent to which restorative processes are sorely needed and should be built into interventions among sexual abuse–affected children and their families.

Of course, implementing restorative practices authentically and successfully in a bureaucratic and retributive paradigm is no easy task. Doing so effectively requires that supportive measures are prioritized over punitive ones, that there is an adequate community-based infrastructure in place to sustain them (Curtis-Fawley and Daly 2005), and that disputes of facts between victims and victimizers are avoided, especially in cases of gendered violence (Astor 1994).

Nevertheless, even when restorative justice programs are developed and implemented successfully, the state can co-opt them through over-regulation, which weakens the community's capacity to respond and take matters of justice into their own hands (Chapman 2012).

As ways to avoid such co-optation of restorative justice programs, we suggest that—alongside other community stakeholders, politicians, police officers, parole officers, or other members of the public who may offer a different and competing vision of how the program should be designed and employed—experienced researchers and academics should be involved in the restorative process so that communication becomes more transparent (Gerkin et al. 2017). Ensuring that critically minded people are present during the facilitation of restorative processes might allow a relationality to surface between all members involved, from the CJS to the families and the larger community, that is productive and keeps the primary goal of restorative justice in mind—which is to seek the healing of all people involved in and/or harmed by the offending behaviour.

Conclusion

In an attempt to move beyond mainstream scholarly and criminal justice emphases on the causality and classification of sexual offending that have often been rationalized in the name of security and risk management (Blasko 2016; Cohen et al. 1971; DiCataldo 2009; Gebhard et al. 1965; Knight 1992, 1999; Mathews et al. 1989; Pratt 2000; Sarrel and Masters 1982; Vandiver 2006), we have drawn attention to the importance of scrutinizing criminal justice responses to youth sexual offending that result in both institutional and social exclusion and, by extension, may compromise public safety. As the parents' accounts reveal, the outcomes of both the problematic exclusionary criminal justice tactics and the positive benefits associated with supportive child-rights advocacy measures underscore the need for communication and guidance. In cases where police discretion was coupled with an understanding of the youth's individual needs and a transparent approach to the criminal justice process, restorative alternatives prevailed. As a result, entire families—and arguably society at large—benefitted.

A child-centered approach that emphasizes inclusion of young offenders is critical, not only for the sake of respecting the offending child's dignity and rights within a criminal justice context

(UNOHCHR 1989), but even more so from the standpoint of prevention versus recidivism. Children isolated by a punitive process aimed solely at accountability are inevitably deprived of the personal and professional resources required to modify their behaviour and to reduce their risk of future offending (Bouhours and Daly 2007; Braithwaite 2002; Daly 2006; Daly et al. 2013; Gxubane 2015; Rossner 2013). An approach that promotes inclusion and restorative justice for children and families simultaneously fosters crime prevention, as well as personal and societal security.

In this regard, we put forth two recommendations related to our findings. The first relates to the modelling of inclusion. By its very nature, this study countered experiences of social exclusion resulting from the CJS processes by prioritizing inclusivity both topically and methodologically. Not only did we shed light on the benefits of inclusive approaches to accountability and prevention, but we also involved the caregivers respectfully and productively within multiple phases of the research process (Gervais and Romano 2018). These longer-term relationships with caregivers helped to build complexity in their narratives, reflections, and accounts of their sons' cases, and thus were instrumental in giving nuance to the earlier and descriptive literature on sexual offending. The parents' involvement and advice throughout the study also led to the comprehensive dissemination of the results and to the development of appropriate community outreach resources, including the pamphlet mentioned earlier (Gervais and Romano 2014).

The second recommendation pertains to a child's right to legal representation (UNOHCHR 1989). In light of the challenges identified by parents, we recommend that families seriously consider exercising their right to legal counsel because it can provide crucial guidance to families navigating criminal justice processes for their children, particularly those with special needs. Counsel can also act as trusted witnesses to any police behaviours that may violate an individual's legally defined rights. An approach to child sexual offending that weaves together child rights-informed police discretion, legal counsel, and child welfare advocacy can foster a transparent, balanced, collaborative, and restorative process that is devoid of deception and that encompasses opportunities for accountability and inclusion—both of which are essential to maximizing all children's safety in the context of child sexual offending behaviour.

Notes

1 Article 18 of the *Convention on the Rights of the Child* underscores caregivers' responsibility toward their children's development and best interests; article 40 emphasizes the rights of children who offend to counselling without resorting to judicial proceedings (UNOHCHR 1989).

2 Institutional and systemic exclusion denotes how people experience social inequalities and are disconnected "from major societal institutions including those in the civic, educational, economic, and family domains" because of state punishment and policy regimes (Foster and Hagan 2015, 136). More specific to our study, "CJS-based exclusion" refers to instances where the parents and the youth were inadequately informed about legal processes and were insufficiently involved in key decisions related to the youth's well-being. It also refers to both perceived and actual social isolation felt by the parents and youth as a result of CJS-based procedures.

3 Restorative justice programs can become co-opted and thus mirror the same principles embodied within the punitive apparatus (Piché and Strimelle 2007). They also have the potential to re-traumatize victims through power imbalances between the victims and offender (Curtis-Fawley and Daly 2005).

4 Despite its limitations, rehabilitation for youth who sexually offend may provide guidance on how they can accept responsibility for their actions without externalizing blame; identify and detect the core issues that led to the offending behaviour; develop victim awareness and empathy; understand the consequences of an offence to themselves, their family, the victim, and the victim's family; and consider options for restitution and healing (Efta-Breitbach and Freeman 2004).

5 The invitation to participate was open to families of all youth who engaged in sexual offending behaviour. However, only the families of male youth responded, so we were not able to examine issues as they pertain to families of female offending youth.

6 Articles 18 and 40 of the *Convention on the Rights of the Child* (UNOHCHR 1989) describe such responsibilities and rights.

7 The youth's special needs included, but were not limited to, anxiety, attention deficit hyperactivity disorder, learning disorder, emotion dysregulation, obsessive-compulsive disorder, oppositional defiant disorder, and autism spectrum disorders.

8 Given our broader study's emphasis on collateral consequences to relatives, we did not examine how class, race, gender, and sexuality among

the youth, parents, and criminal justice and child welfare authorities may have shaped the use of discretion in these cases; parents did not disclose such concerns either. Future studies should explore how power relations and markers of (in)equality influence institutional responses to youth-perpetrated sexual harm.

9 As per Articles 18 and 40 of the *Convention on the Rights of the Child* (UNOHCHR 1989).

10 With the exception of Family 9, none of the youth in our study were charged or convicted.

11 Deoxyribonucleic acid (DNA), is believed to be "a powerful tool for identifying individuals" (RCMP 2017).

12 Many parents expressed concern about the potentially lingering isolation that could result if their child was not able to pass a police records check in the future, which would exclude them from the integration opportunities of volunteer or employment positions. Parents and their social worker worried that such ongoing entanglement in the CJS could impede their son's recovery and rehabilitation.

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CHAPTER 6

Addressing the Overrepresentation of Indigenous Peoples in the Canadian Criminal Justice System: Is Reconciliation a Way Forward?

Kathryn M. Campbell and Stephanie Wellman

> *Reconciliation not only requires apologies, reparations, the relearning of Canada's national history, and public commemoration, but also needs real social, political, and economic change. Ongoing public education and dialogue are essential to reconciliation.*
>
> —Truth and Reconciliation Commission of Canada (TRC 2015, 184–85)

The notion of reconciliation has recently emerged as an important consideration when discussing the repair of relations between Indigenous people and the rest of Canada. How this manifests practically is unclear. The focus of this chapter will be to examine the role that reconciliation may play in addressing the issue of overrepresentation[1] of Indigenous people in Canadian prisons and jails. This will be accomplished through a number of steps. After looking at the statistics that demonstrate the problem of overrepresentation, we'll consider various contemporary and historical explanations, and then examine specific inquiries that were established to address problems Indigenous people face in the criminal justice system. To lay the context for understanding modern day realities and the current oppressive arrangements that exist, we'll briefly review the historical background of relations between Indigenous peoples and the federal

government and the important frameworks of colonization and specifically settler colonialism. These help to situate current tensions that exist around issues of Indigenous people's self-determination and the difficulties that arise with their overrepresentation within the criminal justice system. Both history and theory are useful tools for helping to contextualize current high rates of over-incarceration of Indigenous persons. Finally, we'll examine initiatives, including sentencing reform and correctional assessments, within the context of reconciliation; however, this examination will underline the inadequacies of such initiatives for addressing the seemingly intractable problem of carceral overrepresentation. We conclude that remedial initiatives within the criminal justice system must be part of a larger transformative project that overhauls how justice is administered for and with Indigenous people in Canada.

Indigenous Overrepresentation in Canada's Criminal Justice System: Statistics and Responses

The fact that Indigenous people are overrepresented in Canadian prisons and jails is not a matter of dispute. Figures from 2014 to 2015 indicate that Indigenous men made up 24 percent of the adult male provincial/territorial jail admissions and 24 percent of the male population in federal penitentiaries. The numbers for Indigenous women were even higher, as they made up 38 percent of the adult female provincial/territorial jail admissions and 36 percent of the female population in federal custody (Department of Justice Canada 2017). What is most alarming about these figures is that Indigenous people make up only 4.9 percent of the total population in Canada,[2] and that the prison admission and custody statistics more generally are eight times higher for Indigenous than other men and twelve times higher for Indigenous than other women (Department of Justice Canada 2017). The number of young offenders (aged twelve to seventeen years) of Indigenous origin in custody are even more alarming. Indigenous youth accounting for 34 percent of all male youth and 49 percent of all female youth in provincial/territorial custody admissions (Department of Justice Canada 2017). These stark figures convey a self-evident reality—Indigenous people are overrepresented in Canadian jails and prisons—that has been long known by Indigenous people in Canada, and discussed in criminological circles for decades (Roberts and Reid 2017).

There are no simple answers to the question of why these numbers are so high. Politically conservative explanations that point to higher crime rates among Indigenous populations are oversimplistic and tendentious. They fail to consider the many historic and sociocultural factors that have influenced the current situation which include, but are not limited to, the impacts and intergenerational effects of historical traumas such as systemic discrimination, forced assimilation, and cultural genocide, and current substandard living conditions on many reserves. All of these practices came about as part of colonialism and its resultant after effects. Moreover, these systemic oppressions have contributed to fewer employment and educational opportunities on reserves, resulting in few meaningful opportunities to overcome poverty for many Indigenous people. Thus, while some may argue that crime rates in Canada for Indigenous people seem higher compared to those for non-Indigenous people, larger systemic considerations provide more convincing explanations.

The overrepresentation of Indigenous peoples in the criminal justice system as understood today appears to have begun post–Second World War (Hamilton and Sinclair 1991). Since that time, and at the behest of federal and provincial governments, a number of commissions of inquiry have emerged to address specific injustices or respond to the general situation of Indigenous peoples in Canada. One of the first of several inquiries, the Royal Commission on Aboriginal Peoples (RCAP), was instituted in 1991 following a number of acts of Indigenous resistance that revealed a lack of faith in governments to adequately address Indigenous people's rights and needs.[3] The RCAP research and recommendations from 1996 aimed at restructuring the Aboriginal/non-Aboriginal relationship (as the terminology of the day called it) over twenty years has fallen somewhat short of its ambitious mandate. Nonetheless, what emerged from the RCAP was a recognition and acknowledgement that contemporary difficulties can be traced to historical practices (INAC n.d.).

The Aboriginal Justice Inquiry of Manitoba in 1991 came to similar conclusions and found that

> cultural oppression, social inequality, the loss of self-government and systemic discrimination, which are the legacy of the Canadian government's treatment of Aboriginal people, are intertwined and interdependent factors, and in very few cases is it possible to draw a simple and direct correlation between any

> one of them and the events which lead an individual Aboriginal person to commit a crime or to become incarcerated. We believe that the overall weight of the evidence makes it clear that these factors are crucial in explaining the reasons why Aboriginal people are over-represented in Manitoba jails. (Aboriginal Justice Implementation Commission 2001)

Other inquiries into injustices, such as the Commission of Inquiry into Matters Relating to the Death of Neil Stonechild (Wright 2004) and the Ipperwash Inquiry examining the death of Dudley George (Wortley and Roswell 2007), came to similar conclusions: the relationship between Indigenous peoples and state agents—particularly police—is fraught with tension, suspicion, and racism, and that the criminal justice system response to Indigenous people has long relied on detaining and jailing them in disproportionate numbers. Evidence of these inequities does not lie solely in the domain of criminal law, but rather can be found in, among other things, enduring battles over treaty rights, land claims, and hunting and fishing rights, and the gross overrepresentation of Indigenous children and youth in the child-welfare system in several Western provinces. Despite the fact that Indigenous rights have been enshrined in the *Canadian Charter of Rights and Freedoms*, Indigenous people are forced to continue to fight for their rights and for greater recognition in decisions affecting them.[4]

Historical Context: Canada's Colonial Relationship with Indigenous People

Historically, the relationship of Indigenous peoples in Canada with successive federal governments has been laden with many examples of blatant lies, broken promises, and injustices, creating an atmosphere in which many Indigenous groups have come to view the Canadian government with cynicism and mistrust. Canadian history is replete with policies based on the government's assimilationist agenda, reflecting a colonial mindset that requires the dominating group to control, subvert, repress, and effectively suppress or even attempt to destroy the dominated group's culture, language, and way of life. Canada's history of colonization and systemic discrimination is replete with examples of the federal government's deception in appropriating Indigenous people's land and livelihoods, and

simultaneous destruction of their languages, families, and cultures. All of this occurred within a backdrop of a dependent colonial framework, one that began with the initial colonization of lands that became Canada, where settler-Indigenous relations were characterized by forms of segregation, paternalism and oppression of Indigenous peoples—all under the guise of "civilization" and often in the name of "protection."

A partial list of the many examples of how colonization was manifested through practice includes the establishment of reserves onto which Indigenous people were relocated; the historic disenfranchisement of Indigenous people to exercise particular rights (such as voting, conscription, attending university, or hiring a lawyer to advance a claim); the arbitrary rules for deciding "Indian" status; the limitations and implicit oppressions within the *Indian Act*; the outlawing of cultural practices; and the institution of a "pass" system. One of the more chilling government practices, the fracturing impact of which persists today, were the residential schools. From 1831 to 1996 over 150,000 Indigenous children and youth were placed in federally run institutions overseen by a number of Christian churches. The federal government policy behind residential schools aimed to solve what was then termed the "Indian problem" by taking children away from their cultures, homes, and families at an early age, forbidding the practice of their language and cultures, and instilling the values and mores of the dominant society over a number of years (INAC n.d.). Following then prime minister Sir John A. MacDonald's repressive policies, Duncan Campbell Scott, then Deputy Superintendent General of Indian Affairs, infamously stated in 1920, "I want to get rid of the Indian problem… Our objective is to continue until there is not an Indian that has not been absorbed into the body politic, and there is no Indian question, and no Indian Department" (MacDougall 2008). Perhaps not part of the explicit policy the endemic humiliation, neglect, and abuse that nonetheless occurred as a result of the overall practices resonates to this day, not only with residential school survivors, but with their children and their grandchildren (Gagné 1998). The traumatic experiences of the residential school system impacts several generations and will in turn take many generations to completely heal.

Modern Day Colonization: The Colonial Project Continues

A number of academics and advocates argue that colonialism is alive and well today in Canada, and continues to exist through policies and laws at differing levels of government aimed at the erasure of Indigenous identities. Put differently, "settler colonialism" is a continued and ongoing project of colonization; its ultimate objective is not solely exploitation of Indigenous people, but the elimination or removal and replacement of the Indigenous population with a sovereign settler collective (Mitchell 2018). Patrick Wolfe (1999, 163) contends that settler "invasion is a structure, not an event," and challenges the notion of the "post" in the concept of "post-colonialism," since settlers have stayed and continue to occupy the territories they are on. For Wolfe (2006, 388), settler colonialism is based on the settler view that Indigenous people obstruct settlers' access to territory and, in fact, "the primary motive for elimination is not race (or religion, ethnicity, grade of civilization, etc.), but access to territory. Territoriality is settler colonialism's specific, irreducible element." Through policies and practices that destroy and replace, settler colonizers eliminate Indigenous people and become the majority owners of land (Wolfe 2006).

Despite successive attempts to redress historical injustices, the basic underlying difficulties remain, due to historical relations that laid the groundwork for current tensions. As Sheppard (2006, 43) notes, "current inequalities are deeply tied to histories of exclusion and prejudice. So too are they embedded in modern day policies, practices, and appraisals of worth and value, shaped according to the needs and perspectives of dominant groups in society." Some scholars view this "contemporary colonialism" or "settler colonialism" as having subtle, insidious effects that are now disguised through the rhetoric of inclusiveness. Taiaiake Alfred and Jeff Corntassel (2005, 597) explain contemporary colonialism as "a form of post-modern imperialism in which domination is still the Settler imperative but where colonizers have designed and practise a more subtle means (in contrast to earlier forms of missionary and militaristic colonial enterprises) of accomplishing their objectives."

The subterfuge of contemporary colonialism is that the destructive effects of the colonization of the past have simply been transposed to the present day through the control of Indigenous land and

resources, rather than the control of Indigenous persons' bodies (Alfred 2005). Alfred and Corntassel (2005) argue that even the label of "Aboriginal" represents a political-legal construction of identity grounded in rights afforded by treaties, and is meant to subsume Indigenous existences into the Canadian constitutional and political system. If Indigenous people are identified by their political-legal relationship with the state, rather than by their identity as tied to their home territory, culture, or language, their survival as distinct Indigenous people is further subsumed into the Canadian state.

Furthermore, John Borrows (2001, 65) argues that this incursion is also clearly evident in laws instituted by the federal government—laws that in turn serve to limit Indigenous rights: "Canada continually uses its legislatures to modify, infringe, or extinguish Aboriginal and treaty rights. Courts have continued to develop, support, and implement this framework. The domestication of Aboriginal and treaty rights in this way represents another stage in the development of colonialism today."

Jennifer Henderson and Pauline Wakeham (2013) argue that colonization is not necessarily a finished product. Struggles to contain the effects of residential schooling, Indigenous claims to land and natural resources, and threats to their self-determination all convey the legacy and continual oppression of colonialism. The result is a back-and-forth pattern in the courts as various Indigenous groups fight for recognition of both specific and wider demands relating to traditional practices, land claims, self-government, and self-determination.

The shocking numbers of Indigenous peoples in the criminal justice system discussed earlier must be seen as an ongoing effect of this colonial project. Canadian prisons and jails today have been referred to as the "new residential schools," and the situation has been likened to what existed in South Africa at the height of apartheid (MacDonald 2016). Nancy MacDonald (2016) points out that while overrepresentation in prisons and jail is a significant problem for Indigenous peoples, racial profiling (i.e., a person being repeatedly targeted by police because they are Indigenous), higher rates of denial of bail (e.g., due to violations of disproportionately onerous release conditions), harsher sentencing, and excessive use of segregation in prisons all negatively affect the experiences of Indigenous people in the criminal justice system.

Contemporary Systemic Colonization: Criminal Justice Responses

Beyond issues of Indigenous overrepresentation in jail and prison populations, criminological research has demonstrated that discrimination against Indigenous persons also occurs on other levels within the criminal justice system. Discrimination can be traced to the roots of decision making in correctional institutions (TRC 2015), in particular at the level of risk assessments. Cultural differences are neither recognized nor acknowledged in most of the risk-assessment tools used by correctional services, and Indigenous prisoners thus end up rating higher on risk levels—which in turn increases the likelihood of placement in more secure facilities, of serving longer incarceration times prior to parole, and greater exposure to segregation, which contribute to the overall effects of institutionalization. In September 2015, the Federal Court ruled in *Ewert v Canada* (2015) that the Correctional Services Canada's (CSC) psychological risk-assessment tools to determine security classification violated section 7 of the *Charter* in the case of fifty-three-year-old Métis Jeffrey Ewert's right to "life, liberty, and security of the person." The court ruled that the psychopathy test contained in the risk-assessment tools "has substantial reliability issues and has been called 'junk' in respect of its use for Aboriginal prisoners" (*Ewert v Canada* 2015 at para 19). The court further ruled that the risk-assessment tools are culturally biased against Indigenous offenders and have an adverse impact on prison conditions for Indigenous prisoners.

In June 2018, the Supreme Court affirmed that CSC uses security tests that discriminate against Indigenous offenders, resulting in longer prison sentences and less access to prison programming that may assist in rehabilitation (*Ewert v Canada* 2018). However, in this instance the court did not find that that Ewert's constitutional rights were violated. In its ruling, the Supreme Court reminded the Government of Canada that the criminal justice system must move towards substantive equality, since treating Indigenous people within the criminal justice system in the same manner as non-Indigenous people is simply not fair: "for the correctional system, like the criminal justice system as a whole, to operate fairly and effectively, those administering it must abandon the assumption that all offenders can be treated fairly by being treated the same way" (*Ewert v Canada* 2018 at para 59).

Correctional Service of Canada has yet to act on this decision. Moreover, there appears to be little effort to question the lack of cultural specificity of such instruments (Gutierrez et al. 2017)—a further example of how the influence of a settler-colonial mentality is reinforced and serves to ignore significant differences.

Colonial Legacies: Residential Schools and the Truth and Reconciliation Commission

The history of residential schools offers a clear example of the endurance of colonial legacies. The federal government's belated response to this form of cultural genocide was the first time that "reconciliation" became a stated government policy. The Indian Residential School Settlement Agreement of 2007 began with the largest class action suit in Canadian history to date and also led to the Common Experience Payment, Independent Assessment Process, the Truth and Reconciliation Commission (TRC), and further Health and Healing Services (see INAC 2019). Part of the agreement involved an apology, which occurred in June 2008 when the prime minister at the time, Stephen Harper, apologized to residential school survivors on behalf of Canada. In his statement, the prime minister acknowledged that the purpose of Indian residential schools was to "kill the Indian in the child," and that such a policy was wrong and does not have a place in Canada.[5]

From 2008 to 2015, the TRC was delegated the task of conveying and recording the history of church-run government-mandated Indian residential schools and their persisting legacy. The Commission collected testimony from over six thousand witnesses, which included residential school survivors, their families, their communities, and all those affected by the residential school system. In the ten-volume final report, the TRC (2015) made ninety-four "Calls to Action" related to child welfare, education, language and culture, health, justice, and reconciliation, directed at all levels of government. As a result of this foundational work, Canadians came to learn about Canada's ugly colonial past, and many made a commitment to reconciliation. However, measuring "reconciliation" is challenging, and given that few gains have been made since the TRC's final report in 2015, this objective has not been fully realized. Many Indigenous communities still experience substandard living conditions and endemic social problems, and Canada has been slow in recognizing Indigenous

peoples' right to self-determination. Such failure raises questions about the federal government's commitment to move past the colonial relationship.

The Commission outlined reconciliation as "an ongoing process of establishing and maintaining respectful relationships" to be accomplished through "repairing damaged trust by making apologies, providing individual and collective reparations, and following through with concrete actions that demonstrate real societal change" (TRC 2015, 17)—a rather tall order. Reconciliation can also be thought of as accepting the uncomfortable truth about the colonially imposed history of Indigenous people, while also accepting that all Canadians are implicated in establishing a mutually respectful relationship with Indigenous people. In part, this requires an examination of how the criminal justice system interacts with Indigenous people and facilitating greater self-determination for Indigenous people in how justice is delivered.

It is important to note that the term "reconciliation" itself is complicated. Meaning "restoration of friendly relations" or "the act of causing two people or groups to become friendly again after an argument or disagreement" (*Merriam-Webster*, under "Reconcilitation"), the implication is that relations were once friendly or peaceful. Many believe that, given the historic and contemporary genocidal acts of many generations of colonizers in the Canadian state, this is simply not the case, and some Indigenous groups reject the very notion of reconciliation.

Furthermore, the TRC very clearly outlined that reconciliation can be accomplished through the adoption and implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), and through state recognition of Indigenous self-determination. As an international and universal framework for human rights, UNDRIP sets out to protect the rights of Indigenous peoples. It establishes the "minimum standards for the survival, dignity and well-being of the indigenous peoples of the world" (UN n.d., art. 43). More specifically, UNDRIP affirms Indigenous peoples' basic human rights, as well as individual and collective rights to self-determination, equality, culture, identity, education, health, employment, language, land, and others. UNDRIP also calls for "harmonious and cooperative relations between the State and Indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith" (UN n.d., art. 46.3). While the UN General Assembly

adopted the UNDRIP in 2007, Canada was one of four opposing votes, due to the objections of the prime minister at the time, Stephen Harper. The objections were based in part on the belief that UNDRIP would grant veto powers to Indigenous groups over dealings with lands, territories, and resources. The government under Justin Trudeau removed Canada's objector status in 2016.

Included in the TRC's calls to action were specific measures for the reduction of Indigenous overrepresentation in Canada's prison system. These included greater investment in community-based sanctions and in healing lodges, mandatory cultural competency training for law students, *Criminal Code* amendments to allow judges to depart from mandatory minimum sentences, special attention to Fetal Alcohol Spectrum Disorder and—especially important—state recognition of Indigenous self-determination for justice systems. Call to action 42 states, "We call upon the federal, provincial, and territorial governments to commit to the recognition and implementation of Aboriginal justice systems in a manner consistent with the Treaty and Aboriginal rights of Aboriginal peoples, the *Constitution Act, 1982*, and the *United Nations Declaration on the Rights of Indigenous Peoples*, endorsed by Canada in November 2012" (TRC 2015).

While the TRC's calls to action and the (belated) adoption of UNDRIP can be viewed as examples of governmental attempts at reconciliation, their reach has been mostly symbolic. More recently, actions on the part of the Trudeau Liberals in the face of strong protests by Indigenous peoples reveal a furthering of the colonial project rather than a true commitment to reconciliation. In particular, the purchase of the Trans Mountain Pipeline despite Indigenous resistance, a pipeline that would run through unceded territory of the Secwepemc people (Brake 2018), indicates a commitment to having unfettered control over lands rather than a commitment to reconciliation.

Reconciliation through Criminal Justice Reform: Sentencing

Tangible governmental efforts at reconciliation are visible in sentencing reform. In 1996, the Canadian parliament implemented amendments to sentencing provisions in the *Criminal Code* in order to specifically address what was recognized as a growing problem of overrepresentation of Indigenous persons in Canadian prisons and jails in the 1980s through 1990s. Found in section 718.2(e), the

provision called for less reliance on incarceration and to make greater use of community-based sanctions for all offenders, but in particular for Aboriginal peoples: "A court that imposes a sentence shall also take into consideration the following principles: … (e) All available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders." (*Criminal Code* sec. 718.2)

The application of this principle first occurred in 1999 in the case of *R v Gladue* (1999) and has since come to be known as the Gladue Principle (or just Gladue). In 1995, Jamie Gladue, a nineteen-year-old Cree woman, was charged with killing her common-law spouse, Rueben Beaver. While the initial charge was second-degree murder, Gladue plead guilty to manslaughter and was given a three-year prison sentence. At trial, neither the judge nor defense counsel for the accused requested a section 718.2(e) analysis because Gladue was considered to be an "urban" Aboriginal person, living off-reserve, and was therefore considered not "within the aboriginal community" (Pfefferle 2008, 132). On the case's appeal at the Supreme Court, the court explicitly acknowledged the unique circumstances within which many Aboriginal people live, given their histories of discrimination:

> The circumstances of [A]boriginal offenders differ from those of the majority because many [A]boriginal people are victims of systemic and direct discrimination, may suffer the legacy of dislocation, and many are substantially affected by poor social and economic conditions. Moreover… [A]boriginal offenders are, as a result of these unique systemic and background factors, more adversely affected by incarceration and less likely to be "rehabilitated" thereby, because the internment milieu is often culturally inappropriate and regrettably discrimination towards them is so often rampant in penal institutions. (*R v Gladue* 1999 at para 68)

The Supreme Court indicated that section 718.2(e) was not intended to create an "Aboriginal discount," but rather to "alter the method of analysis which sentencing judges must use in determining a fit sentence for [A]boriginal offenders" (*R v Gladue* 1999 at para 68). This principle was to be applied liberally and in a purposeful manner, and

was specifically meant to address the overrepresentation of Indigenous people in Canada's prison system. In this ruling, the Supreme Court acknowledged Canada's colonial legacy and that the criminal justice system must consider the impact that colonization has had on an Indigenous person's life prior to sentencing. In 2012, the Supreme Court further clarified, in *R v Ipeelee*, that "the Gladue principles" apply in all contexts, including violent offences, and in the case of Ipeelee, a breach of a long-term supervision order (*R. v. Ipeelee*, 2012, at para 131). Moreover, failure to apply these principles was considered a reversible error. In *Ipeelee*, however, the Court ruled that the lower courts continue to ineffectively apply Gladue and err by requiring that an Indigenous offender prove a causal link between their personal background and the commission of an offence in order to have a judge consider the applicability of Gladue, as this neglects a consideration of the intergenerational effects of colonization.

Since *Gladue*, courts are meant to consider Gladue reports or Gladue factors in sentencing decisions for Indigenous persons. Unfortunately, however, "*Gladue* has different meanings in different provinces and places" (Roach 2009, 472). In practice, Gladue impact factors include an overview of the accused's personal history and are to be used by a court when deciding if a restorative justice remedy is appropriate. Given that there are no clear guidelines as to when or under what circumstances they should be used, Gladue factors may be considered in decisions regarding a sentence of diversion (out of the criminal justice system) or as part of a defence to a charge. Moreover, Laforme J. described Gladue reports in *R v RL* as "part of the response of the Aboriginal community … it is not a substitute for a pre-sentence report but can be an adjunct to one. One significant difference will be an awareness of Aboriginal aspects that attempt to respond to the concerns observed by our Supreme Court in R. v. Gladue" (*R v RL*, 2004 at para 13).

> Case law has indicated that both defence counsel and the Crown are responsible for bringing the history of the offender to the judge and ensuring a Gladue analysis takes place (*R v Kakekagumick* 2006 at paras 44, 53); failure to do so constitutes an error in law that requires re-sentencing by the Court of Appeal. However, the mere acknowledgement that an individual is Indigenous is insufficient for the court to warrant a Gladue analysis (*R v Thomas* 2005). In specialized Gladue Courts, which exist

> in many cities throughout Canada, the Aboriginal court worker (or the Gladue caseworker) will be cognizant of the importance of a Gladue analysis, and when such reports are done properly they will likely provide a thorough assessment of background factors and circumstances of the individual and the offence.

An extensive *Gladue* report will assist judges in a greater measure than a pre-sentence report. Such reports allow judges to know about the person in front of them and to tailor a sentence that is better suited to their needs, since "*Gladue* reports go into great detail concerning the life circumstances of the offender. All efforts are made to speak with friends, family members and anyone who can shed light on the life of the person. The reports extensively quote interviewees verbatim. The reports also place the individual's life circumstances in the context of the systemic factors that have affected Aboriginal people. The reports also contain concrete plans as to alternatives to incarceration" (Rudin 2008, 703).

However, in most other courts where Indigenous defendants appear, it is likely that the competency of counsel may impact on whether or not a report is filed or even the extent to which the individual circumstances of an Indigenous offender are given due consideration. The use of Gladue reports across the country is sporadic at best. It is possible that the intermittent nature in which they are used may serve to create a further level of discrimination, whereby geographic location of an Indigenous person dictates the extent of his or her accessibility to this important service. Given that counsel for *Gladue* have argued that section 718.2(e) of the *Criminal Code* could be seen as an affirmative action program, arguments could be made in support of its protection under section 15(2) of the *Charter* (TRC 2015).

Despite parliament and the Supreme Court's attempts at sentencing reform, it has had little impact on Indigenous overrepresentation in Canada's prisons: the Indigenous prisoner population has continuously grown over the two decades since the implementation of section 718.2(e) and the advent of Gladue (Department of Justice Canada, n.d.). This arguably shows that sentencing law is a rather blunt tool to effect social change. Changes likely need to occur within the criminal justice system before an Indigenous person is sentenced and perhaps even before they come into contact with the system—for example, through community policing or prevention during police encounters—to have any tangible effect. However, it

can also be argued that the remedial steps taken thus far indicate that reducing the numbers of Indigenous persons in prisons and jails is not Canada's priority. Moreover, it may reflect a continuation of the modern colonization project, whereby the numbers of Indigenous people in prisons and jails increases, and efforts to mobilize against such practices are silenced.

Concluding Remarks

As demonstrated in the few examples above, in recent years successive Canadian governments appear to have taken remedial steps towards reconciliation, yet there is still significant work to be done. More specifically, as with the cases of *Gladue*, *Ipeelee*, and *Ewert*, the Supreme Court has outlined some of the ways in which Canada can be more responsive to the unique circumstances of Indigenous people within the criminal justice system and has demonstrated the necessity of substantive equality in terms of how the justice system responds to Indigenous people. However, the system has not been able to fully realize the highest court's rulings in ways that are truly transformative. In principle, section 718.2(e) of the *Criminal Code,* the *Gladue* decision, and subsequent policy requiring Gladue reports for convicted Indigenous persons to aid in sentencing decisions are important steps forward, but in practice there has been little substantive change. Other than in a limited number of *Gladue* Courts, Gladue reports are not done on a consistent basis. Many Indigenous people are unaware of the availability of such reports. Reports are underfunded and provoke sentencing delays. Moreover, they have done little to reduce overrepresentation as rates in fact have increased since their introduction (Edwards 2017). One small review of Saskatchewan cases indicated an only 8 percent application rate of Gladue factors reports since 1999, leading some to conclude that "*Gladue* rights for Indigenous offenders still remain an unfulfilled and underappreciated aspect of the criminal justice system" (Edwards 2017). In terms of the prison system itself, while the federal court has underlined the fact that discriminatory assessment practices occur through the continual use of tools insensitive to cultural differences, the Correctional Service of Canada has not yet addressed this issue—despite being put on notice by the court (*Ewert v. Canada* 2015).

While some may argue that substantive changes take time and that current efforts, in the name of reconciliation, are a step in the

right direction it is difficult to believe these limited efforts are truly conciliatory in nature. Perhaps the problem is that the Canadian government's efforts towards reconciliation occur within the political climate of the day, while addressing overrepresentation of Indigenous peoples in the criminal justice system takes place only at the remedial stages of sentencing and correctional assessment. As noted in the TRC "Calls to Action," addressing overrepresentation requires attention to other practices that focus on things like empowering communities to facilitate healing and mandatory cultural-competency training and flexibility for those working in the system. Efforts must be directed toward the greater social structural issues affecting many Indigenous communities, such as poverty, access to education, and access to justice. In other words, reconciliation requires "real social, political, and economic change" (TRC 2015, 184–85), which can only be realized through partnership and a true commitment to these ends.

Given the settler-colonial reality of modern-day Canada it would seem that settlers have stayed and will continue to occupy the territories they are on (Wolfe 1999). Efforts to address the seemingly intractable problem of overrepresentation thus require a genuine engagement and partnership with Indigenous peoples, and a greater recognition and implementation of Indigenous self-determination for justice systems.

Notes

1 The idea of "overrepresentation" in this context refers to the excessive numbers of Indigenous persons in prison relative to their numbers in the general population. This will be explained below.

2 This includes those who are First Nations (North American Indian), Métis, or Inuk (Inuit), and/or those who are Registered or Treaty Indians (i.e., registered under the *Indian Act* of Canada) and/or those who have membership in a First Nation or Indian band (https://www150.statcan.gc.ca/n1/en/daily-quotidien/171025/dq171025a-eng.pdf?st=idIBftG7). The terms "Indigenous" and "Aboriginal" will be used throughout the chapter to refer to the virtually the same groups, however, we will only be using "Aboriginal" if the original citation uses that term in recognition that "Indigenous" is a more politically comfortable term (Alfred and Corntassel 2005).

3 These included the Oka Crisis of 1990 and the failure of the Meech Lake Accord in 1987. The former resulted from an act of resistance by the

Mohawk Nation of Kanesatake to the development of their sacred land without their consent. The latter refers to the failed constitutional talks that were essentially brought down by a lone Indigenous Member of the Legislative Assembly in Manitoba, Elijah Harper.

4 See for example, *McIvor v Canada (Registrar of Indian and Northern Affairs),* in which Sharon McIvor challenged the federal government in 2010 to recognize the Aboriginal status of her grandchildren, who lost that right through her own legal banishment due to her marriage to a non-Aboriginal man prior to the 1985 Bill C-31, which repealed that exclusionary provision of the *Indian Act*. Recently, Bill S-3, which became law in December 2017, amends the *Indian Act* to provide new entitlements to registration in the Indian Register in response to the decision in *Descheneaux c Canada (Procureur général)* that was rendered by the Superior Court of Quebec on August 3, 2015. Furthermore, this legislation provides that the persons who become so entitled also have the right to have their name entered in a Band List maintained by the Department of Indian Affairs and Northern Development (*Act to Amend* 2017).

5 This apology was later described as disingenuous when Stephen Harper denied Canada's colonial past at a G20 meeting in Pittsburgh, Pennsylvania, in 2009 (Walia 2009).

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SECTION 3

MARKERS OF SOCIAL DIFFERENTIATION AND SOCIAL REACTION

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CHAPTER 7

Security Governance and Racialization in the "War on Terror"

Baljit Nagra and Jeffrey Monaghan

> *Security is not a reason to infringe and violate the rights of others especially when you know you have a small group of your society that feels that it's been targeted and alienated, and being cornered. This is definitely not the correct way of solving the real roots of the problem. And it is definitely not a long-term vision.*
>
> – Ottawa, Interview 16

The "war on terror" has contributed to racialized policing of Muslims in Western countries based on a presumption that Islam is a source of terrorism (Kundnani 2014). Our objective in this chapter is to document how national security practices in Canada have targeted Muslim communities. While much of the cultural and social production of Islam as a source of terrorism can be traced to the politics of the Cold War (Mamdani 2005), the emergence of the "new terrorism thesis" in the 1990s cemented a twinning of Islam and with the study of "terrorism" (Stampnitzky 2013). Based on the notion that Islam is incompatible with Western values and produces religious fanaticism, the "new terrorism thesis" has framed the policing and security practices of the "war on terror," not only in the United States but also in Canada. Typically, administrative criminology has been associated with more conventional scholarship that seeks to enhance policing practices associated with the "new terrorism thesis"; however, we approach the study of security as critical criminologists and critical race theorists who seek to challenge how racism, sexism, classism, ableism, and other forms of oppression are reproduced through criminal justice systems that are increasingly, as Mariana Valverde (2001) puts it, governed through security.

Similar to ways that critical criminologists have described how we are governed through crime (see Simon 2007), research on security governance underscores how security proliferates criminal justice systems, transforming the practices of these systems according to a logic of pre-emption (Ericson 2007). Where counterterrorism is concerned, much of the critical work has specifically called attention to the Orientalist character of security practices and how these racialized caricatures of Islam produce widespread discrimination against Muslims as "suspect communities" (Pantazis and Pemberton 2009; see also Awan 2012; Ragazzi 2017). This chapter contributes to our understanding of how racialized policing negatively impacts Muslims in Canada and, in the spirit of critical criminology and critical race scholarship, seeks to challenge these practices as a means of transforming them.

Although much critical attention has been directed toward policing and security practices in the United States and the United Kingdom, the Canadian track record has closely mirrored counterterrorism strategies of these Western allies (Monaghan 2015). Along with other Western states following 9/11, one of the ways in which Canada has participated in the national and transnational racialized discourse of the "threatening Muslim" is through its enactment and implementation of national security legislation (Dua et al. 2005). Immediately after 9/11, Canada passed the *Anti-terrorism Act* (ATA) that criminalized a broad array of potential activities and allowed for enhanced powers of preventative arrest and investigative hearings (Roach 2011). More recently, amendments to the ATA (commonly referred to as Bill C-51) expanded the toolkit of powers available to the government in its attempts to combat terror, domestically and abroad. This included new powers of "disruption"; the criminalization of terrorism-related speech modelled on the United Kingdom "glorification" crime (which, at the time of writing, is subject to potential revocation); a dramatic loosening of privacy provisions protecting the exchange of intelligence and personal data related to "security" issues; and the ability of Canadian courts to approve certain forms of *Charter* rights violations (see Forcese and Roach 2015). Even more recently, the Liberal government has reformed the ATA in Bill C-59, which adds further powers to engage in bulk-data and mass surveillance.

While the text of anti-terrorist laws may not directly point to the targeting and scrutiny of certain groups, political discourses used to justify such laws use highly racialized language, and the

potential for discrimination exists in how the laws are implemented (Bhabha 2003). As political justifications for these powers are commonly tied to the threat of "Islamic terrorism," national security legislation both racializes the discourses of terrorism, as well as contributes to a broader "securitization" of policy and policing (Murphy 2007; Whitaker 2012) that aims to increase capacities of surveillance, intervention, and control against potential (Muslim) terrorists. In so doing, Canada's counterterrorism legislation has also been coupled with a host of administrative measures, such as the tightening of airport security, heightened policing of Canadian borders, the increasing use of Security Certificates for national security purposes, and the introduction of Canada's "No Fly List" (formally, the *Secure Air Travel Act*) through the Passenger Protect Program, which came into operation in 2007.

The drastic change in Canada's national security environment has been accompanied by protests and criticisms from Canadian human rights associations and Canadian Muslim organizations (CCLA 2014; Helly 2004; International Civil Liberties Monitoring Group 2010). These groups have expressed concern that these measures are used almost exclusively to target Muslims in Canada, exposing them to intrusive state surveillance practices. The existence of these measures also contribute to legitimizing the perception that Muslim communities are a threat to Canada, making Canadian Muslim communities vulnerable to discrimination, hate crimes, and stigmatization.

While it has also been widely acknowledged in academic literature that Canada's counterterrorism initiatives target Muslims in Canada (Razack 2008; Thobani 2007), relatively little is known about how Muslims actually perceive and experience these practices. In a bid to fill this gap, we discuss the findings of a study that includes interviews with ninety-five Muslim community leaders and Muslim experts living in five major Canadian cities, in order to understand how Muslim communities have experienced and been impacted by the "war on terror." While other studies (Jamil and Rousseau 2012; Nagra 2017) have also explored how Muslim communities have experienced the "war on terror," ours is the first to use a nationwide sample to examine the concerns of Muslim communities leaders, and experiences, with specific counterterrorism practices. These experiences and concerns offer insight about the impact of counterterrorism practices, and provide "a body of systematic evidence of individual

and systemic racism directed against people of colour" (Tator and Henry 2006, 132). Before detailing how Muslims in Canada experience counterterrorism practices, we offer a brief synthesis of how critical criminologists and critical race scholars have critiqued the racialization of security governance.

The "War on Terror" and the Racialization of Muslim Communities

While the early years of the "war on terror" were largely characterizable as a series of wars abroad, efforts to combat terrorism have increasingly expanded domestic practices of policing, surveillance, and security. Fusing with older "wars" on crime and drugs, the practices of the "war on terror" have rationalized a broad regime of security governance that can be characterized as diverse efforts to police activities associated with insecurity and terrorism (Huysmans 2013). In what Joseba Zulaika (2009) describes as a "self-fulfilling prophecy," security governance practices necessarily inscribe insecurities into society and contribute to a social climate of pervasive fear and suspicion (Jamil and Rousseau 2012; Kundnani 2014; Pantazis and Pemberton 2009). As suspicions and efforts to govern future threats are increasingly prioritized, these practices predominantly target Muslims—not only in Canada (Razack 2008), but in the United States (Kundnani 2014), the United Kingdom (Awan 2012; Ragazzi 2017), and elsewhere (see *Surveillance and Society* 2017). Given these impacts on targeted communities, scholars like Richard Jackson (2005) have argued that the "war on terror" is not a neutral reflection of the reality of terrorism but a careful and deliberate narrative that has been designed to make the war seem reasonable and responsible. In normalizing the enmity of the "war on terror," Jackson notes that one of the most important features has been the use of the rhetorical trope of "good" versus "evil." Sanjay Sharma and Jasbinder Nijjar (2018, 73) argue that counterterrorism surveillance practices are "structured by a fear of not knowing, [which] spawns paranoid forms of racism, rendering migrant-Muslim populations as sites of (trans)national insecurity, uncertainty, and violence." Underlying how race is an enactment of symbolically charged connotations placed into suspicious associations by security agencies, Sharma and Nijjar argue that Islam becomes racialized through a spectrum of implicit and explicit connotations. Within the "war on

terror," this includes "patterns of movement, sites of congregation, mobile phone apps, use of encryption services, social media and Internet search activity, types of luggage, (length of) facial hair, clothing, associations, and so on" (Sharma and Nijjar 2018, 78). In Canada, security agencies have used other connotations like identity problems, an interest in physical conditioning, or losing touch with friends, as possible indicators of "radicalization" pathways (see RCMP 2016). While often the language of policing agencies can be benign, the constant twinning of terrorism with aspersions about Islam have amplified the suspicion of Muslim communities.

Enakshi Dua et al. (2005), for example, note that discourse of race in the "war on terror" have shifted to signifiers such as religion, with individuals holding the strongest religious convictions being targeted for surveillance, policing, and incarceration. Similarly, Jasmin Zine (2012) has noted that since 9/11, Canadian Muslims are profiled, studied, policed, and detained through ontological categories such as the "radical," the "extremist," and "the terrorist." Sheema Khan (2012) emphasizes that these tropes enable Canadian security and intelligence operations to disregard basic human rights of Muslims. Since the figure of the Muslim is used to represent the most potent threat to national security, all Muslims in Canada become constituted as part of this danger and become vulnerable to having their rights dismantled (Thobani 2007). Sherene Razack (2008, 6) elaborates that when Canadian Muslims are denied their fundamental rights, a certain kind of nation-state is made: "What is born or born again is a national community organized increasingly as a fortress, with rigid boundaries and borders that mark who belongs and who does not."

In this chapter, we explore three main issues related to how the "war on terror" has impacted Canadian Muslim communities. We first discuss general concerns Muslim community leaders have toward the "war on terror" and the increased emphasis on national security in Canada. This includes concerns that counterterrorism practices of the Canadian government conflate terrorism with Muslim identity and treat Muslim communities as homogenous. We then explore how interview participants experience and perceive the targeting of their communities through various counterterrorism practices. Our interviewees thought that Security Certificates, the Canadian No Fly List, airport/border security, and CSIS investigations disproportionately targeted their communities. Finally, we conclude by discussing the negative consequences of such policies

and practices on Muslim communities, such as stigma and alienation, as well as a sense of diminished Canadian citizenship and religious freedom.

Research Methodology

This chapter draws on findings from a research study that one of the co-authors (Nagra) conducted. This qualitative study, conducted from May 2014 to September 2015, explored the impact of counterterrorism practices on Muslim communities in Canada. Interviewees included ninety-five Muslim community leaders and Muslim experts living in five major Canadian cities: Toronto (twenty-six interviews), Vancouver (sixteen interviews), Ottawa (twenty interviews), Montreal (fifteen interviews) and Calgary (eighteen interviews).[1] Muslim community leaders were identified as those that could speak about their communities' experiences with Canada's counterterrorism practices. This included those who held prominent roles in Muslim organizations and mosques, as well as those—such as imams, Muslim youth leaders, and those belonging to Muslim women's groups—who were actively involved in their communities. Muslim academics and lawyers who had specific knowledge of communities' experiences with Canada's counterterrorism practices were also interviewed. Interviewees were recruited through both targeted and snowball sampling: some Muslim community leaders were directly approached to participate in the study and then we used snowballing techniques to ask interviewees to recommend others who could also speak of Muslim communities' experiences. Overall, the research sample was diverse, with interviewees coming from a various age groups, ethnic backgrounds, and different Muslim religious traditions.

With a research sample that included ninety-five Muslim community leaders from five different cities across the country, we opted to quantify some findings (i.e., using percentages) to offer a sense of how widespread some of the concerns surrounding counterterrorism policies were among our interviewees. Notwithstanding our use of qualitative sampling and analysis, we think this quantification offers important insights into the overwhelming trends we observed in the spectrum of Muslim community leaders with whom we spoke.

Interviewees were asked about their thoughts, experiences, and concerns with Canada's counterterrorism laws and practices, as well

as the impact of these practices on their communities. Interviews were presented with both general questions about Canada's counterterrorism initiatives, as well as specific questions about certain programs such as the Passenger Protect Program, airport/border security, and Security Certificates. While an interview questionnaire was utilized during the interviews, interviewees were encouraged to elaborate wherever they wanted and to discuss any additional issues they thought were important. Interviews lasted approximately one hour and were audio-recorded, transcribed, coded thematically, and analyzed using the NVIVO qualitative software program. The quotes selected reflect the commonalties in the interviewees' experiences and the themes that arose from the findings.

General Concerns about Canada's National Security Environment

Muslimization of the Problem of Terrorism

Security and policing agencies in Canada are careful in their public-relations efforts to stress that their counterterrorism practices are not exclusively focused on Islam. An introductory paragraph in the RCMP's (2016, 6) *Terrorism Awareness Guide* warns: "Radicalization to violence is not a new phenomenon and is not limited to a single group, social class, religion, culture, ethnicity, age group or worldview." Yet the efforts by agencies in Canada and abroad to address terrorism or radicalization have invariably focused a vast majority of their attention towards Muslims (Kundnani 2014; Mythen 2012). Tim Aistrope (2016) has described the twinning of terrorism and Islam as a product of a powerful "Muslim paranoia narrative" that is deeply embedded in the "war on terror," as well as within Western culture more broadly.

Studies on Canadian security practices have illustrated how terrorism is intimately twinned with Islam (Monaghan 2014; Monaghan and Molnar 2016), and interviews within this study provide experiential accounts of how counterterrorism practices are experienced by Muslims in Canada. When the interviewees were asked whether they felt that Canada's anti-terrorism practices targeted Muslim communities, 90 percent of the interviewees answered yes with responses such as, "Yes, of course," "absolutely," and "100 percent." Overall, there was widespread belief among the interviewees that Muslim communities were being disproportionately

targeted by Canada's counterterrorism practices. While our research uses qualitative sampling and analysis, it is telling that 94 percent of the interviewees—representing a broad array of geographic and social positions—indicated that they were concerned with Canada's counterterrorism initiatives. While interviewees may have had differing viewpoints on how their communities should respond to the targeting they were experiencing, such as how much to engage with state security agencies, there was an overwhelming consensus among our interviewees that their communities were being vilified and treated unfairly. One of the prime shared concerns was that what was understood and conceptualized as being "terrorism" had been conflated with Islam. As a result, they saw counterterrorism policies in Canada operating in a way in which terrorism was envisioned as being synonymous with Muslim identity. For instance, one of the interviewees mentioned the following:

> Believe me; every Muslim household is concerned about these policies, these bills; every Muslim feels that the government is trying to corner him or her or his or her family. Every Muslim believes that this is not a fair, just Canadian way of governing the country or protecting the country; it is just an effort to blame Islam and to isolate (the) Muslim community. … If a person commits a crime and that person happens to be a Muslim, then they start blaming Muslims and terrorism. What happened to this terrorist who killed 9 people in the church in South Carolina? Did anybody call him a Christian terrorist? So why? I mean this guy was a racist. He killed black people. And no media call him a Christian terrorist or a white terrorist. They are calling it mentally ill people. And if a mentally ill person happens to be a Muslim and commits a crime, it's [labelled as] terrorism, or Muslim terrorism, and Islamic terrorism. So is this not discrimination? (Calgary 11)

Other interviewees also expressed similar sentiments and felt that "Islamizing the problems of terrorism" put their communities in precarious positions. While some of the interviewees recognized that there was some attempt made by government officials to say "not all Muslims are bad," the stance of these officials—problematically—was still that when it came to terrorism "they are primarily concerned about Muslims." It was not surprising then that interviewees thought

that Canada's counterterrorism policies were extremely "biased against Muslims." Their thoughts resonate with the work of Khan (2012) who has argued that the stereotypical linking of the words "Muslim" with "terrorist" work to resonate in the everyday psyche in such a way that it produces a self-referential mediascape that almost exclusively conflates terrorism with Islam.

Some of interviewees mentioned that this bias towards Muslims in counterterrorism measures has existed since the introduction of Bill C-36 (Canada's first *Anti-Terrorism Act*) which was introduced immediately after 9/11. One of the interviewees put it this way: "Bill C-36 was primarily for Muslims, targeting the Muslim community and it sent out the message to the Muslim community that the government is out to get us. So there was this fear in the community" (Toronto 2).

Interviewees frequently mentioned that the Canadian government had "overreacted to 9/11 with anti-terrorist legislation." They thought it unfortunate that, since then, Canada has continued to introduce more stringent counterterrorism policies. Interviewees often questioned why Canada was taking such a strong counterterrorism stance and why politicians were so fearful of the Muslim population. Ultimately, they thought the surveillance and scrutiny placed on their communities in Canada was not warranted.

Homogenization of Muslim Communities

Interviewees thought that the conflation between Islam and terrorism created an environment where security and policing agencies, as well as the broader public, view the entire Muslim community as suspicious. They felt their communities, which are quite diverse, were seen as being homogenous and were projected in a negative light. One interviewee said: "I believe it's in [the] extreme. As far as it goes to the Muslim community, you can't really judge the whole Muslim nation based on a few people that did a few things that were bad. But that's what happening" (Calgary 13). Another elaborated on this idea by saying, "How many Christian people or Jewish people commit crimes? People who commit crimes should be blamed. And not on the entire Muslim community. We should not be guilty by association. The Muslim community right now are found guilty by association by the national security [apparatus]" (Calgary 3).

Interviewees thought that Muslim communities were being painted with the same brush as those who committed acts of violence, and were being vilified by connotations to violence that are not only

unconnected with their communities but are exceedingly remote—in contrast to more urgent issues of violent crime in Canada.

They saw the vilification and homogenization of Muslim identity occurring not only through counterterrorism practices, but also through the political discourses used to advocate for these measures, through the media, and through the stereotypes that exist about Muslims in mainstream Canadian society. In line with Gabe Mythen's (2012) research on negative consequences of security practices in the United Kingdom that unjustly targeted Muslims and fuelled a public climate of suspicion and prejudice, our interviewees conveyed that this homogenous and negative portrayal of Muslim communities has a detrimental effect on those communities. One interviewee described this negative impact in this way: "I would say that the cumulative effect of all of the changes is that [it] serves to mark certain populations as, particularly Muslims but not exclusively, as objects of suspicion, as unequal whether they are non-citizens or even as citizens, which can then make them objects of surveillance, scrutiny, and then restrictions can be placed on civil liberties" (Toronto 5).

Targeting of Muslim Communities through Counterterrorism Practices

A major theme that arose out of our research was that the vast majority of the interviewees (90 percent) thought that Canadian Muslims were being disproportionately targeted by a host of counterterrorism practices. Below, we explore how our interviewees felt that Muslims were being unfairly treated through Security Certificates and the Passenger Protect Program, and by how airport and border security is conducted.[2]

The Security Certificates Regime

Security Certificates, introduced in 1978, are administered under immigration law in Canada. They allow the Immigration Minister or the Public Safety Minister to issue a certificate for the detention and eventual removal, without appeal, of a permanent resident or foreign national on the grounds of national security, the violation of human or international rights, or involvement in serious organized criminality (CCLA 2014). Although Security Certificates were implemented before the "war on terror" they have become a tool used to address national

security issues in Canada since 9/11. In total, twenty-nine Security Certificates have been issued since 1991. However, out of the eight Security Certificates issued since 2001, six have involved Muslim men (CCLA 2014). Moreover, Razack (2008) underlines how five prominent Security Certificate cases—known as the "secret trial five"—have been highly punitive and dramatic, working as a crafted aspect of the government's effort to be seen as actively fighting terrorism (see also CCLA 2014). The result is that the Security Certificate regime has contributed to the spectacularly racialized discourse of the "war on terror."

When asked about Security Certificates, many interviewees remarked on the punitive character of the regime that they feel disproportionately targets Muslims. These interviewees noted that all of the three currently outstanding Security Certificates involve Muslim men: Mohammed Zeki Mahjoub, Mohammed Harkat, and Mahmoud Jaballah. For the interviewees this signified the unfair and disproportionate treatment of Muslim individuals. For example, one interviewee said the following: "It is not just a feeling that I have. If you look at the evidence—who has become a target of the Security Certificate regime you see that it is (primarily) the Muslim community being targeted" (Toronto 12).

What made many interviewees particularly concerned about Security Certificates was the inherently unfair process. Interviewees noted that Security Certificates involved secret evidence and secret hearings and did not provide the accused with due legal process. One imam in Montreal said "The Security Certificates regime is very problematic—it is wrong ethically, morally and legally." Hussein Hamdani, a prominent Muslim lawyer from Hamilton, said, "Even if you ask a five-year old do you think it is fair to incarcerate someone indefinitely and not give them a chance to see the evidence and defend themselves—even the toddler will tell you that it is unfair."

The controversial procedures involved Security Certificates contributed to a culture of fear within Muslim communities. As one interviewee put it, "Security Certificates leave a sense of vulnerability among people involved in the Muslim community that you could be detained for something without any charges. It contributes to a sense of distrust with the government" (Vancouver 1). Overall, the very existence of Security Certificates, which allow for the use of secret trials, secret evidence, and indefinite detention was frightening and extremely troubling for our interviewees.

The Passenger Protect Program

Interviewees were also concerned with Canada's Passenger Protect Program—the Canadian version of the No Fly List (Public Safety Canada 2019). As Marieke de Goede and Gavin Sullivan (2016) note, various "lists" have made a resurgence in the "war on terror." Kill lists, no-fly lists, terrorist-financing lists, terrorist organization lists, extremists' lists, and the like all serve as technologies for sorting, managing, excluding, and even killing suspect or suspicious elements of the population. In Canada, the No Fly List remains one of the most publicly contentious of the new security lists. It came into operation in 2007, prohibiting some passengers on the list from boarding domestic and international flights to and from Canada. According to estimates from the advocacy group #NoFlyListKids, there could be upwards of one hundred thousand Canadians on the No Fly List (Standing Committee 2017). While being placed on the No Fly List does not necessarily mean people cannot fly, it does mean added levels of scrutiny and screening. Critics have long pointed to the secretive character of the No Fly List—and what is sometimes called the Slow Fly List—the lack of notification of being placed on the list, and the affected person's inability to challenge the listing, as well as the extensive false positives that have included children as young as a few months old. While the government under Justin Trudeau finally announced a centralized redress system for false positives, many aspects of the No Fly List still remain opaque and problematic.

Given the widespread negative impacts they have observed associated with the No Fly List, interviewees frequently thought that Muslims were disproportionately being placed on the list. One of the interviewees said:

> The Passenger Protect list is just a list with a bunch of Muslim names on it and those names in Islam are so common. It's ridiculous that you just throw in Muslims' names onto a list. This list is very prohibitive for Muslims in general to travel. This should be eliminated. For example, they are restricting people's movement that are just doing activism work, it's ridiculous. These people they might have some connection to someone who is involved in some organization that might have funded a "terrorist organization" or whatever. The link they saw is so far off,

> but they put the person on the list so quickly and so easily just to be on the safe side. It's just ridiculous. It makes me feel, just because you're a Muslim they can get away with it. There is no justification for this. (Calgary 10)

Over the course of our interviews, 39 percent of participants knew people from their communities—family, friends, or acquaintances—who had encountered problems with the list. These interviewees recalled that, because the No Fly List prohibits flying both within Canada and internationally, Muslims were experiencing a host of negative consequences, such as not being able to go to job interviews, attend professional conferences or important family events, or visit sick relatives.

It is not surprising then that many interviewees had serious concerns about how the No Fly List operated. Interviewees frequently mentioned that a major problem was with the confusion of names. As Hussein Hamdani pointed out, "The Canadian list, that's supposed to have more checks and balances than the American list. But I heard lots of stories of people I know who've got very common Muslim names, for example Khan as equivalent to Smith. And so, there are lots of people with the last name Khan. If there is another Khan somewhere in the world that's a person of interest, then this Canadian gets scooped up in that."

Interviewees mentioned the extra hassle and burden that some Muslims experienced because their names matched with someone else's on the list. This included being held up for many hours at airports and, in some cases, even missing their flights. This results in a climate where Canadian Muslims live in fear of being unfairly placed on the list or having a name that matches with someone else's.

Airport and Border Security

Racial profiling and harassment experienced at airports and borders (land crossings) further complicated the interviewees' experiences of travelling. Discussing their experiences, 82 percent of our interviewees thought Canadian Muslims were being racially profiled at airports and borders, and 58 percent of our interviewees indicated being unfairly scrutinized (i.e., through extensive questioning, secondary screenings, and/or intrusive searches) because of their Muslim identity. A total of 76 percent of interviewees recalled their family, friends, and acquaintances having similar problems. These findings are similar to

previous studies that have also found that Muslim Canadians are targeted at airports and borders (Nagra and Maurutto 2016).

Interviewees spoke of Muslim Canadians being racially profiled and constantly being picked out of lines for extra security screenings and questioning. Interviewees reported that while going through these searches, airport and border officials can be intimidating and rude, making the traveller feel humiliated and degraded. As one interviewee recounted:

> People have told me that when they go to the airport, they get pulled aside because they are Muslim. And they get searched many times and are treated differently from other people. Some have even started to shave their moustache. That's very sad that they will pull you from any line because they think you are Muslim or Arab. You feel very embarrassed when you are pulled out of a line of say two hundred people. And they do that just because they think you look Muslim. They think just because you are a Muslim you could do something that is bad. (Toronto 1)

Being picked out for extra security checks and questioning was a common experience for our interviewees. Because of their experiences being held up in security checks, interviewees talked about going to airports much earlier than required so that they would not miss their flights. In some cases, interviewees actually missed their flights because they had been held up so long. Although they were told these were "random" checks by security personnel, our interviewees believed that this indeed was not the case and that they were being discriminated against because of their Muslim identity.

Furthermore, getting back into Canada after travelling internationally or having crossed the border into the United States became a recurring problem. One interviewee from Vancouver mentioned that she knows many Muslim families with Canadian citizenship who have been held up at Canadian customs for many hours after travelling to the Middle East. She says, "it is like facing torture and police interrogation [where they are] locked up and put under pressure." Another interviewee from Vancouver, a Canadian citizen, was held up for a number of hours when trying to get back across the border into Canada after leaving the country for less than half an hour to get cheaper gas in the United States. His car was searched by dogs. Another interviewee from Vancouver, a lawyer, said that he has

represented many Muslim clients who, despite holding legal Canadian citizenship, have faced numerous difficulties getting back into Canada after travelling overseas.

During such experiences, interviewees felt treated as second-class citizens who were perceived as potential security threats. They thought this was unfair because as Canadian citizens they should not be harassed when they were just trying to come back into their country.

Negative Consequences of Counterterrorism Policies and Practices

Practices of the "war on terror" have expanded into further domains of social policy throughout a number of Western states. Francesco Ragazzi (2017, 17) suggests the diffuse embedding of security within wider fields of governance is the product of two intertwined processes: "(1) a future-oriented managerial conception of policing attached to a (2) racialized conception of the social order." Impacts of this diffusion mean that more social issues are connected under the ambit of "security," proliferating opportunities for discrimination, surveillance, and Islamophobia. The diffuse spectrum of suspicion and scrutiny produced by the "war on terror" has significantly impacted Muslims in Canada. Our interviewees revealed that, as a result of these counterterrorism practices, Canadian Muslim communities were experiencing a host of negative consequences, including stigma, alienation, limited religious freedom, and a sense of diminished citizenship.

Fear-Mongering, Stigma, and Alienation

Interviewees thought the targeting of Muslim communities through counterterrorism initiatives sent the wrong message about Islam and Muslims to the rest of Canadian society. For example, one interviewee said, "I think that it's just propaganda. I think that's pretty scary. And I think the more that this government gets that kind of power [and)] gets better at using [the] media, it's scary and is not good for the Muslim community. They're very, very good at setting up images in the public mind about what Muslims are and the threats that Muslims supposedly cause [terrorism]" (Toronto 11).

Other interviewees also spoke about how state policies were "breeding cultures of fear about Islam," were "dehumanizing Muslim communities" and that this "definitely affected how society views

them." Placing an emphasis on the political rhetoric of politicians and governments, interviewees describe how communications practices translate into discriminatory experiences. As Sarah Marusek (2018) notes, the role of government and security "experts" has been critical in expanding the discriminatory practices against Muslims. This is particularly true in the United States where Islamophobic political rhetoric has, combined with poverty and alienation, resulted in anti-Muslim public opinions and sometimes vigilantism (Giroux 2018). Indeed, 47 percent of our interviewees, all from Canada, indicated knowing someone who had faced some form of discrimination due to their being Muslim (i.e., verbal or physical abuse, employment discrimination, or hurtful comments about Islam).

Interviewees emphasized that Canadian Muslims were vulnerable to hate crimes, including both verbal and physical abuse, and especially in public spaces. This is supported by statistical findings by the National Council of Canadian Muslims, who have tracked Islamophobic crimes and violence in recent years.[3] A number of interviewees spoke of how the vilification of Muslim communities made Muslim women more vulnerable to hate crimes. One interviewee from Vancouver, for example, mentioned how he knows many Muslim women who wear the hijab who have experienced a wide range of hate crimes on public transportation such as buses and the SkyTrain.

Interviewees also spoke to how the demonization of their communities was leading to employment discrimination, Islamophobia in educational settings, and the placement of Canadian Muslims in the position where they frequently had to defend their religion to strangers, co-workers, acquaintances, and friends. The stigma of constantly being under suspicion, being vulnerable to discrimination, and having to constantly defend their religion is both emotionally taxing and alienating. Interviewees indicated that their communities felt marginalized in Canada because of the practices of Canadian agencies within the "war on terror." One interviewee summed up the emotional impact: "People will feel more and more alienated. People feel like they're constantly having to defend their religion, they're constantly having to defend their culture, their practices. You don't have that feeling that Canada welcomes you, [even though] you welcome Canada and you welcome Canadians. Because the government is constantly saying that Muslims are different than the rest of you" (Calgary 10).

Limited Religious Freedom and Diminished Canadian Citizenship

Interviewees mentioned that this stigma and alienation associated with being Muslim was compromising their communities' sense of religious freedom—the ability to openly practice their religion or to display their religious identity publicly without a fear of reprisal. One interviewee described how some Muslims are afraid to express their identity and religiosity in public: "Muslims may fear practicing their rights as Muslims. So that fear can cause them to maybe stop wearing the hijab for example or stop praying in school for example, or maybe fasting in the month of Ramadan, or any of their rights, or any of the religious practices that they want to practice, but they might fear, they might not do it because of fear of how it might affect their life" (Calgary 6).

Some interviewees feared a day will come that Muslims would no longer feel free to practice their religion in such ways as being "able to pray in public," "displaying their Muslim identity," "wearing the hijab or the Niqab," "going to the mosque," "attending Muslim events" and "growing a beard." Interviewees also mentioned that a fear also existed in Muslim communities about how travelling to the Middle East or countries like Pakistan could be seen with suspicion and may result in landing under the suspicion of state agencies. Faisal Bhabha, a York University law professor from Toronto said:

> I mean every time a Muslim person thinks about going for a trip, leaving the country, you know, they're going to be second guessing themselves, their intention, their timing, whether it's necessary, their associations, right? So, this is all part of the chill that takes hold when people have lived in fear, like I—when I say fear, that's the kind of fear I'm talking about. I'm not talking about fear that, you know, someone's going to show up with a gun and shoot you in the head one day.

Given the widespread and diffuse suspicion that has targeted Muslims within the "war on terror," a number of interviewees spoke about how their communities were experiencing a "chill" effect similar to what was recounted by Bhabha. This chill effect included being afraid to express their Muslim identity, display their religious traditions and identity in public, travel to certain parts of the world, or be critical of state practices.

Feeling targeted and having their rights eroded resulted in feelings of frustration and anger. As an interviewee from Ottawa put it:

> It hurts more than anything and I guess [you feel] a sense of betrayal. Especially at the airports—I think that's one of the main places where these anti-terrorism legislation hit home. Someone is questioned by—say by the border services—or by CSIS. And the person then feels that their beliefs or their religion is the reason why this attention has been brought upon them. I would like Muslims to be presumed to be law-abiding citizens, until proven otherwise. But it just seems that now we're all basically guilty until proven innocent. And that has a lot of moral and also a lot of social consequences. (Ottawa 2)

One of these consequences is the erosion of Canadian citizenship of Muslim Canadians. Academics have noted that although minority groups may have legal citizenship in liberal democratic nations, they may still be treated as second-class citizens, and that legal citizenship does not always bring equal citizenship (Sassen 2004). Formal legal citizenship is not an integral factor in securing substantive citizenship—that is, access to a variety of civil, political, and social rights (Holston 1998). Many of our interviewees thought that the substantiveness of Canadian citizenship had become diminished for Canadian Muslims and that their communities were experiencing a loss of national belonging—that is, one's everyday acceptance as a subject of belonging by the dominant national community (Hage 2000). Although the vast majority of interviewees (91 percent) held legal Canadian citizenship, they thought Muslims were not always welcome in Canada. One interviewee said:

> For me, especially I would like to feel a part of the place [Canada]. I would like to look at my neighbour and look up at my fellow Canadians, and be able to call that person a brother and for them vice versa call me a brother. I don't see that happening anymore. So that's why I feel dis-attached. I can't really explain it. It's like you kind of grew up here and to kind of know that you're not wanted. You don't feel like part of the people I guess. I feel alienated. I don't feel as Canadian as I used to. What does that do? This makes me feel dis-attached from people, dis-attached from the community. I don't know, maybe I'm just being emotional. I

> don't know other people feel about it, but I certainly don't feel attached as I used to be, and I feel there are a lot of Muslims who are trying to figure out if they are Canadian or not. (Calgary 13)

In sum, interviewees expressed that Canadian Muslim communities were experiencing a sense of diminished Canadian citizenship and a loss of national belonging. This sense of diminished citizenship arose from being targeted by Canadian counterterrorism practices, having their religion vilified through the rhetoric used to justify these practices, feeling stigmatized and shunned from society, and directly experiencing negative repercussions in their daily lives such as losing their freedom of religious expression and their ability to fly.

Conclusion

Canada has historically implemented racist laws and practices that have disproportionately targeted racialized minority communities in the name of security (Agnew 2007; Comack 2012; Maynard 2017). Racialization has deep roots in security and policing practices closely tied with broader cultural forms of citizenship that are constituted by the values of whiteness. While normative representations of middle-class Canadians are invariably based on values of whiteness, terrorism is racialized and imagined as a product of Muslim values. Commenting on national security strategies, Khan (2012) argues that these racialized practices operate as transformed and expanded carceralism. In this chapter, we have illustrated how this expanded carceralism is taking shape through the conflation of Islam with terrorism, the vilification of Muslim communities, and the targeting of Muslims through counterterrorism practices. As a result, Canadian Muslims increasingly face the erosion of their rights, as well as stigma, alienation, limited religious freedom, and an erosion of Canadian citizenship.

While it has been well over a decade since the beginning of the "war on terror," the eclipsing of the rights of Muslims has carried forward with little restraint. As our interviews suggest, the racialized practices within the "war on terror" are pervasive and normalized. Barbara Hudson (2009) has written on the importance of preserving an affinity for the notion of justice within the challenging times brought forward by the "war on terror." Borrowing from Jacques Derrida (1990), she emphasizes that justice is an aspirational ideal,

never fully attained, but strengthening a collective social impulse toward balancing competing claims, dealing fairly with all parties, and upholding human dignities regardless of the difficult practicalities of doing so. Moreover, Hudson (2009, 703) warns that terrorism threatens foundational notions of justice when terror "becomes an imaginary of extraordinary resonance, which can bring about, among other effects, responses by governments of democracies, supported by large numbers of the population, which are contrary to their liberal democratic traditions and values." As the "war on terror" continues, the withering of these democratic values has become increasingly acceptable when directed towards Muslims (Razack 2008). Whether it be the revocation of citizenship, banning of veils or other religious symbols, or systemic scrutiny or profiling practices, Muslims in Canada are experiencing a set of conditional or withdrawn rights in the name of fighting the "war on terror."

Our interviews with ninety-five Muslim community leaders in five major Canadian cities reveal a number of important insights about how counterterrorism initiatives are eroding the rights of Muslims in Canada. Interviewees described the impacts of a "Muslimization of the problem of terrorism." They saw a conflation of what was considered terrorism with Islam and Muslim identity. They found this to be extremely problematic. Interviewees conveyed that this association was misdirected and that the vast number of counterterrorism initiatives were biased and directed against Muslim communities. They shared how their communities were being targeted through a host of counterterrorism policies and practices such as Security Certificates, the No Fly List, and airport/border security. Not surprisingly, as a result of these experiences, interviewees reported that they and their communities felt stigmatized, alienated, and marginalized in Canada. This contributed to their feelings of a loss of religious freedom and a sense of diminished Canadian citizenship.

Canadian Muslims' experiences raise important concerns about the relationship between national security, citizenship, and the Canadian state. They reveal fundamental inequalities in how counterterrorism policies and practices are being employed in Canada. Our research reveals how easily Canadian citizenship can be diminished for racialized minorities when it comes to issues of national security. The Canadian state's attempts to maintain "national security" have resulted in Canadian Muslims experiencing and observing

that their religious freedom and citizenship have been jeopardized and eroded.

Notes

1 Unless given explicit consent to identify them, to keep their identities anonymous, we have cited each interviewee using their city plus their interview number (e.g. Calgary 13).
2 There are other counterterrorism practices and policies that interviewees were also concerned with such as CSIS investigations. However, because of space limitations we have not been able to focus on all of these practices.
3 A map maintained by the National Council of Canadian Muslims tracks anti-Muslim incidents; see their website: https://www.nccm.ca/map/.

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CHAPTER 8

Unruly Women in Neoliberal Times: Still Bad, Mad, and Sluts

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In 1993 Canadian feminist criminologist Karlene Faith (1993, 1) began her classic book *Unruly Women: The Politics of Confinement and Resistance* with these words: "The unruly woman is the undisciplined woman. She is a renegade from the disciplinary practices which would mould her as a gendered being. She is the defiant woman who rejects authority which would subjugate her and render her docile… She is the unmanageable woman who claims her own body, the whore, the wanton woman, the wild woman out of control."

Despite the gains women have made in the twenty-five plus years since Faith's groundbreaking work was published, her words continue to resonate. In this chapter, in order to understand the stubborn entrenchment of the unruly woman trope, we consider the role and complicity of mainstream feminists who use gendered ascriptions of risk to frame women who fail to conform to the white middle-class ideal of victimhood as both unruly and bad neoliberal subjects. In so doing, we trouble the narrative of progress that underlies the oft-told history of feminism in three distinct waves, each an improvement of the last. Instead, we argue that mainstream feminist efforts have long excluded and perpetuated the "othering" of—and continue to marginalize—"unruly" women. The goal of this chapter is to bring critical criminology into conversation with feminism; deploying the conceptual tools of criminology provides a point of entry for respectful and productive critique of feminism at the same time as it affords space to celebrate important gains made by women reformers.

Feminism is perceived as a social movement that—to a greater or lesser degree—can be credited with the significant gains made by

women over the last hundred years. As Janet Halley (2006) argues, however, mainstream governance feminists—feminists who claim narrative authority to position themselves as experts, advocate for, and work alongside legislators to develop policy responses—explicitly put forth solutions to gender inequity and violence that, although well-intentioned and symbolically significant, reflect their own privileged world view insofar as these solutions fit neatly into state discourses and established institutions. These ostensibly gender-responsive initiatives work seamlessly with—indeed offer justification and legitimation to—state initiatives and repressive regulatory apparatuses (e.g., the criminal justice system).

In this chapter we, three self-identified feminists, interrogate how "ideal" women victims (e.g., of men's violence, of criminogenic life circumstances) are constituted in governance-feminist discourse to elicit both sympathy and, relatedly, protectionist legal responses. We reflect upon the implications of subsequent interventions on the unruly woman and how the unruly woman is the foil to the ideal woman victim whose respectability and innocence are inextricably intertwined with gendered expectations of conformity that reflect the experiences of middle-class, white, heterosexual women (Chan and Chunn 2014).[1] In so doing, we examine how governance-feminist discourse—advanced by academics and activists (e.g., Barry 1979, MacKinnon 1982, Murphy 1922), and reiterated through feminist-influenced policy frameworks (e.g., mandatory charging for intimate-partner violence)—operates in tandem with neoliberalism's reconfiguration of citizens as rational, self-interested, responsible, free-choosing subjects[2] to task individuals with managing (social) risks and hold them to account when they fail to do so. Applying Alan Hunt's (2003) insights into the neoliberal intertwining of morality and risk, we consider how narratives of risk—to self, to society, to children, to other women—are mobilized by mainstream feminists to render non-compliant women legitimate subjects of governance. To this end, we examine three populations: women in violent intimate relationships, sex-working women, and imprisoned women. These three populations, which have been subject to a great deal of attention by feminist and other reformers, embody the characteristics enumerated in Faith's quote above, as respectively undisciplined, defiant, and unmanageable. Moreover, representing a broad spectrum of women's experiences and responses to structural constraints they lay bare the tension between the conflicting social expectations

women face. Looking at these populations, then, allows us to unpack how feminist foregrounding of mental or moral deficiencies is not only used to "read over" the voices of women themselves, but to legitimate regulatory interventions. We start by considering feminists' complicated relationship to normative social scripts, which have been, and continue to be, roundly critiqued and, often simultaneously, perpetuated.

Looking Back at Feminist Issues, Literature, and Strategies

A movement that, at its core, endeavours to shed light on women's oppression and the mechanisms enabling it, feminism has nonetheless been wrought with ideological contradictions, often pivoting on questions of inclusion and virtue. On the one hand, there is a long tradition of women writers and activists critiquing the entrenchment of gender inequality, and concomitant exclusion and oppression of women in social institutions and practices. We can think, for example, of women like Mary Wollstonecraft (1992 [1792]) who in 1792 examined how the gendered expectation that women be "pleasing," rather than rational or educated, was reproduced in and through the family, philosophy, and consumer culture, as well as Sojourner Truth who famously asked the attendees of the 1851 Women's Rights Convention in Ohio, "Ain't I a woman?" (Sojourner Truth Memorial Committee n.d.), thereby challenging the normative trope of fragile white womanhood that permeated suffragism by highlighting that "the safety of the pedestal, questionable though it was, had not been extended to her" (White 1985, 14).

On the other hand—and as Sojourner Truth's words so powerfully illustrate—working-class and racialized women were not meaningfully included in mainstream first-wave feminist campaigns and indeed were often excluded from hard-won rights. For example, while the federal franchise was "extended to all British subjects, men and women, over twenty-one in 1918 … voting restrictions on citizens of Asian background and those of Indigenous ancestry were in place until 1949 and 1960, respectively" (Sangster 2018, 3). Racialized and working-class women did, however, often find themselves the subjects of well-meaning, albeit ultimately unhelpful, interventions. As Constance Backhouse (1991) documents, in the late-nineteenth and early-twentieth century middle-class women, concerned that participation in waged labour threatened working-class women's

reproductive health (from extended periods of standing and hazardous conditions) and moral integrity (from exposure to men and poor wages they might supplement through prostitution), mobilized for protective labour legislation. When these workers—preoccupied with their inadequate earnings—found ways to circumvent such protective measures as restricted hours or longer unpaid lunch breaks, middle-class women maternalistically insisted that "in this matter the girls themselves are not the best judges" (Jean Scott, quoted in Backhouse 1991, 276).

The next iteration of feminism would both reproduce and address these implicit biases: middle-class women continued as its visible proponents, now turning their attention from workplace sexual morality to women's sexual victimization. Updating the long-held critique of gender roles, Susan Brownmiller (1975, 343) problematized (hetero)sexual norms and their perpetuation of aggressiveness among men and passivity, fear, and "a victim mentality" among women. She further framed rape as culturally enabled, but also biologically determined, emanating from men's superior physical strength and ability to penetrate. Radical feminists like Catharine MacKinnon (1982) argued rape is an especially violent manifestation of imposed, and thus already, violent heterosexuality (Cahill 2001). Alerted to the pervasiveness of sexual violence, feminists demanded more protection from the state, precipitating significant changes: the offence of rape was transformed into three tiers of sexual assault, acts besides forced penetrative intercourse were recognized, and the exceptionalization of sexual assault within marriage—and husbands' entitlement to their wives' bodies—was ended. While Halley (2006) characterizes solutions relying on state institutions as manifestations of governance feminism, Elizabeth Bernstein (2010, 54) goes further, describing "collusion between mainstream feminism and state agendas" as carceral feminism—an imperative to punish and incarcerate that overshadows structural considerations and pre-empts solutions addressing the root causes of gendered violence.

Unsurprisingly, the legalistic solutions put forth by mainstream governance feminists were not uniformly embraced. So while reformist second-wave activists "succeeded in presenting themselves as feminism *tout court*" (Maroney 1987, 99), they were contemporaries of other variations and political orientations. Feminists trained in critical criminology and legal scholarship cautioned against the misguided attempt to use the criminal justice system to realize gender

equality (Los 1994; Snider 1985). They similarly insisted that extending the regulatory power of the state further entrenched perceptions of women as weak, sexless victims (Smart 1989; Valverde 1989)—imagery that, as we see below, continues to exclude unconventional women. Carol Smart (1989) famously argued that law disempowers and disqualifies women, and that conforming to its methods only entrenches its authority and the dichotomous gender norms on which it rests. Kimberlé Crenshaw (1989) further asserted that law's single-axis analysis is unable to recognize intersecting forms of discrimination. Along with other critical race theorists, she challenged the white, middle-class bias of mainstream second-wave feminists' analysis of sexual violence for failing to consider that rape can be a "weapon of racial terror" (Crenshaw 1989, 158) and that sexualized, racial stereotypes engender lighter sentences for men who sexually assault Black women, but harsher penalties for Black men (see also Davis 1983). In short, in the second wave, as in the first, there were rigorous and multidimensional counter-narratives that rejected the regulatory solutions put forth by governance feminists.

Contemporary feminist scholars—referred to as third- and sometimes as fourth-wave feminists—build on these critiques of law, the state, and other social institutions. Crenshaw's concept of "intersectionality" has been widely adopted to provide a framework to think about the mutually constitutive relationship between identity categories, such as gender, race, class, sexual orientation, ethnicity, citizenship, and ability (Hill Collins 2015). These categories are in turn (re)produced through mutually interdependent social relations, institutions, and structures, which Patricia Hill Collins describes as "interlocking," a term denoting the "interconnectedness of race, class, gender, and sexuality as systems of power" (Hill Collins 2015, 9). These developments have not, however, upended governance—or, for that matter, carceral feminism—nor have they halted the advancement of morally informed solutions, endorsed by mainstream feminists, pivoting on myths of female victimhood and irresponsibility.

Theoretical Framework: Risk and Morality in Neoliberal Times

Since Ulrich Beck (1992) proposed that we live in "a risk society," a vibrant body of literature has emerged that engages with the question of risk; much of it challenges Beck's central premise and focuses on the regulatory potential of risk narratives (Dean 1999). What is of

particular interest to us is the extent to which, in the neoliberal context, morality is subsumed into these narratives of risk. As Alan Hunt (2003, 167) explains, "the most striking feature of the hybridization of morals and risks is the creation of an apparently benign form of moralization in which the boundary between objective hazards and normative judgments becomes blurred." Building on Hunt's work, we argue that middle-class morality and notions of respectability (Skeggs 1997) permeate mainstream feminists' framing of gendered risk. Moreover, these narratives (informed by stereotypes and entrenched gendered tropes) culminate in the constitution of "othered" women as at risk and—should these women challenge the feminist narratives, fail to recognize their vulnerability, or reject prescribed solutions and insist on charting their own path—as risky. As such, feminists are profoundly implicated in the reproduction and legitimation of narratives of vulnerability that inform protectionist state rhetoric. Indeed, in this chapter we see that stigmatic discourses, pivoting on notions of risk, that are advanced by governance feminists routinely come to be embedded in policies and laws—what Stacey Hannem (2012) calls "structural stigma." In the issues to which we now turn—violent intimate relationships, the sex industry, and incarceration—the regulatory underpinnings of mainstream feminism are rendered visible when unruly women challenge normative tropes and claims by words, deeds, or inaction.

Women in Violent Intimate Relationships: Unmanageable, Bad Victims

In the nineteenth and early twentieth centuries, women reformers drew attention to domestic violence, fighting for the right to divorce on the basis of physical cruelty. They also undermined prevailing social, legal, and religious legitimations of a husband's right to "domestic chastisement" (Siegel 1996, 2123). In so doing, they challenged the dominant narrative of disobedient women subject to judicious correction from rational men and (re)cast women in violent relationships as victims of husbands under the influence of alcohol. In the process they also, however, affirmed cultural assumptions about brutish working-class men, effectively framing male violence as a "lower" class problem (McLean 2002). The ensuing efforts toward temperance—and the assistance provided by anti-cruelty and child protection agencies to modest, responsible mothers—reiterated assumptions about the venality of

working-class men and normative expectations of women's virtue (Gordon 1988; McLean 2002).

By the 1970s, prevailing narratives once again routinely blamed women in abusive relationships regardless of their behaviour: "If they are passive, they are doormats that invite abuse. If they are aggressive, they invite the beatings that put them in their place" (Martin 1978, 125). Held to account for provoking "marital discord," women of the day were urged—by counsellors, priests, and family—to adjust their behaviour and save the marriage lest their children be deprived of their father. In response—and alerted to the pervasiveness of intimate partner violence (IPV) in their consciousness-raising groups—second-wave feminists started to mobilize (Martin 1976). To this end, they shifted the image "from a low-income woman of color to a passive, middleclass, white woman cowering in the corner as her enraged husband prepares to beat her again" (Goodmark 2008, 77). The stereotype of this downtrodden, passive, bruised victim was invoked in arguments for state protection (Johnson and McConnell 2014; Stubbs and Wangmann 2015), giving rise to mandatory charging and no-drop prosecution policies across Canada (Abraham and Tastsoglou 2016; Johnson and McConnell 2014). In the ensuing decades, the governance-feminist "ideal victim" (and her foil the irresponsible woman) and how she should, or should not, respond to violence—including whether or not she turns to the criminal justice system—has become entrenched in state mechanisms, with disastrous effects for othered women.

For governance feminists fighting violence against women, state protection was "a way to equalize power between women and their male abusers, provide a credible threat of prosecution, and empower abused women" (Johnson and McConnell 2014, 118) by removing them from the batterer's control and alleviating the onus of deciding whether or not to charge him. In practice, of course, mandatory charging policies are not empowering because they disregard both the victim's wishes and her socio-economic context. Indeed, there are many reasons why a woman may not want to see her abuser criminally charged. For example, she may fear this will cause her partner to lose his job, impacting household income or child support (Cuomo 2017), or she may fear increased violence from the abuser once he is released from custody (Johnson and McConnell 2014). It is unsurprising, then, that forced to comply with no-drop and pro-prosecution policies, 40 to 65 percent of women in Ontario recant their testimonies in court

(Johnson and McConnell 2014). Moreover, the weapons of the court have been used against noncompliant women to compel them to testify against their violent partners: women who recant their statements or refuse to testify may be charged with contempt of court and, by extension, be threatened with incarceration (Snider 1998).

In the current context, state actors (e.g., police, judges) routinely regard women's level of co-operation with the criminal justice process through a neoliberal, paternalistic lens: a woman who establishes contact with authorities in a timely manner, is respectful, participates fully, and expresses gratitude, is seen as co-operative and deserving of help—a "good victim" and a responsible citizen. In contrast, a woman who refrains from co-operating is perceived as immoral, selfish, deceitful, irrational, irresponsible, and at least somewhat to blame; her failure to uphold her responsibilities to the state is seen to render her undeserving of its protection (Cuomo 2017; Johnson and McConnell 2014). These framings not only individualize the problem and make the victim responsible, but are also profoundly gendered, echoing characterizations of women as weak, irrational, unintelligent (i.e., gullible), overly emotional, and submissive (Cuomo 2017).

Furthermore, women who do not embody these characteristics may not be perceived as victims at all: if police are unable to distinguish the primary aggressor, both parties are arrested (Abraham and Tastsoglou 2016) or only the woman is arrested, who—once convicted—will be ineligible for victim support services (Johnson and McConnell 2014). This means that violence against unconventional women—who, for example, were drinking on the night of the incident (Johnson and McConnell 2014); are racialized, Indigenous, or poor; are unwilling to turn to police; who lack access to other support resources leaving them with no other option but retaliation (Goodmark 2008); or any combination thereof—is not taken as seriously as the victimization of white, middle-class women who conform to the ideal victim trope (Snider 2014).

Implicit in the prescribed script is the dictate that victims of IPV end the relationship. This expectation, too, disregards women's circumstances and strategies to protect their well-being; cognizant for example of the increased threat of separation-instigated violence (Canadian Women's Foundation 2014) or wanting to retain residence in her home, a woman may elect not to leave her partner, which has particular consequences for mothers. Although a woman may want to keep her family together, judges' and social workers' perceptions

of what is best for children can override her autonomy. Child welfare and shelter workers position mothers—not, notably, abusive fathers—as responsible for protecting children and for leaving the relationship as the only legitimate response (Morgan and Coombes 2016; Stubbs and Wangmann 2015). Moreover, transition houses sanction women who refuse to comply with "no contact" rules (Abraham and Tastsoglou 2016). Compounding victim-blaming with blame for failing to protect her children, Canada includes exposure to IPV in mandatory child abuse reporting requirements (Morgan and Coombes 2016).

In addition to limiting women's autonomy, these tropes shape women's understanding of their victimization. Informed by the stereotype of IPV as severe and continual—the victim trope advanced by governance feminists—some women minimize or discount their experiences of emotional, psychological, and occasional physical violence (Morgan and Coombes 2016). In spite of the significant ways in which the criminal justice system reproduces these myths and fails to consider women's diverse circumstances, identities, and resistance strategies—and critiques by feminists and criminologists to that effect (see Conners and Johnson 2017)—governance feminists, in concert with state actors, continue to proffer and even argue to increase carceral responses that include bail and prison sentences for repeat offenders (Bill C-75; Hayes 2018; Smithen 2018), a process which further entrenches not only the "right" way to respond to IPV, but also the irresponsibility of those who do not.

Sex Workers: Defiant Sluts

There is a robust history of women reformers mobilizing narratives of enslavement, debasement, and gendered victimization to justify protectionist laws aimed at forcibly "rescuing" women from prostitution. We can think, for example, of the shocking, albeit unsubstantiated, tales in W. T. Stead's *The Maiden Tribute of Modern Babylon* (1885) or *The Black Candle* by Canada's celebrated Emily Murphy (1922) that wove together cultural anxieties about racial purity, morality, prostitution, and lurid tales of the "lowest classes of yellow and black men" (Murphy 1922, 17). Fifty years later, second-wave feminist icon Kathleen Barry (1979, 47) unambiguously reproduced this white-slave trope—complete with the racialized, dangerous other—arguing, for example, "that many of the several thousand French teenagers who

disappear every year end up in Arab harems." The maternalistic and xenophobic discourse of such women reformers challenged normative framings of prostitutes as immoral women at the same time as it affirmed narratives of vulnerable women at risk of malevolent, foreign men. Recently, this enduring narrative has been augmented by one that evokes a well-established mechanism of patriarchal control—the hierarchical division of "good girls" and "bad girls"—to denigrate and negate othered women. The legislative process surrounding the *Protection of Communities and Exploited Persons Act* (hereafter PCEPA) provides a salient illustration of this process.

In 2013, ruling on a case brought forward by Amy Lebovitch, Terri-Jean Bedford, and Valerie Scott (one current and two former sex workers), the Supreme Court of Canada in *Canada (AG) v Bedford* (hereafter *Bedford*) struck down key provisions of Canada's prostitution laws on the basis of unconstitutionality (see Belak 2018). In response, the Conservative majority government of Stephen Harper tabled Bill C-36, the *Protection of Communities and Exploited Persons Act* on June 4, 2014. The legislative process, including hearings by parliamentary committees, provides a recent context in which to examine the ways sex workers are constituted by mainstream feminists. During the 2014 House of Commons Committee on Justice and Human Rights and the Senate Standing Committee on Legal and Constitutional Affairs hearings on PCEPA, sex-worker rights activists were characterized as a tiny minority representing perhaps "3 percent to 10 percent" of the industry (MacDonald 2014, 13) who take up a disproportionate space in the debate and speak "loudly" (Nagy 2014a, 2). These women were trivialized as engaging in sex work "to buy a thousand dollars' worth of shoes" (Nagy 2014b, n.p.), and their "individualistic argument[s]" delegitimized as being driven by self-interest (Smith-Tague 2014, n.p.). Named "pro-prostitution advocates" (Nagy 2014a, 2), the women were condemned for "enable[ing] people to stay" in the sex industry (Falle 2014, 13) or even "endeavour[ing] to keep women in prostitution" (Matte 2014, 6). At worst, they were characterized as part of the "pimp lobby" or—in the words of Gunilla Ekberg (2014, 9)—the "pro-violation constituencies" seeking to "increase their exploitative access to those victims." Here, a moralistic and dichotomized framing of women as "good girls" who would never exchange sex for money or, having done so, are now on "the other side of it" (MacLeod 2014, 5) is juxtaposed against "unrepentant whores," who not only reject offers of salvation, but claim public

space and loudly assert their rights. The latter are impugned as morally bereft, selfish, and superficial bad girls who pose a risk not only to would-be good girls, but also to gender equality, and for putting forth arguments that "[privilege] a few women's experiences over the collective well-being of women" (Smith-Tague 2014, n.p.).

Notably, we see not only the reinvigoration of the narratives of unworthiness and disrepute on which the "whore stigma" pivots (Pheterson 1996, 45), but also the constitution of saviours. Unlike their progressive-era foremothers whose moral authority—based on class and race location—went largely unquestioned, modern-day governance feminists need to first neutralize those who disrupt the victim narrative. In the prostitution debates, we see this explicitly when middle-class and, predominantly, white social workers, lawyers, and academics dismiss the words of sex-working women, whose labour and lives are marked by stigmatization and criminalization, on the basis of exceptionality and privilege (Porth et al. 2017). That the "privileged few" sex workers include women who labour(ed) in the street-based sex industry evinces that, in this context, privilege is strategically—and ironically—transformed from a sensitizing device to one of delegitimization, weaponized by women who have considerably more social and cultural capital than those they seek to discredit. Rendering invisible their own class and race privilege allows neo-prohibitionist feminists[3] to assume the mantle of saviours who "speak for the vast majority of people in the sex trade" (Nagy 2014a, 2). Megan Walker (2014 n.p.) of the London Abused Women Centre neatly sidelined the narratives of sex workers, explaining why she—and not women in the industry—was appearing before parliamentarians, evoking imagery worthy of a nineteenth-century reformer: "I am here today speaking on behalf of the rights of those whose voices are not represented, those who are forgotten by policy-makers and the general public… It is their human rights that need protecting … those who are forgotten, those who are silenced… If you listen carefully enough, you will hear the cries for help from survivors and those prostituted women who will not be represented before you this week."

Speaking to governance feminism, the condemnation of the "unrepentant whore" put forth by these reformers was, perhaps unsurprisingly, embraced and amplified by committee members aligned with the Conservative Party of Canada. While women who identified as victims were applauded for their courage, praise was noticeable in its absence for current and former sex workers who gave

equally powerful testimony, but shamelessly rebuffed offers of rescue in favour of rights. Indeed, these witnesses were either ignored and snubbed (Porth 2018), cut off (Porth et al. 2017), or subjected to disparaging questions and commentary—for example, then Member of Parliament Stella Ambler characterized Natasha Potvin's eloquent testimony about her experiences of stigma, social judgment, and the threatened loss of parental custody as akin to "a TV sitcom about happy hookers" (Ambler 2014, 15). In short, discrediting women who dared to reject the victim narrative as pathological and irresponsible "whores" worked seamlessly to support a law (PCEPA) that not only increases sex workers'—and most especially those for whom neo-prohibitionists purport to speak, street-based workers'—vulnerability to violence, but also to criminalization (Belak and Bennett 2016).

Imprisoned Women: Mad, Bad, and Out of Control

As is the case for women in abusive relationships and sex workers, there is a robust history of women reformers advocating on behalf of women in conflict with the law. Indeed, from the mid-1800s onward there was a concerted movement to reframe "the female criminal" as a fallen, infantilized woman. Reformers petitioned for separate prisons that were run by and for women, certain that "the fallen could be redeemed and made into true women" (Freedman 1984, 45). Predictably, the implementation of these new prisons also meant that women spent long periods in institutions designed to save them (Brock 2003), receiving instruction on hygiene, morals, and domestic skills. Those who successfully refrained from unseemly behaviours (e.g., swearing, chewing gum) were rewarded with badges and privileges, while those who rejected the middle-class ideal of femininity fell outside the redemption narrative and were subject to harsh physical sanctions (Faith 1993).

The narratives regarding imprisoned women continue to pivot on stereotypes of ideal femininity: they are straying from traditional gendered expectations of being passive, docile, caring, nurturing, and selfless (Dell et al. 2009; Hannah-Moffat 2001) by acting out and being violent (Kilty 2012; Pollack and Kendall 2005). Women prisoners in Canada are routinely sent to segregation, given institutional charges, or otherwise sanctioned for behaviour that is considered outside of the normative construction of femininity (e.g., swearing) (Kolind and Bjønness 2019). At the same time, women's aggression is

read as emotional instability and is "pathologized, disciplined and censured even when it is defensive" (Hannah-Moffat 2010, 204). Harking back to diagnoses of hysteria in the nineteenth century and anorexia nervosa in the early twentieth century, women's reactions are deemed pathological and stereotypically emotional (Hepworth and Griffin 1990)—framings that overlook structural factors, including the prison environment and, in a neoliberal context, put responsibility on women to control themselves.

Feminist activists and scholars have inserted another trope into this narrative since the 1980s, drawing attention to the high rates of victimization that criminalized women experience at the hands of the men in their lives (Johnson 1987; LaPrairie 1987; Shaw 1999). For example, the Canadian Association of Elizabeth Fry Societies (CAEFS) highlights that women's violence is "defensive or otherwise reactive to violence directed at themselves, their children," or another party (CAEFS 2015, 2). In short, the bad female criminal trope was supplemented, but not replaced, by the trope of the victimized woman; the latter provides a gendered narrative that contextualizes her violence at the same time as it erases her agency.

Again, we see the complicity of feminist reformers in the dualist construction of othered women. A trenchant example is the *Creating Choices* report, authored by the Task Force for Federally Sentenced Women (Task Force 1990). *Creating Choices* was generated in reaction to the rampant issues in Canada's only federal prison for women at the time, the Kingston Prison for Women (informally known as P4W), a harsh, maximum-security facility built to nineteenth-century prison standards. The Task Force responded to P4W's atrocious conditions, the high number of suicides (especially among Indigenous women), the poor treatment of women prisoners generally, and (in comparison to imprisoned men) the lack of programming. The Task Force, comprised of predominantly women representatives from government departments and feminist organizations (including CAEFS) sought to counteract gendered narratives of "bad women" and called for significant institutional change. The authors adopted a "woman-centered approach" (Task Force 1990, 27) and expressed confidence that "women's needs" (Task Force 1990, 109), including their "security needs" (Task Force 1990, 110), could be met in a "supportive environment" (Task Force 1990, 133). In short, they framed criminalized women as victims who could be healed and empowered in penal facilities and ultimately go on to live "productive and meaningful"

lives (Task Force 1990, 133). There are clear echoes of the essentialism that drove nineteenth-century reformers to become "their sister's keepers" (Freedman 1984, 2) and, like their foremothers, the *Creating Choices* authors sought to bring feminine influence to foster middle-class sensibilities: "the presence of women staff particularly in key positions, provides a powerful message of self-sufficiency to women. Teaching strength and self-esteem to women can be achieved when women can daily observe these characteristics in other women" (Task Force 1990, 109).

Although well-intentioned, the recommendations of the Task Force were folded into the Correctional Service of Canada's (CSC) policies and procedures, and translated into security-based regulation and management of women and their social, cultural, and economic disadvantages (Chartrand and Kilty 2017; Hannah-Moffat 2000). As such, they support a neoliberal agenda of penal discipline, stressing self-governance (e.g., through empowerment by building self-esteem and encouraging a "take charge" attitude), responsibilization (e.g., exhorting women to be accountable, to self-govern, and to change their "deviant ways"), and the shared responsibility of prison staff, prisoners, and community members to engage in a "holistic approach" to rehabilitation and reintegration of prisoners (Hannah-Moffat 2001; Task Force 1990).

Moreover, the bifurcated framing that emerged in the context of *Creating Choices*, which remains evident in the most recent policies that govern mental health for women in prisons (i.e., the *Mental Health Strategy for Women Offenders* [Laishes 2002] and the *Mental Health Strategy for Corrections in Canada* [Correctional Service Canada 2012]), means women continue to be divided into reformable victims of circumstance and risky women beyond redemption. The same narrative that positions some women as potentially good neoliberal subjects also constitutes the mentally disordered incarcerated woman as other (Hannah-Moffat 2000, 525). The latter is the "mad woman" who defies prison authority, engages in self-injury, and lashes out—an unruly woman whose behaviour is read not as resistance, but as evidence of faulty cognition and a maladjusted psyche (Dell et al. 2009; Hannah-Moffat 2010; Pollack and Kendall 2005). In the penal context these "complex needs cases" (Sapers 2016, 20) or "unempowerable prisoners" (Hannah-Moffat 2000, 525) are subjected to harsh penal sanctions. For example, women who have mental health concerns in prison are more likely to be assessed by CSC as high-risk and high-needs, to be

prescribed (and administered without the woman's permission) psychotropic medication, to experience increased levels of force by prison staff, and to be placed in segregation (Hannah-Moffat 2013; Hannah-Moffat and Klassen 2015; Kilty 2012, 2014). On the basis that they pose a threat to the security of the institution and to themselves (Hannah-Moffat 2010), they are also physically restrained (e.g., by strapping a woman onto a Pinel board, thereby preventing any movement—see Richard 2008), subject to strip searches, and shackled during medical appointments (Zinger 2017).

In short, women's mental health concerns are regulated through gendered strategies that individualize their criminality and pathologize their state of mental health. Accordingly, rehabilitative strategies for women include teaching them to contain their emotions, improve their self-esteem, and monitor their interpersonal relationships (Kilty 2014; Pollack and Kendall 2005; Wyse 2013). The underlying assumption—that this will position women to better manage their behaviours and improve their relationships—affirms and reinforces the gendered stereotype that women are inherently irrational, overly emotional, and influenced by their interpersonal relationships (Kilty 2014; Pollack and Kendall 2005). None of this logic informs men's rehabilitation strategies in prisons, which instead focus on problem-solving, aggression management, and the improvement of communication and interpersonal skills.

Discussion: Structures, Agency, and Resistance

As the examples above have demonstrated, the bifurcated governance-feminist framing of women as either good, responsible women who acknowledge their victimization and support state interventions, or irresponsible women who reject the narrative and/or the solutions, is absorbed into state policies with disastrous results for "unruly women." Moreover, we have seen othered women—in violent intimate relationships, in the sex industry, and in prison—further marginalized by feminists who claim to have their best interests at heart, but collude with government mechanisms and the carceral system (Bernstein 2010; Halley 2006) to perpetuate myths framing those who fail to conform to the ideal woman trope as mad, bad, and sluts. We see that by advancing a risk-focused narrative and protectionist rhetoric, the actions of governance feminists—and the stereotypes and gendered tropes on which their actions pivot—legitimate

regulatory responses. Hannem (2012, 25) describes such interventions as structural stigma, "the result of a carefully calculated decision at an institutional or bureaucratic level to manage the risk that a particular population is perceived to present, either to themselves, the institution, or to society." We contend that regulatory efforts that responsibilize, delegitimate women's agency, and reify gendered tropes also constitute maternalism, a paradoxical relationship between privileged women—governance feminists who are "saving" other women through control and regulation—and the marginalized—who are deemed unruly and bad neoliberal subjects in need of being saved, through a "mix of condescension and genuine caring" (Cummins and Blum 2015, 625).

Structural stigma and maternalism are evident in stigmatic assumptions about "mentally disordered" imprisoned women that become embedded at the structural level where their risk to themselves, the institution, and society are managed through mental health policies and security logics that justify the use of solitary confinement, involuntary psychotropic injections, and extreme force by correctional staff (Hannah-Moffat and Klassen 2015; Kilty 2006, 2012). They are also evident in the treatment of marginalized women confronting IPV for whom mandatory charging policies that override agentic strategies to manage financial and family concerns can exacerbate the risk of violence or result in punishment by the state. Similarly, framings of sex workers as "unrepentant whores" and exploited women in need of saving are entrenched in the strict regulation and criminalization of sex work. In short, mainstream feminist interpretations of these (gendered) risks, and how women should manage them, are deeply moralistic. They are measured on a continuum of "degrees of wrongness or immorality" (Hunt 2003, 171) and enforced by law, reflecting a maternalism that reiterates the good girl/bad girl distinction, long a regulatory device that operates against the interests of all women.

Even when women engage in strategies of resistance—when women experiencing IPV choose not to testify, when sex workers reject being defined as victims, or when imprisoned women who have mental health concerns engage in self-injurious behaviour—governance feminism, embedded within a neoliberal framework, transforms their actions into evidence of the need for further control and risk management. Yet questions of risk are grounded in a moral discourse that fails to acknowledge the structural factors (Hunt 2003)

that intersect and interlock in the lives of "unruly" women, conditioning the challenges they face, their agentic strategies to meet these challenges, and how their resistance is read. In this context, women are exhorted to manage risks as neoliberal subjects exercising self-control, self-knowledge, and self-improvement (Hunt 2003). Consequently, othered women who face intersectional oppressions are "promoted within discourses of social obligation or noncompliance," and relegated to spaces of control, exclusion, and violence (Chartrand 2015, 11).

Although women's resistance strategies, as we have seen, seldom successfully prevent or counteract intrusive regulatory interventions and punitive sanctions, they nonetheless draw our attention to the moralization embedded in neoliberal risk discourses. As Faith (1993) argues, resistance involves rejecting the ideals and values that sustain power relations. Thus, when women prisoners argue that their mental ill-health is precipitated by the violence of incarceration itself (Cree 1994), when sex workers organize to challenge harmful and stigmatic laws using a discourse of self-determination that rejects tropes of victimization and false consciousness, and when women have the audacity to assert they know better than state and welfare officials on how to respond to intimate partner violence, they are (re) claiming narrative authority. At the same time, these acts of resistance highlight how myths perpetuated through governance-feminist tactics support the structures that engender the challenges women face and delegitimate women's agency. Recognizing the significance of these contestations, it becomes imperative that critical feminist criminologists continue to expose the maternalistic, neoliberal, risk narratives and gendered tropes governance feminism deploys to "read over" the voices of "unruly" women.

Conclusion: From Risk to Respect

In this chapter, we considered feminism's long and fraught history of both advancing radical discursive change and perpetuating normative tropes that continue to exclude women whose conduct is perceived as unruly and punish them for being mad, bad, and sluts. In so doing, we have highlighted how these unruly women resist and challenge both the normative order and maternalistic feminist orthodoxy, exposing governance feminism's dark regulatory underbelly. To recall the words of Karlene Faith (1993) with which we began the chapter,

characterizing women as unruly, defiant, and wild has all too often reflected ascriptions of riskiness and judgment of poor choices. In this context, rethinking these enduring myths, and how they are reconfigured in relation to neoliberal narratives of risk and choice, takes on particular urgency.

While this chapter has encouraged reconsideration of women facing intimate partner violence, sex workers, and imprisoned women, we invite feminists and academics to continue to reflect on other populations of women who challenge gendered conventions (e.g., drug users—Dell and Kilty 2013). This is not to suggest abandoning the analysis of oppressive structures and institutions; rather it is to acknowledge the possibility that, even—and perhaps especially—when women make unconventional decisions within diverse contexts of constraint, they are mobilizing the resources at hand and operating in what they perceive to be their own best interests. In place of attempts to reform or "save" women who do not engage in neoliberal responsibilization strategies or conform to a white, middle-class ideal of victimhood, the aims of feminism are perhaps better served by respecting marginalized and criminalized women's narrative authority and recognizing that their rejection of subjugation and docility may challenge gendered expectations in complex, contradictory, and unconventional ways.

Notes

1 For example, the ideal victim of sexual assault—a white middle-class woman whose behaviour is "above reproach"—dresses modestly, is monogamous, and does not drink excessively.

2 In neoliberalism individualized, market-based competition is framed as the superior mode of organization, which culminates in social and economic policies favouring free markets, free trade, and private property rights (Harvey 2007; Mudge 2008). The concurrent emphasis on personal autonomy, competition, and self-sufficiency renders invisible social and economic disadvantages engendered by social structures (Gingrich 2008) that constrain and condition people's options.

3 Feminists who, like reformers in the early twentieth century, advocate for vigorous anti-prostitution laws with the goal of eliminating the sex industry.

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CHAPTER 9

On the Weighing of Protections: "Exerting Power and Doing Good" with Child Sexual Abuse Legislation

Christopher Greco and Patrice Corriveau

For all its advantages, communication technology "has encouraged different forms of anti-social behaviour" (al-Khateeb and Epiphaniou 2016, 14). At the turn of the twenty-first century, child sexual abuse (CSA)—a body of offensive, technologically adaptive acts linked to later life dysfunction (van Gijn-Grosvenor and Lamb 2016)—was among the most despised of these forms, and child luring, or the use of a means of telecommunication to facilitate the commission of a sexual offence against a child, among the most contemporary.[1]

While, as a field of academic inquiry, luring is often contextualized with reference to offline or "traditional" offending (Black et al. 2015; Ioannou et al. 2018), study of the phenomenon remains focused on commission-related factors or typologies (Greco 2019; Quayle et al. 2014; see also Aitken et al. 2018; Gámez-Guadix et al. 2018). Little attention is paid to how lawmakers speak of the offence or its place in the "relationship between human values and the market" (Zelizer 1981, 1036). This is of little surprise. Twentieth-century shifts in the emotional valuing of children have produced a distaste for questions that disrupt the "cultural process of sacralization" (Zelizer 1981, 1038) and the related claim of an "economically 'worthless' but emotionally 'priceless' child" (Zelizer 1981, 1037). If, however, we hope to move beyond discourses of insecurity and exclusion in the marketing of justice as legal policy, citizens of capitalist states must understand the cost of their values and how that cost is weighed by members of Parliament.[2]

With the above in mind, we ask in this chapter if the needs of Canada's economic system can be seen to outweigh the preservation of childhood or the protection of children from sexual abuse by exploring how members of the Parliament of Canada's Senate and House of Commons discussed and responded to the threat of child luring. Following a contextual note on capitalism and a review of our methodological approach, we offer an analysis of parliamentary debates related to the introduction of, and the amendment to, *Criminal Code* section 172.1 (luring a child), which included the decision to allow Internet service providers (ISPs) to "self-police" their response to the discovery of images that depict—and in turn facilitate (Babchishin et al. 2015; Berson 2003; Plummer 2018)—child sexual abuse. Our analysis of the claims of parliamentarians and the decisions to which they are adjoined finds that the needs of Canada's economic system outweigh child-protection efforts. The chapter ends with the suggestion that attempts to prevent sexual abuse are best understood by adopting a capitalist logic and a valuation or worth of childhood within the same frame of reasoning.

Canadian Capitalism

As part of his writing on childhood, Daniel Cook (2004) opposes the invasion theory of commodification and, like Karl Polanyi (2001 [1944]), situates culture, ethics, or morality as the corrective aid to capitalism's blind eye and invisible hand.[3] Karl Marx's (1970, 20) description of society's "real foundation" and superstructure is thus flipped, allowing for the monetary quantification of persons, their parts, and materials (Resnik 1998; Sharp 2000), or stages of development to be understood as a reflection of society's cultural base and not a symptom of capitalist perversion. Here, capitalist economies "only exist" (Polanyi 2001 [1944], 72) in capitalist societies or those "in which a relatively small number of individuals own and control the means for creating goods and services, while the majority have no direct ownership stake in the economy and are paid a wage to work for those who do" (Krahn et al. 2011, 3).

Despite its use of government intervention to help "set prices, restrict the flow of finance" (Mueller 2012, 2), and manage public capital (Macdonald 2008), Canada employs an economic system that is capitalist (Choudry and Smith 2016; Fitzsimons 1950; Ornstein and Stevenson 1999). Acceptance of this position requires we in turn

support the claim that "Canada is a capitalist state" (Satzewich 1991, 298) or "capitalist society" (Poland et al. 1998, 793), be it the result of a culturally grounded calculation or the development of "material forces of production" (Marx 1970, 20). Though the distinction is beyond semantics, the outcome is the same: Governments differentiate between lawful and criminal conduct in ways that do not offend the principles innate to the functioning of a capitalist economic system or those able to bring the "economy to its knees through capital strike" (Phillips 2003, 29).[4] Framed differently, "business governs the economy and elected governments cannot ignore this" (Cornwall and Cornwall 2001, 264)—even when debating the importance of protecting children or, perhaps more appropriately stated, protecting the innocence perceived to denote the period of development known as childhood (Smith and Woodiwiss 2016) from sexual abuse.

Approach

If we define markets as spaces for the purpose of trade (Polanyi 2001 [1944]), the Parliament of Canada is a market of contextualizing services. Issues of governance are framed, sold, and bought for public consumption, and the value of and reasons for protecting persons and things weighed through amendments to the *Criminal Code*. Much of this exchange is captured in the official transcripts of upper- and lower-house debate, which in turn help formulate and answer the question posed here: When analyzing Senate and House of Commons debates on the introduction of and amendments to section 172.1 of the *Criminal Code*, can the needs of Canada's economic system (i.e., the conditions that appease those who own the means of production) be seen to outweigh the preservation of childhood or the protection of children from sexual abuse?

To be clear, we are not interested in assessing whether the position adopted by members of Parliament should be considered "right" or "wrong." Nor are we attempting to assess decision-making processes that are external to the aforementioned public setting. Instead, while acknowledging the provocative nature of our question, our concern is transparency in argumentation and the weighing of public parliamentary claims and the decisions to which they are adjoined. Our decision to use the development of section 172.1 as a focal point of analysis has two bases: Luring is seen to "represent a very real threat" (Hillman et al. 2014, 687; see also Whittle et al. 2013) or a threat

that impacts "a significant number of children" (Lorenzo-Dus et al. 2016, 40; see also Kloess et al. 2014), and its occurrence is adjoined to telecommunication services that, in Canada, are often privately owned and operated for profit (CRTC 2017; Winseck 1997).[5] In other words, legislative attempts to address the phenomenon of child luring are likely to affect or be seen to affect those who own the means of production and, in turn, force parliamentarians to weigh child protective efforts against the wider economic system or parts thereof.

To weigh the claims of parliamentarians, transcripts of Senate and House of Commons debates related to section 172.1 were accessed through the Library of Parliament's online (LEGIS*info*) database. The result is an assessment of five bills related to child luring—C-15 (2001), C-15A (2001), C-277 (2006), C-2 (2007), and C-10 (2011)—by way of a method that reworks Michael Reisigl and Ruth Wodak's (2009) discourse-historical approach and Norman Fairclough's (2009) dialectical-relational approach around three texts (Fairclough 1992, 2001a 2001b).[6] The method may also be represented by the following steps or stages: (1) the identification of an issue and object of research; (2) the collection of evidentiary work or data, and the rules that governed its formation; and (3) the contextually sensitive assessment of content and discourse. The inconsistency of age restrictions across sexual behaviours governed by the *Criminal Code* led, in cases where categorical labels were absent, to an operational definition of "children" as persons who have not yet reached the legal age of sexual consent.

Findings

Presented as an "overdue" (Toews 2001, 3644; MacKay 2001b, 5330) attempt to "safeguard children from criminals on the Internet" (McLellan 2001a, 3581) and "address what has been reported as a growing phenomenon," (McLellan 2001a, 3581), Bill C-15's clause 14, aimed to amend the *Criminal Code* and introduce child luring to the list of behaviours for which one could receive a term of imprisonment "of not more than five years" (Bill C-15 2001, 9). Though the omnibus bill would be divided, so as to highlight the provisions parliamentarians "would look pretty stupid opposing," (Gagnon 2001, 5384; see also Laframboise 2001, 5367) references to luring were reintroduced as part of the "good stuff" (Lunney 2001, 5385) in bill C-15A. Amid calls "to do more to protect our children" (Owen 2001, 6313) and a lone supportive questioning of the provision's necessity

(Cadman 2001, 5332), royal assent was granted in June 2002. Five years later, and following a campaign that characterized the move as an "overdue" (Fast 2006a, 1314), "significant … step in protecting our vulnerable children against" (Fast 2006a, 1314) an "increasingly more common" (Warawa 2006, 3455) and "abhorrent behaviour" (Eggleton 2007, 2334; see also Maloney 2006, 3451) bill C-277 would double the maximum custodial sentence.

Unlike bills C-15A and C-277, the effect of bills C-2 and C-10 on section 172.1 was less direct. Both bills amended the *Criminal Code*'s luring provision by addressing the wider issue of CSA. The narrative used to lobby for the amendments, however, did not change. Bill C-2's move to increase the age of sexual consent—from fourteen to sixteen—was sold as an overdue (Nicholson 2007, 1277) attempt "to better protect young people against adult sexual predators" (Nicholson 2008, 8). Bill C-10's inclusion of mandatory minimum sentences—one year in cases of child luring—helped introduce overdue (Adams 2011, 1598) measures to "protect" (Goguen 2011, 1316) or "better protect children and youth from sexual predators" (MacKenzie 2011, 1584). It also re-emphasized the categorization of children as persons of value.

Making Cents

If we equate the attribution of value to behaviour defined as protective, then the royal assent of bills C-15A, C-277, C-2, and C-10 can be read to support children as persons of value. Members of Parliament repeatedly "sold" and "purchased" (passed) legislative initiatives framed as child protective measures.

Though children were described as a danger to adults (Carstairs 2008, 47; Angus 2012, 157), their depiction as "vulnerable" (Fast 2007c, 75), "innocent" (Butt 2011, 1501), "precious" (Fast 2007c, 76; Fast 2007b, 8069), and in need of "special attention and protection" (Fast 2007c, 74) was almost opaque. Supporting Nils Christie's (1986) notion of the ideal victim, those who abused them were described as "predators" (MacKenzie 2007, 74; Stratton 2007, 382; Fast 2007d, 1471) or persons "everyone is against" (Joyal 2008, 857) and whom "we all want to punish" (Dyck 2008, 855). And while these characterizations may be the by-product of the sacralization or the emotional pricelessness of the child (Zelizer 1981), the language used by parliamentarians suggests a more mercantile reading: "Our children are

among the most important resources we have" (Fast 2007b, 8069); they are "our most precious possession" (Schmidt 2002, 10737; see also Fast 2007c, 72), "commodity" (Maloney 2006, 3452), "resource" (Spencer 2002, 10686); "we can ask any parent or grandparent, including me, and they will tell us that no resource is more precious than our children" (MacKenzie 2007, 74); "I can think of no higher calling than to be able to participate in substantive legislative changes that better protect our most precious resource, our Canadian children" (Findlay 2011, 3908).

With children (or Canadian children) presented as a valued commodity, possession, and resource, the enactment of legislation to protect them reads as the rational act of a cultural order that serves or is serviced by a capitalist economic system. Even the description of children as "the wealth of society" (Boisvenu 2011, 834) can be read to support this point and allow for a challenge that would be at odds with the statements made by the "knowledgeable" persons or "witnesses" (Senate of Canada 2013: para. 3).

Heads and Doyens

When bills are considered for passage through houses of Parliament, legislation review committees are able to invite witnesses "to help them understand the proposed legislation and its potential impact" (Senate of Canada 2013, para. 3). Appearances by these persons are recorded as part of the publicly available evidence or minutes of debate and, in the case of bills C-15 and C-15A, one name is of particular importance: Jay Thomson.

Speaking before the House of Commons Standing Committee on Justice and Human Rights, and on behalf of companies that "provide approximately 80 percent of the Internet connections in Canada. (Thomson 2001a, 0915h para. 18), Thomson—President and CEO of the Canadian Association of Internet Providers—expressed concern over the wording used in bill C-15:

> It's a pleasure for me to be here this morning, along with our colleagues from CCTA [Canadian Cable Television Association], with whom we've worked quite closely on this particular file, to offer our general support for the provisions of Bill C-15, which deal with child pornography and child-luring on the Internet. At the same time, I'd like to highlight for you our real concern

> that these provisions could have serious but clearly unintended consequences for ISPs and the Internet. (Thomson 2001a, 0920h para. 1)

Later, and in support of the CCTA's call on the government to clarify its use of the words "'transmitting' and 'making available' child pornography" (Assheton-Smith 2001, 0925h para. 15), he framed his position in economic terms:

> We are aware that the Minister of Justice has assured members of this committee, as well as the Commons committee studying Bill C-15A, that the bill is intended to target child pornographers and predators, and not ISPs. Those are indeed welcome comments, however … the bill still does not clearly state that. Instead, we fear that the language used in the bill remains so broad that it could permit a court to hold ISPs liable for criminal acts of others over which they have no knowledge or control … The costs of defending such a charge could put many of my members, our smaller ISPs, out of business.
>
> Not only would this be unfair and unjustified, it would run contrary to the approach taken by other democratic countries with similar criminal law principles, namely the U.S. and the European Commission, and it would place Canada at a competitive disadvantage in its efforts to be a leader in the Internet economy. (Thomson 2001b, para. 149 and 152–53)

The threat of criminal liability and capital loss were also related to apprehensions, expressed by members of Parliament, that changes to the enforcement of child pornography legislation "would require … Internet service providers … [to] be able to police sites and access information" (MacKay 2001a, 3654). While it was argued "steps have already been taken to do just that" (MacKay 2001a, 3654) (i.e., "service providers hire staff to take complaints from their users" [MacKay 2001a, 3654] and "monitor Internet chat rooms and supply information to the proper authorities if they have reason to believe these nefarious activities are taking place" [MacKay 2001a, 3654]), the Minister of Justice and Attorney General of Canada made note of a need to protect ISPs in the government's decision to promote self-regulation: "I also want to clarify that the bill does not create additional obligations for Internet service providers … The bill does not

require them to monitor the material going through their servers. Doing so would raise significant privacy issues in relation to Internet users and place an excessive burden on ISPs … It is important in this area to provide them with the opportunity to self-regulate before we, as legislators, would contemplate anything further" (McLellan 2001b, 1640h para. 1–2).

Competing Roles

Allowing ISPs to "voluntarily police themselves" (McLellan 2001c, para. 84–85) or the manner in which they address the issue of online CSA highlights a divide in what are here competing parliamentary roles: (1) the "job" (Fast 2007b, 8069) or "duty" (Solberg 2007, 68; Lunn 2002, 10630; Moore 2006, 1801; see also Comartin 2006, 1800) "to provide our justice system with the legal tools to keep sexual predators away from our children" (Fast 2006b, 3459; Fast 2007a, 3; Fast 2007b, 8069) and (2) to protect "what matters most to Canadians, jobs and economic growth" (Hoback 2011, 1241; see also Flaherty 2011, 1242; McLeod 2011, 1325; Menzies 2011, 1339; Albas 2011, 1343; Gourde 2011, 1242; LeBreton 2011, 968). Even if ISPs have "shown themselves to be responsible" (McLellan 2001b, 1720h para. 13; see also McLellan 2001b, 1720h para. 3), concern over their interest dilutes calls to "not worry about affecting anyone else but the young people", and not worry about "ruining anyone's lives except those of the young people" or "making people suffer except the young people" (Bailey 2002, 10637). It shifts, in the absence of circular logic, focus away from "our most precious resource" by reworking the questions for which answers are sought, toward the following: "How do we protect the industry and get at the real perpetrators?" (Andreychuk 2002, 10); "How can we protect them [ISPs] and ensure the way we create the infraction does not include them en passant?" (Nolin 2001, para. 72); and "How can we ensure that service providers are protected?" (Nolin 2001, para. 73). In the case of the only bills whose child luring provision was met with industry concerns—C-15 and C-15A—it appears "the government carefully examined how this [the proposed sexual abuse legislation] would affect the [ISP] industry" (Pearson 2001, 1610). As such, when analyzing the public claims of parliamentarians and the decisions to which they are adjoined, it appears the needs of Canada's economic system outweighed the

preservation of childhood or the protection of children from sexual abuse.

Conclusion

Within the capitalist framework that characterizes Canada's economic system and ensures government officials "conduct the nation's business at a reasonable cost" (Rempel 2011, 3772), the above reads as it should: Parliamentarians spoke of children in economic terms, expressed concern over the effect child-protective measures could have on the economy, and—when passing bill C-15A—appear to have tempered their efforts so as not to offend or endanger Canada's ISP industry. The reading also suggests the value of childhood may be expressed monetarily. And while the mathematical exercise is beyond the scope of our work, if capitalists hope to move beyond discourses of insecurity (related to disruptions or breaks in the logic of legislative initiatives) and exclusion (where fault is a distinctive feature of the "Other") in the marketing of justice as legal policy or child luring–related legislation, the calculation is inescapable. It is only by completing a valuation of childhood within the logic of capitalism—the logic of those who govern our capitalist state—that legislative attempts to prevent CSA may be weighed against "the essence of a humanistic civilization: to exert power and to do good at the same time" (Cohen 1985, 114). Phrased differently, this exercise represents a crude turn toward the freedom afforded by capitalism, assuming, of course, that transparency is a condition of freedom—which is a condition of doing good or the ability "to do something" (Simmel 1990, 400) good—and that "humanity will only achieve freedom when it knows what its ideals cost" (Polanyi as quoted in Dale 2010, 19).

Notes

1 In their summary of bill C-15A (2001), David Goetz and Gérald Lafrenière (2002, 4) defined child luring as the act of communicating "via a 'computer system' with a person under a certain age, or a person whom the accused believes to be under a certain age, for the purpose of facilitating the commission of certain sexual offences in relation to children or child abduction." The 2012 royal assent of bill C-10 replaced the words computer system with the more generic "means of telecommunication" (An Act to enact the Justice for Victims of Terrorism Act, 2012, p.14). It is worth

noting that both definitions are more limiting than Kenneth Lanning's (2018, 11) use of grooming/seduction (i.e., "the use of nonviolent techniques by one person to gain sexual access to and control over potential and actual child victims"). They are, however, more inclusive than Patricia de Santisteban et al.'s (2018, 203) definition of online grooming or "the process by which an adult, using the means offered by Information and Communication Technologies (ICTs), enters into the dynamic of persuading and victimizing a child sexually, both physically and through the Internet, by performance or obtaining sexual material from the minor" (see also Lorenzo-Dus et al. 2016).

2 This position is built on Polanyi's (2001 [1944], 262) note on the problem of freedom, which

> arises on two different levels: the institutional and the moral or religious. On the institutional level it is a matter of balancing increased against diminished freedoms; no radically new questions are encountered. On the more fundamental level the very possibility of freedom is in doubt. It appears that the means of maintaining freedom are themselves adulterating and destroying it. The key to the problem of freedom in our age must be sought on this latter plane. Institutions are embodiments of human meaning and purpose. We cannot achieve the freedom we seek, unless we comprehend the true significance of freedom in a complex society.

3 Though we recognize the divisibility of culture, ethics, and morality (Lukes 2008), as well as the added complexity of their commodification (Shepherd 2002), use of the terms as synonyms is here justified with reference to the following three descriptions: "The concept 'culture' is familiar enough to the modern layman. It refers to knowledge, beliefs, values, codes, tastes and prejudices that are traditional in social groups and that are acquired by participation in such groups" (Cohen 1955, 12); "Ideally, ethics is a code of law that prescribes the correct behaviour 'universally'—that is, for all people at all times; one that sets apart good from evil once for all and everybody" (Bauman 1994, 2); and "Morality represents a set of culturally inscribed codes that exist external to any single individual" (Hier 2011, 11).

4 Stanley Cohen (1985, 103–4) presents a similar outline when discussing theories that "might be called 'business as usual' or 'shuffling the cards'… Liberal democratic theory may assume a separation of the economic from the political and legal but, the argument goes, the state will hardly

operate to undermine its own economic base: all its operations will be directed to maintaining the viability of the economic system. The state will, thus, only create the type of crime-control system which in the long run supports the existing division of labour." Both Paul Phillips's and Cohen's claims may be linked to Marx (1964, 225), who noted: "The individuals who rule under these [capitalist] conditions, quite apart from the fact that their power has to constitute itself as a State, must give their will as it is determined by these definite circumstances, a general expression as the will of the State, as law. The content of this expression is always determined by the situation of this class, as is most clearly revealed in the civil and criminal law."

5 According to the Canadian Radio-television and Telecommunications Commission (CRTC), the country's ISP industry—one of a number of mass communication industries operating within Canada—had a total revenue estimate of $1.7 billion and an average operating margin (i.e., a ratio of operating income divided by net sales) of 12.9 percent in 2002 (CRTC 2002). Revenues in 2009, 2010, and 2011 were $6.5 billion, $6.8 billion, and $7.2 billion respectively (CRTC 2012).

6 A more detailed breakdown of the bills, by short titles, reads as follows: C-15, the *Criminal Law Amendment Act, 2001*; C-15A, also the *Criminal Law Amendment Act, 2001* (S. Canada. 2002, c. 13); C-277, *An Act to Amend the Criminal Code (Luring a Child)* 2006 (S. C, 2007, c. 20); C-2, *Tackling Violent Crime Act* (S. C. 2008, c. 6); C-10, the *Safe Streets and Communities Act* 2011 (S. C. 2012, c.1).

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CHAPTER 10

Disadvantage, Crime, and Criminal Justice

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When individuals are asked to form a general impression of the common "criminal," they tend to think of "an outsider, a young, lower-class male, physically unattractive, who has been convicted of a crime involving violence" (Roberts 1992, 138). Criminalized persons are stereotypically disliked and perceived as being evil, but are also stereotyped as being poor (Carroll et al. 1987; Carlsmith and Darley 2008; Langworthy and Whitehead 1986; Reed and Reed 1973; Roberts 1992; Sargent 2004; Tam et al. 2008). In this respect, central aspects of the criminal stereotype are related to their disadvantage.

Disadvantage itself can come to impact what is considered a crime from a legislative standpoint. Many categorically harmful practices are indeed not defined as crimes (e.g., deadly pollution, unsafe working conditions), particularly when they are committed by the powerful (Bittle and Snider 2006; Reiman and Leighton 2015). The politicization of "crime" extends the "definition of crime from its narrow legal base to include wider social harms, injuries and injustices" committed by corporations and by the state (Cohen 1996, 5). Any discussion of criminalized persons therefore must heed in part to the important role that disadvantage plays in the very designation of behaviours as crimes.

Broadly, the concept of disadvantage can be understood as conveying a sense of inferiority in terms of perceived and actual access to resources, such as income, power, and prestige (e.g., in terms of employment or achievements). The nomenclature of disadvantage is therefore conceptually large enough to capture the experiences of various social groups including—but not limited to—racialized groups, LGBTQ groups, those experiencing significant physical or

mental health problems, and those experiencing demarked social exclusion (e.g., the poor, the homeless), including formerly incarcerated individuals. Though the present work uses the concept of disadvantage, more traditional concepts such as social class could have also been employed. Though the concept of social class has a longer history in sociological works on social structure and inequality, social class could be seen as being more strictly tied to poverty and economic relations than other forms of disadvantage. Moreover, the concept of social class does not allow for the consideration of the impacts of multiple forms of social exclusion (e.g., cumulative disadvantage). For these reasons, the present work draws on the concept of disadvantage.

Though not focusing on disadvantage explicitly, concepts related to disadvantage have historically been prominent in theoretical frameworks aiming to explain criminal behaviours and judicial responses to these behaviours. From the eighteenth to the twentieth century, social class was a key lens through which crime was understood (Emsley 1996). Such a view of crime was in line with Marxist theory, which posited that economic activity and related social class distinctions shape the rest of society (Garland 1990). A traditionally Marxist view put forth in the nineteenth century suggests that crime is the result of social class conflicts, with criminalized persons as a social group conceptualized as being in a specific class position forced upon them by the capitalist system (Hirst 1975). In other words, criminal behaviours among the lower-classes, though undesirable, were seen as being the result of the social system.

Drawing on the Marxist tradition, the 1940s saw the introduction of neo-Marxist frameworks suggesting a direct link between social structure and state reactions to crime (Rusche and Kirchheimer 1939). Specifically, it was hypothesized that varying unemployment rates would be associated with varying imprisonment rates. In this way, the criminal justice system was conceptualized as a means to manage the behaviours of "lower-classes" (Quinney 1975).

Over the past fifty years, dominant theoretical currents have continued to draw links between the social position of individuals and their criminalized behaviours. For instance, in the 1960s it was suggested that a combination of differential cultural values among the poor and opportunities for crime explained the overrepresentation of the poor among criminalized persons (Blau and Blau 1982). However, other more critical or radical theoretical frameworks emerged in the

1970s and 1980s, which brought to the fore issues surrounding power, politics, and inequalities, and the role of criminal justice in preserving unequal class relations (Cohen 1985; Quinney 1970; Rock 2002; Taylor et al. 1973). Questions surrounding the designation of behaviours as "crimes" also emerged (Lemert 1972; Wellford 1975). In more recent theoretical frameworks, the criminal justice system is understood as simultaneously reacting to and producing disadvantage: being disadvantaged may lead to involvement in the criminal justice system, while a criminal record and incarceration in turn have detrimental impacts on employment, earnings, health, family life, and recidivism (Harcourt 2008; Western and Muller 2013). This reciprocal relationship between disadvantage going into and out of the criminal justice system is underscored by theoretical frameworks and empirical evidence put forth in the late twentieth century which posit that the "criminal justice system is one of the most important hierarchy enhancing social institutions in the social system" (Sidanius et al. 1994, 340).

The following chapter is in line with theoretical frameworks that conceive the criminal justice system as both reacting to and producing disadvantage, elsewhere described as a "ratchet effect" (Harcourt 2008). The objective is to provide a review of the state of empirical research that demonstrates the numerous ways in which disadvantage comes to impact crime and the criminal justice process. In this review, preference is given to large empirical studies, systematic reviews (i.e., summaries of all empirical evidence that answers a defined research question), and meta-analyses (i.e., statistical analyses that combine the results of multiple empirical studies). The chapter draws in part on earlier frameworks linking social class to the criminal justice process. However, it also moves beyond these frameworks by considering not only the social class of individuals, but also other types of disadvantage (e.g., based on ethnicity or gender). The review also underscores empirical evidence demonstrating the impacts of disadvantage on the criminal justice process for both criminalized persons and victims, and the current theoretical frameworks that explain these trends. Lastly, the objective is to extend the "ratchet effect" perspective by providing evidence of how public perceptions that are reactive to disadvantage and criminal justice practices ensure—wittingly or unwittingly—that these processes continue in the same direction.

Distinguishing between components of disadvantage and stages of the criminal justice process is problematic for two central reasons.

First, decisions at one stage of the criminal justice process will undoubtedly impact later decisions, something referred to as the "dynamic process" that constitutes criminal punishment (Kutateladze et al. 2014). For instance, decisions pertaining to arrest will have a definitive impact on who is processed through the court system. Similarly, outcomes of court decisions will undoubtedly shape the composition of the so-called "criminal population" or "criminal identity" and public perceptions of this social group.

The second issue concerns the drawing of somewhat artificial delineations between the effects of socio-economic status and race on judicial outcomes. To be sure, it is empirically difficult to fully disentangle the historical, intergenerational, and systemic impacts of disadvantage for racialized groups, and especially Black and Indigenous individuals in North America. Take for instance findings suggesting that, for Black individuals, merely living in disadvantaged areas further increases their likelihood of being arrested, independent of other individual-level (e.g., age, sex) and neighbourhood-level features (e.g., residential stability, ethnic composition) (Kirk 2008). The combination of elements of disadvantage result in what some have called "cumulative disadvantage" (Kutateladze et al. 2014), which has devastating impacts on the life outcomes for the most vulnerable individuals. The delineations drawn between aspects or types of disadvantage, as well as between the multiple facets of crime and the criminal justice process, are therefore for pedagogic purposes only, and should not be seen as implying that these are mutually exclusive phenomena. Nevertheless, it is helpful to discuss disadvantage, along with its impacts at various stages in the treatment of crime and law. The following review therefore first considers how disadvantage comes into play for those suspected or convicted of having committed a crime: in arrest statistics, in court proceedings, and in generating public support for harsh criminal justice policy. Next, the chapter considers the role of disadvantage in shaping victims' experiences in terms of relations with police and in court proceedings. The chapter concludes by discussing some of the potentially devastating impacts of growing social inequality on criminal justice.

Disadvantage and the "Offender"

Disadvantage and Arrest

Arrest is arguably the first point of entry into the criminal justice system. In terms of explaining biases linked to disadvantage in arrest rates, five key factors contribute to policing biases in arrest practices: discretion, being a novice, crime focus, cognitive demand, and identity threats (Swencionis and Goff 2017). In particular, the combination of ambiguous situations and a personal disposition to exert dominance is likely to work toward discrimination against individuals of a lower social status. Some evidence suggests that as a social group, police officers demonstrate significantly higher levels of a preference for social dominance compared to other social groups (e.g., jurors, university students, or public defenders) (Sidanius et al. 1994). These personal dispositions may partly explain discrepancies in arrest rates related to disadvantage. More broadly, systemic and individual discrimination against disadvantaged individuals is likely facilitated by myths that legitimize disadvantage by drawing on classism, economic theories of merit (e.g., the protestant ethic), and racism (Sidanius et al. 1994).

Investigating the impact of disadvantage on arrest rates, however, is challenging for two central reasons. The first is related to the nature of arrest data. On one hand, official arrest data recorded by police provides a snapshot of crimes reported to the police, for which the police effected and recorded an arrest. However, arrest data tends to be under-reported by police departments compared to crime data (Maltz 2010). Self-reported arrest is a second source of arrest data; however, this data is seen as problematic due to desirability effects and a general reticence to disclose criminal behaviour.

Crime rates—though subject to many measurement issues—could also be considered as an indirect measure of arrests. There is robust evidence suggesting that police-recorded crime rates for violent and property crimes are higher in areas demarked by absolute and relative disadvantage (Chamberlain and Hipp 2015). Several theoretical frameworks help explain this trend. Notably, social disorganization theory suggests that communities demarked by disadvantage will lack resources to provide informal and formal sources of social control. For instance, the clustering of disadvantaged neighbourhoods

within cities suggests a concentration of poverty, unemployment, and weak social control, and therefore ideal conditions for crime (Chamberlain and Hipp 2015).

Still—adjusting for the crime rate—individuals living in disadvantaged areas are more likely to be stopped, searched, and arrested. Research investigating a number of individual, family, and neighbourhood characteristics suggest that a low socio-economic family status is associated with arrest and police contact (e.g., questioning), and that this association cannot be explained by disproportionate criminal offending alone (Kirk 2008; Pollock et al. 2012).

In terms of disadvantage linked to race and ethnicity, there is no shortage of examples of the disproportionate use of force and persecution of Black Canadians and Americans by the police. In Canada, the Centre for Research-Action on Race Relations has consistently denounced the over-policing of Black individuals in the city of Montreal. In Toronto, a 2017 study suggests that 80 percent of Black men between the ages of twenty-five and forty-four report having been stopped by police (The Black Experience Project 2017). In their study of Canadian youth, Scot Wortley and Julian Tanner (2005) find greater self-reporting by Black youth than white youth of stops by police, adjusting for a range of factors (e.g., involvement in criminal activity, use of public spaces, socio-economic status). They suggest that the practice of racial profiling, or stopping Black individuals more frequently than white individuals, is a self-fulfilling prophecy as it will ultimately lead to more detection of crimes among Black individuals even if white individuals demonstrate the same level of criminal behaviours (Wortley and Tanner 2005). However, data from the United States suggests that in neighbourhoods with a high number of racialized (e.g., Black) individuals, stops have been found to be less effective in terms of identifying culprits of crime, particularly stops of racialized individuals (Fagan et al. 2010). And while overall arrest rates have decreased in many American cities, trends in the States suggest that Black Americans continue to be disproportionately arrested: in New York City, they were 5.2 times more likely to be arrested than white individuals, and in most California counties they were 3 times more likely to be arrested than white individuals (Lofstrom et al. 2019; Patten et al. 2018).

In the United States, some studies suggest that differential offending behaviours (e.g., committing more crimes, and more serious crimes) are responsible for the disproportionate arrest rates of

Black individuals (D'Alessio and Stolzenberg 2003). Other studies suggest that once lifetime involvement and IQ level are taken into account, there is no difference in self-reported rates of arrest between white and Black individuals (Beaver et al. 2013). However, these studies are heavily criticized for ignoring structural and discrimination-based factors contributing to arrest disparities (Gabbidon and Greene 2018). Moreover, these studies are marked with methodological flaws, including improper estimation techniques and the omission of key confounding variables (e.g., socio-economic status, neighbourhood-level factors). A meta-analysis of observation data of actual police arrests found a robust effect of race—specifically for Black and Hispanic individuals—adjusting for a number of confounding variables (e.g., seriousness of the crime, use of weapon) (Lytle 2014). In particular, when Black individuals are economically and residentially disadvantaged relative to white individuals, they are more likely to be arrested, and this is particularly the case where police officers can exert more discretion (e.g., in drug arrests). Furthermore, research investigating the neighbourhood context suggests that, adjusting for involvement in criminal behaviour, if Black individuals lived in neighbourhoods with similar levels of poverty as white individuals, their arrest rate would be substantially decreased (Kirk 2008).

In summary, although capturing the true association between disadvantage and arrest rates is rendered difficult by methodological limitations related to measuring actual arrest practices, empirical and theoretical grounds suggest that those experiencing disadvantage are more likely to be stopped, searched, and arrested by police.

Disadvantage and Courtroom Decisions

Disadvantage may also come into play in the courtroom by impacting prosecutorial, defence, judiciary, and jury decision-making. In terms of judicial decisions, key concerns relate to blameworthiness or culpability (e.g., based on criminal and life history), and the practical consequences (e.g., concerns about efficiency) or social costs of judicial decisions (Kutateladze et al. 2014). The "focal concerns" theoretical framework suggests that cues related to social status are relevant in courtroom decisions to the extent that they suggest a likelihood of future offending, as this would go against the judicial concern for community protection (Steffensmeier et al. 1998).

In this respect, stereotypes linking crime to disadvantage are likely bolstered by concerns associated with pragmatic issues related

to judicial efficiency and "the greater good." The concept of the greater good suggests that punishment—even if applied disproportionately to the disadvantaged—could be seen as contributing to improving the overall welfare and happiness of society (Fletcher 1998). Moreover, it is argued that when information is missing or incomplete, decision-makers are likely to rely on stereotypes that systematically place racialized groups—and particularly the young, male, and poor—at a disadvantage in terms of inferences related to the likelihood of reoffending, to life history, and to other factors (Kutateladze et al. 2014).

With regards to juror decision-making, a meta-analysis of eighty mock juror experiments varying a range of characteristics of the accused suggested a small but robust effect of a low socio-economic status on an increased likelihood of being found guilty and on a greater likelihood of receiving harsher punishment (Mazzella and Feingold 1994). This finding may be due to the presumed covariance of these characteristics with criminality and thus jurors "unconsciously" finding these characteristics relevant in their decision-making.

With regards to prosecutorial, defence, and judiciary decisions, a U.S. study investigating 185,275 criminal cases revealed that adjusting for legal characteristics of the offence (e.g., number of charges, type of offence, severity of offence) and of the individual (e.g., age, sex, social class), Black individuals were more likely to be incarcerated, while Black and Latino individuals were more likely to be detained pretrial and to be treated more harshly in terms of plea bargaining and sentence type (Kutateladze et al. 2014). A systematic review of seventy-one published and unpublished studies investigating racial disparities in sentencing, which adjusted for offence seriousness and criminal history, revealed a small but robust effect suggesting that Black individuals are sentenced more harshly than white individuals (Mitchell 2005). The size of this effect is larger for drug offences, imprisonment decisions, and discretionary sentencing decisions. Similar findings of small but significant negative effects for non-white defendants have also been found outside of the United Stated (e.g., in the Netherlands) (Wermink et al. 2017).

The concept of cumulative disadvantage in the courtroom suggests that the interactive effects of personal characteristics (e.g., race, age, income, employment, gender) should be considered when investigating sentencing outcomes (Spohn 2000; Steffensmeier et al. 1998). In particular, the combination of a low socio-economic status and

being a racialized individual is potentially particularly disadvantageous (Wooldredge 1998; Wu 2016). However, this combination is insufficiently investigated with more emphasis put on the racial dimension in most studies (Zatz 2000).

In any case, the over-representation of the disadvantaged in prisons (Wright 2013; Reiman and Leighton 2015) suggests, first, that courts may be more likely to find the disadvantaged guilty of crime and, second, when this occurs they may be more likely to sentence them to a custodial sentence. These trends are likely partly the result of the cumulative impact of decision-making in the courtroom that draws legal inferences from disadvantage to legal notions of intent and blameworthiness, and the broader notion of "the greater good." Moreover, disadvantage at one phase (e.g., the impact of imprisonment history on pretrial detention) of the criminal justice process is likely to contribute to later disadvantage (e.g., the impact of pretrial detention on suspended prison sentences) (Wooldredge et al. 2015).

Disadvantage and Public Support for Harsh Criminal Justice Policy

Moving beyond policing and courtroom decisions, public decisions and opinions about harsh criminal justice policies can also lead to punitive practices, which tend to disproportionately affect the disadvantaged (e.g., the poor, youth, racialized groups, those with mental health problems) (Bazemore 2007; Bobo and Johnson 2004; Curry and Klumpp 2009; Garland 2004; Harcourt 2008; Helms 2009; James and Glaze 2006; Pettit and Western 2004; Robinson and Darley 2007; Teplin 1984). Public support for harsher criminal justice policy has been found to partly explain the long-term increase in legislative punitiveness and punitive practices (e.g., imprisonment rates) (Enns 2014; Jennings et al. 2017). More broadly, levels of public punitiveness remain relatively high in the United States, Britain, and Canada, with figures suggesting a majority of individuals believe that courts are not harsh enough in dealing with criminalized persons (Enns 2014; Hough et al. 2013; Hough and Roberts 2005; Ramirez 2013; Sato and Hough 2013). And while measures of public punitiveness in specific instances (e.g., in response to a hypothetical crime) suggest lower levels of public punitiveness than broader measures of support for harsh criminal justice policy (Doob and Roberts 1984), high levels of public support for harsh criminal justice policy are apparent despite declining crime rates and stable or growing prison populations (Côté-Lussier 2016).

Theoretical frameworks which gained prominence in the beginning of the twenty-first century suggest that social-structural factors linked to disadvantage may contribute to shaping public attitudes toward crime. Competition for resources and differences in social status are the two key factors influencing inter-group perceptions and responses (Fiske et al. 2007; Fiske et al. 2002; Fiske et al. 1999). Social status refers to a group's overall attainment in terms of education, income, and prestige.

Perceiving criminalized persons as having a low social status is associated with the perception that these persons are cold and callous (Côté-Lussier 2016). These perceptions in turn contribute to public feelings of anger toward criminalized persons and increased support for harsh criminal justice policies. This indirect pathway linking disadvantage to public punitiveness is explained by functional links between inter-group perceptions and corresponding emotional responses that motivate specific behaviours (Cuddy et al. 2007). For instance, perceiving a social group as competing against one's own group leads to inferences regarding that group's general negative disposition, and therefore negative emotional (e.g., contempt, disgust, resentment) and behavioural response (e.g., attacking, excluding). Groups perceived as having a low social status and as competing against society for resources—thus those most likely to elicit negative responses—include the poor, the homeless, and welfare recipients.

Social-structural inequalities, and criminalized persons' perceived disadvantage within that context can therefore contribute to public support for harsh criminal justice policies. This support is the result of functional processes that come into play in inter-group relations. Such processes may help explain sustained public support for costly criminal justice policies, despite declining crime rates and growing prison populations.

Disadvantage and the "Victim"

Indigenous Peoples in Canada and Police Relations

Ensuring a positive relationship between the public and the police has significant implications for both parties (Jackson and Bradford 2009; Jackson et al. 2009; Jackson and Sunshine 2006; Loader and Mulcahy 2003; Sunshine and Tyler 2003a). For instance, through the

fair treatment of citizens and the nurturing of public confidence, the police are able to cultivate within communities a sense of legitimacy and consent to their authority. In return, citizens will be more likely to voluntarily co-operate with the police in the performance of their duties (Sunshine and Tyler 2003b; Tyler 2010; Tyler and Fagan 2008). This arguably helps the functioning of the criminal justice system, while hopefully contributing to the wellness of communities and the strength of social ties. Yet relations between disadvantaged groups and the police are fraught with tension, distrust, and a perceived lack of legitimacy of the latter (Tyler 2005; Wortley and Owusu-Bempah 2011). For victims of crime, a lack of trust and confidence in the police may deter them from reporting crime and co-operating with the criminal justice process (Tyler 2005; Sunshine and Tyler 2003b). Relations between disadvantaged individuals and the police are particularly key as these groups are most likely to become victims of crime, though they are rarely the object of scientific or political attention (Bunch et al. 2012; Miller 2013; Perrault 2014).

The following section focuses on Indigenous peoples as one particularly disadvantaged group in Canada and their relation with the police. Indigenous communities across Canada have been and are still affected by a myriad of social harms and social prejudices, which can be tied to colonialism and the attempted assimilation of Indigenous peoples by the British and Canadian governments, which has contributed to continuing issues of intergenerational trauma, substance abuse, low socio-economic living, cultural dislocation, and educational and health inequalities (Comack 2012; Monchalin 2016; TRC 2015). One of the legacies of these experiences is notably a greater risk of victimization (Monchalin 2016). According to the most recent official statistics, Indigenous peoples were approximately one and a half times more likely to report having been the victim of a crime compared to their non-Indigenous counterparts in 2014. Moreover, Indigenous women were about three times more likely than non-Indigenous women to report having been the victim of spousal violence (Boyce 2016, 3).

Despite greater rates of victimization, Indigenous peoples' reporting of those incidents to the police remains low. Indeed, 77 percent of non-spousal violent incidents and 50 percent of violent spousal incidents experienced by Indigenous peoples in 2014 were not reported to the police (Boyce 2016). Such low reporting rates may be explained by the difficult relationship between

Indigenous peoples and the police in Canada. From their role in the attempted assimilation of Indigenous peoples, to their involvement during Indigenous rights protests and land claim disputes, police have played and continue to play a pervasive role in the life of Indigenous peoples in Canada (Ministry of the Attorney General 2007; Monchalin 2016; Rudin 2006). Indigenous communities experience two discriminatory forms of policing: over-policing and under-policing (Monchalin 2016; Rudin 2006). Over-policing is the practice by which the police focus their attention "inordinately in one particular geographic area (or neighbourhood) or on members of one particular racial or ethnic group" (Rudin 2006, 28). More relevant to Indigenous victims, however, is the practice of under-policing: "[Indigenous] people are often seen as less worthy victims by the police, and thus requests for assistance are often ignored or downplayed. … Just as over-policing has a significant impact on [Indigenous] peoples' attitudes toward the police, under-policing also plays a great role in fostering a deep distrust of police" (Rudin 2006, 1–2).

Under-policing of Indigenous peoples is particularly visible in the case of women victims of violence at the hands of partners or former partners. For instance, some findings suggest that Indigenous women victims report racist responses from the responding officers or are discouraged from filing an official report by the police officers themselves, while others simply do not report their victimization for fear of being criminalized in turn (e.g., for being intoxicated) (Comaskey and McGillivray 2000).

As a social group, Indigenous peoples in Canada are therefore more likely to become victims of crime and simultaneously experience under-policing when in need of police intervention (Boyce 2016; Rudin 2006). These trends may partly explain the overall lower levels of confidence Indigenous peoples have in the police and their overall poor relations with police (Boyce 2016). Ensuring positive relationships between the public and the police is important not only because it helps the police in the performance of their duties, but also because it promotes a context through which authority is asserted with the consent and the recognition from communities, and not through authoritative coercion (Jackson and Gau 2016). This is especially important when it comes to Indigenous peoples in Canada in recognition of their nation-to-nation relationship with the Canadian government (David 2018).

Rape Victims' Credibility and Gender-Based Disadvantage in the Criminal Justice Process

That victims of gendered-based violence experience disadvantage within criminal justice systems across jurisdictions is well established, in particular for the case of rape (Lovett and Kelly 2009; Spohn and Tellis 2014; Westmarland and Gangoli 2012). This section outlines how gender operates as disadvantage at all stages of the criminal justice process, undermining victim credibility and resulting in poor criminal justice outcomes for a crime that is overwhelmingly committed by men against women.

A consistent finding of research on rape victims' experience of the criminal justice process is the central role played by the extent to which a rape victim conforms, or fails to conform, to gender expectations and "real rape" stereotypes. A "real rape," as first proposed by Susan Estrich (1987), is perpetrated by a stranger, typically in an outdoor setting. A "real" victim fights back verbally and physically to avert the rape, resulting in visible injuries that prove the struggle, and reports the rape to police immediately. Furthermore, rape victims are found wanting in their credibility as "genuine" victims if they violate gender expectations by voluntarily consuming alcohol prior to the offence, being sexually active, having a previous consensual intimate relationship with the perpetrator, dressing "provocatively," disclosing substance abuse, being sex workers, having a record of mental health problems, or not fighting back to defend their "unsullied" woman status (Ellison et al. 2014; Kelly et al. 2005; Ellison et al. 2014; Lonsway and Fitzgerald 1994; Lovett and Horvath 2009; Stanko 1985). The empirical evidence suggests that "real rapes" are in fact not typical at all: the majority of victims know their perpetrator—frequently they are current or previous intimate partners. Moreover, rapes often do not result in visible injuries and most victims delay reporting to police, or do not disclose the rape at all (Hohl and Stanko 2015). This is compounded by rape being, in part, enabled by gender-based disadvantage. Perpetrators exploit victim vulnerabilities—for example, alcohol and drug use—and use their relative position of power to coerce victims into sex against their will.

Rape victims' courtroom experience further illustrates how gender and rape stereotypes and beliefs enhance their disadvantage. In rape cases it is often "one word against another"; the testimony of the victim and the accused are frequently the only and

nearly always the key evidence. As a result, the credibility of the victim versus that of the defendant takes centre stage, and defence lawyers exploit the rape myths and stereotypes held by the members of the public who make up the jury. For example, Emily Finch and Vanessa Munro (2007) found that while (mock) juries hold intoxicated defendants less responsible for their actions, intoxicated victims are held more responsible for the subsequent sexual events. Louise Ellison and Vanessa Munro (2009) found that, in line with the "real rape" myth and rape victim stereotypes, a lack of physical resistance, delayed reporting and a calm, unemotional demeanour of the victim all served to undermine their credibility in the eyes of (mock) juries. In this way, stereotypes disadvantage victims by attributing responsibility and blame for the rape to the victim, and diminishing the perceived responsibility of the accused (Taylor 2004; Temkin and Krahé 2008).

Disadvantage and status defined by gender expectations and rape stereotypes therefore play out at all stages of the criminal justice process. As a result, most victims in England do not report the rape to the police (Stern 2010), and of those who do around half withdraw their complaint and do not wish to continue with the police investigation and prosecution (Hohl and Stanko 2015). Of the non-withdrawn complaints the police conclude the investigation with "no further action" in 67 percent of cases (Hohl and Stanko 2015), and only 7 percent of cases result in a conviction (Ministry of Justice 2013). A similar pattern of attrition is evidenced in other jurisdictions (see Daly and Bouhours 2010; Lovett and Kelly 2009; Spohn and Tellis 2014). For instance, in the United States it is estimated that 19 percent of women who were victims of rape after the age of eighteen reported those rapes to the police (Tjaden and Thoennes 2006). In Canada, it is estimated that approximately one in five sexual assaults (which includes rape and other types of assault) are reported to the police (Conroy and Cotter 2017).

More broadly, there is a dearth of research on the link between further forms of disadvantage (e.g., in terms of socio-economic status, sexuality, or ethnicity), victimization, and attrition. In England, there is some evidence that additional forms of disadvantage such as being non-white, having had prior police contact, or having a mental health issue further increase the odds of attrition (Hohl and Stanko 2015). While race or ethnicity is not strongly associated with rape victimization, there are some exceptions. Namely, there is some evidence that

Indigenous women in the United States are significantly more likely to be victims of rape than other women (Tjaden and Thoennes 2006). In Canada, there is evidence that self-reported sexual assault is higher among Indigenous women, homosexual, or bisexual individuals; those with poorer mental health; and those who have experienced homelessness (Conroy and Cotter 2017). Gender-based and other forms of disadvantage therefore work to reduce reporting of rapes, impacting both policing practices and courtroom decisions to the detriment of victims.

Conclusion

For suspected or convicted criminalized persons, the consequences of disadvantage are apparent in arrest statistics, judicial decision-making, and public opinion. Cumulative disadvantage means that those facing multiple types of disadvantage—for instance in terms of socioeconomic status and race or ethnicity—are particularly likely to feel the full force of the criminal justice system. The fact that disadvantage has notable impacts on "offender" treatment in the various phases of the criminal justice process (i.e., from arrest to court proceedings) suggests a "dynamic" or compounding effect of disadvantage. That is, an individual who is more likely to be arrested for a crime may also be more likely to be subject to courtroom biases with regards to findings of guilt and punishment.

The disadvantaged are more likely to be arrested and be given harsh punishments, but are also often more likely to suffer as citizens who come into contact with the criminal justice system as victims. Drawing on the example of Indigenous peoples in Canada, it is demonstrated that, as a social group that has experienced systemic disadvantage over centuries, they are subject to under-policing as it relates to their victimization, over-policing as it relates to their criminalization, and overall poor relations with the police. In a second case, it is demonstrated that victims of rape, who are overwhelmingly women, face systematic, gender-based disadvantage in the way police deal with their cases and in terms of courtroom outcomes, particularly when women fail to conform to gender expectations and gendered victim stereotypes. While some of these findings echo what is typically referred to as the "victim-offender overlap," the focus of this literature is typically in terms of identifying trajectories of offending and victimization (Jennings et al. 2010; Schreck et al. 2008). The present work

aimed to underscore how victims, like offenders, face systematic disadvantage in the criminal justice process and how this may be associated with their social disadvantage.

The negative links drawn between disadvantage and crime are evidenced not only throughout the criminal justice process, but are also apparent in widespread public perceptions. These public perceptions in turn contribute to supporting criminal justice policies that are particularly damaging for the disadvantaged. In other words, endorsing stereotypes that suggest that criminalized persons are disadvantaged in terms of income, education, and success, is associated with endorsing policies that, for instance, push for greater use of prison. The evidence therefore lends support to Marxist and neo-Marxist theories writ large, in that policies that disproportionately punish the disadvantaged are largely supported by the public.

Within criminology, theoretical frameworks have historically focused on social class as a key lens through which to understand crime and criminal justice. A traditional Marxist approach, focusing on social-class conflicts, has been taken up in various iterations over the past hundred and fifty years or so. These frameworks, however, tend to focus largely on the social class of the offender and appear to place the dominant classes as the driving force behind punitive trends.

The present chapter aimed to move beyond these frameworks in part by drawing on more recent theoretical frameworks that may help explain the impact of disadvantage at a micro level (e.g., in terms of police and courtroom decision-making). These frameworks point to separate but related processes (e.g., personality differences, stereotyping, judicial goals) that together may help explain the impacts of disadvantage for criminalized persons and victims throughout the criminal justice process.

The chapter also builds on the "ratchet effect" framework by drawing on a macro-level theoretical framework that identifies functional links between the social structure and public support for harsh criminal justice policy. According to this framework, inequality may contribute to public punitiveness by leading to perceptions of criminalized persons as being disadvantaged. Specifically, in an unequal social system where there are greater status differences between groups within that system, criminalized persons are situated at the very bottom of the social system. Growing social inequality may therefore contribute to widespread public punitiveness and punitive

practices, despite consistently declining crime rates and stable or growing prison populations. In fact, growing inequality has been found to explain incarceration rates in the United States (Enns 2014). Changes in social structure leading to growing inequality may therefore have devastating consequences for offenders, victims, and other social groups targeted by harsh social policies.

Perceptions of specific disadvantaged groups may also contribute to public responses toward crime and punishment. For instance, perceived threat and competition from Black people predicts public punitiveness, while racism partly accounts for the divide in white and Black people's support for the death penalty in the United States (King and Wheelock 2007; Unnever and Cullen 2007). These findings are additionally explained in part by theories of racial threat and racial animus (Unnever and Cullen 2010).

In summary, this review demonstrates that poverty and social class have historically made up the key lens through which crime has been understood. The review further demonstrates that the broader concept of disadvantage is helpful in observing the numerous impacts that inferiority in terms of perceived and actual access to resources—such as income, power, and prestige—can have throughout the criminal justice process for both criminalized persons and victims. The implications of this dual impact of disadvantage calls into question a Kantian and Marxist view that suggests that crime can be seen as a form of restoration of the injustice of the social system. Indeed—according to Kant's *Lectures on Ethics*—by adhering to the laws and rules of a social structure we may be nevertheless contributing and participating in injustice, in that the social system victimizes a large segment of the population (Reiman 2007). However, such a view fails to take into account that victims of crime are very often the disadvantaged themselves, and that both disadvantaged victims and criminalized individuals will evermore be subject to systematic biases and the full force of the criminal justice system.

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SECTION 4

REFLECTIONS ON CRIMINOLOGY

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CHAPTER 11

Using Criminological Evidence to Shift Policy: From a Punishment to a Prevention Agenda

Irvin Waller, Verónica Martínez,
Audrey Monette, and Jeffrey Bradley

Critical criminologists make the flaws in the criminal justice system a dominant contemporary issue. They show that the poor get prison and the rich get richer. They draw attention to policing and sentencing, which disproportionately target racial and other vulnerable groups. They show the failures and injustices of incarceration, particularly its massive overuse in the United States, the disastrous outcomes in Canada from overcrowding, and its negative impacts on people and communities everywhere. In Canada, they remind others of the disproportionate numbers of Indigenous people incarcerated.

Irvin Waller was a full professor in the Department of Criminology at the University of Ottawa for thirty-six years before retiring in 2018. Throughout his career, he has not only agreed with these critiques but also worked to ensure solutions proposed by criminologists have been put into practice. He has used criminological evidence to activate solutions that prevent persons from committing the crimes that typically lead to arrest and incarceration. Engaging with the political machine in Canada and abroad, he has shared prevention and victimological knowledge to get politicians to support making necessary investments (Waller 2019). This chapter highlights some of what has been achieved during Waller's career as a means of informing the work that future criminologists can engage in to advance a shift from the flawed punishment agenda to an upstream prevention agenda that saves lives

and money while avoiding so many persons from being arrested and incarcerated. Waller's work has championed both empirical and public criminology to reform criminal justice policy in Canada and abroad.

The first section of this chapter describes the shift in his thinking as one of the pioneers of early Canadian criminology, in the 1960s and 1970s. He came to Canada to solve the failure of prisons by studying them. The criminological evidence from his study of men released from prison (Waller 1974) led him to examine ways to solve the problems that lead to misuse of policing and prisons through preventing crime and meeting the needs of victims (Waller and Okihiro 1978). These two pioneering and evidence-based studies at the University of Toronto were the foundations for Waller's career, influencing his role in the Canadian government from 1974 to 1980, where he headed the major criminological research section. This office provided evidence to justify the abolishment of the death penalty and a shift from retributive punishment to evidence-based ways to meet the needs of victims, including through gun control, prevention of violence against women, and investments in evidence on prevention and victim assistance.

The next two sections overview some major changes made after Waller joined the University of Ottawa in 1980 and became a full professor in 1982. The first of these focuses on major shifts in the United Nation's (UN's) stance on human rights in relation to criminal justice policies that were influenced by Waller. Both of these started with a basic pamphlet that bridged the criminological evidence to common sense solutions. The pamphlets illustrate an important tool that criminologists can use to influence changes to policy. The next section shows the major accumulation of scientific knowledge on victimization and effective prevention that was the work of other leading criminologists, which strengthened the evidence that Waller uses.

The final section turns to the decade starting from 2010. Waller continued his perspective on the importance of using evidence to influence policy with reason, focusing on prevention, protection of victims' rights, and advocacy. His perspective built on the significant changes identified in previous sections. The combination underpins Waller's four recent books, which have been translated into multiple languages. These books, like the pamphlets, are a significant instrument in explaining criminological evidence and its

implications to politicians and non-governmental organizations. The influence of his books is illustrated by two examples of practical efforts to shift policy from a punishment to a prevention agenda. The Mexico example illustrates how accumulated criminological evidence and policy recommendations were harnessed starting in 2010 and describes the lessons for successful implementation of prevention policies across Latin America. Progress was made through collaboration with governments and through public speeches and significant media interviews. The Canadian example presents the efforts—particularly from 2015 to 2018—to harness the accumulated criminological evidence to reduce crime, victimization, and costs in municipalities. The Canadian example illustrates the role of partnerships, which included drafting action briefs similar to the pamphlets used earlier in his career.

The chapter concludes with lessons for teaching criminology. Teaching must include a foundation in the evidence for crime prevention and the protection of victim rights, as well as ways for students to shape their world by using evidence to promote reason and justice in crime policy and in public criminological engagement.

Timeline	Milestone	Key to transformation	Outcome(s)	Result(s)
1974	Publication of the book *Men Released from Prison*	*Canadian Solicitor General's Task Force on Release of Inmates* (the Hugessen Report)	Changes to the *Canadian Parole Act*	Rights for parole applicants Public support and use of data
1978	Publication of the book *Burglary: The Victim and the Public* (co-written with Norman R. Okhiro)	Waller's role as Director General, Ministry of the Solicitor General of Canada	Peace and Security Package focus on substituting prevention for punishment	Abolition of the death penalty Gun control Investment in research and prevention
1981	Publication of *Rights and Services for Crime Victims*	Waller's role as Secretary General, World Society of Victimology	UN General Assembly (UNGA) Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power	Recognition of harm to victims Expansion of victim assistance and rights, and prevention

Timeline	Milestone	Key to transformation	Outcome(s)	Result(s)
1984	Publication of *Crime Prevention through Social Development*	Agenda for Safer Cities: Final Declaration from International Conference of Mayors in Montreal	Creation of the International Centre for the Prevention of Crime (ICPC), affiliated with UN	Parliamentary Committee support for investment in crime prevention Momentum for crime prevention in Canada, Western Europe, and South Africa
1986	Waller starts to advise policy-makers on victim rights across world	UNGA Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power	Victim legislation in Canada and across world	Services and rights for victims in practice in Canada, Europe, and elsewhere
1994	Waller starts to advise policy-makers on crime prevention	ICPC and Crime Prevention Digest	UN Economic and Social Council guidelines on crime prevention and criminal justice in 1996 and 2002, UN Habitat program on Safer Cities	Governments and cities in Europe initiated comprehensive strategies UN Office for Drugs and Crime and Habitat consensus on implementation essentials
2006	Publication of the book *Less Law, More Order*	Publication of the book in Spanish	Crime-prevention legislation and investment in Mexico	Initial reductions in homicides in Mexico
2011	Publication of the book *Rights for Victims of Crime*	Publication of the book in Spanish	General Victims' Law in Mexico and European Union Directive	Payments to victims, services Canada Bill of Rights for Victims
2014	Publication of the book *Smarter Crime Control*	*Regional Model for a Comprehensive Violence and Crime Prevention Policy*	National Prevention Strategies in Mexico and elsewhere in Latin America	Some investment and support from InterAmerican Development Bank
2017	Publication of Action Briefs, use of videos and Twitter	Canadian Municipal Network for Crime Prevention	Crime-prevention policy and training and 25 cities engaged	Some municipal crime-prevention planning

Figure 1: *Timeline of Irvin Waller's major contributions and their impact on policy.*

More broadly, the chapter will follow a timeline of Waller's major contributions (see figure 1), with a particular focus on how Waller's contributions influenced outcomes and results.

Early Criminology in Canada Focused on Evidence and Policy Reform

In 1966, Waller came to Canada from England to join the new Centre of Criminology at the University of Toronto. He had just completed a graduate degree at the Institute of Criminology at the University of Cambridge, where he had acquired knowledge about how to do criminological research that is evidence-based and therefore likely to influence policy. He was hired to work on a large Ford Foundation grant focused on evaluation of prisons and parole in Ontario. The study was to include parole decision making, the impact of prison on offenders, and evaluation of the rehabilitative effects of prison and parole.

Incarceration Is Not the Solution

Several criminological pioneers in the 1950s and 1960s had influenced Canadian policy to reduce the impact of the punishment agenda on offenders. Reforms had been made to reduce the number of offenders being sentenced to prison by developing alternatives such as probation and getting prisoners released early on parole. As the major part of the Ford Foundation grant, Waller became the architect and principal investigator of the pioneering empirical study of the background, prison experience, and post-release lives of 423 men exiting federal penitentiaries in Ontario. It included access to fingerprint section files on all arrests and convictions of the men both before incarceration, including as juveniles, and for five years after release.

The book that reported on the study, *Men Released from Prison* (Waller 1974), concluded that the main determinants of the high rates of post-release offending were the adverse life experiences of the men *before* they arrived at the prison door. While prisoners improved their grade levels and health while behind bars, the prison programs of job training, Alcoholics Anonymous, counselling, and so on, could not change their life chances or reduce their likelihood of reoffending. It confirmed the often insurmountable gap and difficulties of transition from prison to community. After release, the assistance from a halfway house or parole officer made little difference to

further offending. Getting a job and a sustained family relationship made a small, but positive difference, while misuse of alcohol, delinquent associates, and fighting made a negative difference. The study concluded that it was remarkable that a few men were actually able to beat the odds and not reoffend. In sum, neither prison nor parole were significant ways of reducing future offending.

Along with the main study, Waller and Janet Chan (1974) did a quick study of comparative incarceration rates to provide evidence on how Canada compared with other countries. It pioneered the indicator for comparing incarceration use as the number of persons behind bars per 100,000 total population. It showed that in 1970, with a rate of 205 persons behind bars per 100,000, the United States was much more punitive than other Western countries, such as Canada, Germany, and United Kingdom, which had rates of less than 100 persons behind bars per 100,000. It also showed that the higher the incarceration rate across different jurisdictions in the United States, the higher the rate of homicide and recorded violent crime. They concluded that incarceration is not a significant deterrent to violent crime, but rather a reaction to crime. It showed how incarceration was correlated with race and Indigenous indicators. By 2010, the United States rate of incarceration had skyrocketed to over 700 per 100,000, while rates of violent crime rose, thus confirming again the limits of the deterrent effect (Waller 2014). Studies later showed a small incapacitation effect, but at a huge cost to taxpayers and the communities where prisoners tend to come from and go to (Waller 2019).

The development of evidence about reoffending after release and after parole contributed to Waller's role on the Hugessen Task Force (1972), which reorganized parole to function how it does today in Canada. This role on a task force was an important way for a criminologist to influence policy. Unfortunately, the recommendations—to create an institute on parole to provide evidence and accountability in terms of reoffending after parole—were never implemented. Corrections agencies in Canada are able to claim low recidivism rates because Canada does not publish the data that shows the high rates of failure after parole. If they did, politicians would be more aware of the failure of incarceration.

The Public Wants Prevention, Victims Want Reparation

In reaction to the conclusions about the limits of prison and parole in contributing positive benefits, Waller's next study looked at whether

prisons and parole were a rational option given what the public and crime victims wanted, and how those needs could be met in more effective ways. It used burglary for the study as the offence of break-and-enter was the conviction for which many men were still sentenced to the penitentiary in 1970. The study mapped police-recorded burglary across census tracts in Toronto and conducted Canada's pioneering victimization survey looking at public attitudes, rates of victimization, impact of burglary on victims, precautions taken by citizens, and demographic data. The survey methodology later influenced the British Crime Survey (n.d.).

The book that came out of the study, *Burglary: The Victim and the Public* (Waller and Okihiro 1978), showed the risk of burglary to be highest in areas close to a concentration of poor young men living alone and where victims had more stealable property. The presence of a guardian, such as a concierge in an apartment building, reduced risk. Importantly, it showed that the public and victims are much less punitive than is commonly believed, that victims were more traumatized by vandalism than by property stolen, and that they wanted restitution more than punishment.

The Abolition of the Death Penalty and Prevention Initiatives

When Waller was hired to be the first director general of research for the public safety ministry (then called the Ministry of the Solicitor General of Canada), he used criminological evidence to advocate for a package of initiatives that could be leveraged in the abolition of the death penalty that would meet the needs of victims by tackling the causes of homicide and violence. Three causes identified at that time were guns, domestic disputes, and dangerous offenders. Therefore, the package included a major initiative for gun control, investments in tackling violence against women, and dangerous offender legislation. All three were to be evaluated based on evidence. It was projected that these would reduce rates of violence and, thereby, penalties would be reduced later. He also demonstrated that public attitudes were much more positive toward the prevention agenda than many politicians believed they would be.

The evaluation of the gun control package showed that it contributed to reductions in violence as well as to a decline in homicides. The evaluation of the dangerous-offender law showed that it was used much more moderately than previous laws. Unfortunately, the funds for tackling violence against women were mostly used for other

purposes. The research funded significant criminological research at the universities of Montreal, Toronto, and Simon Fraser with the aim of influencing policy with criminological evidence. The research group published a booklet for policy-makers called *Selected Trends* (Waller and Touchette 1982). A video was also produced for briefing politicians, to bridge the gulf between criminological evidence and public policy. Violent crime declined, but the visionary politicians of the 1970s—keen to reduce the use of incarceration, based on evidence—were not to be seen in subsequent years. In fact, the government diminished the resources and clout of the research group about five years after Waller left.

Major Changes at the UN to Justice for Victims and Prevention of Victimization Initiatives

What is now the UN Office for Drugs and Crime (UNODC) had had a long-term interest, between the 1950s and 1970s, in promoting rights for suspects and offenders, and better humane conditions and rehabilitation for offenders. Its meetings were dominated by corrections experts and penologists. Waller was a pioneer of expanding these human rights to include justice for victims and prevention of victimization. Indeed by 2000, UNODC had prevention as one of its permanent three priorities, and showed significant interest in protecting the rights of victims, within the context of its priorities, for criminal justice and organized crime. This section touches on some of Waller's key actions in contributing to these changes.

"Victim Magna Carta*" Makes Justice for Victims a Human Right*

In 1976, Waller was invited to chair the research section of the pioneering meeting of those interested in victim research, assistance, and rights (Waller 1976). In 1979, he contributed two papers to the meeting of victimologists that led to the founding of the World Society of Victimology, where he was elected to the executive committee (Waller 1982a, 1982b).

In 1979, Waller was invited to join the board of the influential US National Organization for Victim Assistance (NOVA). He learned about the wave of state legislation to promote services, compensation, restitution, and civil remedies for victims, as well as amendments to state constitutions that was crowned by the national *Victims of Crime Act* in 1984 (NOVA 1984). He was later to be identified as one of the

pioneers of victim services and rights in the United States (Waller 2017), but it was the advocacy at NOVA that inspired his pioneering push for the UN General Assembly Magna Carta for victims.

Waller's first steps at the University of Ottawa were to engage a graduate student to research a pamphlet eventually titled *Rights and Services for Crime Victims* (CCSD 1981), as well as organize a major international conference on victim assistance and rights in Toronto. The pamphlet focused on the evidence about the harm from victimization in Canada and proposed rights to prevention, reparation and services, and respect. This short booklet was written to explain criminological evidence to politicians and advocacy groups who began to promote its framework. This led to the resolution from the UN General Assembly, dubbed the Magna Carta for victims (UNGA 1985). The resolution adopts prevention and makes the "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power":

> Recognizing that victims of crime are unjustly subjected to loss, damage or injury and that they may, in addition, suffer hardship when assisting in the prosecution of offenders, countries around the world agreed on the necessity of adopting measures to secure universal and effective recognition of—and respect for—the rights of victims and multiple other actions that aimed to alleviate the plight of victims and to prevent victimization from occurring. (UNGA 1985, 1)

When an individual is a victim of a criminal act, they experience shock, trauma, and anger, as well as frequent financial loss and sometimes injury. If they report the victimization to the police, they may suddenly be propelled into the criminal justice system, whose main interest in the victim is as a mere witness. Already affected by the incident, victims often feel frustrated and oppressed by a justice system that is complex and often insensitive to them and which, in turn, adds to the burden of the victims, rather than lightening it. (Waller 2011)

Yet, the Canadian criminal justice system is built on a model that is predominantly focused around justice for the criminal by the state. It is rare that this system asks: What about the victim? All too often, when criminologists or criminal justice policy-makers talk about crime and justice, they fail to mention the victim or, if they do,

they focus on the anger rather than ways to meet the needs of victims and constructively deal with that anger. Often, the victim's animosity is about the operation of criminal justice, as well as their victimization.

The "victim Magna Carta" has gradually influenced policy reforms in Canada, which started with a series of victim-service laws in most provinces, as well as a victim rights law in Ontario. These have fostered a modest increase in information and services for victims, and thus reduced the frustration and the anger that can drive punishment solutions. In 2007, the federal government established the Office of the Ombudsman for Victims of Crime. Subsequently, the *Canadian Victims' Bill of Rights* was enacted in 2015. Its objective was to recognize that criminal acts have a detrimental impact on victims and society, and thus to emphasize the importance of taking the rights of victims into consideration throughout the criminal justice process (Waller 2020). The *Canadian Victims' Bill of Rights* "guarantees" four statutory rights for victims: (1) the right to information; (2) the right to protection; (3) the right to participation; and (4) the right to seek restitution. However, the rights under the *Canadian Victims' Bill of Rights* remain to be implemented. Specific measures must still be developed to ensure the uniform application of victims' rights, as well as an annual assessment of these enforcement measures with the victims. In short, it is imperative to ensure that victims' rights are not just rights on paper, but rather that they are connected to concrete and universal actions. As this happens the frustration of victims with criminal justice will be reduced and the potential for restorative justice will become greater.

Waller, together with other international experts, proposed a draft "Model Law for Victims of Crime" in 2006 based on commitments by all world governments to implement the Magna Carta for victims. It points to the harm caused to victims of crime, the lack of effective strategies to reduce victimization, and the need to minimize harm when victims collaborate with law enforcement and criminal justice systems (Waller 2011, 163). This focuses on support, justice, and protection, as well as the use of surveys to assess progress.

Canadian criminology is lagging behind international developments. Nonetheless, in 2010, Rick Linden, the editor of the most widely used textbook on criminology, added a chapter on victim services and rights (Waller 2020). Undergraduates are therefore

exposed to some of the basic notions. For most undergraduates, this chapter is the only part of their curriculum that looks at evidence on the needs of victims and how those needs are better met through rights and services than through the state's role in punishment in criminal justice.

For the past thirty-five years, leaders from the field of victimology, criminology, and criminal justice have been coming together to offer the postgraduate course on Victimology, Victim Assistance, and Criminal Justice in Dubrovnik, Croatia. This course, held in co-operation with the World Society of Victimology, is being replicated in other regions around the world. It aims to inspire students across the globe to keep fighting for victim rights in the years to come and to address victims' needs through services and supports, rather than through incarceration. The course covers the areas of history of victimology, relevant UN declarations, restorative justice, victim compensation and restitution, crisis intervention, assistance to rape victims, standing in court, and much more. Many of the pioneers of prison abolition, such as Louk Hulsman and Nils Christie, were a regular part of the course, discussing solutions for victims as an alternative to the state playing a role in incarceration and punishment. This course, though popular, is often the only exposure for criminology graduate students at the University of Ottawa or elsewhere to understand the needs, services, and rights for victims and the potential for sustained reductions in punishment.

International Centre for the Prevention of Crime Makes Prevention Part of the UN

In 1983, another graduate student helped Waller write a pamphlet on crime prevention through social development (CCSD 1984) that led to a UN centre that focused on prevention and shifts towards prevention in Europe, Canada, Mexico, and elsewhere. This pamphlet too was written to explain criminological evidence to politicians and non-governmental groups and offered common sense ways of achieving significant reductions in crime through prevention.

Waller was the scientific advisor for two major conferences of mayors and national leaders, in Montreal in 1989 and Paris in 1991. These events sparked a new commitment to make cities safer by going beyond police, courts, and corrections to invest in actions by sectors such as schools, housing, youth, social services, and health in order to tackle the causes of crime through social prevention.

In 1993, the Standing Committee on Justice and the Solicitor General recommended that the Canadian federal government, in cooperation with the provinces and municipalities, take on a national leadership role in crime prevention (Horner 1993). Following the recommendations made by the standing committee, governments in Canada and France, and the provincial government in Quebec signed a declaration on the creation of the International Centre for the Prevention of Crime (ICPC) in Montreal.

This has also brought significant change. The work of the ICPC created an international movement that led UNODC and the UN Economic and Social Council (ECOSOC) to adopt the UN crime prevention guidelines (UN ECOSOC 2002). Essentially these stress that implementation requires a permanent crime-prevention board, the use of crime-prevention science, a plan from diagnosis to evaluation that mobilizes entities able to tackle causes, and the development of the human talent to make it happen—in other words, basic empirical criminology. It also requires adequate and sustained funding, and public engagement—in other words, public criminology.

At the international level, intergovernmental agencies have held a series of congresses, and produced documents and declarations that have transformed some national agendas on the best ways to tackle crime. Many governments across the world are starting to consider violence as a public health issue—which really means a criminological issue—and are seeking to develop effective frameworks to better prevent crime and violence. The most recent include the UNODC quinquennial Congress on Crime Prevention and Criminal Justice in 2015. In 2017, the World Health Organization (WHO) held its milestone meeting on violence prevention in Ottawa and, the year after, UN-Habitat agreed on guidelines on safer cities. Each of these meetings raised awareness and moved the prevention agenda slowly but steadily forward. In 2018, the UK Youth Violence Commission made its report endorsing these models and investments (Youth Violence Commission 2018). This commission was a partnership between parliamentarians and the University of Warwick—a government-university pairing similar to other commissions on which Waller worked earlier (Waller 2017). These examples again illustrate key ways to influence policy in Canada and abroad through the UN system, but also through major conferences.

Significant Change in Data and Criminological Evidence Internationally

While Waller was focused on using evidence to advance crime prevention and victim protection, there was a sea change, from 1980 to 2017, in relevant data available. Notable areas where knowledge dramatically expanded includes the prevalence and impact of crime on victims, the risk factors that correlate with persons known to commit common and interpersonal crime, the effectiveness and cost effectiveness of interventions to tackle those risk factors, and services and rights for victims.

Data Shows Prevalence of Crime and Harm from Victimization

The United States has had an annual national crime-victim survey since 1972 (US Bureau of Justice Statistics n.d.). England and Wales have had the sophisticated British Crime Survey since the early 1980s (British Crime Survey n.d.).

Canadian data from government statistical agencies generally lags behind other countries. Canada restarted its victimization surveys in 1989, but these have been implemented only every four years and are much less sophisticated than other leading countries. The most recent Canadian victimization survey shows that 2.2 million Canadians aged fifteen and older were still victimized by a violent crime in 2014 (Perreault 2015). Moreover, there was one property crime for every seven adult Canadians, and one violent crime for every fifteen adult Canadians in 2014 (Perreault 2015). It is estimated that 650 persons will be murdered in any given year—of whom a quarter will be Indigenous—and close to a quarter will be with a handgun. The total harm to Canadians from interpersonal crime is estimated at a staggering $55 billion a year (CMNCP 2016a; Zhang 2011). Canada does not have a current survey on intimate partner and sexual violence, but it is likely that 100,000 women will be raped each year if our rates are proportionately the same as Centers for Disease Control and Prevention (CDC) shows for the United States (CDC 2018; Waller 2019). While gains have been made elsewhere, Canada needs to catch up on its collection of victimization data to better inform public policy as it relates to prevention and meeting the needs of victims.

Expenditures on Criminal Justice Spike

The evidence on harm to victims and related costs has been used to argue that crime policy should focus on prevention because it saves lives, losses, and taxes. Canada is spending $22 billion on cops, courts, and corrections to react to the $55 billion in harm (Zhang 2011). From 2000 to 2016, Canada doubled its expenditures on policing from $6 billion to $14 billion today (CMNCP 2016a; Greenland and Alam 2017). During this time, police were recording less crime, in part, because the proportion of victims of crime—particularly against property—reporting to police was dropping and clearance rates for homicide were dropping. Municipalities, who pay two thirds of these expenditures, cried foul. The unsustainable growth in public safety expenditures is crowding out expenditures on early intervention and prevention (CMNCP 2016b), but municipalities are apparently powerless to change it.

While Canada's expenditures per capita on policing are not cheap, the United States spends similar amounts on policing with some of their cities spending much more. A comparison between Toronto and Chicago is particularly striking, as they have the same population size. Toronto has 5,500 police for about CDN$1 billion and an average of sixty murders a year. Chicago has 13,000 police for CDN$2 billion and an average of 600 murders a year (Waller 2019).

As noted previously, the use of incarceration in the United States exploded from a punitive 215 persons in prison per 100,000 total population in 1965, to over 700 per 100,000 in 2015 (Waller 2019). From 1965 to 2015, the incarceration rate in Canada has vacillated around 100 per 100,000 (Correctional Services Program 2015). The United States outpaces any other country on its per capita use of incarceration, as well as expenditures on policing and imprisonment. If it reduced its massive overuse of incarceration to our level, they would save more than $60 USD billion a year, and the savings would be even higher if they reduced its use to the German level (Waller 2019, 209–10).

These massive increases in spending and use of incarceration have not brought the homicide rate in the United States close to Canada's, let alone Germany's (Waller 2019, xxv, 209). The spike in American incarceration can be read as the largest single criminological experiment ever and demonstrates the failure of incarceration to deter or even to provide significant incapacitation (Waller 2019, 38–46). The states with the highest incarceration rates have the

highest homicide and violent crime rates—thus demonstrating that incarceration is no silver bullet. While studies done for the National Academy of Sciences show some decrease in violent crime by incapacitating such massive numbers of poor young men, the effect is not large and the cost to taxpayers and disadvantaged communities is massive (Waller 2019).

Upstream Prevention Proven as Smart Solution

What are the programs and practices that have been shown to prevent crime and victimization? What are the strategies that help offenders and avoid over-policing and over-incarceration? Knowledge on these issues has changed dramatically in the last fifty years, which constitutes a substantial change on what we know about the causes of personal crime and its prevention.

Some of the causes include lack of jobs, limited access to education, negative parenting and family breakdown, poverty, and racial discrimination. The risk factors include being born into situations of relative poverty, inconsistent parenting and child abuse, being identified in primary school as troublesome, dropping out of school, having anger issues, abusing substances (including alcohol), and being incarcerated (Waller 2014; WHO 2016). Reducing the number of children growing up with these causes and risk factors has been proven to reduce crime (Waller 2014, 19).

Historically, the milestone study that brought together multiple criminological evaluations of what prevents crime—what works, what is promising, and what does not work—was undertaken by Lawrence Sherman and other criminologists at the University of Maryland (Sherman et al. 1998; see also Sherman et al. 2006). This was the first step toward today's CrimeSolutions.gov website which is the major repository maintained by criminologists at the National Institute of Justice of the United States Department of Justice. This repertory has become the single most important source of criminological evaluations and is so essential to core criminology. It includes empirical evaluations of more than 500 different types of programs and 100 practices that have been evaluated—often in random control trials—in terms of their proven or non-proven effectiveness in preventing crime (Waller 2019, 26–32).

This repertory shows more than 60 percent of effective solutions were delivered by services such as those for youth, families, early childhood, education, and health. In sum, the solutions to

crime are upstream prevention, not cops, courts, or corrections. A modest number of programs based on proactive law enforcement and diversion have also reduced policing costs and prevented victimization (CMNCP 2016b, 2; Waller 2019, 20–32). Many of the best-known programs of youth outreach, parenting, and school curricula, such as life skills, result in a 50 percent reduction in offending compared to criminal justice interventions, without the negative consequences for young people in the criminal justice system (Waller 2019, 59–78).

While familiarity with CrimeSolutions.gov should be mandatory for every policy-maker and criminologist, the website does not bridge the evidence to policy actions. One of Waller's missions has been to make this bridge to policy-makers (CMNCP 2016b; Waller 2014, 2019). He has identified the specific policy investments in social and crime prevention programs for politician, and has shown the benefits in reduced crime and taxes (i.e., through less policing and prisons) (Waller 2014). He has presented the ways that these programs must be implemented and how advocates can influence the politicians to invest in them (CMNCP 2018; Waller 2019)

Today, several other major organizations provide similar access to yet more criminological evidence on the impressive actions that have reduced crime—mostly away from policing and certainly not involving incarceration. The access is on websites sponsored by national and international agencies such as Public Safety Canada, the International Centre for the Prevention of Crime, the UK College of Policing, and the World Health Organization (CMNCP 2016b; Waller 2019, 23–36). The Public Safety Canada repertory was based on more than 200 programs in 2018. The University of Ottawa Crime Prevention Team, including two of the authors of this article, has brought this knowledge together so that mayors, journalists, and students in Canada can grasp it easily (CMNCP 2016c).

Many of the evaluations demonstrate a return of $7 for every $1 invested. The Washington State Institute for Public Policy is a non-partisan research institute that informs the legislature of the State of Washington in education, criminal justice, social services, and health care. Its website is the go-to source for policy-makers as it systematically reviews evidence on the cost-benefit of programs that tackle crime, using important work of criminologists (Washington State 2018). The summaries of their findings demonstrate clearly that investing in prevention programs not only reduces harm to

victims, but also reduces the cost of crime to the state and taxpayers. Nowhere does it show that more spending on reactive police or incarceration reduces crime. In fact, one study showed how much would be saved to taxpayers by investing in prevention and so avoiding prison construction. Public Safety Canada has published its "Tyler" story that shows the massive savings from investment in youth inclusion, thinking twice to avoid violence, and in family support (Waller 2019, 23–36).

At the international level, the World Health Organization has developed multiple useful resources on the prevention of violence—again using criminological evidence. The role of law enforcement is very limited, restricted only for the enforcement of rules (e.g., around the abuse of alcohol or guns). The WHO's portfolio of effective strategies includes:

- focus on at-risk youth by teaching life skills and establishing meaningful relationships;
- early childhood education and parenting programs;
- reducing access to alcohol and guns;
- improving respect for gender norms; and
- providing support and assistance for victims.

In 2017, at the invitation of Health Canada, the WHO organized a major meeting in Ottawa on the topic of evidence on what stops violence. It launched an even more extensive website covering 3,000 different research studies on the prevalence, impact, causes, and solutions to violent crime (WHO 2016). Waller was instrumental in getting this meeting to Ottawa, and the resulting website must become a part of the knowledge base for any criminology student.

Preventive evidence and Waller's work with WHO and the ICPC led to UN ECOSOC and UN-Habitat Guidelines on how to implement effective, comprehensive strategies (Waller 2019). In 2006, the City of Glasgow in Scotland took these steps to heart and, after completing the all-important diagnosis, it implemented a comprehensive strategy that reduced violence by 50 percent and sustained the reductions over the next ten years (Waller 2019, 159–82). The Glasgow strategy could serve as a model for more cities in Canada, the United States, and Latin America. The strategy was recently featured as the number one priority for reducing murders in England and Wales, as recommended

by the stellar Youth Violence Commission (2018) mentioned earlier. This in turn has led to the City of London in the United Kingdom to adopt the Glasgow strategy, which is expected to lead to many more replications across the world.

Evidence, Books, and Collaboration Shift the Agenda

Waller has now written four books that bring the evidence to advocacy for investments in effective prevention and victim rights in multiple languages. *Less Law, More Order* (2006), *Rights for Victims of Crime* (2011), and *Smarter Crime Control* (2014) have already made a difference. *Science and Secrets for Stopping Violent Crime* (2019a) goes one step further by showing how public criminology can be used successfully to get political buy-in, including how to work with governments and non-governmental advocacy groups.

The books are based on the combination of Waller's evidence-based prevention and victim agenda developed prior to 1980, the major changes in both UN recognition of prevention and of victim rights, and the remarkable increase in data and criminological evidence. Essential tools for action are to communicate science in user-friendly ways to politicians and bureaucracies and to explain specific actions that they can take. If politicians are to guarantee rights for victims and stop victimization, they need help to understand what is known and the implications of this knowledge for policy. If criminologists are to make a difference, they must also get to know these easy-to-read books. The influence of these books will be illustrated by two examples of efforts to shift policy from a punishment to a prevention agenda.

Collaboration Starts with a Shift in Agenda in Mexico and Latin America

Waller's books and expertise have contributed to a movement toward effective crime prevention and citizen safety in Latin America. It has been marked by multiple successes, some failures with lessons, and hope for more effective implementation in the future.

General Law for the Social Prevention of Violence and Crime

Waller's work synergized with the concept of citizen safety. Instead of police and prisons acting only in the interest of the state, citizen safety gave greater importance to the reduction of feelings of insecurity, prevention of victimization and violence, and participation of citizens, as

well as policing that is community-oriented, and a respect for human rights (Waller and Martínez-Solares 2019).

The failure of traditional security policies to stem the rising tide of violence in Mexico helped political decisions to shift from a paradigm based on punishment and deterrence to a proactive and preventive one (Waller and Martínez-Solares 2019). In an unprecedented event in Latin America in 2008, convened by Mexico's Party of the Democratic Revolution, Waller and other experts met in the Chamber of Deputies to lay the conceptual, legal, and evidential foundations of what would be established in the *General Law* of the National System of Public Safety. It focused on evidence about effective prevention and experiences developed in the European Union and in English-speaking countries.

Later in 2008, a second opportunity came, this time called by Mexico's Institutional Revolutionary Party (PRI). Once again with the support and advice of Waller, a report drawing on international experience and consensus was written to give support to a prevention law. Thus, in 2011, the *General Law for the Social Prevention of Violence and Crime* was proposed based on solid scientific evidence, but with a focus on smarter ways of dealing with violent crime (Waller and Martínez-Solares 2019). The law was adopted and received significant funding for several years, and was associated with several thousand fewer homicides for the first few years. Unfortunately, the funding was not sustained. As too often happens, upstream and holistic approaches that are effective and cost-effective wither because policing and security forces, which are more visible as "action," take precedence.

The General Victims' Law in Mexico: Solace Long Awaited

For issues of protection of victims, Mexico had lived through a disturbing spike in violence that started in 2006. Mass executions, disappearances, beheadings, and hangings were commonplace across the country, as was impunity for these and many other crimes. The "war on drugs"[1] led to the escalation of conflict between official forces and drug cartels, resulting in significant increases in many thousands of civilian deaths (Taladrid 2016, 5).

In 2012, the *General Victims' Law* (GVL) was enacted as an overdue recognition of the direct and indirect victims who had been affected by the wave of violent crime in Mexico (Amnesty International 2013). Prior to the GVL, no single legal instrument

guaranteed the protection of their rights. Victims had no access to restorative justice; their rights to truth, justice, and integral reparations were not satisfied. The GVL "aimed at guaranteeing the rights of victims of crime and human rights abuses in the ongoing violence resulting from the struggle against organized crime in Mexico" (Amnesty International 2013, 1). Compensation could be claimed by victims, including relatives of people who had been killed or forcibly disappeared and those who had been kidnapped or injured as a result of organized crime.

The GVL was a victory for the victims' movement in Mexico, but it was a partial one. Unfortunately, the implementation of the GVL was marked by a series of delays and significant shortcomings, which in turn affected victims' ability to claim the benefits and rights. The government lacked political will and tolerated poor leadership, corrupt bureaucracy, and unwillingness to harmonize state laws with the GVL (Taladrid 2016). Victims gained a little, but were let down in terms of what was promised.

Regional Model for a Comprehensive Violence and Crime Prevention Policy

Mexico was one of several Latin American governments that collaborated in the development of the *Regional Model for a Comprehensive Violence and Crime Prevention Policy* in 2015 (EUROsociAL 2015; Waller 2019, 147–48). The *Regional Model* was a new effort to prevent crime and victimization, learning from the successes and failures of the implementation of the crime-prevention and victim legislation in Mexico, but also from the failure to deal with growing violence and spending on reactions in other Latin American countries.

Veronica Martínez-Solares, with advice from Waller, was responsible for the work funded through the European Forum for Urban Security and the International Juvenile Justice Observatory and the European Union's EUROsociAL II program. It focused on the UN crime-prevention guidelines from 2002 (UN ECOSOC 2002; Waller 2019, 115–38) discussed above. These stress some essentials for successful implementation, such as multi-sectoral approaches that diagnose the problems that cause violence and mobilize the sectors able to tackle the problems; significant and sustained investment; capacity development (human talent); quick wins; and measuring outcomes. By 2015, there was a realization that it must also focus on gender.

In partnership with representatives from ten Latin American governments, the project drafted a framework for comprehensive regional violence and crime-prevention policies. The model puts forward seven processes and two conditions whose purpose is to facilitate the identification of the circumstances, developments, and requirements specific to each country to contribute to the construction, as well as implementation, of comprehensive public violence- and crime-prevention policies (EUROsociAL 2015, 8; Waller 2019, 147–53). This model is the core of a non-binding declaration, known as the *Cartagena Declaration*, that reaffirms the political commitment of the region's authorities to create policies using the model. It shows what is needed for the solid science of violence prevention to be implemented and sustained successfully. It reaffirms that policies will not succeed without strong political will, leadership, management, institutionalization, good governance, coordination and integration of criminological analysis, focus, inclusion, equity and dignity with a gender perspective, and ethics, as well as regional collaboration (EUROsociAL 2015; Waller 2019, 115–58). This model has led to significant implementation of crime prevention in several of the partner countries.

Collaboration Provides Basis to Shift Agenda in Canada

The movement toward investment in, and implementation of, effective crime prevention has been harnessed and championed in Canada by a group of key stakeholders from municipalities who are part of the Canadian Municipal Network on Crime Prevention (CMNCP).

Creation of CMNCP

In 2006, the Institute for the Prevention of Crime (IPC) of the University of Ottawa, originally launched and directed by Waller with financial support from the National Crime Prevention Centre (NCPC), invited mayors from fourteen Canadian municipalities to nominate a city official—not a police officer—to become part of what is now the CMNCP. One outcome from the project was that the municipalities agreed on the importance of a clear, strong political will; ongoing funding; a centre of municipal responsibilities for crime prevention; a strategic plan; and the importance of public engagement. These were seen as essential to achieve tangible and permanent reductions in crime at the municipal level. All these essential

issues were later identified among the elements of the Latin America regional model.

After the end of this first phase of funding, the municipalities decided to continue in collaboration with Waller. In 2015, they secured funding for a second phase from Public Safety Canada and formed the CMNCP as a community of practice to build capacity and mobilize Canadian municipalities to prevent and reduce crime and to foster community safety and well-being. The funding aimed to increase investment in effective, evidence-based, and collaborative crime-prevention strategies in municipalities (CMNCP 2016a, 2016c, 2018). Members in 2019 represent most big cities and over thirty municipalities whose combined populations are more than 50 percent of the population of Canada.

Main Contributions of CMNCP

CMNCP shares good practice in successful evidence-based crime prevention and practical experiences of its members. Its focus is on strategies that go beyond the established reactive police and criminal justice activities. These upstream strategies include preventive measures that tackle the causes of, and risk factors for, crime through stronger actions and innovations in sectors such as schools, housing, social and youth services, health, and preventive policing. This requires the mobilization of stakeholders—such as mayors, city councillors, and city officials—in the municipalities and in these sectors. It also includes greater public engagement and strategies based on collaboration, evidence, planning, and results' evaluation. CMNCP has presented examples, such as Glasgow, where cities have followed the essentials for successful implementation (UN ECOSOC 2002; Waller 2019, 115–82). These examples show there is potential for Canadian cities to end youth and handgun violence, while spending less on policing and significantly reducing overuse of incarceration.

These achievements were largely achieved by young criminologists who knew the scientific literature on violence prevention and wanted to make a difference to policy. With the leadership of Waller, a crime-prevention team of graduate students at the University of Ottawa, including Jeff Bradley and Audrey Monette, helped with the analysis and writing of nine action briefs between 2016 and 2018. The actions briefs are important tools that provide decision makers easy access to the evidence on crime prevention and related topics, as well as actions that the stakeholders can take. They are designed for

elected politicians, senior municipal officials, police executives, community safety coordinators, and citizens. They are also great for students. The messages of several of these action briefs have been recorded, TEDx-talk style, as videos in English and French (see also CMNCP 2017; Waller 2013)

In October 2017, the University of Ottawa team, in collaboration with CMNCP, organized a workshop called Advancing Investment in Effective Crime Prevention. The aim was to help members get more funding by exploring how evidence and systematic strategies can be implemented to advance cost-effective crime prevention in Canadian municipalities. In February 2018, the team collaborated again with the CMNCP on a three-day training on creating community safety strategies. The training provided skills and capacity development in comprehensive community safety strategies and upstream crime prevention. Both provided blueprints for future trainings and for students.

The bottom line is that CMNCP has provided easy access to decision makers and students to the criminological evidence on what prevents crime, the essentials of successful prevention implementation, and the convincing arguments for cities and governments to shift from the punitive agenda to a more caring and much more cost-effective way of making communities safer. The membership and interest in CMNCP from municipalities has grown in the last three years, in part because it is a community of practice on prevention, in part because municipalities are interested in evidence-based ways of investing in youth and they do not know what else to do to control police budgets. It also facilitates some networking with other levels of government who have funding.

Looking to the Future for Criminology

It seems unlikely that the prevalence and impact of interpersonal crime and victimization is going to disappear on its own or as a result of the punishment agenda of policing and prisons. Indeed, some projections suggest that advances in artificial intelligence are going to increase the gap between the rich and the poor by increasing unemployment for young unqualified and disadvantaged men, and so likely will increase violent crime. Unfortunately, shifting politicians' focus from police expenditures—which in turn keep prisons overcrowded—will require more work.

The logic for Waller and other criminologists who want to stop the tragedies of violent crime while reducing the overuse of policing and the misuse of incarceration is set out in figure 2. It highlights four important ingredients. First, fundamental to success in reducing crime are the use of both the criminological knowledge on what prevents violent crime and the UN agreements on how to implement such knowledge successfully (Waller 2019, 23–182). Second, the science and results of such examples as Glasgow show that relatively small investments can achieve reductions in crime of 50 percent or more. Canada is committed to the Sustainable Development Goals (set out below), which require transformation from "more of the same" to strategic investments based on evidence (Waller 2019, 126–37). Third, it will require collaboration with initiatives able to bring about the policy changes (figure 2 lists collaborations in which Waller is involved). Finally, significant shifts have been achieved by many of the activities of public criminology (listed in figure 2) in which Waller has engaged. It is an ongoing challenge for a criminology that wants to contribute reasoned evidence and relevant advocacy to impact a shift from a punishment to a prevention agenda. Listed below are three areas where criminology and its students can make a mark.

The UN Sustainable Development Goals

In 2015, Canada along with the leaders of the global North agreed to achieve seventeen Sustainable Development Goals (SDGs) by 2030 (UNGA 2015). The commitment to the SDGs is an engagement to achieve targets that include significant reductions of violence against women and girls (SDG 5), violence and homicides (SDG 16), and drug abuse (SDG 3), and ways of making cities safer (SDG 11) (Waller 2019, 132–37). Governments who support SDGs are committed to transforming their actions so that they achieve these targets through a significant shift in their strategies relating to investment, capacity development, partnerships, and evidence-based action set out in SDG 17.

The commitment of governments to the SDGs is creating new impetus to use evidence to reinforce the prevention agenda (CMNCP 2018; Waller 2019). It is expected that this momentum will accelerate in Canada and around the world, particularly as intergovernmental and international events raise awareness and commitment to share bold solutions for preventing and responding to

Figure 2: *Chart showing the "theory of change" logic model for using criminological science to shift from the punishment agenda to the prevention agenda which was produced for the Student Fair during Criminology Week at the University of Ottawa in 2016.*

violence. The time frame for achieving the targets, by 2030, allows municipalities to change their investments, but also foster initiatives by other levels of government to support them. An essential step to achieving the targets is the use of indicators for a baseline

measure of violence rates, such as victimization surveys and associated costs. This baseline will enable progress to be measured over time and inform decision makers as to whether adjustments are needed to achieve the goals (Waller 2019, 126–37). All of this applies the work of criminology.

Science and the Secrets of Ending Violent Crime

Waller (2019) recently published a new book to empower politicians and the public to make the shift from misspending after the fact to smart investment upstream. It renews the focus on stopping the tragedies of violent crime by offering examples of effective solutions, essentials for implementation, and secrets of getting buy-in from collaborations such as that with Mexico and the CMNCP.

The book uses the positive experiences in Canada and Mexico, as well as the lessons from the failures of early adopters, to stress how the prevention agenda can be advanced. It is not just about what is wrong but what can and must put it right. It also shows how criminologists who want to make a difference in the overuse of policing or incarceration can get buy-in by using the cost-benefit arguments and the movements in many countries that want to stop victimization. It shows specific ways for students and criminologists to use social media and other marketing methods to influence policy. It provides practical ways for public criminology to make the policy difference (Waller 2019, 221–46).

Too many criminologists have reacted to the victim movement as being the cause for overuse of the punishment agenda, but reductions in crime in jurisdictions, from the Netherlands to New York City, have all been associated with large reductions in incarceration. For instance, 2018 saw the impact of Mothers Demand Action on Gun Violence and the students from Parkland in the United States—to name but a few—who want less violence, not more punishment (no surprise to Waller). In 2019, March for Our Lives (started by the students from Parkland) proposed a Peace Plan for a Safer America, which proposes standards for gun ownership, upstream violence prevention, and an office to implement the action among six actions for change—but none of them call for more punishment. These movements are succeeding in reforming policy toward the prevention agenda. Criminology students must get to know and get involved in these influential movements.

Teaching Criminology to Stop Violence and Misuse of Police and Prisons

Moving forward, it is imperative that criminologists understand that this is their world, and if they do not shape it, someone else will. No one studying health care, environmental chaos, or education would passively allow governments to continue the status quo. Therefore, criminologists must learn ways to be more influential.

Criminology must make the criminological evidence on prevention and protection of victims a core component of their education—much more than a chapter in an undergraduate textbook or an optional graduate course in Dubrovnik. Students must be encouraged to use evidence to reason and must be helped to use the tools they have to agitate for the prevention agenda.

It is time for policy-makers to deliver what the public wants—less crime and more caring for victims. It is time for policy-makers to use citizens' taxes in the most sustainable and cost-effective manner (Waller 2019). This will only happen if people in the field of criminology engage in making the change happen. This chapter looks at some ways this has been done and some ways to do this in the future. Criminology that makes a difference must become basic learning, to leave our children with fewer scars from violence within the home and with safer streets, and with fewer young Canadians mangled by the nineteenth-century punishment agenda that persists today. For all this, we need a more sustainable and humane way to deal with crime, before it happens.

Notes

1 The Mexican War on Drugs is an ongoing war between the Mexican government and various drug trafficking syndicates. The Mexican government has asserted that their primary focus is on dismantling the powerful drug cartels, rather than on preventing drug trafficking (Etter and Lehmuth 2013).

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AFTERWORD

Reflections and Intentions: Critical Criminology in Canada

Gillian Balfour (class of '87 and '94)

Being asked to provide closing remarks for a collection of essays authored by respected colleagues for my alma mater seemed a daunting task, but it has proved an opportunity to reflect on how the discipline of criminology has changed and where it might be headed. Since leaving the graduate program in 1994, I have watched the faculty and students at the Department of Criminology at the University of Ottawa confront hard questions about the political economy of punishment; the paradoxes of criminal justice reforms; the decriminalization of sex trade work and the politics of legal moralism; and, by making space for incarcerated voices in their research and for former prisoners in their classrooms, the ethics of inclusion.

During my undergraduate and graduate studies at the University of Ottawa over two decades ago, Anglophone criminology and Canadian criminal justice looked very different from what we see today. The criminology curriculum in the late 1980s was framed by correctional behaviouralism, the ascendancy of victims' rights, and debates over neoclassical sentencing regimes. But all that was challenged in the wake of tragic and troubling events, such as reports of physical and sexual abuse of youth confined to training schools across Ontario; suicides of nine Indigenous women inside the Prison for Women in Kingston, Ontario; the rise of some victims' rights groups seeking a national referendum on capital punishment; and a mass shooting of eleven women at the École Polytechnique, in what was to be called the Montreal Massacre. By the early 1990s, the Canadian state took up militarized arms against Mohawk peoples of Oka, Quebec; suspended a woman's right to privacy in defence of a man's right to due process when charged with sexual assault; and decriminalized, but did not legalize, abortion.

Also during this time, feminist academics, former women prisoners, and equality-seeking groups worked together to form the first national task force dedicated to the study and reform of the federal Prison for Women. In 1990, the federal government accepted the recommendations of the task force report, *Creating Choices* (Phelps and Diamond 1990). The report called for a women-centred correctional model grounded in a trauma-centred understanding of women's criminal offending and espoused principles of empowerment through meaningful choices and community involvement. The Prison for Women was slated for closure and five new regional prisons, as well as an Aboriginal Healing Lodge, were proposed in its place. In 1994—three years after Correctional Service Canada's (CSC's) acceptance of the proposed reforms to the federal imprisonment of women—an all-male riot-response team strip-searched seven women and confined them in segregation, and shipped others, without their consent, to psychiatric hospitals or men's penitentiaries, without access to lawyers. Madame Justice Arbour "castigated CSC for its deplorable defensive culture and showed in forensic detail how CSC chose to disregard the Rule of Law whenever it suited its purposes and had a disturbing lack of commitment to ideals of justice" (Arbour 1996, 139). The words of the Arbour Report echo today in the continuing inquiries into the illegal uses of segregation. In most cases Indigenous people and those struggling with mental illness are placed in isolation: Adam Capay was "discovered" undocumented in segregation cells after 1,636 days in isolation; Daniel Wolfe died of a heart attack after 600 days in segregation, and Edward Snowshoe died by suicide after 162 days in the hole. Christine Jahn was held in segregation for 210 days and denied access to medical care despite having late-stage cancer and mental-health needs; Kinew James—an Indigenous woman with schizophrenia—spent six years of a fifteen-year sentence in segregation due to self-harm and lashing out at staff. She eventually died of a heart attack in a cell despite calls for help. Ashley Smith whose death was ruled a homicide, died after 1,047 days in segregation where she experienced physical and psychological harm by staff.

Since the 1990s, critical criminologists in the United Kingdom and Europe have documented the deeper connections between these abuses of police and carceral power, to the ascendency of neoliberalism. As the statecraft of mass incarceration in United States ramped up and imposed the new Jim Crow regime (Alexander 2010;

Gottschalk 2015), Canadian prisons were less critically examined by criminologists and continued to be imagined as spaces of progressive reforms. Today, the tracking of government expenditures on police and prison expansion remains mired in access-to-information request processes (Piché 2011), and critical scholars are routinely denied access to prisons or face close scrutiny of their research methodologies (Balfour and Martel 2018; Martel 2006). Federal prisons shuttered due to crumbling infrastructure have become monetized as tourist destinations or condominium development sites rather than as memorials to those who have died in prison. But more importantly, as Justin Piché and colleagues argue (see chapter 2 of this volume), these museums retrench the patriotic nationalism of policing (and prisons) and obfuscate the crisis of law enforcement's legitimacy—revealed in class-action lawsuits for sexual harassment, unlawful civilian arrests, and the deaths of unarmed civilians.

Policing and technology—a sub-field of critical criminology—has been inspired by the US Black Lives Matter movement, and given urgency by the police shootings of Indigenous and distressed young people in Canada. In work presented at the conference celebrating the 50th anniversary of the criminology program at the University of Ottawa (not included in the present volume), Nevena Aksin, Michael Kempa, and Anne-Marie Singh explored the fetishization of technology by way of the body-worn camera in contemporary law enforcements, which is almost a surreal form of community policing predominant in the 1980s. Rather than the police officer becoming part of the community, donned technology has become part of the policing "body" that renders us more visible to police.—just as artificial intelligence, Big Data, and machine learning (the use of algorithms to calculate risk) are framing Canadian Border Services Agency decision-making at our borders. Big data is also being used by critical criminologists in the United States to code racial bias in policing-incident report data. Yet the racialized and classed application of technology onto Brown and Black bodies, and onto Indigenous bodies, must be in the forefront of our critical scholarship on technology in policing: Who is it used against and why? Big data and technology need to be harnessed to resist and subvert state power, in order to expose its tactics of surveillance. So do critical criminologists need to be coders in the twenty-first century? Perhaps. But certainly, as Maritza Felices-Luna and Anouk Guiné (see chapter 3 of this volume) portrayed in their descriptions of engaging with various political actors amidst

armed civil conflict in Peru, critical scholars must be brave and risk censorship.

Beyond the technology of public policing, Christopher Greco and Patrice Corriveau (see chapter 9 of this volume) expose the implications of privately owned technology as a site of the commodification of safety. Digital capital (i.e., internet service providers) seeks to protect its market interests—its profits—by resisting state regulation intended to protect children from online sexual predators. Their work echoes that of Erica Meiner (2016) in her book *For the Children? Innocence and the Carceral State* where she documents the rise of sex offender registries that enable lifelong surveillance of men after imprisonment. Whereas Meiner argues these registries are legitimated through ideologies of childhood and innocence, in the Canadian context "economically 'worthless' but emotionally 'priceless'" (Zelizer 1981: 1037, cited in Greco and Corriveau) children are less valuable than market interests of internet service providers. Unlike in the United States, where carceralism expands in the service of child protection, in Canada carceralism recedes in the service of profit.

At the provincial level, in Canada, prisons have become "super jails" designed by multinational corporations, and unionized correctional officers organize to protect their jobs and themselves from shackled prisoners wracked by addiction, mental illness, and trauma. In the Ottawa region, critical criminologists and their students are working together to stop the construction of a new super-jail to replace the Ottawa-Carleton Detention Centre, calling instead for affordable housing and access to drug and mental health care in the community. We are confronting our own prison industry complex that creates middle-class jobs for a generation of young precarious workers who see employment at prisons as job security. The future of a critical criminology must engage in labour politics and scholarship to understand the legitimation of punishment as work. Embedded in these intersecting fields of prison and labour studies is the impact of carceral feminism.

Carceral feminist influences from the United States took hold of policy reforms and deepened the power of the state to discipline and punish in the name of gender responsive corrections (Bernstein 2012). However—as authors Tuulia Law, Brittany Mario, and Chris Bruckert remind us (see chapter 8 of this volume)—carceral feminism, or governance feminism, in Canada is embedded into criminal justice policies and practices far beyond the prison. More aligned with legal

moralism, carceral feminism brands sex trade workers as unruly bodies. Feminist scholars are now divided into prostitution abolitionists versus those who are allies with sex-working women. Despite the initial victory of *R v Bedford* that resulted in the striking down of Canada's prostitution-related offences as unconstitutional, the critical debate among feminists has become factionalized and returned us to the good girls/bad girls debates of the 1980s. In my view, this is happening at a more dangerous time. The slaughter of Indigenous girls and women, many of whom were involved in street-level sex work, compels us all to act; such violence cannot be stopped through the expansion of the carceral state. To aim to abolish prostitution like we aim to abolition prisons is not the same struggle.

The question remains: How do we call attention to prison conditions and demand the end of prisons, and maintain a human connection to those confined? This continues to challenge critical criminologists. By studying the prison are we reifying it? Are we eroticizing the prison rather than decentring it? Is being a critical criminologist enough or, rather, the same as being an abolitionist? Are we exploiting former prisoners by wanting evidence of the pains of their imprisonment? Walls to Bridges is a prison-based pedagogical practice that brings university classrooms into prisons and welcomes incarcerated students. As discussed by Jennifer Kilty, Sandra Lehalle, and Rachel Fayter (see chapter 4 of this volume), the effect has been to overcome stereotypes and stigma, and to foster community collectives of former prisoners as alumni and their allies on campuses. By teaching within the prison, are we softening its rough edges? Criminologists walk a fine line between breaking down barriers to recognize "we are all one; no one is the other," yet do so within the confines of prison authority and the resource restraints of post-secondary institutions.

As we move forward with research as critical criminologists we should be mindful of how our thinking is limited by our subject matter. As David Moffette and Anna Pratt (see chapter 1 of this volume) assert: "criminologists need to move beyond a focus on crime, criminal law, and the nation-state." Moreover, they argue scholarship struggles to overcome "methodological nationalism" and that decentring criminal law and national institutional frameworks is necessary to "make sense of the multi-scalar, multi-actor, and multi-jurisdictional socio-legal regulation of people and things in many contexts today." This seems to suggest to me that indeed we need to move

beyond criminology and its conceptual and methodological borders. Yet the border is not easily removed from our conceptualization of struggle and harm; Baljit Nagra and Jeffrey Monaghan (see chapter 7 of this volume) lay bare the significance of national borders as a justification for racialized domestic anti-terrorism initiatives against Muslim communities. I would say histories of othering are a constant feature of Canadian nationalism.

Critical criminology can no longer be a criminology of inward-looking reform. Instead, we have a responsibility to hold power to account through abolitionist methodologies (e.g., employing former prisoners in our places of work, publishing the writings of the incarcerated, using our academic freedom when it matters—on Parliament Hill or in our municipal elections). Reclaiming the material consequences of policing and imprisonment is a necessary step forward. I would also say we must recognize, as Loic Wacquant (2014, 17) puts it, "the global firestorm of law and order inspired by the United States that has raged far and wide, even as it [takes] different paths and forms in the different countries it [strikes]." Like never before in criminology, we are challenged to conceptualize borders, citizenship, the movement of bodies, and the complexity of governance through shadow states and visceral state violence.

Where are we headed? I think a criminology of liberal reform is behind us. The discipline ahead may be one that is shaped by anti-carceral feminism; borders and bodies; abolition and decarceration; labour studies; society; and technology. I am not so sure, however, if this is criminology.

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Matthew Ferguson is a doctoral student in the Department of Criminology at the University of Ottawa. As a member of the Carceral Cultures Research Initiative, he has conducted research on the memorialization of public policing and punishment in Canada. His co-authored papers have appeared in academic journals such as *Policing and Society* and the *International Journal of Tourism Research*. He is also the co-author of chapters in *The Palgrave Handbook of Prison Tourism* (2017), *Prison Breaks: Toward a Sociology of Escape* (Palgrave, 2018), and *Making Surveillance States: Transnational Histories* (University of Toronto Press, 2019).

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Irvin Waller is a professor emeritus at the University of Ottawa. He uses evidence to convince governments across the world to prevent crime and protect victim rights. In his fifty-year career, he was director general of research in the Solicitor General of Canada in the 1970s, working on abolition of the death penalty and gun control. He received multiple awards internationally, starting with recognition of his work to get the UN General Assembly to recognize rights for victims in 1985. He was the founding director in the 1990s of the International Centre for Prevention of Crime, affiliated with the UN.

Stephanie Wellman is originally from Treaty 1 Territory and the homeland of the Metis Nation, and now resides on Unceded and Unsurrendered Algonquin Territory. She obtained her MA in criminology at the University of Ottawa where her focus was Indigenous issues within the criminal justice system. She now works at the Assembly of First Nations focusing on advocacy for substantive equality for First Nations children, as well as human rights approaches to health, social, and education services for First Nations children. As an Indigenous woman, she believes the answers to many questions can be found by focusing on our inherently held strengths as Indigenous people.

"Critical criminology [has] a shared commitment towards understanding how class, race, gender, sexuality, and other markers of difference shape catastrophic imaginaries that construct threats to security and actual instances of victimization. This shared commitment to critically engage with issues related to insecurity and exclusion produces different ways of seeing 'crime' and 'security' matters appropriated by the state, and opens horizons to other ways of responding to them premised on equality and inclusion."

Contemporary Criminological Issues **tackles some of today's most pressing social issues, from the criminalization of Indigenous peoples to interpersonal violence, border control, and armed conflicts.**

This book advances cutting-edge theories and methods, with the aim of moving beyond the scholarship that reproduces insecurity and exclusion.

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This edited collection featuring two books, one in English and one in French, includes important contributions to knowledge and public policy by eminent experts and emerging scholars.

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