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Seth Adema

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MORE THAN STONE AND IRON:
INDIGENOUS HISTORY AND INCARCERATION IN CANADA
1834-1996

by
Seth Adema

Honours Bachelor of Arts (History) McMaster University, 2010

Master of Arts (History), McMaster University, 2011

A Dissertation

Submitted to the Faculty of Arts in partial fulfilment of the requirements for
Doctor of Philosophy in History

Wilfrid Laurier University

Waterloo, Ontario, Canada

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Abstract

This dissertation examines Indigenous (First Nation, Métis, and Inuit) history as played out in Canadian prisons. It argues that in the prison, processes of colonialism, decolonization, and neocolonialism took place simultaneously. In the nineteenth century, the prison was built as part of a network of colonial institutions and polices. It was imagined, designed, and built by representatives of the Canadian state alongside other colonial institutions, drawing on similar intellectual traditions. It maintains the imprint of this colonial origin. Prisons also became arenas for Indigenous cultural exchange and cultural creation, which in most cases subverted the logic of the prison. This was part of a larger effort at decolonizing the prison. In the twentieth century, Indigenous prisoners actively challenged the colonial logic of the prison by affirming their Indigenous cultures and identities. As Indigenous inmates expressed their cultural identities in prisons, they created literary, material, and ceremonial cultural frameworks distinct to the prison yet reflective of the wider Canadian context. Still, colonial practices emerged in new ways, in a process described in this dissertation as neocolonialism. By drawing on oral and archival sources, this dissertation demonstrates the complexity behind these historical processes of colonization, decolonization, and neocolonialism in Canada, while shedding light on the nature of the prison system and Indigenous history.

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Chapter 1: Introduction: Reading Prison History as Indigenous History

The history of Canadian prisons is Indigenous history. This may seem surprising because Indigenous peoples have never built prisons. One of the most vocal and persistent critiques of the prison system as articulated by Indigenous activists, Elders, and prisoners is that in pre-contact Indigenous history there were no prisons. Noted legal scholar Michael Jackson wrote, “Aboriginal societies did not build prisons, and to the extent that imprisonment continues to be deemed necessary for some native offenders, it is appropriate that we remain cynical...”¹ Reading penal history as Indigenous history challenges existing historiographical trends in the study of Canadian prisons. It also offers new ways to envision the prison as more than a colonial imposition.

Situating the prison within Indigenous history is only possible by looking at the prison through what historian Keith Carlson calls an “Indigenous historical consciousness.”² By framing the history of the Canadian prison system within this consciousness, the nature of penal history changes fundamentally. It also forces historians to consider the ways that Indigenous prisoners have actively resisted and shaped the penal system in Canada. This does not mean that finding Native agency within the history of Canadian penal systems is a “colonialist alibi.”³ What it does mean is that we refocus the history of the Canadian penitentiary system in order to see how it fit within Indigenous histories. Doing this shows that the relationship between Indigenous peoples and prisons as more complex than one of straightforward colonial hegemony and decolonization. Instead, colonization, decolonization, and neocolonialism all coexisted in prisons as Indigenous

¹ Michael Jackson, *Locking Up Natives in Canada: A Report of the Canadian Bar Association Committee on Imprisonment and Release*. (Vancouver: University of British Columbia, 1988), 89.

² Keith Thor Carlson, *The Power of Place, the Problem of Time: Aboriginal History and Identity in the Cauldron of Colonialism* (Toronto: University of Toronto Press, 2010), 112.

³ Robin Jarvis-Brownlie and Mary-Ellen Kelm, “Desperately Seeking Absolution: Native Agency as Colonialist Alibi?” CHR 75/4 (Dec. 1994): 543-56.

peoples responded to incarceration in culturally creative ways. By looking at prisons as places where colonial processes played out, and finding ways that prisoners challenged colonialism within the system, we see not only how the prison affected the lives of Indigenous prisoners in unique ways, but also how Indigenous prisoners and communities shaped prisons in Canada.

When Indigenous peoples encountered prisons, they entered institutions that were made of more than stone and iron. The prison was built according to a settler colonial logic at roughly the same time that the hallmarks of Canadian Indian Policy were being articulated.⁴ During the twentieth century, Indigenous prisoners still entered institutions inextricably shaped by the Euro-Canadian cultural basis upon which the penal system in Canada had been built. They challenged this system by proposing alternatives to healing guided by Indigenous epistemologies. This was a significant act of decolonization because colonization is predicated on the loss of culture.⁵ By reclaiming their culture Indigenous prisoners acted directly against the goals of the colonial system. In the late twentieth century, Indigenous prisoners, community members, and supporters achieved some of their goals in decolonization of the prisons. During this time, penal administration took over these programs without first understanding the cultural basis of programs that were rooted in Indigenous spirituality. I argue that this was a new kind of colonialization unique to the twentieth century, a process which I term “neocolonialism.” Therefore, historical processes of colonization, decolonization, and neocolonialism coexisted in prisons.

The terms “colonialism,” “decolonization,” and “neocolonialism” are all contested, and they are used in this dissertation in particular ways. Colonization is the process whereby Euro-Canadian settlers attempted to eliminate Indigenous peoples as they had existed from time immemorial to

⁴ This includes “the policy of the bible and the plough” For a survey of 19th century colonial policies see: J.R. Miller, *Skyscrapers Hide the Heavens: A New History of Indian-White Relations in Canada*, 3rd ed. (Toronto: University of Toronto Press, 2000).

⁵ Jürgen Osterhammel, *Colonialism: A Theoretical Overview* (Princeton: Princeton University Press, 2005).

facilitate the seizure of land for the government. This was done through elimination or marginalization of Indigenous peoples. The most famous examples of this process are the inequitable treaty-making processes that facilitated the seizure of land, and the residential school system which aimed to “kill the Indian” in the child through forced assimilation.⁶ I argue that these institutions fit within a network that set out to achieve the same goal. Appropriately for this dissertation, the prison has been a dominant metaphor for colonial processes, most famously invoked by Howard Adams in *Prison of Grass*.⁷

Recently scholarship has suggested that “settler colonialism,” as a distinct process separate to colonialism, is a more appropriate way to think about colonization in settler states. Building on the work of Patrick Wolfe, Lorenzo Veracini noted that settler colonial states were places defined not by conquest (as in the case of colonization), but by immigration.⁸ What makes settler colonialism unique is that Indigenous peoples are dispensable in the process of colonization.⁹ Therefore, settler colonialism has a distinct dynamic compared to colonization outside of settler states. Effectively, Veracini complicates the original notion of colonialism as a linear process that is unique to the colonial state, as pioneered by Jürgen Osterhammel.¹⁰ In the Canadian context, Paulette Regan’s work has shown most effectively the cultural impact of settler colonialism, both on settler myths of settlement and its impact on Indigenous peoples.¹¹ In settler colonialism, the settlement of the land becomes part of national myths. Either the preceding nations who lived on the land are washed away from the national psyche variants of Indigenous history became a part of the national

⁶ Jürgen Osterhammel, *Colonialism: A Theoretical Overview* (Princeton: Princeton University Press, 2005). Residential schools and the legal basis for colonialism are discussed at length in chapter two.

⁷ Howard Adams, *Prison of Grass: Canada from a Native Point of View* (Saskatoon: Fifth House, 1975).

⁸ Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview* (New York: Palgrave Macmillan, 2010), 2-3.

⁹ Patrick Wolfe, *Settler Colonialism and the Transformation of Anthropology: The Politics and Poetics of an Ethnographic Event* (New York: Cassell, 1999), 163.

¹⁰ Recently Adam Barker has given a useful overview of the direction of recent literature pertaining to settler colonialism in: “Locating Settler Colonialism,” *The Journal of Colonialism and Colonial History* 13(3), Winter 2012,

¹¹ Paulette Regan, *Unsettling the Settler Within: Indian Residential Schools, Truth Telling, and Reconciliation in Canada*. (Vancouver: UBC Press, 2010).

mythology. For Regan, then, to reconcile in Canada first requires the unsettling of these cultural myths. The prison is an excellent example of settler colonialism in action. When it was built, and especially as it expanded, the construction of prisons became synonymous with expanding colonial power. But as much as this institution was colonial, those who built it were not thinking of the effect it had on Indigenous peoples. They were rather thinking about how institutionalization could break down people so that they could reconstruct them according to a particular ethic, one that I argue is rooted in liberalism. The founding myth of the prison is one of law and order, whereas its effect was and remains colonial. That is definitive of settler colonialism.

Decolonization, by contrast, is the process whereby Indigenous peoples worked against the processes of colonialism to ensure that their cultures continued. The process of decolonization breaks down the institutional structures that maintain the goal of forced assimilation, and creates space whereby Indigenous peoples could maintain their culture and nationhood. This differs from colonization in non-settler states in several respects. First, decolonization in settler colonial states like Canada does not have the violence of political overhaul that is described in the writings of Caribbean scholars like Frantz Fanon.¹² Unlike African decolonization, the North American reality precluded the goal of colonial expulsion through violent uprisings. Instead, Indigenous peoples carved out spaces within settler colonial societies whereby they could exist as Indigenous peoples, disrupting a system of power designed to eliminate their cultures. This is a process that has taken place in many institutions, including the prisons,¹³ education ranging from primary schools to

¹² Frantz Fanon, *The Wretched of the Earth*, trans. Richard Philcox (New York: Grove Press, 1968).

Note this is not an endorsement of settler colonialism. There is tremendous violence, both for and against (see the history of confrontations between Indigenous peoples and settler authorities. Recent history shows that, despite our inclinations to the contrary, Indigenous peoples still experience colonial violence. This dissertation shows that the prison is an avenue where Indigenous peoples are subject to colonial violence. The way Indigenous peoples responded to the colonial state, however, was not violent in the same way as decolonization in the non-settler colonial world was.

¹³ Seth Adema, “Our Destiny is Not Negotiable”: Native Brotherhoods and Decolonization in Ontario’s Federal Prisons, 1970-1982.” *Left History*, 16 (2), Fall/Winter 2012: 37-54.

universities,¹⁴ governance,¹⁵ and research methods.¹⁶ Indeed, settler colonialism is so deep in Canada's institutional and social fabric that every social, political, and economic institution is a potential venue for decolonization. Within prisons, this meant that Indigenous peoples decolonized by celebrating their cultural identities, in contradiction to the original design of the prison as a tool of assimilation. They defined themselves by their pursuit for truth via Indigenous culture, not by their shared experience of incarceration or colonization.¹⁷

Neocolonialism is the process whereby colonial societies such as Canada reinvigorate colonial processes in new ways. The notion of neocolonialism originated in scholarship emanating from Africa after decolonization, largely in the 1960s and 1970s.¹⁸ It was then used to describe the use of economic methods to achieve the same ends as took place during the colonial era. The term has since been expanded for new purposes and new geographies. In Canada, the term has been used less as an economic form of colonialism, and more a description of an ongoing pattern of colonial thought, actions, and policies that happened without the straightforward mechanisms of the residential school, but with a similar ethos.¹⁹

To be clear, neocolonialism's existence should not be taken to suggest that there is a clear break between historic colonial practices and contemporary realities facing Indigenous peoples. This false binary would suggest that there was a historical moment where neither colonialism nor

¹⁴ Jo-Ann Archibald, *Indigenous Storywork: Educating the Heart, Mind, Body, and Spirit* (Vancouver: UBC Press, 2008). ; Marie Battiste, Lynne Bell, L.M. Findlay, "Decolonization Education in Canadian Universities: An Interdisciplinary, International, Indigenous Research Project," *Canadian Journal of Native Education* Vol. 26 No. 2 (2002): 82-95.

¹⁵ Taiaiake Alfred, *Wasáse: Indigenous Pathways of Action and Freedom* (Toronto: University of Toronto Press, 2009).

¹⁶ Linda Tuhiwai Smith, *Decolonizing Methodologies Research and Indigenous Peoples* (Dunedin, NZ: Universtago Press, 1999). ; Shawn Wilson, *Research is Ceremony: Indigenous Research Methods* (Black Point, Nova Scotia: Fernwood Publishers, 2008). ; Kathleen Absolon, *Kaandossiwín: How We Come to Know* (Winnipeg: Fernwood, 2011).

¹⁷ Michael Jackson, *Locking Up Natives in Canada*, 128.

¹⁸ Many credit Kwame Nkrumah as coining the term, which he used in his book, *Neocolonialism: The Last Stage of Imperialism* (New York: International Publishers, 1966).

¹⁹ See for example: Jim Harding, *Aboriginal Rights and Government Wrongs: Uranium Mining and Neocolonialism in Northern Saskatchewan* (Regina: Prairie Research Centre, 1988). ; Winona Stevenson, "'Ethnic' Assimilates 'Indigenous': A Study in Intellectual Neocolonialism," *Wicazo Sa Review* 13(1), Spring 1998, 33-51.

neocolonialism existed; a blissful moment of “non-colonialism.” That is not true. However, late twentieth century colonialism looks different than its nineteenth century counterpart. Residential schools no longer exist since the last one closed in 1996, but colonialism still effects Indigenous peoples through contemporary institutions that perpetuate structural violence and the ongoing contemporary legacies of that violence. Neocolonial processes appear on their face to be benevolent, where superficially Indigenous cultures are tolerated or even encouraged. Thus, neocolonialism masquerades as tolerance, and therefore becomes invisible to the settlers who are engaging in neocolonial practices. This is what makes neocolonialism insidious. However, as settlers encouraged Indigenous peoples to express their cultures, they encouraged them to do so within the confines of a settler colonial institution.²⁰

While these processes of colonialism, decolonization, and neocolonialism all coexisted within the prison, they were not always present in equal measure. During different periods of the penal system’s development, several of these processes were more prominent than others. During the 1870s, when the prison system expanded into western Canada at the same time and based on the same logic as the residential school system, the historical process of colonization was the most evident of these three processes. While active and passive resistance showed the potential of decolonization, this was muted within the overwhelmingly colonial nature of the prison system. In contrast, the emergence of the Native Brotherhoods in the 1970s shifted the dominant process to that of decolonization even though the institution remained colonial. As these movements became increasingly important to life behind bars, the prison ironically became a place where Indigenous men and women, who had become culturally uprooted thanks to the legacy of colonial policies and practices, learned about their culture and heritage. By the late 1980s, the Correctional Services

²⁰ I suggest that this applies to the university as well as the prison. Thankfully, Indigenous scholars have been breaking down some of these barriers, but many scholarly structures still privilege non-Aboriginal ways of knowing.

Canada administration attempted to take over the cultural programs. They did this by replacing Indigenous worldviews with a western, clinical model of corrections in the guise of “Aboriginal Spirituality.” This process is demonstrative of neocolonialism. Shifts where the dominant historical narrative changed are key moments in the history of Indigenous peoples in prisons.

The most obvious of these processes to discern is that of settler colonialism. To incarcerate Indigenous peoples, the British and Canadian state first expanded its legal jurisdiction in criminal matters and subjugated Indigenous peoples to these imported sources of authority. Images of Indigenous incarceration have come to be representative of Canadian colonialism. Likely the most famous of which is Mistahimaskwa, the Plains Cree chief who is best known by his English name, “Big Bear.” In this now-iconic image, Mistahimaskwa sits with his legs chained as he awaits incarceration for his role in the 1885 North West Rebellion. He ultimately died from tuberculosis contracted while in Manitoba

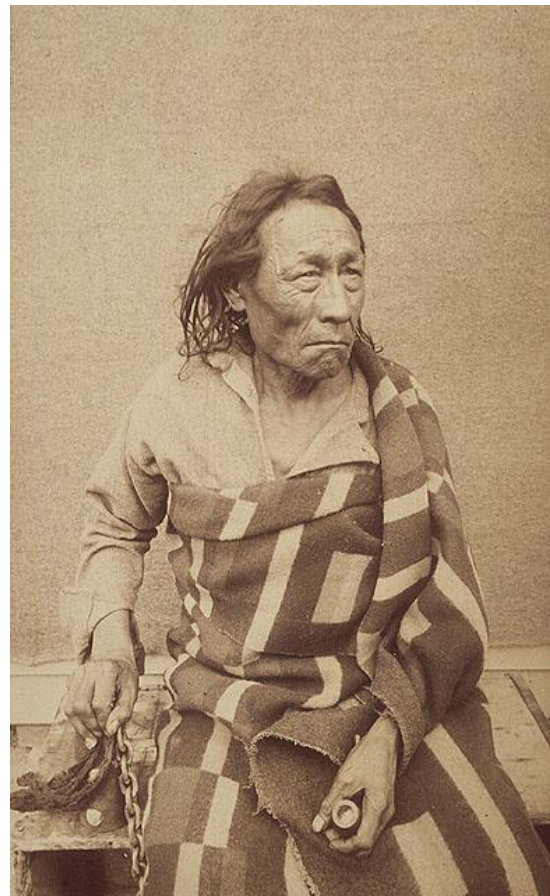


Figure 1: Mistahimaskwa, Library and Archives Canada, RG 10, Box: 02690, item 5

Penitentiary, which took on symbolic meaning as discussed in this dissertation.

Prisons are settler colonial institutions because they are rooted in European liberalism, a foreign worldview to Indigenous peoples. Ian McKay has usefully framed the study of the Canadian past as a part of a liberal “project of rule called Canada.”²¹ McKay argues that rather than returning

²¹ Ian McKay, “The Liberal Order Framework: A Prospectus for a Reconnaissance of Canadian History,” *Canadian Historical Review* 81(4) 2000: 620.

to grand historical narratives of nation building or burrowing in ever-increasingly specialized subfields of research, historians ought to study Canada as a “project of rule” that was shaped on practical principles of liberalism: equality, liberty, and property. This historical narrative would hold Canadian history together as a coherent whole.²² McKay gives a rough timeframe for this project from the Rebellions of 1837 until the Criminal Code of Canada which in 1893 “solidified the liberal ideal of “equality before the law” in a way that potentially made an abstract principle into a tangible reality for every adult Canadian.”²³ According to McKay’s liberal order framework, the category of the individual took the highest importance in the expansion of the state, which McKay defines broadly to include the daily interactions of the state outside the physical locus of the government.²⁴ By arguing that the liberal order framework was the central principle in the project of rule that became Canada, McKay frames Indigenous history as “on the edges of a liberal domination.”

McKay specifically identified the position of Indigenous history within the approach to Canadian history that he envisioned in the following terms:

Finally, there were, on the edges of a liberal dominion, other aliberal entities more completely external to its project of rule. Long-established and once militarily powerful, Aboriginals, the demographic majority in most of the territory eventually to be claimed by the liberal dominion, were people whose conceptions of property, politics, and the individual were scandalously not derived from the universe of Locke, Smith, Bentham, or Lord Durham. The containment of these alternative logics was an ideological imperative of the liberal order, without which it could not exist as a transcontinental project.²⁵

Numerous scholars have pointed to the potential of the liberal order framework as holding potential in the study of the Indigenous past. Robin Jarvis Brownlie argued that there are obvious benefits to this concept of liberalism as a guiding framework for the study of Indigenous history because state

²² McKay, “The Liberal Order Framework,” 633-4.

²³ McKay, “The Liberal Order Framework,” 633-4.

²⁴ McKay, “The Liberal Order Framework,” 620-624.

²⁵ McKay, “The Liberal Order Framework,” 636.

projects of assimilation were central to the liberal order.²⁶ Brownlie posits that while there are examples of individualism in Indigenous societies and we ought not to generalize regarding those cultures, the beliefs that underpinned Indigenous societies ran contrary to the possessive liberal individualism presented in McKay's liberal order framework.²⁷ Adele Perry has used the same framework to show how Indigenous peoples and women were excluded from the sources of authority within this new liberal order in British Columbia.²⁸ Indigenous peoples were seen as opponents to the liberal order because they presented and maintained an alternative philosophy from liberal Canada. While it is difficult to characterize in a sentence the variety of worldviews contained within the Indigenous nations of North America, one of the most significant differences between Indigenous and settler philosophies is that Indigenous peoples focus on the collective as opposed to the individual, which is especially notable when examining the relationship between Indigenous peoples and the land.²⁹ Historian Keith Smith argued that when the colonial state expanded to western Canada, liberalism excluded Indigenous peoples because in the European mind "progress" was oxymoronic to Indigenous traditions.³⁰ The study of Indigenous history in prisons through the lens of the liberal order framework has obvious utility because prisons were emblematic

²⁶ Robin Jarvis Brownlie, "A Persistent Antagonism: First Nations and the Liberal Order," in *Liberalism and Hegemony: Debating the Canadian Liberal Revolution*, Jean Constant and Michel Ducharme (eds) (Toronto: University of Toronto Press, 2009), 298-321.

²⁷ Brownlie, "A Persistent Antagonism," 306-307.

²⁸ Adele Perry, "Women, Racialized People, and the Making of the Liberal Order in Northern North America," in *Liberalism and Hegemony*, 274-297.

McKay's thesis is most thoroughly explored in Jean-Francois Constant and Michel Ducharme's edited collection, *Liberalism and Hegemony: Debating the Canadian Liberal Revolution* (Toronto: University of Toronto Press, 2009). This book includes a copy of the original article from the *Canadian Historical Review*, and a series of essays that explore the potential and pitfalls of the concept of the liberal order framework, including both the essays referenced pertaining to Aboriginal peoples. The fullest articulation of what McKay envisioned in this article can be found in McKay's subsequent book, *Reasoning Otherwise: Leftists and the People's Enlightenment in Canada, 1890-1920* (Toronto: Between the Lines, 2008).

See also: Robin Jarvis Brownlie, "A Persistent Antagonism: First Nations and the Liberal Order," in *Liberalism and Hegemony: Debating the Canadian Liberal Revolution*, ed. Jean-Francois Constant and Michel Ducharme, eds (Toronto: University of Toronto Press, 2009), 298-321.

²⁹ For more information on this topic, an excellent resource is: Dale Turner, *This is Not a Peace Pipe: Towards a Critical Indigenous Philosophy* (Toronto: University of Toronto Press, 2006).

³⁰ Keith D. Smith, *Liberalism, Surveillance, and Resistance: Indigenous Communities in Western Canada, 1877-1927* (Edmonton: Athabasca University Press, 2009), 4.

of the liberal order, and the realities established in the nineteenth century persisted into the twentieth century and continues through a colonizing liberalism. The expanding criminal law a significant part of this liberal domination that expanded through developments in case law, evolving Indian policy, and Eurocentric readings of the treaties. When framed in this way the prison is a symbol for the imposition of liberal values of equality, liberty, and personal property.³¹

In tracing Indigenous history from prisons, it becomes evident that the same colonial processes rooted in an expanding liberalism that led to Mistahimaskwa's incarceration continued unabated into the twentieth and twenty-first centuries. George Manuel, the Shuswap chief of the National Indian Brotherhood, commented on the historic and contemporary realities facing Indigenous prisoners when he wrote, "the height of Canadian racism is achieved in Canadian prisons."³² While the explicitly political nature of Mistahimaskwa's conviction was rarely repeated, with significant exceptions,³³ the prison fit squarely within a network of colonial institutions that perpetuated Indigenous incarceration.³⁴ The most obvious of these is the residential school. The processes of incarceration and rituals of entry in residential schools were remarkably similar because they were created out of the same colonial ethos. This included shaving the prisoners' heads, teaching Christian religion, assigning a number and a trade, and denial of culture and language. The comparison became obvious for both residential school survivors and prisoners alike. Deena Rymhes has shown that many prisoners' writings viewed the prison as a continuation of the residential school, a notion that has received much traction in both prisoners' writings and the scholarship that surrounds it.³⁵ Conversely, survivors of residential schools used the prison as a

³¹ McKay, "The Liberal Order Framework," 636.

³² George Manuel and Michael Posluns. *The Fourth World: An Indian Reality*. (Toronto: Collier-Macmillan Canada, 1974), 185.

³³ Note Leonard Peltier especially for his role in the stand-off at Wounded Knee and the politicization of his case. See: Leonard Peltier, *Prison Writings: My Life is a Sun Dance*. 1st ed. (New York: St. Martin's Press, 1999).

³⁴ See Chapters 4-6.

³⁵ Deena Rymhes, *From the Iron House: Imprisonment in First Nations Writing* (Waterloo: WLU Press, 2008).

motif that explained the purpose and function of the school, perhaps most famously done in Basil Johnston's *Indian School Days*. In it, Johnston writes of entering Spanish Residential School:

Though we didn't know for certain what Spanish represented, our fear of it was not without foundation... Spanish! It was a word synonymous with residential school, penitentiary, reformatory, exile, dungeon, whippings, kicks, slaps, all rolled into one.³⁶

The same motif of exile in the prison applies with little modification. Furthermore, the social and cultural disruption wrought by residential schools destroyed families and led to significantly higher rates of incarceration.³⁷ As the residential school system began the process of closure, the prison continued to exist unabated, playing the same role as the residential school once did. According to legal scholar Michael Jackson,

Prison has become for young native men, the promise of a just society which high school and college represent for the rest of us. Placed in a historical context, the prison has become for many young native people the contemporary equivalent of what the Indian residential school represented for their parents.³⁸

The prison system was reformed numerous times over the twentieth century, but the assimilatory nature of the prison continued unabated until inmates were able to confront the system and, as much as possible, decolonize it.

We should be caution when delineating the relationships between the prison and the residential school. Many scholars have already shown the two to be related. For example, the prison precedes the residential school, and some aspects of the residential school were modeled on the prison.³⁹ More recently, many Indigenous men and women went through the residential school as

³⁶ Basil Johnston, *Indian School Days* (Toronto: Key Porter, 1988), 6.

³⁷ Jeffrey Ross and Larry Gould. *Native Americans and the Criminal Justice System*. (Boulder: Paradigm Publishers, 2006), p4. ; Michael Gauthier, "The Impact of the Residential School, Child Welfare System and Intergenerational Trauma upon the Incarceration of Aboriginals." (MA Thesis, Queens University, 2011).

³⁸ Michael Jackson, *Locking Up Natives in Canada: A Report of the Canadian Bar Association Committee on Imprisonment and Release*. (Vancouver: University of British Columbia, 1988), p34.

³⁹ Famously, aspects of the Carlisle Indian Residential School in the United States was based on the prison system, and that residential school became the model upon which the Canadian system was built.

children and then were “re-institutionalized” in the prison.⁴⁰ This was powerfully described by Donnie Yellowfly:

Somewhere in my misty past – misted by ugly clouds of coerced pain, I recall a qualified teacher of mine at one of the institutions built by the government on my reserve... Almost two decades later, I went through an identical experience in another total institution, prison. The man standing over me this time was not a teacher but, certainly another qualified symbol of the government’s rehabilitation process.⁴¹

Clearly there are relationships between the prison and residential schools. However, drawing a relationship of cause and effect between the two, where one serves as a model for the other, would be misguided. The reason the two systems look so similar is not because one was designed using the other institution as a model, but rather because they all came from the same cultural ethos, which has the same values implicit within the liberal order framework at its root. That explains the pervasiveness of settler colonialism. It was so deeply engrained within the colonial psyche that without intending to, colonial authorities repeated several institutions that served the same assimilationist purpose.

The problem with the way colonialism has been invoked in reference to prisons is that it is most often presented with a statistical argument. The argument goes that Indigenous peoples are colonized, and that this colonization marginalized them. Marginalization drove young Aboriginal men and women drift towards “skid rows” in cities. Therefore, the repercussions of historic and ongoing colonization put young Indigenous men and women in situations where they became more likely to be incarcerated. Numerous studies have shown that this is true.⁴² What this misses,

⁴⁰ Michael Gauthier, “The Impact of the Residential School, Child Welfare System and Intergenerational Trauma upon the Incarceration of Aboriginals.” MA Thesis (Faculty of Education), Queens University.

⁴¹ Donnie Yellowfly, “The Irony of Prison,” *Inside News* Vol. 3 No. 1 (Drumheller, Alberta, 1974), 13. (This is quoted in greater length and discussed in chapter eight)

⁴² Canadian Corrections Association, *Indians and the Law*, Ottawa: Canadian Welfare Council (Liang Report): August 1967. ; Hugh Brody, *Indians on Skid Row*. Northern Science Research Group: Department of Indian Affairs and Northern Development. NSRG 70-2. 1971.

however, is that in Indigenous societies there were no prisons, and that the prison as an institution is constructed on premises that are culturally foreign to Indigenous peoples.⁴³ Indigenous peoples are not colonized in prisons because they are overrepresented; they are colonized because they are represented. The fact of Indigenous incarceration cannot exist without the fact of colonization. By arguing that statistical overrepresentation of Indigenous peoples in Canadian prisons is proof of colonization, scholars have focused on the effect of colonialism, not its practical, historical, and ideological causes. The presence of Indigenous peoples in Canadian prisons is not a symptom of colonialism. It is colonialism.

As this dissertation affirms, narratives of colonization are inadequate to fully appreciate the history of Indigenous peoples inside Canadian prisons. I take the work of historian Keith Carlson as a point of departure here, as he writes:

It will no doubt surprise some people to learn that non-Natives are not necessarily always the most important thing in Indigenous historical consciousness, let alone Indigenous history. Ethnohistory requires historians to explore not only the story of Natives in newcomer history, but also the saga of newcomers in multiple Aboriginal histories. It requires the construction of new chronologies and interpretive frameworks that go beyond the story of Aboriginal people in Canadian history; stories that are sensitive to, but not necessarily centred upon, the role and place of colonialism within Aboriginal history.⁴⁴

The prison was, and remains, a place for negotiating Indigenous identities. The question Carlson's work forces us to consider is what other histories were at play as Indigenous peoples entered prisons? To see this, we must take a critical look at the response of Indigenous peoples to their own incarceration. Invoking sacred teachings while in prisons shows that Indigenous sacred history was as important for incarcerated men and women as was the history of developing penal regimes. By the twentieth century, Indigenous peoples worked towards decolonizing the prisons by introducing their own cultural and spiritual practices behind the walls. The nature of their continued

⁴³ See Chapter 3 of this dissertation.

⁴⁴ Carlson, *The Power of Place, the Problem of Time*, 29.

incarceration meant this decolonization was perpetually incomplete, but this is true of all efforts at decolonization; there was and remains no way to turn back the clock to a pre-colonial era. Ongoing colonialism means that decolonization was and will remain an ongoing process. At the same time, the prison administrations responded to these efforts by re-colonizing Indigenous cultures within the prison in a process of “neo-colonialism.”

What is remarkable is the degree to which Indigenous prisoners were able to decolonize the prison space in the twentieth century. Native Brotherhoods and the Native Sisterhood played the most active role in decolonizing the prison. Native Brotherhoods were inmate-run organizations that began in Western Canadian institutions and spread nationally in the 1970s, and have since spearheaded program development for Indigenous inmates. In the 1970s, the Correctional Service of Canada transferred a number of Indigenous inmates who then began new Brotherhoods in the prisons that they entered.⁴⁵ These groups worked with Indigenous organizations that formed outside the prison to make life more palatable within prisons while rehabilitating inmates by celebrating Indigenous identities, teaching inmates about their cultural heritage, and conducting ceremonies inside the prison. For many prisoners, time in prison was the first time that they were exposed to Indigenous spirituality in a positive light.⁴⁶ George Manuel wrote about the efforts of the Native Brotherhoods in *The Fourth World*: “Within the prison system itself it is the Native Brotherhood Societies that are doing the greatest work toward long-term rehabilitation.”⁴⁷ In celebrating their identities and promoting Indigenous cultural practices as the most likely approach to healing, the Native Brotherhoods resisted centuries of colonialism. Within the same book, though not directly discussing movements in prison, Manuel also said, “It is very much a mistake to identify the cultural

⁴⁵ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 15, 2013.

⁴⁶ James Waldram, “American Spirituality: Symbolic Healing in Canadian Prisons,” *Culture, Medicine, and Psychiatry* vol. 17 no. 3 (September 1993), pp 349.

⁴⁷ Manuel and Posluns, *The Fourth World*, 186-7.

and political renaissance that is going on among Indian societies today with a *new Indian renaissance*.⁴⁸ Manuel illuminates that while records of Indigenous opposition to and decolonization of the penal system emerged in the twentieth century, these efforts built on historical legacies of resistance that stretch back much further in time.

The Native Brotherhood/Sisterhood movement shared a common trajectory as a movement, but there was also an important gendered dynamic within the movement. There was one Native Sisterhood in Prison for Women, which was the only federal prison for women. However, other than this one institution, all of the groups in federal prisons were comprised of men. For brevity, when I refer to the movement as a whole, I use the term “Brotherhood,” following the nomenclature of those in the movement itself. That said, the concerns facing Indigenous women were not the same as facing Indigenous men, or at least they had unique concerns beyond that of the men. Only having one federal women’s prison, for example, meant that women from across Canada were all incarcerated in Kingston, and that led to issues when First Nation, Inuit, and Métis traditions were all represented in the one Native Sisterhood. Furthermore, the movement was largely male-driven, so at key moments the male voice was heard and women were marginalized within the movement. In order to appreciate the depths of these differences, Indigenous women’s gendered experiences were analyzed separately in a case study. While men also experienced prisons in a gendered way, this is reflected in the growth of the Brotherhood movement more broadly.

As Indigenous prisoners and communities achieved more rights within prisons, the penal apparatus coopted these programs through bureaucratic and legal means, which was a new kind of colonialism unique to the twentieth century. I call this neocolonialism. Correctional Service Canada took control of Indigenous cultural practices and alienated the communities who pioneered these programs. This was done through policy changes and laws that protected the right of Indigenous

⁴⁸ Manuel, *The Fourth World*, 69.

prisoners to their cultures. While the increased rights under this new framework responded to many needs voiced by prisoners and community members, the shift from community-based to institutional-based service represented a change in the relationship between Indigenous peoples and Canadian penal institutions.⁴⁹ This was less the reincarnation of colonial practices than it was the adaptation of colonialism in a new way in the twentieth century, which is why the term “neocolonialism” is useful.

It is noteworthy that many argue that colonialism has not ended, and therefore “neocolonialism” is a misnomer. I agree with this assessment. The term “neocolonialism” suggests that twentieth century colonialism is unique, but there was no time historically where colonialism was not acted out.⁵⁰ I use the term “neocolonialism” to make explicit that the nature of twentieth century colonialism was different from its nineteenth century antecedent. Instead of actively pursuing assimilation, in the twentieth century Canadian prison administrators took control of Indigenous cultural programs and promoted these programs to Indigenous prisoners. In doing so prison staff modified these cultural practices for a western, clinical model of incarceration which

⁴⁹ Current literature has questioned the potential for a settler penal regime to meaningfully engage with Indigenous worldviews and build an “Aboriginal prison.” Recently, this literature has circulated around the construction and difficulties associated with “Healing Lodges” built by the Correctional Services Canada. See: Margaret Malloch, “A Healing Place?: Okimaw Ohci and a Canadian Approach to Aboriginal Women,” in Margaret Malloch and Gill McIvor, eds., *Women, Punishment, and Social Justice: Human Rights and Penal Practices* (New York: Routledge, 2013), 79-89. ; Monture-Angus, Patricia. “Aboriginal Women and Correctional Practice: Reflections on the Task Force on Federally Sentenced Women.” In Hannah-Moffat and Shaw, (eds.) *An Ideal Prison? Critical Essays on Women’s Imprisonment in Canada*. (Halifax: Fernwood Publishing, 2000). ; Joane Martel, Renée Brassard and Mylène Jaccoud, “When Two Worlds Collide: Aboriginal Risk Management in Canadian Corrections,” *British Journal of Criminology* Vol 51 (2011), 235-255. ; Karlene Faith, “Aboriginal Women’s Healing Lodge: Challenge to Penal Correctionism?” *Journal of Human Justice* Vol 6 No 2 (Spring/ Autumn 1995), 79-104. Anna McGillivray and Brenda Comaskey, *Black Eyes All of the Time: Intimate Violence, Aboriginal Women, and the Justice System* (Toronto: University of Toronto Press, 1999). ; Monture-OKanee, Patricia A. “Reclaiming Justice: Aboriginal Women and Justice Initiatives in the 1990s,” in *Aboriginal People and the Justice System: Report of the National Round Table on Aboriginal Justice Issues, Royal Commission on Aboriginal Peoples*. (Ottawa: Minister of Supply Services, 1993), 105-132. ; Fran Sugar and Lana Fox, *Survey of Federally Sentenced Aboriginal Women in the Community* (Canada: Task Force on Federally Sentenced Women, 1990).

⁵⁰ These same critiques have been levied against the term “post-colonial.”

differed from the holistic notion of healing. The language of “Healing” as utilized in prisons has been critiqued as a continuation of colonial processes.⁵¹

This narrative of twentieth century neocolonialism in prisons raises questions about whether it possible for Indigenous culture to be seamlessly integrated into the penal system. Put another way, is it possible to have a prison that heals offenders in an Indigenous way, yet has the trappings of the western penal system? It is clear that Indigenous worldviews differed from the liberal worldview that supported the penal state. Decolonization in prisons was unique because Indigenous mechanisms for social control never used prisons, meaning that any Indigenous approach to crime and justice required prison abolition.⁵² This was different from other initiatives in wildlife management or political self-governance because they could not draw on traditional knowledge systems or alternative economic and political structures, as did wildlife management and self-governance, where the cultural differences could be reasonably reconciled. I argue that history has shown Indigenous worldviews and conventional Western prisons to be irreconcilable. Indigenous peoples still drew upon their historic and cultural traditions within the prison, but they did so in fundamentally different ways when compared to these other contexts. The limited decolonization that took place in the twentieth century was remarkable, but was always incomplete.

The Brotherhoods faced challenges as they engaged in traditional cultural practices within prisons because Indigenous prisoner populations were heterogeneous. This was owing to the realities of modern penitentiary regimes that meant that prisoners from all across Canada, including different First Nations, Métis, and Inuit peoples, lived together in prisons. While the population was heterogeneous, there was only one Native Brotherhood in most institutions. This has led scholars to

⁵¹ Jean-Philippe Crete, *A Disciplined Healing: The New Language of Imprisonment in Canada* (MA Thesis: Carlton University, 2013).

⁵² Efforts for prison abolition have not been the emphasis for Indigenous activists from either within or outside the prison walls. While many have recognized that Indigenous approaches to healing and the penal context are at odds with each other, pragmatic concerns limited the implications of this recognition.

assume that the cultural practices that took root in prisons in the twentieth century were generalized Indigenous practices that reduced Indigenous culture and spirituality to the lowest-common-denominator, basing cultural practices loosely on “plains” or “Cree” cultures, but wholeheartedly committing themselves to none.⁵³ While this explanation addresses some of the character of twentieth century identity formation in prisons, it ignores that there was still considerable regional variation. The question then is how the Brotherhood could create a cultural program that did not alienate members, but was rooted in specific cultural practices? This required considerable cultural innovation. Through the efforts of the Brotherhoods, Indigenous inmates integrated their traditions in a single institution without reducing their culture to a set of clichés. They did this in creating literary, material, and ceremonial cultural frameworks distinct to the local cultural context of the prison that also reflected the wider Indigenous context.

This dissertation also sheds light on how neotraditional identities took shape in the twentieth century. Native Brotherhoods typically were constituted of prisoners from various First Nation, Metis, and Inuit Nations from across Canada, making neotraditionalism necessary, even though the challenges that come with adapting diverse cultures for one group persisted. The way Brotherhoods navigated these challenges was by emphasizing what they shared as Indigenous peoples over the differences between them. Mohawk political scientist and activist Taiaiake Alfred wrote in *Peace, Power, Righteousness: An Indigenous Manifesto* that as a Kahnawake Mohawk man, his identity is nested; he is Kahnawake and Akwasasne, then Mohawk, then Haudenosaunee, and finally he had an Indigenous identity that he shared with Indigenous peoples across Canada and around the world.⁵⁴ He further argued that through colonial practices, Indigenous traditions shifted and adapted, but

⁵³ Based on informant interviews, James Waldram argues that pan-Indianism exists, where people believe that “all Aboriginal spiritual traditions are fundamentally the same, with only minor differences in procedures.” James Waldram, “American Spirituality: Symbolic Healing in Canadian Prisons,” *Culture, Medicine, and Psychiatry* vol. 17 no. 3 (September 1993), pp 345-362. (Quote from p354)

⁵⁴ Taiaiake Alfred, *Heeding the Voices of our Ancestors: Kahnawake Mohawk Politics and the Rise of Native Nationalism*. (Toronto: Oxford University Press, 1995), 18.

that this was a natural response to cultural change. Therefore, to Alfred, traditions adapt, being Indigenous does not explain the goals of Indigenous peoples, and external factors do influence Indigenous peoples.⁵⁵ What Alfred is pointing to here is the failure of a “frozen” approach to indigeneity. In his case, he argues that his perspective is shaped by his identity as an Kahnawake Mohawk man, but it is also shaped by contemporary social and political realities, his personal aspirations, and the dynamic nature of his community. Therefore, nobody can argue that there is one “Indigenous” perspective, but rather many perspectives that may share traits based on common historical and cultural factors. When applied to the prison, Indigenous practices were “pan-Indian,” because they emphasized the largest “nest.” For practical reasons the differences between national and cultural affiliations were muted in prisons. Still, these differences did not disappear. For example, if a Mohawk person was incarcerated in Western Canada, they did not become Cree. Rather, they found meaning within the Indigenous identities and practices celebrated there. This adaptation to the penal context should not suggest that somehow the cultural practices in prisons were less authentically Indigenous. Historian Keith Carlson articulates in regard to Sto:lo identities:

What I challenge is the notion that certain collective affiliations are necessarily more traditional or legitimate than others because they have always been so. I argue that the passage of time presents problems for collective affiliations, and these problems caused shared identities to be periodically reconstituted upon new lines.⁵⁶

In the context of Indigenous prisons activism, prisoners did create new identities “in the cauldron of colonialism,” but that was no less “Indigenous” than the practices that took place in the past.⁵⁷

⁵⁵ Taiaiake Alfred, *Heeding the Voices of our Ancestors*, 22.

⁵⁶ Keith Carlson, *The Power of Place the Problem of Time: Aboriginal Identity and Historical Consciousness in the Cauldron of Colonialism*. (Toronto: University of Toronto Press, 2010), 24.

⁵⁷ This echoes the literature on authenticity that was particularly vibrant in the late 1990s and early 2000s. See for example: Paige Raibmon, *Authentic Indians: Episodes of Encounter from the Late Nineteenth-Century Northwest Coast* (Durham: Duke University Press, 2005) ; Lischke, Ute and David T. McNab, eds. *Walking a Tightrope: Aboriginal People and Their Representations*. Waterloo: Wilfrid Laurier University Press, 2005. ; Alfred, Taiaiake (Gerald). *Heeding the Voices of our Ancestors: Kahnawake Mohawk Politics and the Rise of Native Nationalism*. Toronto: Oxford University Press, 1995.; King, Thomas. *The Truth About Stories: A Native Narrative*. CBC Massey Lectures Series Toronto: House of Anansi Press, 2003. This was a response to the first wave of Aboriginal history that looked at Aboriginal history as a move away from an authentic past. The most characteristic of this is Fisher, Robin. *Contact and Conflict: Indian-European Relations in British Columbia, 1774-1890*. Vancouver: University of British Columbia Press, 1977., and Grant, John Webster. *Moon of*

Pan-Indianism within prisons is significant because the processes that developed within prisons were not unique to prisons in the twentieth century. Although experiences of incarceration were isolating, prisons themselves were never isolated. Instead prisons occupied a particular place within the political, cultural, and social context of Indigenous Canada. What makes the prison different is the nature and degree to which colonialism was explicit. Therefore, Indigenous responses to incarceration shed light on the responses of Indigenous peoples to their historic colonialism in the nineteenth and twentieth centuries. In the following terms, the 1996 Royal Commission on Aboriginal Peoples documented the work of Indigenous groups in prisons, especially the Native Brotherhood:

Indeed, what appears to be happening in prisons is an example of the contemporary expression of Aboriginal traditions that responds to current needs and experiences of Aboriginal prisoners. The convergence of Aboriginal people from different nations and distinctive cultures is not, of course, confined to prisons. It is also a contemporary fact of life in the urban centres of Canada. The experience of Aboriginal spirituality in the prisons may provide one of the models for the development of an urban Aboriginal justice system that would seek to build on the common denominators between different Aboriginal traditions to respond to the issues facing urban Aboriginal people on the brink of the twenty-first century. It is a model that while celebrating the cultural diversity of Aboriginal nations looks to a common framework for their expression. The experience of Aboriginal prisoners and their work with Elders demonstrates that the achievement of a common framework is not only a laudable but an achievable objective.⁵⁸

Thus, Brotherhoods efforts fit within historical trends of increasing political activism at the national level. In the twentieth century Indigenous peoples achieved new levels of self-governance and control over issues of concern to their communities. Indigenous political groups achieved a new unity and influence in political processes in Canada after the 1969 *Statement of the Government of Canada*

Wintertime: Missionaries and the Indians of Canada in Encounter since 1534. Toronto: University of Toronto Press, 1984. For a contrarian view of the role of Authenticity, and a challenge to the notion that Aboriginal cultures are adaptive, with which I do not agree, see: Flanagan, Tom. *First Nations? Second Thoughts*. Kingston and Montreal: McGill-Queen's University Press, 2000. ; Widdowson, Frances, and Albert Howard. *Disrobing the Aboriginal Industry: The Deception Behind Indigenous Cultural Preservation*. Montreal and Kingston: McGill-Queen's University Press, 2008.

⁵⁸ Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada, 136.

on Indian Policy, commonly called the *White Paper*. This policy recommended abolishing the Indian Act and with it, historic Aboriginal and Treaty rights.⁵⁹ The Indigenous political response was unanimous and overwhelming, and was led by the young Cree leader from Alberta, Harold Cardinal.⁶⁰ J.R. Miller identifies the late twentieth century as an era of “Conflict and Confrontation” in his sweeping book, *Skyscrapers Hide the Heavens*.⁶¹ He and other scholars have noted advances in self-government in Aboriginal history, particularly in cases of political autonomy at the band level,⁶² land claims cases,⁶³ wildlife management,⁶⁴ and social services in urban areas through Friendship Centres. What the prison shows is the limits of self-governance as well as the ubiquity and longevity of colonial power.

This study also contributes to the burgeoning literature on the global history of prisons. The historiography of prisons is built largely around the work of three “revisionist” scholars: Michel Foucault, David Rothman, and Michael Ignatieff. They challenged the optimism of traditional “progressivist” historiography, and they established the historical study of prisons within mainstream academia in the 1970s. Foucault famously argued that in the “birth of the prison,” states designed a more effective technology for the creation of a “disciplined society.”⁶⁵ While his work is

⁵⁹ This period in Aboriginal history has been most often discussed in relation to the Trudeau government’s *Statement of the Government of Canada on Indian Policy*, commonly referred to as the White Paper, and Aboriginal responses to it. See: Canada Department of Indian Affairs and Northern Development. *Indian Policy – (White Paper on Indian Policy)*. 1969. For Indigenous responses, see: Harold Cardinal, *The Unjust Society: The Tragedy of Canada’s Indians*. Edmonton: M.G. Hurting Ltd, 1969. ; Indian Association of Alberta, *Citizens Plus: A Presentation by the Indian Chiefs of Alberta to Right Honourable P. E. Trudeau, Prime Minister and the Government of Canada*. June, 1970.

For discussions of the role of Friendship Centres in the National Association of Friendship Centres, “About: Our History,” <http://nafc.ca/about/our-history/>, Accessed April 22, 2014. For example, Maria Campbell’s Half Breek and Lee Maracle’s Bobbi Lee talk about what life was like in these periods.

⁶⁰ See: Harold Cardinal, *The Unjust Society: The Tragedy of Canada’s Indians*. (Edmonton: M.G. Hurting Ltd, 1969).

⁶¹ J.R. Miller, *Skyscrapers Hide the Heavens* 3rd ed. (Toronto: UTP, 2000), 336-363.

⁶² Alfred, Taiaiake (Gerald). *Heeding the Voices of our Ancestors: Kahnawake Mohawk Politics and the Rise of Native Nationalism*. Toronto: Oxford University Press, 1995. ;

⁶³ J.R. Miller, *Skyscrapers Hide the Heavens* 3rd ed. (Toronto: UTP, 2000), 336-363. ; Foster, Hamar, Heather Raven, and Jeremy Webber (eds.). *Let Right Be Done: Aboriginal Title, the Calder Case, and the Future of Indigenous Rights*. Vancouver: UBC Press, 2007.

⁶⁴ John Sandlos, *Hunters at the Margin: Native People and Wildlife Conservation in the Northwest Territories*. (Vancouver: UBC Press, 2007) ; Hans Carlson, *Home is the Hunter: The James Bay Cree and Their Land*. (Vancouver: UBC Press, 2009)

⁶⁵ Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1977).

the most well-known of the three, it has been fairly critiqued for its lack of historical rigour, use of anecdotal evidence, and tendency towards presentism.⁶⁶ But Foucault was not a historian, and as a philosophical work *Discipline and Punish* has been tremendously influential in reframing the nature of power and authority. Rothman and Ignatieff, both historians, cast similarly skeptical eyes on the prison system, studying the development of prisons between 1790 and 1840 in the United States and Great Britain, respectively.⁶⁷ While Rothman's book was first among these three, he was influenced by Foucault's prior study, *Madness and Civilization*, which anticipated many of the arguments in *Discipline and Punish*. By studying the prison as a method of social control rather than one of benevolent reform, and in recasting the role of the societies that supported prisons from basically benevolent and humanitarian to oppressive and hegemonic, these scholars sent a jolt through the study of prison history.

The Native Brotherhood movement also fits within the global context of late twentieth century prison activism. While Indigenous inmates in Canada formed these movements, other race-based movements emerged globally. A parallel movement emerged in the United States, where the American Indian Movement was shaped by prison activism.⁶⁸ The transformative role of incarceration for many black leaders in the United States belies a larger trend where time in the penitentiary initiated a sense of cultural pride in contrast to what inmates viewed as a white system of oppression.⁶⁹ One Brotherhood member specifically noted that the black power movement in the

⁶⁶ Mary Gibson, "Global Perspectives on the Birth of the Prison," *The American Historical Review* 116 no. 4 (October 2011): 1040-1063.

⁶⁷ David Rothman, *The Discovery of the Asylum: Social Order and disorder in the New Republic*, (Boston: Little Brown, 1971) ; Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution* (New York: Pantheon Books, 1978).

⁶⁸ See: Peter Mattheissen, *In the Spirit of Crazy Horse*. (New York: Penguin Books, 1992).

⁶⁹ The black prison revolutionaries' writings shed considerable light on theoretical concerns of inmates. See: George Jackson, *Soledad Brother* (New York: Coward-McCann, Inc, 1970), 233-250; Huey Newton, *Revolutionary Suicide* (New York: Harcourt Brace Jovanovich, Inc., 1973), 260-261.

Academic work on prison revolutionaries include: Dan Berger, "'We Are the Revolutionaries': Visibility, Protest, and Racial Formation in 1970s Prison Radicalism" PhD diss. Penn State University, 2010; H. Bruce Franklin, *Prison Writing in 20th-Century America* (New York: Penguin Press, 1998); Michael Hames-Garcia, *Fugitive Thought: Prison Movements, Race, and the Meaning of Justice* (Minneapolis: University of Minnesota Press, 2004); Barbara Harlow, *Barred: Women, Writing, and Political Detention* (Hanover, NH: University of New Hampshire Press, 1992); Joy James, ed., *Imprisoned Intellectuals:*

United States inspired him to greater action.⁷⁰ Similar issues of colonialism in prisons faced Latino and Black inmates in the United States, the Maori in New Zealand, Aboriginal and Torres Strait Islander populations in Australia, and Indigenous peoples in South Africa.⁷¹

Since the 1970s, historians of the prison have been forced to respond to these revisionist historians and frame their own work accordingly. Historian Mary Gibson has written an excellent overview of these possible responses to revisionist historiography, identifying a “third wave” of prison historical writing, categorizing this new literature in three ways.⁷² The first, Gibson argues, and by far least popular response, is to reject the pessimism that characterized revisionism and continue to interpret the prison as a basically benevolent, albeit imperfect, institution, as characterized by the writings of Leon Radzinowicz.⁷³ The second is to accept the main thrust of the revisionist historiography but to add detail, scope, and nuance to the debates. Even Michael Ignatieff fit within this debate as he challenged the nature of the study of prisons, rendering an insightful critique of revisionist historiography, including his own work.⁷⁴ Finally, many historians have accepted the basic argument presented in revisionist historiography, with reservations, and began to ask new kinds of questions. This includes the study of women in prisons, its effect on children, racial

America's Political Prisoners Write on Life, Liberation, and Rebellion (Lanham, MD: Rowman & Littlefield, 2003); Joy James, ed., *The New Abolitionists: (Neo)Slave Narratives and Contemporary Prison Writings* (Albany: SUNY Press, 2005); Dylan Rodríguez, *Forced Passages: Imprisoned Radical Intellectuals and the U.S. Prison Regime* (Minneapolis: University of Minnesota Press, 2006); Lee Bernstein, *America is the Prison: Arts and Politics in Prison in the 1970s*. Chapel Hill: University of North Carolina Press, 2010.

⁷⁰ Bob Lebeuf, “Held,” *The Talking Leaves*, Vol. 2, Feb. 1972, 5.

⁷¹ Michael Hames Garcia, *Fugitive Thought: Prison Movements, Race, and the Meaning of Justice*. (Minneapolis: University of Minnesota Press, 2004). ; Selections from Barry Godfrey and Graeme Dunstall (eds). *Crime and Empire, 1840-1940: Criminal Justice in Global and Local Context*. Portland: Willan Publishers, 2005.

⁷² Mary Gibson, “Global Perspectives on the Birth of the Prison,” *The American Historical Review* 116 no. 4 (October 2011): 1040-1063.

⁷³ While Leon Radzinowicz’s list of publications is far too long to list here, he is most famous for his opus, *A History of the English Criminal Law from 1750*, a five volume monumental achievement. Volume five is devoted to “The Emergence of Penal Policy.” More recently, he has critiqued Foucault’s work and maintained his belief in the humanitarianism within the development of prisons, and he was in the process of writing a book about Foucault’s philosophy of punishment when he died at 93 years old in 1999.

⁷⁴ Michael Ignatieff, “State, Civil Society, and Total Institutions: A Critique of Recent Social Histories of Punishment,” in Stanley Cohen and Andrew Scull, eds., *Social Control and the State* (London: Basil Blackwell, 1983).

minorities, or as in my case, how the prison was a colonial institution.⁷⁵ In situating my research as part of the “third wave” of prison historiography, I add nuance to the scholarship of the global expansion of the western penitentiary model. This shows another dimension of the prison missed by first and second wave literature.

The history of prisons specifically in Canada has been more limited within this global history of incarceration. Historian Owen Carrigan’s book, *Crime and Punishment in Canada: A History*, was the first book length study of punishment in Canada. His book was broken into two parts, divided into assessment of “crime” and “treatment of criminals” from earliest settlement to 1991.⁷⁶ This book’s vast historical scope was both its greatest strength and its greatest limitation. This work provides a compelling overview of crime and punishment in Canada, but was not able to delve into marginal or marginalized historical narratives, and for this reason his assessment of Indigenous peoples’ relationships with crime and punishment is scant. The most influential work in the history of Canadian prisons is Peter Oliver’s excellent overview, *Terror to Evil-Doers*, which studies punishment in nineteenth century Canada. Writing from a perspective informed primarily by David Rothman’s pioneering work in the United States, Oliver argued that transformations in criminal justice came in response to elite views and only indirectly related to economic changes and class tensions.⁷⁷ His work outlined the administrative origins of the prison and the failure of reform. Oliver laid a foundation upon which later historians could build. Unfortunately, few have done so. Some studies of the Canadian criminal law have included discussions of punishment, but rarely have prisons and punishment occupied a central place in the historical literature. Most recently, Ted McCoy’s study of

⁷⁵ For other historians who have taken this basic approach within the history of prisons, see: Frank Dikötter and Ian Brown, eds, *Cultures of Confinement: A History of the Prison in Africa, Asia, and Latin America* (Ithaca, NY: Cornell University Press, 2007), especially the final essay by Clare Anderson and David Arnold, “Envisioning the Colonial Prison,” 304-331.

⁷⁶ Owen Carrigan, *Crime and Punishment in Canada: A History* (Toronto: McClelland and Stewart, 1991).

⁷⁷ Peter Oliver, *“Terror to Evil-Doers”: Prisons and Punishment in Nineteenth Century Ontario*. (Toronto: University of Toronto Press, 1998), xxi.

prison reform in the nineteenth century looks at the efforts of reformers; he argues that the language of reform played a vital role in the social organization of Canada. A historian of the Canadian justice system, McCoy writes, “Positioning the reform movement within a historical materialist framework helps us to grasp the relationships between social practices and the structures that sustain those practices and their accompanying discourses.”⁷⁸ Other than broad overviews, no historians have considered the history of Canadian prisons in the twentieth century.

No historians have studied the Indigenous past through the lens of the prison, but many scholars have studied Native Brotherhoods and Indigenous cultural programming in Canadian prisons. Rather, most of the literature comes from other disciplines and attempts to discern “what works” for rehabilitating Indigenous offenders. First among this approach is anthropologist James Waldram, whose book *The Way of the Pipe* is an “applied medical anthropology” that contextualizes Indigenous spirituality within a tradition of symbolic healing.⁷⁹ *The Way of the Pipe* offers the most thorough assessment of the movement beginning at a 1982 spiritual fast by the Butler brothers in Stoney Mountain institution. This dissertation shows that the movement began much earlier. Waldram posited that in symbolic healing Elders “negotiate meaning and ritual” to establish a common sense of spirituality based on a new pan-Indian identity based on Plains cultures.⁸⁰ Tellingly, Waldram’s final chapter is titled, “But Does it Work?,” an entirely reasonable question to ask given Waldram’s intent to communicate the value of Indigenous cultural practices for the purposes of rehabilitation to policymakers. What this misses are the nuances that a deeper historical assessment of Indigenous culture behind bars and how processes of colonization, decolonization, and neocolonialism all coexisted.⁸¹

⁷⁸ Ted McCoy, *Hard Time: Reforming the Penitentiary in Nineteenth-Century Canada*. (Edmonton: AU Press, 2012), 8.

⁷⁹ James Waldram, *The Way of the Pipe: Aboriginal Spirituality and Symbolic Healing in Canadian Prisons*. (Peterborough: Broadview Press, 1997), x.

⁸⁰ Waldram, *The Way of the Pipe*, 73-111.

⁸¹ This general line of inquiry has been pursued in numerous graduate theses at the doctoral and masters level. See: Connie Bruaun, “Colonization, Destruction, and Renewal: Stories from Aboriginal Men at the Pe’Sakastew Centre.”

The other prominent scholar to study the Native Brotherhoods is Indigenous legal scholar Michael Jackson. His book *Justice Behind the Walls* remains the authoritative work on disciplinary processes in Canadian prisons. This book spends considerable attention analyzing the “Red Road” of Indigenous spirituality, building a legal case for protection of Indigenous cultural practices behind the walls.⁸² His concern in building legal arguments that support the Brotherhoods is longstanding, as he authored the Canadian Bar Association’s 1988 paper, *Locking Up Natives in Canada*, in an effort to further advocate on the behalf of Indigenous prisoners.⁸³ He did not contextualize the movement within a longer historical timeline of penal or Indigenous history because his work is also primarily concerned with realities facing Indigenous prisoners today. The experiences of Indigenous prisoners in Canada have also provided fodder for several graduate theses in departments ranging from community psychology, sociology, recreation and leisure, social work, and education, though not history.⁸⁴

Recent scholarship has emphasized the ways that Indigenous peoples engaged with the criminal law in creative ways. Legal historian Shelley Gavigan most recently has argued that discourses of criminalization do not capture the full spectrum of Indigenous interactions with the law. In her study of what is now Southern Saskatchewan, Gavigan shows that Indigenous interactions with the law were more complex than hegemonic models suggest; instead Indigenous

(MA Thesis, University of Saskatchewan, 1998). ; Gauthier, Michael. “The Impact of the Residential School, Child Welfare System and Intergenerational Trauma upon the Incarceration of Aboriginals.” (MA Thesis, Queens University, 2011).

⁸² Michael Jackson, *Justice Behind the Walls: Human Rights in Canadian Prisons*. (Vancouver: Douglas and McIntyre, 2002).

⁸³ Michael Jackson, *Locking Up Natives in Canada: A Report of the Canadian Bar Association Committee on Imprisonment and Release*. (Vancouver: University of British Columbia, 1988).

⁸⁴ Wilhemiena Carleton, “A Comparative Analysis of Correctional Ideology of the Correctional Service of Canada and Native Ideology at Stony Mountain Penitentiary.” MSW Diss., University of Manitoba, 1985. ; Randolph Mason, “The Healing of Aboriginal Offenders: A Comparison between Cognitive-Behavioral Treatment and the Traditional Aboriginal Sweat Lodge Ceremony.” PhD Diss. (Department of Psychology), University of Saskatchewan, 2000 ; Felice Yuen, “Walking the *Red Road*: Aboriginal Federally Sentenced Women’s Experiences in Healing, Empowerment, and Re-Creation.” PhD Diss. (Department of Recreation and Leisure Studies), University of Waterloo, 2008. ; Michael Gauthier, “The Impact of the Residential School, Child Welfare System and Intergenerational Trauma upon the Incarceration of Aboriginals.” MA Thesis (Faculty of Education), Queens University.

peoples confronted the law “as informants, complainants, interpreters, and witnesses, in addition to accused persons.”⁸⁵ This built on historical research by Macleod and Rollason who showed that Indigenous people used the law in creative ways when they found it useful, and Tina Loo whose study of Indigenous participation in the systems of law illuminated “the ambiguities and contradictions of power.”⁸⁶ All of these scholars were correct in arguing that Indigenous peoples did engage with the law in meaningful ways, though they focused outside incarceration. In focusing on the proactive interactions with the law, these scholars tended to minimize the role of the accused and incarcerated Indigenous peoples, and so doing downplayed the effect the law had on eliminating Indigenous sovereignty.

This dissertation also contributes to the study of law and its relationship to Indigenous peoples. Most studies of Indigenous peoples and the law in Canada have circulated around questions of Aboriginal rights within the Constitution, land rights, and litigation since the 1970s, a trend which is understandable in the modern land claims era in Canadian history.⁸⁷ However, several scholars have written about the relationships between Indigenous peoples and the criminal law. First among them is legal historian Sidney Haring, whose book *White Man’s Law* examines the expansion of Canadian law into Indigenous land. What distinguishes Haring’s work is that he discusses the criminal law within the context of land law and Indigenous rights. He writes that modern challenges

⁸⁵ Shelley Gavigan, *Hunger, Horses, and Government Men*, (Vancouver: UBC Press, 2012), 17.

⁸⁶ RC Macleod and Heather Rollason, “‘Restrain the Lawless Savages’: Native Defendants in the Criminal Courts of the North West Territories, 1878-1885,” *Journal of Historical Sociology*, Vol 10 No 2 (1997):157-183.

Tina Loo, “Tonto’s Due: Law, Culture, and Colonization in British Columbia” in Hamar Foster and John McLaren, eds., *Essays in the History of Canadian Law* vol 6, *The Legal History of British Columbia and the Yukon*, (Toronto: University of Toronto Press, 1995), 63.

⁸⁷ The modern land claims era of Canadian history began in 1973 with the Supreme Court of Canada ruling in *Calder v Attorney-General of British Columbia*. See: Michael Asch, *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference*. Vancouver: University of British Columbia Press, 2002 [1997]. ; John Borrows, *Recovering Canada: The Resurgence of Indigenous Law*. Toronto: University of Toronto Press, 2002. ; John Borrows, *Drawing Out the Law: A Spirit’s Guide*. Toronto: University of Toronto Press, 2010. ; Dara Culhane, *The Pleasure of the Crown: Anthropology, Law, and First Nations*. Burnaby, BC: Talon Books, 1998. ; Douglas Cole and Ira Chaiken. *An Iron Hand upon the People: The Law against the Potlatch on the Northwest Coast*. Vancouver: Douglas and McIntyre, 1990. ; Dianne Newell, *Tangled Webs of History: Indians and the Law in Canada’s Pacific Coast Fisheries*. Toronto: University of Toronto Press, 1993. ; Arthur Ray, *Telling it to the Judge: Taking Native History to Court*. Montreal and Kingston: McGill-Queens University Press, 2011.

in the relationship between Indigenous peoples and settlers stem from “a historical denial of Indian Law and legal rights and need to be understood in the context of wide-ranging legal history.”⁸⁸ Shelly Gavigan focused exclusively on “low law” in *Hunger, Horses, and Government Men*. She defines low law as law that effected people on the ground, in contrast to “high law” of sovereignty.⁸⁹ By examining the records of the Hugh Richardson court in modern-day Saskatchewan between 1870 and 1905, Gavigan noted that Indigenous peoples were involved in cases of “low law” as defendants, but also as witnesses, and prosecutors. She argues based on this wide variety of interactions with the law that narratives of “criminalizing” Indigenous culture are incomplete in explaining Indigenous relationships with the law. Instead, she argues that the law “Indianized” Indigenous peoples by defining them as separate from “Canadian.” In other words, the law was a key tool in defining, for non-Native settlers, who Indigenous peoples were.⁹⁰ Tina Loo similarly argued that Indigenous contributions to the functioning of the law in British Columbia through cooperation with police reproduced the same colonial systems that oppressed them.⁹¹ In *Making Law, Order, and Authority in British Columbia, 1821-1871*, Tina Loo conceptualizes the law as a “discourse” that vested authority within the Canadian state.⁹² More recently, Sheleigh Grant has examined the expansion of British justice in the North, by tracing the social and legal history of a dramatic trial at Pond Inlet, Baffin Island in 1923.⁹³ These scholars have offered ways to conceptualize Indigenous experiences with the

⁸⁸ Sidney Haring, *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence*. (Toronto: Osgoode Society, 1998), 4.

⁸⁹ Shelly Gavigan, *Hunger, Horses, and Government Men: Criminal Law on the Aboriginal Plains, 1870-1905*. (Vancouver: UBC Press, 2012), 12-13.

⁹⁰ Gavigan, *Hunger, Horses, and Government Men*, 17-22.

⁹¹ Tina Loo, “Tonto's Due: Law, Culture, and Colonization in British Columbia,” in Hamar Forster and John McLarend, eds., *Essays in the History of Canadian Law*, vol 6, *The Legal History of British Columbia and the Yukon* (Toronto: University of Toronto Press, 1995), 63-64.

⁹² Tina Loo, *Making Law, Order, and Authority in British Columbia, 1821-1871* (Toronto: University of Toronto Press, 1994), 8.

⁹³ Shelagh Grant, *Arctic Justice: On Trial for Murder, Pond Inlet, 1923*. (Montreal: McGill-Queens University Press, 2002).

law by privileging Indigenous voices. This dissertation takes their insights and approach to the study of Canadian law and applies it to a hitherto unexplored area of the law.

Research Methods and Outline

This dissertation uses a collaborative research methodology that relies on oral history interviews as well as archival research.⁹⁴ The world of Indigenous corrections is relatively small, and several individuals who were involved have been interviewed for this project. They agreed to collaborate in my research through oral history interviews between 2012 and 2014, and my interviewees then introduced me to others within this community. I conducted open-ended interviews with those who were active members in Indigenous corrections during this period. This included Ed Buller, Christie Jefferson, Charlie,⁹⁵ Allen Benson, Kim Pate, Eva Solomon, Laurel Claus-Johnson, and the Honorable Warren Allmand. Charlie, Allen Benson, Laurel Claus-Johnson, and Eva Solomon are all Indigenous peoples from across Canada (Mohawk, Cree, and Ojibwa) who have worked in Indigenous corrections through community organizations, Native Brotherhoods, or crafting policy at the Solicitor General's Office. Christie Jefferson and Kim Pate were both Executive Directors of the Canadian Association of Elizabeth Fry Societies, and have advocated for prison reform concerning Indigenous women. Former Liberal Member of Parliament Warren Allmand was Solicitor General in the 1970s and became the Minister of Aboriginal Affairs largely because of his involvement in Indigenous corrections.⁹⁶

⁹⁴ A more detailed biography of those who collaborated with me as interview subjects is included in Appendix 1.

⁹⁵ I use the single name "Charlie" to protect this individual's anonymity.

⁹⁶ While interviewees did not agree on all points concerning Aboriginal corrections, all of these individuals were cognizant of injustices endured by Aboriginal peoples in Canadian prisons, both historically and today. I share their concerns.

I run the risk of being accused of writing an activist piece on their behalf. As Valerie Yow commented in "Do I Like them Too Much," this might have led me to overlook certain questions or areas in their histories: Valerie Yow, "Do I Like Them Too Much?: Effects of the Oral History Interview on the Interviewer and Vice-Versa," *The Oral History Review* 24 (1) (Summer 1997): 55–79.

By relying on oral histories, I have been given an opportunity to see beyond the posturing and guarded language that most federal reports contain. Devoid of the oral component to my research, I would have discerned a narrative from the archival record that looks like the following: in the nineteenth century, the prison was a colonial institution, much like the residential school system. By the 1960s, thanks to inmate activism and enlightened policymakers, Indigenous programs were introduced. By 1996, CSC had become so progressive that it opened a healing lodge, replacing the colonial prison with the decolonized healing lodge. This narrative is incorrect. More importantly, by excluding Indigenous voices, this narrative uncritically perpetuates the settler colonial influence on Indigenous people. The reality is that Indigenous peoples are still colonized in Canadian prisons, and while decolonization has taken place, it has been limited by neocolonialism. In short, the oral history interviews I conducted fundamentally shaped my arguments. Not only did they add an important source of information, but more importantly they corrected my previous misinterpretation of archival sources. The generosity of my interviewees helped me read the colonial archive through Indigenous perspectives.

During the research process, I have overcome two major hurdles: human mortality and redacted documentation. Many of those individuals most intimately involved with Indigenous corrections in Canada during the formative years of the 1960s and 1970s have recently passed away. Since 1990, Art Solomon, Ernie Benedict, Trish Monture, Chester Cunningham, Stan Daniels, Harry Daniels, and Andy Anderson have all passed away. Ed Buller told me that he was one of the few present in the establishment of Indigenous programming in the 1970s who is still alive, a sentiment that was repeated several times in my interviews.⁹⁷ Each person listed above played a vital role within the small world of Indigenous corrections. Art Solomon was the first and most influential Elder to work in Canadian prisons during the 1970s, and he published two books about his life experience,

⁹⁷ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author,, August 15, 2013.

one of which focused exclusively on prisons.⁹⁸ Ernie Benedict worked with Solomon in the development of Indigenous programming in the Kingston area. According to Ed Buller, these two men were the motors that drove Indigenous correctional program development in the 1970s, and their passing was a loss to the Indigenous community and meant that my dissertation has a gap of knowledge.⁹⁹ Trish Monture was a lawyer who, beginning during her graduate studies at Queens University, advocated for and worked with Indigenous prisoners.¹⁰⁰ In Western Canada, I have not been able to speak with Chester Cunningham, who organized and led the Native Counselling Services of Alberta from its beginnings until 1996, Métis leader Stan Daniels, or Harry Daniels, who began the Native Brotherhood with a group of Métis men in Prince Albert and later led the Native Council of Canada. Without their wisdom to guide this research, I have found different ways to consider their experiences, interviewing those close to them and reading their published works.

Recognizing that Indigenous peoples are present in both the oral and documentary archive, I also draw on the archival record. Archival documents shed light on policy changes, measures the political influence that inmates achieved, and reflects administrators' attitudes and priorities. I have poured over records at Library and Archives Canada, specifically the records of the Solicitor General's office (Record Group 73), as well as provincial archives in Ontario and Alberta. I have also conducted research at the Trent University Archives, where the Canadian Association in

⁹⁸ Arthur Solomon, *Eating Bitterness: A Vision Beyond the Prison Walls (Poems and Essays of Art Solomon)*. Edited by Cathleen Kneen and Michael Posluns. Toronto: NC Press Ltd, 1994). And Arthur Solomon, *Songs for the People: Teachings on the Natural Way*. Edited by Michael Posluns. Toronto: NC Press Ltd., 1990.

⁹⁹ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author., August 15, 2013.

¹⁰⁰ Trish Monture claimed international headlines when she refused, as a Haudenosaunee woman, to pledge allegiance to the Queen of England after being called to the Bar following law school, and she successfully argued that as an Aboriginal woman her unique relationship with the crown did not require allegiance, but rather a treaty relationship. I have been able to glean some of her ideas from her published works: "Aboriginal Women and Correctional Practice: Reflections on the Task Force on Federally Sentenced Women." In Hannah-Moffat and Shaw, (eds.) *An Ideal Prison? Critical Essays on Women's Imprisonment in Canada*. (Halifax: Fernwood Publishing, 2000). ; "Reclaiming Justice: Aboriginal Women and Justice Initiatives in the 1990s," in *Aboriginal People and the Justice System: Report of the National Round Table on Aboriginal Justice Issues, Royal Commission on Aboriginal Peoples*. (Ottawa: Minister of Supply Services, 1993), 105-132. ; Patricia Monture, *Thunder in my Soul: A Mohawk Woman Speaks*. (Halifax: Fernwood Pub., 1995).

Support of Native Peoples' records are housed, as well as the archives of the United Church of Canada and the Anglican Church of Canada. Because this project relies on recent and sensitive documents, and given recent reductions in the staff at Library and Archives Canada, the richest source of documents was also the most inaccessible. I therefore found smaller, private archives that housed similar records. In many cases, the exact same documents were housed in two locations, Library and Archives Canada where they were inaccessible, and other archives like at Trent University where they were available.¹⁰¹

There are limits to this approach which should be recognized. Since I am a settler scholar of Dutch-Canadian ancestry, it is not possible for me to fully indigenize my approach or research methods. While I use an ethnohistoric approach that centralizes Indigenous history in the prisons, certain features of this research necessarily focus on a settler institution. In fact, this research was conceptualized as a straightforward institutional history with an eye for the impact it had on Indigenous peoples, and the final result bears that imprint. This research methodology has not been fully indigenized; it could not be as completed by a settler scholar. Still, the dissertation is an Indigenous history. It is important to reconceptualise the prison as a stage upon which Indigenous history plays out rather than as an overarching historical narrative unto itself. This also has the benefit of sidestepping questions of authenticity, which is a moot point because since this is the history of Indigenous peoples the judgements of how closely these individuals fit an image of the authentic past is irrelevant. Also, this approach avoids the pitfall of attributing all cultural change to colonialism. As Carlson reminds us, cultural change was and is the logical response that living and vibrant cultures have to new realities.¹⁰²

¹⁰¹ I know this because I have seen repeated documents in various archives. For example, one report on the Native Brotherhoods in Western Canada conducted for the Correctional Services Canada by a former inmate was in several boxes in the Trent University Archives, at Library and Archives Canada, and the Provincial Archives of Alberta. While it is impossible to definitively say that the files I could not access from Library and Archives Canada were replicated elsewhere, my research experience suggests that much of that material was in fact available in the other archives I visited.

¹⁰² Carlson, *The Power of Place, the Problem of Time*, 29.

This dissertation is broken into three parts. In part one (chapters 2 and 3), I examine the colonial origins of the penitentiary system in Canada. Chapter 2 asks how Indigenous peoples approached issues of crime and justice, when Indigenous peoples first found themselves in settler prisons, and what process led to expanding colonial jurisdiction. It explores pre-existing systems of Indigenous law and the processes whereby colonial jurisdiction expanded. It finds that Indigenous incarceration is colonial, and that historic and treaty relationships make it illegitimate legally speaking. Chapter 3 then examines the ways that this liberal-colonial institution was constructed and experienced on the ground. It specifically focuses on Manitoba Penitentiary at Stony Mountain, Manitoba, outside of Winnipeg. It explores how the colonialism within the prison was manifest, and the cultural, social, physical, and spiritual toll it took on Indigenous peoples.

Part two (chapters 4, 5, and 6) moves towards the period between 1950 and 1996 when the Native Brotherhood and Sisterhood movement emerged, organized itself, and achieved national prominence. It considers the relationships between three key groups: prison administrations and policymakers, Indigenous community members, and Indigenous prisoners. Chapter 4 examines the origins and early expansion of the Native Brotherhoods in Western Canada between 1950 and 1970. Between these periods the Native Brotherhood emerged in Prince Albert Penitentiary at the initiative of a group of Métis men, and then quickly expanded across British Columbia and the Prairie provinces to become a regional movement. Chapter 5 picks up in 1970 when, through inmate transfers, specifically the transfer of Charlie, the movement became national in scope. This chapter centres on a pivotal conference held in 1975 in Edmonton. It assembled political leaders who represented every provincial, territorial, and federal organization involved in the criminal justice system, leaders of the Native Brotherhoods, and community activists for a three-day event. This was a high point in optimism regarding Indigenous corrections. The optimism that defined this event would be short lived, as political and personality rifts, along with inadequate funding, stopped the

momentum this conference created. Chapter 6 then examines the history of corrections between 1978 and 1996. During this period, Indigenous communities developed innovative programs, but in the late 1980s and throughout the 1990s the Correctional Service of Canada took over these programs without first understanding the cultural basis of them. This chapter analyzes the process whereby policies and eventually laws were created to facilitate that process. This process was a new way of colonizing Indigenous peoples, and sheds light on the nature of colonialism in the twentieth century.

Part three (chapters 7, 8, and 9) examines cultural creation of Indigenous prisoners, focusing on cultural creations that emerged from Brotherhoods and the Sisterhoods. Chapter 7 is a case study of the Native Sisterhood. The Sisterhood illustrates tensions and struggles that existed in Canadian prisons, as well as cultural responses to those struggles. Native Brotherhoods dominated the Brotherhood/Sisterhood movement because there was only one women's prison in Canada (Prison for Women), and therefore only one Native Sisterhood. It also examines the process where Prison for Women was closed and the first healing lodge run by Correctional Services Canada was opened with Ohkimaw Ohci. This healing lodge opened with much optimism, but problems with implementation of the healing lodge illustrate the limits of decolonization. Chapter 8 explores the Indigenous contribution to the penal press. The penal press was a new kind of publication written and published by prisoners from the 1950s onwards. In it, Indigenous peoples published articles, artwork, and poetry. An under-examined historical resource, these penal presses reflect developing of Indigenous identities. They were vehicles for the development of Indigenous communities nationally and internationally, and they allowed prisoners to creatively respond to their incarceration. Similarly, chapter 9 examines how the production of material items in the 1970s shaped and reflected Indigenous identities by examining the case study of a Totem Pole construction project carried out by the Native Brotherhood at Joyceville Penitentiary near Kingston, Ontario.

Taken as a whole, this dissertation shows how processes of colonization, decolonization, and neocolonialism were simultaneous and ongoing inside Canadian prisons. While the prisons were and are inherently colonial institutions, they became an arena for decolonization, evident in the rise in Brotherhoods and the introduction of cultural and spiritual programs. While similar processes took place in other Canadian colonial institutions, such as residential schools, prisons are distinct because of the longevity of the system, the persistent confidence in incarceration on the part of settler society, and the realities of penal institutions where the state controls every part of prisoners' lives.¹⁰³ Conducting ceremonies and building sweat lodges decolonized and indigenized the prison itself. At the same time, prisons became an arena for neocolonialism when the state regulated when Indigenous practices were introduced and controlled what sacred items could be used. The state also attempted to take control of implementing the practice of Indigenous cultures through policy. In functioning within the prison, Indigenous prisoners had to accept a certain degree of structural limitation and administrative hierarchy, which represented the European imprint on the practice of Indigenous cultures. Regardless of how much Indigenous peoples shaped the practice of incarceration, the penitentiary remained a penitentiary. Thus, the introduction of Indigenous culture simultaneously enacted processes of westernization and indigenization, creating a new context for the expression of traditional values within colonial institutions. Furthermore, how Indigenous prisoners advocated and worked within the prisons had significant effects on how prisons were built and operated. Appreciating the complexities within historical processes of colonization, decolonization, and neocolonialism as played out in prisons, including the unexpected or unarticulated effects of policies and practices in prisons, can become the foundation for improving the contemporary situation facing Indigenous people in Canadian prisons.

¹⁰³ The concept of a Total Institution was the original aim of the reform penitentiary, and provided a theoretical point in Michel Foucault's *Discipline and Punish: The Birth of the Prison* (New York: Pantheon Books, 1977)

PART ONE: BUILDING A COLONIAL INSTITUTION

Chapter Two: “A Cloud Before Them Which Made Things Dark”: 19th Century Law and Indigenous History

On Friday morning, the Chiefs and spokesmen were duly presented and, after their names were recorded, the Indians were invited to express their views.

After some delay they stated that there was a cloud before them which made things dark, and they did not wish to commence the proceedings till the cloud was dispersed.

On enquiring into their meaning, I found that they were referring to some four of their number who were prisoners in gaol. It seemed that some Swampy Indians had entered into a contract with the Hudson’s Bay Company as boatmen, and had deserted, and had been brought up before the Magistrates under a local law of last session, and fined, and, in default of payment sent to prison, for forty days.

Of this term some considerable part had expired. A few of the offenders had paid their fines, but there were still four Indians remaining in prison.

On learning the facts I told the Indians that I could not listen to them if they made a demand for the release of the Indians as a matter of right, that every subject of the Queen, whether Indian, half-breed, or white, was equal in the eye of the law; that every offender against the law must be punished whatever race he belonged to; but I said that on the opening of negotiations with them the Queen would also like to see all her Indians taking part in them, and if the whole body present were to ask as a matter of grace and favor, under the circumstances, that their brethren should be released, Her Majesty would be willing to consent to their discharge; she would grant as a favour what she must refuse if asked for on any other ground. They replied by saying that they begged it as a matter of favor only. Thereupon I acceded to their request, and directed the discharge of the four Indians. This was received with great satisfaction. I explained again that there might be no misunderstanding about it, that henceforth every offender against the law must be punished. They all expressed their acquiescence in what I said.¹

So wrote the Hon. Adams Gerald Archibald after the Queen’s representatives met with the Chippewa and Swampy Cree Chiefs at Lower Fort Garry on July 25, 1871 to discuss the signing of Treaty No. 1. As this report of the dialogue between the negotiators suggests, the prison was central in the relationships between Indigenous peoples and settlers in Canada. The prison was the most tangible example of the expansion of the Euro-Canadian state and its hegemonic power. Therefore, the history of Indigenous incarceration is inseparable from wider patterns of European expansion geographically and jurisdictionally. Indian Agents viewed the prison as both a mechanism for both enforcement of English law over Indigenous peoples and a tool to educate Indigenous peoples in

¹ Adams G. Archibald, July 29, 1871, in *Report of the Indian Branch of the Department of the Secretary of State for the Provinces, 1871*. (Ottawa: Queens Printer, 1871), 14-15.

the meaning of “civilization.” This is why European treaty negotiators took such pains to ensure that Indigenous peoples were subjects to British law. Indigenous peoples experienced the loss of sovereignty and self-governance in incarceration, because the state took power and control away from Indigenous peoples who had pre-existing systems of laws. The prison cast a long shadow over Indigenous history. When the chiefs consulting regarding Treaty No. 1 described the incarceration of four of their own as “a dark cloud before them that made things dark,” their words echoed through history into the twentieth century. In spite of Archibald’s assessment of the negotiations, that cloud had not dissipated.

The expansion of the prison system eroded Indigenous sovereignty by eliminating the possibility for Indigenous peoples to deal with misbehaviour, or even define what constituted ‘crimes,’ in a culturally appropriate way. A central question that this chapter considers is: when did Indigenous peoples begin serving terms of incarceration rather than being punished by their communities? And further to the point, what was the impact that this had on Indigenous peoples? When looking at the prison system through an indigenous historical consciousness, the process whereby the settler colonial state marginalized their justice systems looms large, especially as it speaks to contemporary issues in the justice system. Cree Chief Philip Michel told the Aboriginal Justice Inquiry of Manitoba about this process in the following terms:

When the white man first seen us, when they first said, “Well, there’s something wrong with these people here. They don’t have no religion. They have no judicial system. We have to do something for these people.” I guess that must have been what they thought because they totally screwed up what we already had. . . . We had that judicial system and the white people, when they came here, they didn’t see that. They said, “These guys have nothing. We have to introduce all these different things to them so they can be one of us.” That’s exactly the problem that we have.²

² Chief Philip Michel, as told to the Aboriginal Justice Inquiry of Manitoba. Report of the Aboriginal Justice Inquiry of Manitoba, Chapter 2 – Aboriginal Concepts of Justice, <http://www.ajic.mb.ca/volumel/chapter2.html>

The prisons were part of the institutional infrastructure that falls under the umbrella of the judicial system. It is telling that within Chief Michel's discussion of crime, he situated it within a wider framework of colonial impulses, and directly linked processes of judicial expansion to mission work. The issue was not the mechanism of justice per se, but rather how it fit within a settler colonial impulse to expand euro-settler institutions and ways of being at the expense of Indigenous mechanisms for social control. Therefore when seen through an Indigenous historical consciousness, the prison was one part of this large process of eroding sovereignty.

My central contention is that prisons were built from more than stone and iron; they were constructed from ideas that were central to colonial contact and confrontation. Therefore, this chapter is concerned with questions of self-governance and Indigenous sovereignty. It outlines the history and processes whereby European jurisdiction expanded and changed the relationship between Indigenous and colonial law to become more coercive and hegemonic. This chapter outlines how the prison fit within a network of settler colonial institutions, and the impact that had on indigenous historical consciousness. I contend that in the history of jurisdictional expansion, no moment can be pointed to as undermining Indigenous sovereignty, even though multiple cases have been used in an attempt to do just that.³

I show in this chapter that Indigenous peoples had diverse, rich legal traditions and that through colonial expansion these laws were marginalized by colonial states. In the early colonial period, especially in Western Canada and the Prairies, this was a slow process where originally settler law was integrated within pre-existing Indigenous laws, in a process of cultural exchange.⁴ As

³ Legal scholar Robert Porter offered a minimalist definition of sovereignty when he defined it as "the freedom of a people to choose what their future will be," a definition he defended as cutting to the heart of the issue, that is, "are you are free people?" The criminal law is not the only avenue whereby sovereignty according to this rubric is defensible. Rather, the law serves as a barometer for the degree to which Indigenous peoples, or any people, control their futures. Robert Porter, "The Meaning of Indigenous Nation Sovereignty," *Arizona State Law Journal*, 34(1) (Spring 2002), 75.

⁴ Literature on contact zones sheds light on this type of exchange. See for example: Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650-1815*. (London: Cambridge University Press, 1991). For an

settlement intensified, settler justice became the assumed recourse for crime. I examine the specific mechanisms whereby this was accomplished, specifically treaty-making, case law, and Indian policy. There was no moment of European jurisdictional victory because until the 1886 Criminal Code of Canada, Canadian laws pertaining to Indigenous peoples were a patchwork, often contradictory, and unclear regarding where jurisdiction existed. Many Indigenous people will argue that their laws maintained their integrity through active and passive resistance to colonial incursions. The symbolic importance of the prison within Canadian society, along with the chronological timeframe in which the penal system developed, fits within what historian Ian McKay argued was the time when the Canadian body politic created a project of rule rooted in liberalism.⁵ As is typical of settler colonialism, those administering the colonial system could not see the colonialism of the prison.

For Indigenous people, the liberal pillar of equality was dramatically tempered by racial theories of inferiority that infantilized Indigenous peoples. Infantilization was always a foundational part of the liberal ideology. It was essential to the functioning of settler colonization, because it allowed imperial elites to promote liberal values while simultaneously excluding Indigenous peoples, women, slaves, and those without property.⁶ In this way, Indigenous peoples were expected to uphold the social contract as articulated by the imperial authorities by contributing to the imperial economy and abiding to imperial law, but this did not come in parcel with the rights of citizens. Instead, through imperial liberal arithmetic, Indigenous peoples had the duties of citizens but the rights of subjects. This ambiguity, that is holding the status of children in the eyes of the law until they broke the law when they were punished as adults, was written into the Indian Act.⁷

example of cultural accommodation in the BC economy, see: John Lutz, *Makuk: A New History of Aboriginal-White Relations*, (Vancouver: UBC Press, 2008).

⁵ McKay's thesis is discussed in more detail in the introduction to this dissertation. See: Ian McKay, "The Liberal Order Framework: A Prospectus for a Reconnaissance of Canadian History," *Canadian Historical Review* 81(4) 2000

⁶ Uday Singh Mehta, "Liberal Strategies of Exclusion," in *Tensions of Empire: Colonial Cultures in a Bourgeois World*, Frederick Cooper and Ann Laura Stoler, Eds (Berkeley: University of California Press, 1997), 79-80.

⁷ Michael Posluns, *Speaking With Authority: The Emergence of the Vocabulary of First Nations' Self-Governance* (New York: Taylor and Francis, 2007), 10.

. The prison fits seamlessly within a network of colonial institutions because it was built on a foundation of liberalism that tied it to projects of colonization and nation-building. It trained prisoners in a particular type of citizenship that upheld the twin values of liberalism and Christianity. Those who developed the penal system in Canada understood that inmates needed to learn, or perhaps relearn, how to exist in a liberal society by upholding the social contract and contributing to Canadian industrial society as Christian citizens.⁸ Especially from 1880 to 1940, Roman Catholic and Protestant churches separated the intellectual divisions between themselves and public life, and projected an image of social citizenship that was indistinguishable from their particular brand of Christianity. This engagement of churches with the social world created what historians Nancy Christie and Michael Gauvreau termed “the creation of Christian subject-citizens.”⁹ Prisons were institutions where the state through policymakers and staff alongside the churches through institutional chaplains attempted to build these “Christian subject-citizens.” This term is useful in characterizing the aspirations of penal administrators because it reflects the assimilatory aims of incarceration. Those running prisons felt most successful when Indigenous inmates joined the European work-force, not when they returned to their home communities. The system was designed to transform a “deviant” into productive citizens as defined by the liberal order. This echoed the purpose of Indian policy, making subjects out of sovereign nations. While it took intensive settlement for Indigenous peoples to become highly represented within prisons, penitentiaries served as symbols of “expanding civilization” in the settler psyche.

The penitentiary system was built without consideration of Indigenous peoples, but looking at the expansion of the prison system through an Indigenous historical consciousness shows that the

⁸ An Act to Provide for the Maintenance by the Government of the Provincial Penitentiary, (1834), 4 Will. IV. Legally, people in prisons did not have the same equality in Canadian society, as they were legally dead. One example of this is that inmates were not able to vote in elections because their incarceration made them lose that right.

⁹ Nancy Christie and Michael Gauvreau, *Christian Churches and their Peoples, 1840-1965: A Social History of Religion in Canada* (Toronto: UTP, 2010), 62.

prison was driven by a typical settler colonial goal of assimilation. While this goal was articulated for all inmates irrespective of racial or ethnic origin, it had unique implications for Indigenous prisoners.¹⁰ The prison should then be regarded within the network of colonial institutions because of the goal of shaping Indigenous people into liberal subjects. Because the purpose of the prison was to modify offenders to fit into Euro-Canadian middle class values implicit within the liberal order, administrators assumed Indigenous prisoners would become enfranchised through the prison. When the individual failed to uphold the social contract, then the penitentiary became a stage where the obligations of liberalism were upheld. This was seen as part of a process of “civilizing” Indigenous peoples. The physical geography of the prison was a symbol for this process, as prisons were imposed colonial structures on Indigenous land, metaphorically ordering an untamed landscape. While penitentiaries illustrated the ramifications of colonial law, the importance of the prison as a symbol of the advance of Canadian law was more important than its practical use.¹¹

This chapter examines the ideas that built the penitentiary and the processes whereby Indigenous peoples became subject to settler law and found themselves inside colonial prisons. This chapter begins by considering Indigenous traditional law; while there was tremendous variation across time and space, several commonalities were evident, especially in contrast with colonial legal systems. It then considers how Indigenous peoples became incarcerated through the expansion of jurisdiction through treaty-making, policy decisions, and common practice. This was an uneven process that did not have a moment of jurisdictional expansion, but rather ambiguously spread without a clear mandate regarding Indigenous peoples. Indeed, in many ways Indigenous peoples integrated settler law in their lands as a new type of international law. I conclude by exploring how

¹⁰ Policy and administrative discussions often questioned the ability for ethnic groups, including Aboriginal, Chinese, and Black inmates, to fit into the penal mission.

¹¹ Sidney L. Haring, “The Liberal Treatment of Indians’: Native People in Nineteenth Century Ontario Law,” *Saskatchewan Law Review* 56(2), 1992: 297-371.

the imposition of a set of liberal Christian values on Indigenous peoples over the nineteenth and twentieth century eventually marginalized Indigenous peoples politically, socially, and economically.

Indigenous Systems of Law

Indigenous societies had laws that held the same weight as those of settler nations. Of course, these laws appeared significantly different to Europeans because of their Indigenous cultural foundations. Thayendanegea (Joseph Brant), the Mohawk Chief from Six Nations of the Grand River commented on the disjuncture between Settler and Haudenosaunee justice in 1870, writing:

In the government you call civilized, the happiness of the people is constantly sacrificed to the splendor of the empire. Hence your code of criminal and civil laws have their origin; hence your dungeons and prisons. I will not enlarge on an idea so singular in civilized life, and perhaps disagreeable to you, and you will observe that among us we have no prisons; we have no pompous parade of courts; we have no written laws; and yet judges are as highly revered among us as they are among you, and their decisions are as much regarded. Property, to say the least, is as well guarded, and crimes are impartially punished. We have among us no splendid villains above the control of our own laws. Daring wickedness is here never suffered to triumph over helpless innocence. The estates of widows and orphans are never devoured by enterprising sharpers. In a word, we have no robbery under color of the law. No person among us desires any other reward for performing a brave and worthy action, but the consciousness of having served his nation. Our wise men are called fathers; they truly sustain that character. They are always accessible, I will not say to the meanest of our people, for we have no mean but such as render themselves so by vices. The palaces and prisons among you form a most dreadful contrast.¹²

Thayandanegea demonstrates in this powerful letter the way that the justice system as a whole fits within an Indigenous historical consciousness. Here he spoke about the ways that social order was maintained within the community in what is now Ontario. In this discussion, Thayandanegea defined Indigenous and settler justice in contrast to each other, and “dungeons and prisons” in western law serve to emphasize the point. However, the critique is less about justice systems defined

¹² Mr. Clarke, “Report of the Indians in British North America by the British Government: Management of Indians in British America,” (41st Congress, 2nd Session, House of Representatives Mis. Doc. No. 35, January 27, 1870), 31-32.

in binary terms, but more about the so called “splendor of empire.” Notions of crime and punishment are not particularly at issue in this particular episode, but rather the driving motive behind them as supporting the British crown. The following pages outline some of the key features of domestic Indigenous justice, and set out some tentative generalizations regarding them.

While legal scholars recognize Canada as a multi-legal society, this is most often seen in dialogue between French and British law.¹³ Anishinabe legal scholar John Borrows has challenged this approach, noting the role of Indigenous legal traditions in Canadian law.¹⁴ Still, exploring Indigenous law faces two major challenges: the cultural diversity of Indigenous North America and that all laws are dynamic and change over time and historical context. John Borrows summarized this predicament, writing:

Each group created its own distinctive ceremonies and formalities to renew, celebrate, transfer, or abandon their legal relationships. The ceremonies of the Potlatch on the West Coast produced entirely different legal relationships from those of the Sundance on the Prairies or the Midewiwin and False Face societies of central Canada. The stories told in the Big Houses of the Salish differ fundamentally from those told in the teepees of the Assinaboine, which might likewise be very different from those spoken in the Longhouses of the Haudenosaunee or the lodges of the Mi'kmaq... The diverse customs and conventions which evolved became the foundations for many complex systems of law...¹⁵

¹³ This is a general failing in most legal scholarship where Aboriginal people are either invisible or function as the “background” in a way that parallels George Stanley’s article, “The Indian Background to Canadian History,” where Stanley argues that Aboriginal people as “a problem or a resource” that defined Canadian history. Thus, while Aboriginal peoples existed in Stanley’s interpretation of Canadian history, they played the same kind of environmental role as the geography itself. See: George Stanley, “The Indian Background to Canadian History,” *Report of the Annual Meeting of the Canadian Historical Association* 31 no. 1 (1952), 14-21.

For examples of this approach in legal writing, though this list is by no means exhaustive, see: André Cellard, *Punishment, Imprisonment and Reform in Canada, from New France to the Present*, Ottawa: CHA Bulletin volume 60, 2000). ; John Saywell, Jim Philips, and Roland McMurtry (eds.) *Essays in the History of Canadian Law: A Tribute to Peter Oliver* (Toronto: Osgoode Society for Canadian Legal History by the University of Toronto Press, 2008); Hamar Foster and Chet Orloff (eds.) *Law for the Elephant, Law for the Beaver – Essays in the Legal History of the North American West* (Regina: Canadian Plains Research Centre, University of Regina, 1992).

¹⁴ John Borrows, *Recovering Canada: The Resurgence of Canadian Law*, (Toronto: UTP, 2002).

¹⁵ Borrows, *Recovering Canada*, 3-4.

There were some common trends and characteristics of Indigenous law broadly, but generalizing across Native North America is a fraught process.¹⁶ Even summarizing approaches to law within the context of a single First Nation legal tradition falls outside the scope of this dissertation.

Haudenosaunee lawyer and activist Patricia Monture warned that, “It is impossible to capture the essence of traditional ways in a moment or on paper. It is a lifelong commitment to learn these ways.”¹⁷ She was speaking of her Haudenosaunee tradition, but the comment can apply to any legal tradition, be it Indigenous or Western. In addition, there were legal codes that guided relationships between Nations, and other laws that guided the relationships within communities. While maintaining relationships between kinship networks focused often on restoring relationships, relationships outside of the kinship circle were often governed by a harsher version of justice. Furthermore, colonization, and the intensification of European settlement forced Indigenous peoples to integrate settler nations into their legal frameworks.

Failure to see this adaptive nature of Indigenous cultures and legal traditions ignores the processes that took place in Indigenous societies. This is most often seen in comparing “traditional” Indigenous law to “contemporary” European law. Anthropologist Wayne Warry has argued that in comparing Indigenous and settler law, most scholars compare historic Indigenous law to contemporary settler law. By comparing seventeenth-century European law to early colonial Indigenous law, the distinctions between the two legal structures become less distinct. Seventeenth century European law was less formalized, bureaucratized, and rule-bound, and it was more closely linked to the sacred than European law today.¹⁸

¹⁶ Borrows, *Canada's Indigenous Constitution*, 65-66.

¹⁷ Patricia Monture-Angus, *Thunder in my Soul: A Mohawk Woman Speaks* (Halifax: Fernwood Publishing, 1995), 211.

¹⁸ Wayne Warry, *Unfinished Dreams: Community Healing and the Reality of Aboriginal Self-Government* (Toronto: University of Toronto Press, 1998), 173.

Comparing Native and European law comes with risks of reductionism of both Indigenous and European law. Scholars often fall into reductive binaries between Indigenous and western justice systems, especially pertaining to the prison.¹⁹ They argue that if Indigenous justice systems are based on communal values, then western justice is based on hierarchy. If Indigenous justice is based on consensus, then western justice is based on hegemony. This ultimately leads to value judgements of western justice being self-serving while Indigenous justice is generous, or while Indigenous justice came from sacred teachings, that European justice was rooted in earthly authority. The penitentiary, however, was no secular project. Christian penitence was the defining feature of the system. It was developed and designed, both physically and intellectually, as a project in the reformatory power of Christian faith where the chaplain wielded as much power as the warden. This goes to show that we ought to be cautious in summarizing entire cultural legal structures, especially when these cultures traverse national boundaries. How then, to characterize Indigenous law rooted in oral traditions without reducing them to a set of generalizations, and understanding that they are subject to change?

In spite of the challenges, several scholars have made tentative generalizations, avoiding reducing Indigenous law to one common experience. The most effective approach that scholars have used regarding Indigenous law is to identify the core values and sources of law generally, and then show how different First Nations applied those values in unique ways. In *Canada's Indigenous Constitution*, John Borrows identifies the sacred, natural, deliberative, positivistic, and customary sources of Indigenous law, and shows how different Indigenous groups used common sources to create distinct legal traditions. Borrows argues that these sources worked together as Indigenous

¹⁹ See: James Dumont, "Justice and Aboriginal People," in *Aboriginal People and the Justice System: Report of the National Round Table on Aboriginal Justice Issues* (Ottawa: Minister of Supply and Services Canada, 1993). ; Treaty 7 Elders. *The True Spirit and Original Intent of Treaty 7* (Montréal: McGill-Queen's University Press, 1995), 202-203. ; Menno Boldt and J. Anthony Long, "Tribal Traditions and European-Western Political Ideologies: The Dilemma of Canada's Native Indians," *Canadian Journal of Political Science* 17(3) (Sept. 1984), 541-3 ; JTL James, *Penitentiary Chaplaincy: A Living Tradition* (Ottawa: Correctional Services Canada, 1990), 31-45.

peoples were influenced by their past and present in finding a path to rectify wrongs.²⁰ Christie Jefferson also uses this approach, assessing many legal traditions acting independently across North America.²¹ In *Dancing with a Ghost*, Judge Rupert Ross explores how Indigenous ethics of non-interference, of not showing anger, respecting praise and gratitude, conservation and withdrawal, and ensuring the right timing of correction informed Indigenous interactions in both traditional law and the colonial courts over which he presided.²² James Dumont, an Aboriginal scholar and member of the Truth and Reconciliation Commission, also identified core values that provided the foundation for all Indigenous justice patterns. Rooted in teachings, these varied by cultural group but were based on overlapping values. After an assessment of the values of the Ojibwa Anishinabe, Cheyenne, Apache, and the Midewewin, Dumont identified a legal framework of “generalized primary Aboriginal values,” characterized by wholeness and spirit-centredness, respect and harmony, kindness, honesty and integrity, sharing, strength, bravery and courage, wisdom, respect and humility wholeness.²³ Like Ross, Dumont argues that these core values are applied in particular ways depending on specific cultural variations. The same kind of argument could be articulated in respect to the emerging legal traditions in Europe before 1700. In other words, while legal structures in Indigenous North America, what eastern First Nations term “Turtle Island,” and Europe looked different, both were culturally creative solutions to problems of social control.

A basic characteristic of Indigenous laws is that they tend to be based on principles of living in right relationships. Conversely, settler law is focused on what individuals ought not to do. Rather than a set of negative laws that outlined what one shall not do, Indigenous legal systems positively

²⁰ John Borrows, *Canada's Indigenous Constitution* (Toronto: UTP, 2010), chapter 2, 23-58.

²¹ Christie Jefferson, *Conquest by Law*. (Solicitor General of Canada APC 8 CA, 1994).

²² Rupert Ross, *Dancing with a Ghost: Exploring Indian Reality* (Markham: Octopus Books, 1992).

²³ James Dumont, “Justice and Aboriginal People,” in *Aboriginal People and the Justice System: Report of the National Round Table on Aboriginal Justice Issues* (Ottawa: Minister of Supply and Services Canada, 1993), 53-57.

dictated how to live.²⁴ Speaking to Rupert Ross, Ojibwa Elder Charlie Fisher articulated this in a critique against the European criminal justice system. He said, “Your laws tell a person what they cannot do, not what they should be. We know you have a legal system; we are just not sure it is a justice system.”²⁵ In articulating the Indigenous worldview, F. David Peat wrote that Indigenous language and culture “does not seek to control or to hold on to stability within this flux with analytical ideas, laws and concepts. Instead they seek balance, harmony and relationship.”²⁶ Three examples – Cree, Anishinaabe, and Haudenosaunee laws – will serve to illustrate some of the similarities and differences among Indigenous legal traditions. These three Indigenous traditions are culturally, geographically, and historically distinct from one-another. Their diversity makes them useful examples of Indigenous law. These three also have received the most scholarly attention, especially in the case of the Haudenosaunee Great Law of Peace, which was the first to be documented and studied in academe. In outlining the parallels within distinct legal traditions, we can begin to question in a more concrete way what it was that gave Indigenous law a shared character even with differences in the law itself.

Among the Cree, the doctrine of Wâhkôhtowin guides all of life, including social interaction and methods of correction. It is a set of norms rooted in sacred teachings. According to Wâhkôhtowin, to live in right relationship one must understand that all things are equal, and the spaces between people, the cosmos, the creation, and the creator need to be respected. Living according to this teaching means that healthy boundaries guided by respect, kindness, and love exist

²⁴ For a brief introduction to Aboriginal teachings, see fourdirectionsteachings.com. It introduces the basic teachings of the Blackfoot, Cree, Ojibwe, Mohawk, and Mi'kmaq in the words of Elders from each of those Nations. While it is intended as a teaching resource for classroom use, it effectively introduces the common themes of balance and right relationships that guide Aboriginal law.

²⁵ Charlie Fisher, told to Rupert Ross, quoted in Joe Couture, *A Metaphorical Mind*, p203

²⁶ Peat, F. David. *Blackfoot Physics: A Journey into the Native American Universe*. (Grand Rapids, MI: Phanes Press, Inc, 2002), 278.

and allow people to live in peace.²⁷ Cree politician Harold Cardinal described this in the following terms:

What I would call the doctrine of Wahkohtowin speaks to the laws that we have as nations that govern the conduct of our relationship with each other and with all things in life. There are laws, there are teachings that go with how, for example, if you are a fisherman with what your duties are to the fish you take, what relationship you have to respect if you are going to continue to be able to feed your family from that fish. How that relationship is two way, our laws teach us that because not only are we related to that particular species but that species is related to us.²⁸

Wâhkôhtowin is not strictly a legal concept; for the Cree, Wâhkôhtowin must guide all of life or it is an empty notion.²⁹ The Cree were also gifted with Iyintoweyesawewina, which is most closely translated to Natural Law, which includes physical gifts (land, crops, material culture) and metaphysical gifts (law, values, principles).³⁰ The repercussion for transgressing Iyintoweyesawewina was severe and intergenerational, which the Cree refer to as pastahowin, which is comparable to the Christian notion of sin. Omushkego (Swampy Cree) Elder Louis Bird translates pastahowin as “a blasphemous act.”³¹ Thus, the transgressions of an individual disrupt social relationships and obligations. Since the fabric of society is dependent on individuals fulfilling their particular roles, the long term effects of disrupting that social structure would be ongoing until the entire community together corrected it. This interpretation of pastahowin being intergenerational not only explains the importance of these laws in Cree society, but also explains the disruption that followed colonialism

²⁷ Allen Benson (CEO, Native Counselling Services of Alberta), interviewed by the author, March 30, 2014. ; Patti Laboucane -Benson, *Reconciliation, Repatriation and Reconnection: A Framework for Building Resilience In Canadian Indigenous Families* (University of Alberta: PhD Thesis, 2009).

²⁸ Harold Cardinal, *Transcript of speech*. Paper presented at the NCSA Annual Meeting, Edmonton, AB. In Patti Laboucane -Benson, *Reconciliation, Repatriation and Reconnection: A Framework for Building Resilience in Canadian Indigenous Families* (University of Alberta: PhD Thesis, 2009), 93.

²⁹ Patti Laboucane -Benson, *Reconciliation, Repatriation and Reconnection: A Framework for Building Resilience in Canadian Indigenous Families* (University of Alberta: PhD Thesis, 2009), 5.

³⁰ Harold Cardinal and Walter Hildebrandt, *Treaty Elders of Saskatchewan: Our Dream is That Our Peoples Will One Day Be Clearly Recognized as Nations* (Calgary: University of Calgary Press, 2000), 10.

³¹ Louis Bird, *Telling Our Stories: Omushkego Legends and Histories from Hudson Bay* (Toronto: University of Toronto Press, 2005), 164.

and incarceration of Indigenous peoples according to settler law.³² Thus, Cree laws were included in their sacred history and were social laws that required communities to collectively uphold the law.

The Anishinaabe have a similar teaching regarding how to live: *mino-bimaadiziwin*. This translates to “living the good life” according to the seven grandfather teachings. These teachings are of wisdom, love, respect, bravery, honesty, humility, and truth. They were passed down from the seven grandfathers, who the Anishinaabe point to as the fathers of their Nation.³³ This is not a private endeavor. In *mino-bimaadiziwin*, one lives in the fullest sense of health, well-being, and relationships for both individuals and kinship networks.³⁴ This focus on living within the community also influenced the mechanisms of social correction; the entire community was involved in processes of healing and correction because transgressing the grandfather teachings disrupted the lives of those in the person’s communities and kinship networks. *Mino bimaadiziwin* is infrequently articulated as law, but rather as a guiding paradigm for living. Thus, it has been utilized in recent scholarly work into in Anishinaabe history, women’s health, cultural resurgence, environmental activism, narrative, inquiry, social work, and Indigenous Knowledge (IK).³⁵ *Mino bimaadiziwin* is binding as a way to live because it is articulated in an Indigenous worldview that emphasizes balance, connectivity, and the sacred. Because living the good life is community oriented, colonialism and incarceration had dramatic impacts on the social structure of Anishinaabe communities who lost the ability to correct through community intervention.

³² Teaching Circle of Elders, 2007 in Patti Laboucane -Benson, *Reconciliation, Repatriation and Reconnection: A Framework for Building Resilience in Canadian Indigenous Families* (University of Alberta: PhD Thesis, 2009), 34.

³³ Edward Benton-Banai, *The Mishomis Book: The Voice of the Ojibway*. (Hayward, WI: Indian Country Communications, 1988), 61-67.

³⁴ Irving Hallowell, *Culture and Experience*, (Philadelphia: University of Pennsylvania Press, 1967), 360.

³⁵ Ahnungoonhs/Brent Debassige, “Reconceptualizing Anishinaabe *Mino-Bimaadiziwin* (the Good Life) as Research Methodology: A Spirit-Centred Way in Anishinaabe Research,” *Canadian Journal of Native Education* 33 no. 1 (2010), 17.

Among Indigenous law, the most academically studied is the Haudenosaunee Great Law of Peace.³⁶ Haudenosaunee sacred history falls into three eras based on prophets who marked each time period. The first prophet brought culture to the people after the earth was formed, the second was the Peacemaker who created the Five Nations Confederacy, and the third was the Seneca prophet Handsome Lake who brought the Haudenosaunee from near destruction in the wake of colonialism and revived the confederacy.³⁷ The Great Law of Peace a gifted from the creator through the Peacemaker. It contained both natural law and negative law which became the basis of the Constitution of the Five Nations.³⁸ The Great Law was a statement of values and norms, but also a set of actions that individuals could not take, including appropriate punishments to be used at the discretion of the council when the law was broken. A key feature of the Great Law of Peace was

³⁶ In a 1916 edition of the Great Law scholars wrote that as a system of government it was “an almost ideal one,” and “the greatest ever devised by barbaric man.” (A. C. Parker, *The Constitution of the Five Nations or The Iroquois Book of the Great Law* (Albany: University of the State of New York, 1916, 12.) As early as the 1940s Anthropologists understood Haudenosaunee (or Iroquois in their words) laws were rooted in Aboriginal spirituality, though they explained this in terms dictated by salvage anthropology. See: John Noon, *Law and Government of the Grand River Iroquois* (New York: Viking, 1949), 21-27.

In the 1980s there was a newfound interest in the Great Law of Peace because an influential paper in the *American Indian Law Review* argued that because of parallels between the Great Law of Peace and the US Constitution and the affinity and respect that the founding fathers had for the Great Law, that the Great Law of Peace was a contributor to the United States Constitution.

See: Bruce Johnsen, *Forgotten Founders: Benjamin Franklin, the Iroquois, and the Rationale for the American Revolution* (Ipswich, Mass.: Gambit, 1982) ; Gregory Schaaf, “From the Great Law of Peace to the Constitution of the United States: A Revision of America’s Democratic Roots,” *American Indian Law Review* 14 no. 2 (1988), 323-331. ; Jack Weatherford, *Indian Givers: How the Indians of the Americas Transformed the World* (New York: Crown Publishers, 1988).

This argument was especially well covered in popular publications like *Omni*, *The Atlantic*, and a New York Times op ed by Charles C. Mann (of *1491* fame) on July 4, 2005 that reinvigorated the debate in the public mind, if not in academia. This thesis sparked considerable controversy in the United States in the late 1980s and early 1990s, with Erik Jenson rebutting Schaaf’s argument in: “The Imaginary Connection between the Great Law of Peace and the United States Constitution: Reply to Professor Schaaf,” *American Indian Law Review* 15 no. 2 (1990), 295-308. It was also rebutted by Elizabeth Tooker in her essay, “The United States Constitution and the Iroquois League,” in J.A. Clifton, *The Invented Indian: Cultural Fictions and Government Policies* (New Brunswick, NJ: Transaction Publishers, 1990), 107-128.

³⁷ Among the Haudenosaunee, it is not proper to say the Peacemaker’s name outside of ceremony, and therefore I am refraining from using it here. Explaining the protocol, Tom Porter wrote, “The Real Iroquois never say the Peacemaker’s name, except when they’re raising a chief, or having an official reading of the Law. And it has to be prayed on, or tobacco burnt for it. But commonly, we never say that name, except with kids. I can tell my young son or daughter that name. But when I tell them, I say, ‘I’m not going to tell you anymore. From here on you’ll never say that name.’” Tom Porter, “Mohawk (Haudenosaunee) Teaching,” Four Directions Teachings, www.fourdirectionsteachings.com, accessed May 20, 2014.

³⁸ William Fenton, *The Great Law and the Longhouse: A Political History of the Iroquois Confederacy*, (Norman: University of Oklahoma Press, 1998), 4-6. For writings on Handsome Lake, see: Anthony Wallace, *The Death and Rebirth of the Seneca* (New York: Knopf, 1970).

the principle that a person's rights and privileges were always secondary to their responsibilities.³⁹ Thus the community focus of Cree and Anishinaabe law shines in the positive law of the Haudenosaunee. While the Great Law was carried through oral traditions and wampum belts, it which is one of few Indigenous laws that were written down when they transcribed their oral tradition in 1916.⁴⁰ The laws were encoded and upheld in the clan system. Social values of honesty and respect for others dictated approaches to reconciling, and the clan system was the organizational basis for restitution when an offence was so egregious that the individuals themselves could not restore the balance within the community.⁴¹ Thus, while the individual was responsible to live within the constraints of Haudenosaunee society, when they failed to do so their clans became communally involved. Punishment was levied, but only through guidance with Elders and community members who all were engaged in this process.

There was also another kind of Indigenous law: international law. Bruce Miller, in his discussion of international justice among the Stó:lo, has argued that the dichotomies drawn between Indigenous and Western justice fall apart when looking at international law.⁴² When transgressions took place where the parties involved were not from the same kinship group or First Nation, the established protocols did not apply. Instead, a different mechanism of justice then operated, which did not rely on restoring harmony or right relationships.⁴³ Miller argues that these kinds of distinctions are evidence for an Indigenous-driven mechanism for establishing legal jurisdiction.⁴⁴

³⁹ Ta-Io-Wah-Ron-Ha-Gai (William Newell), *Among the Iroquois Nations* (Montreal: Caughnawaga Historical Society, 1965), 35.

⁴⁰ John Kahionhes Fadden and Ray Tehanetorens Fadden, *Kaianerekowa Hotinonsionne: The Great Law of Peace of the Longhouse People* (Berkeley: Ovate, 1999).

⁴¹ M. Coyle, "Traditional Indian Justice in Ontario: A Role for the Present?" *Osgoode Hall Law Journal* 24(3) (1986), 617-620.

⁴² Bruce Miller, *The Problem of Justice: Tradition and Law in the Coast Salish World* (Lincoln: University of Nebraska Press, 2001), 163.

⁴³ Of course, there were mechanisms to maintain good relationships internationally, namely treaty-making. The point here is that a type of personal legal code existed among First Nations for community members, and another existed for strangers.

⁴⁴ Miller, *The Problem of Justice*, 163.

Certainly there are differences between Indigenous and settler law, but these have often been done by comparing penal systems to the domestic law of First Nations. When comparing the prison system to international law, though, these distinctions are not as obvious, and the binaries often fall apart.

Still, comparing these three Nations' legal sources allows cautious insight into the nature of Indigenous law. Positively speaking each of these laws came as direct gifts from the creator, either through the teaching of Wâhkôhtowin, the Seven Grandfather Teachings, or the Great Law of Peace gifted through the Peacemaker. It flows that the law is tied to a worldview that guided all of life, especially in Indigenous societies that did not separate the sacred from the secular. In addition, Indigenous law is not codified in the written word, but was carried through oral tradition.⁴⁵ It was this oral tradition that made nineteenth-century settlers assume that Indigenous peoples had no law at all.⁴⁶

The other approach to characterizing Indigenous law is to generalize in negative terms, focusing on what Indigenous laws are not. For one, Indigenous laws are not vanishing. Contact did not eliminate these legal practices, even as in most cases European law was imposed throughout the nineteenth century. Instead of replacing one law with another, these historical processes layered legal systems upon one another, a process that John Borrows likens to building a European-style garden on the banks of an Indigenous stream, where the aesthetics of the landscape bore the imprint of European values but still held the contours of its Indigenous past.⁴⁷

There were systems of banishment which on their surface appear similar to prisons, but there are fundamental differences between banishment and prisons. Banishment was a last resort

⁴⁵ Report of the Aboriginal Justice Inquiry of Manitoba, Chapter 3 – An Historical Overview, <http://www.ajic.mb.ca/volumel/chapter3.html#1>

⁴⁶ We must avoid claims of Indigenous exceptionalism, creating binaries between static European law versus fluid mechanisms of Indigenous laws that were more context sensitive. Colonial law was built on adaptive principles, especially in policymaking developments and case law based on precedent.

⁴⁷ John Borrows, *Recovering Canada*, ix-xi.

while incarceration is the first in Western societies. Also, the physical separation of banishment was not totalizing, as a relationship was maintained with the offender.⁴⁸ The purpose of the banishment was also not punitive, and was not used as a way to rid a community of a “problem” individual. This historical memory of banishment shows how Indigenous historical consciousness defines Indigenous justice mechanisms in contrast to settler justice. There were many forms of banishment, yet the perspective that comes from an Indigenous historical consciousness speaks to this distinction. All of this contrasts with the penal system as it evolved in Canada. It was because Indigenous peoples had no prisons that the penitentiary was such an important institution in the expansion of the British and later Canadian state.

Another reasonable generalization is that Indigenous peoples did not build prisons. This was a theme that emerged repeatedly in the writings and musings of Indigenous leaders especially when considering Indigenous incarceration. Reading the history of prisons with an Indigenous historical consciousness puts great emphasis on the novelty of the penal system, and its foreign origin.⁴⁹ Here it is worth reflecting back to the connection that Thayandenagea made between the “splendor of empire” and prisons.⁵⁰ The splendor of empire, as Thayandenagea articulated it, had also motivated previous legal codes in Europe.⁵¹

The practical impact of prisons was also significant, because when individuals transgressed within an Indigenous community, restitution was done communally, while settlers isolated convicts from the community. While all laws are codes for how to live in a community, Indigenous law put a particular emphasis on the ways that straying from social norms effected the entire community, and

⁴⁸ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author,, August 15, 2013.

⁴⁹ The foreign origins of the prison system are perhaps more important. Prisons, or at least penitentiaries, are a relatively new historical phenomenon, tracing their origins to the industrial revolution.

⁵⁰ Mr. Clarke, “Report of the Indians in British North America by the British Government: Management of Indians in British America,” (41st Congress, 2nd Session, House of Representatives Mis. Doc. No. 35, January 27, 1870), 31-32.

⁵¹ Douglas Hay, “Property, Authority, and the Criminal Law,” in *Albion’s Fatal Tree: Crime and Society in Eighteenth-Century England*. Ed. Douglas Hay et al. (New York: Pantheon Books, 1975), 17.

therefore required the whole community to address. This communal responsibility for transgression differed from the individual penitence that dictated the beginnings of the penitentiary system in Great Britain, the United States, and Canada. Because one of the key tenants of liberalism is individualism and individual responsibility, the Canadian penal system targeted one person for correction when they committed an offence.⁵² For this reason, when Indigenous peoples were incarcerated, it had a serious effect on Indigenous communities who no longer had the means to heal because the offender was removed from the society.

The Expansion of Liberal Canada's Criminal Justice

That Indigenous peoples had distinct approaches to justice raises the question of when and how they came to find themselves in settler prisons. To understand the nature of Indigenous incarceration, it is necessary first to see the prison within the expansion of Canadian law. As settlements were built, a penitentiary or a local gaol was often one of the first buildings to be constructed because of the physical image of order that it represented. An implicit but important assumption behind this imposed order was that it replaced a previous “disorder,” associated with the wildness of the landscape and its people. Thus, the expansion of settler colonial law and the so-called ordering of the landscape implied that the Indigenous order of was replaced with a colonial one. This ignored that Canada was and remains a multi-legal society that includes Indigenous law, as indicated by John Borrows and discussed earlier in this chapter.⁵³ By doing this without explicitly invoking colonial tropes, the prison and the law it embodied were demonstrative of settler colonialism. There were legal alternatives to incarceration for Indigenous peoples rooted in cultural

⁵² Canada's penal system was a hybrid of models developed in the United States and England. This statement applies broadly to all judicial systems that use the prison as the central mode of punishment, but I am speaking in the Canadian context here. For details, see: Peter Oliver, *Terror to Evil-Doers: Prisons and Punishments in Nineteenth-Century Ontario* (Toronto: Osgoode Society for Canadian Legal History, 1998).

⁵³ John Borrows, *Recovering Canada: The Resurgence of Canadian Law*, (Toronto: UTP, 2002).

and historic traditions. However, in the nineteenth and twentieth century, settlers imposed their legal system upon Indigenous peoples through treaties, proclamations, and case law. What becomes clear when assessing the expansion of Canada's criminal justice system is that there was no singular moment of judicial victory of settler law over Indigenous law. Instead, through common practice, Indigenous peoples were brought before colonial justices in increasing numbers. While the practice of incarcerating Indigenous peoples became more common, it did so without a legal basis.

There is an important distinction to be made between integration and subjugation in the expansion of the Canadian justice system. As settler made inroads into Indigenous-dominated portions of what is now known as Canada, Indigenous laws were often the immediate recourse for settler and Indigenous peoples alike. One important example of this is the law as applied by voyageurs and settler fur traders in the HBC.⁵⁴ There are also examples where Indigenous peoples used settler mechanisms for justice as an integrated part of international relations between First Nations and settler nations.⁵⁵ That said, as increasing numbers of Indigenous peoples encountered prisons, and as the liberal colonial realities that underpinned the system became increasingly apparent for Indigenous peoples held within it, which is why it is important to consider when Indigenous peoples fell under Canadian jurisdiction: it is a question of Indigenous sovereignty.

In incarcerating Indigenous peoples, colonial states eroded Indigenous sovereignty and criminalized several nations through specific cultural practices becoming illegal, including most famously the Sundance and potlatch. The loss of sovereignty was felt for generations as Indigenous peoples continued to struggle to heal in culturally appropriate ways while residing inside colonial

⁵⁴ Carolyn Podruchny, *Making the Voyageur World: Travelers and Traders in the North American Fur Trade* (Toronto: University of Toronto Press, 2006)

⁵⁵ See for example: Shelley Gavigan, *Hunger, Horses, and Government Men*, (Vancouver: UBC Press, 2012), 17.

⁵⁵ RC Macleod and Heather Rollason, "Restrain the Lawless Savages": Native Defendants in the Criminal Courts of the North West Territories, 1878-1885," *Journal of Historical Sociology*, Vol 10 No 2 (1997): 157-183.; Tina Loo, "Tonto's Due: Law, Culture, and Colonization in British Columbia" in Hamar Foster and John McLaren, eds., *Essays in the History of Canadian Law* vol 6, *The Legal History of British Columbia and the Yukon*, (Toronto: University of Toronto Press, 1995).

iron houses.⁵⁶ When Indigenous peoples fell within the expanding reach of liberal Canada's criminal jurisdiction is an unanswerable question because the loss of Indigenous sovereignty was uneven and illegitimate. The application of the criminal law did not always follow settlement nor did settlers abide by policy statements. As we shall see, while the reality of Indigenous incarceration showed a loss of practical sovereignty, there is no single historical moment officially or legally that challenged Indigenous self-governance on issues of criminal justice. As the Canadian state officially expanded through the legal sale of Rupert's Land in 1870, considerable territories were claimed to be Canadian while maintaining settler and Indigenous legal traditions. It was impossible to apply British law outside the reach of the colonial office. Therefore Indigenous laws were the primary legal recourse beyond the British reach.⁵⁷ The complexity of Indigenous law ambiguity of settler jurisdictional expansion muddies discussions of the expansion of Canadian law. Many First Nations posit that Indigenous laws are still binding and always have been, even if they are not recognized in colonial courts.

While Indigenous legal systems remained intact, the Canadian state ventured to expand its jurisdiction in three distinct, though interrelated ways: first in developing case law, second in evolving Indian policy of protection, civilization, and assimilation, and third through Eurocentric interpretations of treaties.⁵⁸ These were formal mechanisms that legally justified the pre-existing practice of incarceration. For example, if Treaty No. 1 justified the use of the criminal law, it only

⁵⁶ Luana Ross, *Inventing the Savage: The Social Construction of Native American Criminality* (Austin: University of Texas Press, 1998), 5.

⁵⁷ Sidney Haring, *White Man's Law*, 109-118. The idea that the meaning of "Canada" depended on the context, which my statement builds upon, is also explored in Patricia McCormack, *Fort Chipewyan and the Shaping of Canadian History* (Vancouver UBC Press, 2010)

⁵⁸ This is the Canadian treaties, which only captures half of the meaning of the treaties, as it does not include the sacred ceremonies that preceded treaty-making. See: See Treaty 7 Elders and Tribal Council with Walter Hildebrandt, Dorothy First Rider, and Sarah Carter, *The True Spirit and Original Intent of Treaty 7* (Kingston: McGill-Queens University Press, 1997). ; Derek Whitehouse. 'The Numbered Treaties: Similar Means to Dichotomous Ends' *Past Imperfect* Vol. 3 (1994), 25-45.

did so after at least four men were already incarcerated.⁵⁹ These mechanisms were paired with the Criminal Code in an effort to maintain a legally structured frontier where westward expansion was possible.⁶⁰ The following explores some of the processes of jurisdictional expansion, but does not assume to point to a single moment where Indigenous incarceration began.

In the early colonial period, there was a keen understanding by Europeans living in the interior and Indigenous peoples alike that Indigenous peoples had laws that were binding, in continuous existence, and coexisted with European law. Even so, several key documents from this period became the basis for later claims to Indigenous sovereignty in the nineteenth and twentieth centuries. For example, the HBC Charter (1670) was one of the earliest legal codes enacted on North America, but it only applied to settlers and voyageurs who lived and traded in the Canadian interior. It included specific mention of crimes and how to address them, but it was not assumed to relate to Indigenous peoples. Later legal cases, discussed below, would uphold that the charter was intended as a check on the activities of Europeans in the fur-trading interior. It was not a new law for Indigenous traders as well. In the 1763 Royal Proclamation, King George III declared that Indigenous peoples had title and self-governance over lands that were not ceded, and that only representatives of the Crown could purchase land through sale or treaty. Following the Seven Years' War, this proclamation set out processes whereby land could be acquired, regulating and organizing the relationship between the British monarchy and First Nations. This document was vital in the history of treaty-making and jurisdictional expansion because it tied loose-ends from the previous era of treaty-making that assured friendly trade while laying out processes whereby land could be

⁵⁹ The Treaty text does not explicitly expand jurisdiction, though it does include the following phrase: "And the undersigned Chiefs do hereby bind and pledge themselves and their people strictly to observe this treaty and to maintain perpetual peace between themselves and Her Majesty's white subjects, and not to interfere with the property or in any way molest the persons of Her Majesty's white or other subjects." This could be taken in some courts to be an expansion of the colonial law, but that is subject to interpretation.

⁶⁰ Sidney Haring, *White Man's Law: Aboriginal People in Nineteenth-Century Canadian Jurisprudence* (Toronto: University of Toronto Press, 1998), 26.

ceded, a process that would occupy the following 150 years.⁶¹ John Borrows has effectively argued that the Proclamation was the written version of a sacred treaty between the First Nations and the Crown that guaranteed Indigenous self-determination.⁶² What this Proclamation established was that only through Imperial or later federal negotiations with Indigenous peoples could European governments extinguish Indigenous sovereignty in issues of criminal justice according to Europeans' own binding legal documents.⁶³ This is still binding, since no act or policy has overruled it.⁶⁴ Thus, at least in principle, Indigenous laws were recognized and respected, especially regarding inter-Indigenous matters. According to the Royal Proclamation, Indigenous peoples needed to cede their land west of the Proclamation Line, and they held their laws in tact until then. That Indigenous laws were held intact was upheld in colonial case law and borne out in practice. That questions of sovereignty and crown jurisdiction came up repeatedly, as is illustrated below, illustrates how Indigenous sovereignty was a reality in the early colonial era.

Even though Indigenous law was protected under the Royal Proclamation, recognized in case law that followed it, and used to guide early colonial interactions, a central project of nineteenth century colonialism was the spread of British law to so-called “lawless people” to consolidate British control of the Canadian frontier. This marks a shift in colonial thinking in the early 1800s. This was the era that proponents of the liberal order framework took hold as a driving force in the history of Canada. Because Indigenous law was maintained orally, these practices were derisively labelled “custom” rather than “law” by policymakers who elevated their own written codes of law above Indigenous oral law.⁶⁵ In describing the legal status of Indigenous peoples in Canada, Pennsylvanian

⁶¹ J.R. Miller, *Compact, Contract, Covenant: Aboriginal Treaty-Making in Canada* (Toronto: University of Toronto Press, 2008), 66-70.

⁶² John Borrows, “Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self Government,” in *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference* (Vancouver: UBC Press, 1997), 155.

⁶³ Leonardy, *First Nations Criminal Jurisdiction in Canada*, 153.

⁶⁴ John L. Steckley & Bryan D. Cummins, *Full Circle, Canada's First Nations* (Toronto: Pearson Prentice Hall, 2008), 122.

⁶⁵ Curt Griffiths and Allan Patenaude, “Aboriginal People and the Criminal Law,” in Robert Silverman and Marianne Nielsen (eds), *Aboriginal People and Canadian Criminal Justice* (Toronto: Harcourt Brace, 1992), 72.

adventurer-writer Archibald Loudon was revealing in writing, “They [Indigenous societies] have scarcely any penal laws... even murder is not punished by any formal law, only the friends of the murdered are at liberty to slay the murderer, if some atonement is not made.”⁶⁶ This emphasis of the penal law illuminates the cultural disjuncture between Indigenous and British law in the colonial mind. As the agenda of settler populations moved regarding Indigenous peoples from cooperation to subordination and assimilation, the legal patterns that were once recognized as both legitimate and autonomous were recast as “primitive.”

Changes in jurisdiction took place within a context of changing relationships between Indigenous peoples and settlers. Historian J.R. Miller has shown that normalizing relations with the United States, declining economic importance of the fur trade, and demographic change following mass-immigration from the United States and Europe all changed the relationship between Indigenous peoples from one of trade and friendship to policies of “civilization.”⁶⁷ This coincided with the transition of Indian Affairs from military to civilian control in 1830, representing a shift in the position colonial authorities envisioned for Indigenous people. Prisons were built to police a state’s own citizens and wards, not for foreigners or autonomous nations. Thus, when Indigenous people found themselves inside these institutions their loss of self-governance was apparent.

During the 1830s, the British Empire faced questions of jurisdiction after the abolition of the slave trade reinvigorated debates on colonial hierarchies. The 1836 *Report of the Parliamentary Select Committee on Aborigines* was struck out in response to humanitarian concerns specifically regarding the treatment of Indigenous peoples in the Empire. It aspired to protect Indigenous access to justice and protection of rights, promote the spread of “civilization,” and to facilitate Indigenous reception

⁶⁶ Archibald Loudon, *A Selection of some of the most Interesting Narratives of Outrages, Committed by the Indians in their Wars, with the White People*, (Carlisle: A. Loudon Press, 1808 [reprint 1888]), 241

⁶⁷ Miller, *Skyscrapers Hide the Heavens*, 103-123; Miller, *Compact, Contract, Covenant*, 291-293.

of Christianity.⁶⁸ Key to each of these processes, it argued, was that all of the land in the British Empire necessarily had to fall under British law. In so stipulating, it thusly applied English criminal law to all Indigenous peoples within the British Empire.⁶⁹ This did not resolve ethical questions concerning convicting Indigenous who were not knowledgeable in British law. In its final report, the Parliamentary Select Committee stated that the administration of criminal justice was “defective and unsatisfactory” because “within it ignorant savages are often made amenable to a code of which they are absolutely ignorant, and the whole spirit and principles of which are foreign to their modes of thought and action.”⁷⁰ This meant that colonial judiciaries were faced with an uncomfortable position of having to uphold the law while simultaneously educating Indigenous peoples concerning the law as a prerequisite for its application. In some legal cases the question of understanding of the law took a central position concerning conviction of Indigenous defendants.⁷¹ While rhetoric of educating Indigenous peoples regarding British law was expressed in humanitarian societies and before the courts, this education came overwhelmingly through incarceration. In other words, the prison itself became the tool for education of Indigenous peoples in liberalism. The context in British North America was expressed in the Aborigine Protection Society’s 1839 *Report of the Indians of Upper Canada*. The society set out a plan for the application of these norms in Britain’s colonies. They recommended,

...that every possible encouragement should be given to the tribes of Indians in question to adopt the habits of settled and civilized life, with the necessary organization to give stability to an improved order of society... By inviting the native population... to *participate in the privilege of British Law*, the integrity of our frontier, as well as their preservation and advancement, would be effectually secured. (Emphasis added)⁷²

⁶⁸ *Report of the Parliamentary Select Committee on Aborigines (British Settlements) Together with the Evidence, Appendix, and Index* (Cape Town C. Struik Ltd, 1836).

⁶⁹ 1836 *Report of the Parliamentary Select Committee on Aborigines*, 78-80

⁷⁰ Report of the Parliamentary Select Committee on Aboriginal Tribes, (British Settlements.) 1837, 120-121

⁷¹ See for example the case of the two Inuit men convicted of murder in 1917, discussed below.

⁷² Aborigine Protection Society, *Report of the Indians of Upper Canada*, (London: 1839), p29-30.

The colonial intent behind the application of the law was evident in the invitation to ‘participate in the privilege’ of the law. This included both the peaceful acquisition of land and in the subjugation and assimilation of Indigenous people. The frontier was claimed as British, as were the people who were to be “advanced,” which ultimately meant transforming Indigenous people to British subjects. In reality, as Sidney Haring argued, participating in “the privilege of British Law” most often meant incarceration.⁷³

Even though metropolitan humanitarians universally recommended the advance of British law, the process of jurisdictional expansion by European states was not the straightforward expansion of law and order as suggested by imperial propaganda of the time or myths of orderly settlement imply.⁷⁴ Colonists understood that they were on unsteady legal grounds concerning their jurisdiction over Indigenous peoples, but a legally structured frontier was a central tenant of the colonial imagination. Colonial jurisdiction was notoriously imprecise, and settlers worked as much on local context, assumption, and practicality as they did official policy or case law. This was partly a reflection of the nature of application of colonial precepts on the imperial periphery, but also reflected the contradictory opinions of various justices. Because numerous courts reached contradictory conclusions regarding expanding jurisdiction, people on the ground could justify nearly any action based on case law.⁷⁵ Indigenous peoples were tried and punished according to British law, but Justices of the Peace repeatedly questioned what their rights, duties, and jurisdictional limitations were. Unanimity did not exist in settling criminal cases that involved Indigenous peoples, especially if both defendant and victim were Indigenous. A few cases have been interpreted as extending colonial jurisdiction, but none of them unequivocally did so.

⁷³ Sidney Haring, *White Man's Law*, 109.

⁷⁴ Daniel Francis, *National Dreams: Myth, Memory, and Canadian History* (Vancouver: Arsenal Pulp Press, 1997), 29-51.

⁷⁵ Sidney Haring, *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence* (Toronto: Osgoode Society for Legal History by UTP, 1998), 109.

The first of these was the Shawanakiskie Case (1823-1826) which raised the question of whether colonial authorities could prosecute when both victim and aggressor were Indigenous. Shawanakiskie, a member of the Ottawa First Nation, murdered another Indigenous person in the streets of Amherstberg, Upper Canada. He was summarily arrested, tried, and found guilty at the court of assize. Facing overwhelming evidence of guilt, the judge suspended the execution to clarify the jurisdictional question of whether the colonial government had the authority to execute. Since the case was without precedent, the decision was sent to the Privy Council, which ultimately issued an execution warrant which was presumably carried out, though the record falls silent regarding Shawanakiskie's fate.⁷⁶ This was the presumed first execution of an Indigenous for crimes that did not involve settlers, but what it established is not immediately clear. Legal scholar Derek Smith argued that this case set the precedent making Indigenous peoples universally subject to British and Canadian law, finishing the "erosion of Indian sovereignty."⁷⁷ Noted legal historian Sidney Haring argued in similar terms that Shawanakiskie's case represented a leap in jurisdiction.⁷⁸ Mark Walters re-evaluated the meaning of this case, noting the case neither rejected Native jurisdiction nor did it subject all Natives to colonial law. Instead, the case had a much more specific impact, granting colonists jurisdiction of inter-Indigenous crime inside their settlements.⁷⁹ Thus, what appears as a fundamental shift in jurisdiction was not as dramatic as Smith asserted. In *White Man's Law*, Haring notes that Walters convinced him that this interpretation of the limited expansion of criminal

⁷⁶ Details of this case are documented in Derek Smith (ed.), *Canadian Indians and the Law: Select Documents, 1663-1972* (Toronto: McClelland and Stewart, 1975), 21-25. See also Dennis Carter-Edwards, "SHAWANAKISKIE," in *Dictionary of Canadian Biography*, vol. 6, University of Toronto/Université Laval, 2003–, accessed March 17, 2014, http://www.biographi.ca/en/bio/shawanakiskie_6E.html.

⁷⁷ Derek Smith, "Introduction" in Derek Smith (ed.), *Canadian Indians and the Law: Select Documents, 1663-1972* (Toronto: McClelland and Stewart, 1975), xvi.

⁷⁸ Sidney Haring, "The Liberal Treatment of Indians": Native People in Nineteenth Century Ontario Law,' *Saskatchewan Law Review* vol. 56 (1992), 297, 304-5.

⁷⁹ Mark Walters, "The Extension of Colonial Criminal Jurisdiction over the Aboriginal Peoples of Upper Canada: Reconsidering the Shawanakiskie Case (1822-26)," *University of Toronto Law Journal*, 46 (1996), 274.

jurisdiction was accurate.⁸⁰ This case was not a watershed moment in jurisdictional expansion. It was remarkable given the severity of the crime and the lengths taken to decide the matter. Still, it was not a significant jurisdictional turning point.⁸¹

This early jurisdictional expansion took a more formalized turn in the aftermath of the Rebellions of 1837. Following Lord Durham's Report and the reorganization of the Canadian political context in the uniting of the Canadas, the Governor-General Sir Robert Bagot spearheaded a commission that now has his name (the Bagot Commission) to evaluate Indian Affairs in order to improve the lives of Indigenous peoples while reducing the cost of Indian policy.⁸² Although the Bagot Commission's 1844 report is remembered because it established the Residential School system and refocusing Indian policy on education, the report also addressed questions of jurisdiction. The report read, "Indians are amenable to, and enjoy the protection of, both the civil and criminal laws of the Province," establishing jurisdiction through study of then-current contexts.⁸³ In other words, the report extended jurisdiction by asserting the existence of that jurisdiction as naturally existing and needing no legal defense. In addition, the Bagot Commission also recommended the separation of Indigenous children from families in Indian Residential Schools, and it established the policy of laying out reserve lands. Thus, Indigenous incarceration and the Indian Residential Schools system are rooted in the same colonial document.

These policies and reports ultimately fed into the more influential Gradual Civilization Act (1857), which marked a significant turning point in that it presumed jurisdiction that had not been established in case law to that point.⁸⁴ The Gradual Civilization Act began with the aspirations

⁸⁰ Sidney Haring, *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence*. (Toronto: University of Toronto Press, 1998), 115, 348 n.28.

⁸¹ Matthias Leonardy, *First Nations Criminal Jurisdiction in Canada*, 158-160.

⁸² Jim Miller, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada* 3rd ed. (Toronto: University of Toronto Press, 2000), 132-134.

⁸³ Canada, Legislative Assembly, Report on the Affairs of the Indians in Canada 1844, Journal of the Legislative Assembly, Appendix EEE, 1844-5 (more commonly referred to as the 'Bagot Commission')

⁸⁴ Leonardy, *First Nations Criminal Jurisdiction in Canada*, 163.

voiced in the Bagot Commission, expressing that “it is desirable to encourage the progress of Civilization among the Indian Tribes in this Province, and the gradual removal of all legal distinctions between them and Her Majesty’s other Canadian Subjects.”⁸⁵ While the Gradual Civilization Act implicitly included mention of criminal law, it presumed jurisdiction over Indigenous peoples. After 1857 questions of jurisdiction were infrequently raised in later cases, but had never been formally settled.⁸⁶ This act became the basis for the subsequent Indian Act (1876) which made the most lasting statement of Indian policy in the nineteenth century.⁸⁷ The Indian Act consolidated laws pertaining to Indigenous peoples and put in place more stringent policies that applied specific laws to First Nations peoples. Some of these provisions created laws for Indigenous peoples that did not apply to settler (including for example an alcohol ban), while others directly criminalized Indigenous cultures.

That Canadian jurisprudence expanded slowly, unevenly, and in many cases in a self-contradictory manner is illustrated in legal cases that hinged on questions of jurisdiction. These questions were most often raised in relation to marriage *à la façon du pays* or “in the custom of the country.”⁸⁸ For example, in *Connolly v Woolrich* (1867) the fur trader William Connolly lived for 28 years in a marriage *à la façon du pays* with a Cree woman, and then married an English in the Catholic tradition upon his return to settled Canada.⁸⁹ Upon Connolly’s death, both wives challenged for the inheritance, claiming rightful title to the estate. In ruling on the Cree wife’s behalf, the court established that through “joint occupation” of what the court knew as Rupert’s Land, “that two

⁸⁵ Parliament of the Province of Canada, “An Act to encourage the gradual Civilization of the Indian Tribes in this Province, and to amend the Laws respecting Indians. [Assented to 10th June, 1857.]

⁸⁶ It is on this basis that Matthias Leonardy builds a case for modern Aboriginal self-governance and sovereignty in issues of criminal justice in *First Nations Criminal Jurisdiction in Canada*.

⁸⁷ Harring, *White Man’s Law*, 32.

⁸⁸ For discussion of these “bush marriages” see: Sylvia Van Kirk, *Many Tender Ties: Women in Fur Trading Society, 1670-1870* (Winnipeg: Watson and Dwyer, 1980) ; Jennifer Brown, *Strangers in Blood: Fur Trade Company Families in Indian Country* (Vancouver: UBC Press, 1980).

⁸⁹ *Connolly v. Woolrich* (1867) (Quebec Superior Court) (reported: 11 L.C.Jur.197) (v1)

different systems of civil and even criminal law may prevail,” citing historical precedent for this legal situation.⁹⁰ It further stated that the HBC Charter did not abrogate Indigenous customs or laws, that the Charter did not apply to the Indigenous inhabitants of the land, that the Royal Proclamation only introduced English law against settlers living in North America, and that the French law did not usurp Indigenous law either.⁹¹ This case was appealed to the Queen’s Bench, and there these principles were upheld yet again.⁹² Indigenous laws were not unequivocally replaced, but rather settler laws were integrated into the new legal landscape.

After the 1870 “sale” of Rupert’s Land, however, there was an understanding within the courts that so too did the Canadian jurisdictional authority expand, though this was projected from settler authorities and did not reflect life “on the ground” nor was this accepted by the First Nations in those territories.⁹³ Still, that settlers understood their jurisdiction to have expanded represented a change in relationships in the late nineteenth century. The case of *Regina v Nan-E-Quis-A-Ka* (1889) was a case of assault that questioned both the admissibility of the witness of two Native women who were in a polygamous marriage with the accused and “the administration of the criminal law as it affects the aboriginal inhabitants of these Territories [N.W.T].”⁹⁴ In it the presiding judge established that the polygamous marriage was valid, but only because they were solemnized before July 15, 1870, when the legal transfer of Rupert’s Land was complete. This precedent was further entrenched with the cases of *Regina v Bear’s Shin Bone* (1899) which made polygamy an indictable offence against Indigenous peoples, in *Regina v Machekequonabe* (1897) which ruled that Wendigo

⁹⁰ Ibid, page 90.

⁹¹ Ibid, 78, 90.

⁹² *Johnstone v Connolly* (1869)(Q.Q.B.) (v1), 161, 218.

⁹³ See Patricia McCormack, *Fort Chipewyan and the Shaping of Canadian History* (Vancouver UBC Press, 2010).

⁹⁴ *Regina v Nan-E-Quis-A-Ka* (1889), 1 Terr.L.R. 211 (v2)

killings were manslaughter under Canadian law, and *Regina v Beboning* (1908) which established that theft from reserve land was a federal offence.⁹⁵

While the 1876 Indian Act became the guiding framework of Indian policy, as amended intermittently, it did not propose a fundamental shift in the aims or methods of the various departments that controlled Indian Affairs. Whether couched in terms of protection, assimilation, or civilization, the aims of Indian policy remained the assimilation of Indigenous peoples into the Canadian body politic.⁹⁶ Alongside Section 91:24 of the British North America Act, which made the Canadian federal government “responsible” for Indigenous peoples and the 1870 transfer of Rupert’s Land to the Dominion, the Indian Act was the key piece of colonial legislation that aggressively pursued First Nations’ assimilation.⁹⁷ According to this revamped policy regarding Indigenous peoples, status Indians were pushed to “enfranchise,” becoming Canadian citizens by revoking their Indian Status and, ostensibly, their cultural heritage.⁹⁸ This policy revoked Indigenous personhood, famously defining a person as “an individual other than an Indian.”⁹⁹ This was intended as a temporary measure that would fully assimilate Indigenous peoples into the Canadian body politic quickly and render itself obsolete. This sentiment was most famously articulated by John A. Macdonald when he said, “The great aim of our legislation has been to do away with the tribal system and assimilate the Indian people in all respects with the other inhabitants of the Dominion as speedily as they are fit to change.”¹⁰⁰

⁹⁵ *Regina v Bear’s Shin Bone* (1899) (NWTSC) (v3) ; *Regina v Machekequonabe* (1897)(Ont.Div.C) 577 (v3) ; *Regina v Beboning* (1908)(Ont.C.A.) p522, 526 (v3)

⁹⁶ Robert G. Moore, John Leslie, Ron Maguire, and Sally Weaver, Treaties and Historical Research Centre (Canada), *The Historical Development of the Indian Act, 2nd Edition* (Ottawa : Treaties and Historical Research Centre, P.R.E. Group, Indian and Northern Affairs 1978), 51.

⁹⁷ John Milloy, *Indian Act Colonialism: A Century of Dishonour, 1869-1969*. (West Vancouver: National Centre for First Nations Governance, 2008), 1.

⁹⁸ Report of the Aboriginal Justice Inquiry of Manitoba

⁹⁹ Indian Act, 1876.

¹⁰⁰ Return to an Order of the House of Commons, May 2, 1887, Canada, *Sessional Papers (No. 2b)*, 1887, 36.

One function of the Indian Act was criminalizing Indigenous cultural practices and making Indians amenable to the Criminal Code. It was quickly put to use in prohibiting Indigenous peoples from engaging in cultural practices that had vital social and political functions in Indigenous societies. One of the most egregious examples of this practice was in the ban on the Potlatch. The term “Potlatch” was a Chinook Jargon term with a particular meaning that was coopted by European settlers to define any of a series of Indigenous ceremonial events on the British Columbia coast. This type of Indigenous practice as defined by settlers in law were characterized by feasting, gift giving, and ceremonies. As Cole and Chaiken show in their book, *An Iron Hand Upon the People*, the ban was created because the potlatch and the ethic it embodied contradicted the industrial liberalist ethic of the state. In applying this ban, terms of incarceration were infrequently used, yet the threat of the penitentiary remained constant in the application of the new law, and there were conflicts where the Indian Agent was chastised for under-utilizing the full power of the criminal law.¹⁰¹ The case of Dan Cramner’s potlatch in 1922 that did end with convictions was more important for its symbolic utility than in the actual implications on the society at large.¹⁰² In short, the convictions were necessary to show the authority of the law.¹⁰³ However, it was not in the criminalization of culture itself that the penal system had the greatest impact on Indigenous peoples. Instead, when Indigenous peoples were incarcerated in increasing numbers, it was for alcohol and drug offences that stemmed from the legacies of colonialism damaging the social fabric and

¹⁰¹ Cole and Chaiken, *An Iron Hand Upon the People: The Law against the Potlatch on the Northwest Coast* (Vancouver: Douglas and McIntyre, 1990)

¹⁰² Tina Loo, “Dan Cranmer’s Potlatch: Law as Coercion, Symbol, and Rhetoric in British Columbia, 1884-1951: *Canadian Historical Review* Vol 73 No. 2 (1992): 125-165.

¹⁰³ This echoes the famous essay by Douglas Hay on the purpose of the Bloody Code in England, where he argues that the Bloody Code (a legal code that punished most crimes with the death sentence) operated effectively by harnessing the key features of “majesty, justice, and mercy.” The law worked, Hay argues, by creating an adequate pomp and circumstance around trials, to convict based on an established code, and by demonstrating mercy to keep subjects’ allegiance. For Hay, this maintained the class structure. It seems to also uphold a colonial structure in this case. See Douglas Hay, “Property, Authority, and the Criminal Law,” in *Albion’s Fatal Tree: Crime and Society in Eighteenth-Century England*. Ed. Douglas Hay et al. (New York: Pantheon Books, 1975), 17.

economic opportunities available to young people which led them to commit crimes, not that they were practicing their culture.¹⁰⁴ However, the same colonial attitudes behind outlawing Indigenous cultures were also the root causes behind Indigenous trouble with the law. In short, the causes of Indigenous incarceration came from colonial marginalization causing social fracture, not because of particular laws that criminalized specific cultural practices.

This vision of expanding jurisdiction that went with the sale of Rupert's Land influenced the interpretation of treaties by settler negotiators as well. Negotiators tried to communicate that Indigenous peoples fell under their jurisdiction. In the eyes of the representatives of the Queen, stipulations regarding the application of the criminal law within what the crown understood as ceded territory enforced rather than established criminal jurisdiction. This was because the crown interpreted treaties as subjecting Indigenous peoples to British law as a matter of course.¹⁰⁵ When the numbered treaties were being negotiated in the late 19th and early 20th centuries, the Canadian government was motivated to proactively resolve disputes and acquire prairie lands because of the threat of US expansion, expansionist aspirations of their own, and the central role the government saw in the transcontinental railroad.¹⁰⁶ Alexander Morris, a key figure in negotiating the numbered treaties, took pains to ensure that Indigenous peoples understood that under the treaties they were subject to and protected by British law.¹⁰⁷ Likewise Adams Archibald went to great lengths to ensure that those signing Treaty No. 1 were aware that "any offender against the law, shall be punished with

¹⁰⁴ The work by Patti Laboucane-Benson is useful in this regard. She published a graphic novel based on her dissertation which outlines this in a fascinating way. See: Patti Laboucane-Benson, art by Kelly Mellings, *The Outside Circle: A Graphic Novel* (Vancouver: House of Anansi Press, 2015)

¹⁰⁵ There is a distinction to make between the understandings of treaties on the side of the Crown and for First Nations. See Treaty 7 Elders and Tribal Council with Walter Hildebrandt, Dorothy First Rider, and Sarah Carter, *The True Spirit and Original Intent of Treaty 7* (Kingston: McGill-Queens University Press, 1997).

¹⁰⁶ Miller, *Compact, Contract, Covenant*, 156.

¹⁰⁷ Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories, including the Negotiations on which they were Based*, (Toronto: Belfords, Clarke & co, 1975, Reprint of 1880 edition), 73.

the utmost rigour of the law.”¹⁰⁸ Concerning issues of crime and jurisdiction, the numbered treaties were either silent, entrenched separate legal codes, or established shared jurisdiction.¹⁰⁹ One area that the written, post-1840s treaties were clear on was that non-Natives were subject to colonial law when they offended against Indigenous peoples, and in this way the Crown spread its jurisdiction to Indigenous land.¹¹⁰ These negotiations created a double standard in jurisdictional boundaries. When a settler offended against an Indigenous person, the crown assured the First Nations that they would fall under British law. Conversely, if an Indigenous person offended against a settler, British law still was taken as authoritative in this case. In other words, if there was an intercultural incident, settlers would defer to their own law, usurping the sovereignty of Indigenous peoples to prosecute. Thus, even though Indigenous peoples struggled to maintain their sovereignty in matters of social control and the law, after the treaties were signed colonial authorities used them to presume jurisdiction over the Indigenous inhabitants of Western Canada.

Indigenous peoples understood that they maintained control over internal affairs because the treaties were sacred agreements between sovereign nations; settler law existed in Indigenous lands insofar as Indigenous peoples found use for them. Through active resistance to crown negotiators, surveyors, settlers, and developers, plains First Nations asserted their sovereignty and ownership of the land. To them, the numbered treaties did not extinguish either sovereignty or ownership, and they complained when their expectations from sacred treaties did not materialize.¹¹¹ James Youngblood Henderson has argued that even the settlers originally interpreted these as documents

¹⁰⁸ Adams George Archibald, *1871 Report of the Indian Branch of the Department of the Secretary of State for the Provinces*, July 23, 1871.

¹⁰⁹ Mathias R.J. Leonardy, *First Nations Criminal Jurisdiction in Canada*. (Saskatoon: Native Law Centre, 1998), 191-200. The silence of treaties concerning criminal law has led some to the conclusion that criminal justice remains under the jurisdiction of First Nations. For example, there is no discussion of the criminal law in Treaty No. 6, which is why Saskatchewan Elders recently took the position that because justice and corrections are not specifically mentioned in Treaties, jurisdiction remains with First Nations.

¹¹⁰ Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories, including the Negotiations on which they were Based*, (Toronto: Belfords, Clarke & co, 1975, Reprint of 1880 edition), 109.

¹¹¹ Miller, *Compact, Contract, Covenant*, 154-155.

of international law based on the norms established in Victorian era nation-to-nation treaties internal to Europe.¹¹² Blair Stonechild argued that these treaties were commitments to peace, which did not imply loss of jurisdiction or sovereignty, but instead were sacred oaths that allowed Indigenous peoples to coexist with settlers. It was the sacred dimension of these covenants that ensured the peace.¹¹³ This sacred dimension to the treaty-making process, which was codified in the ceremonies leading up to negotiations and maintained in the oral traditions of Indigenous nations, was central to the meaning and intent of the treaties, yet were not recorded in the written versions.¹¹⁴ That Indigenous and settler perspectives on the meanings of the treaties are fundamentally opposed reflects a different understanding of what the treaties were.¹¹⁵

The treaties did not give unequivocal jurisdiction to Britain or Canada, but that does not mean that case law entrenched the practice of Indigenous conviction and punishment through incarceration. In 1917, two Inuit men were convicted and executed for the murder of two Oblate priests, marking the first time that the Queen's Law was applied in the Yukon Territory.¹¹⁶ Charles McCaul acting as a prosecutor in a case against an Indigenous man for the murder of two Catholic priests in the Yukon, began his arguments in 1917 by establishing that the defendants understood the law, stating, "The Indians of the Plains... have been educated on the ideas of justice."¹¹⁷ McCaul went on to explicitly state that the First Nations understood not only what the laws said, but that it

¹¹² James Youngblood Henderson, "Implementing the Treaty Order," in Richard Gosse, James Youngblood Henderson, and Roger Carter (eds.) *Continuing Poundmaker and Riel's Quest: Presentations made at a Conference on Aboriginal Peoples and Justice* (Saskatoon: Purich Publishing, 1994), 52-54.

¹¹³ Blair Stonechild, "The Indian View of the 1885 Uprising," in F. Laurie Barron and James B. Waldram (eds), *1885 and After: Native Society in Transition* (Regina: University of Regina Press, 1986), 157-158.

¹¹⁴ These themes are picked up by J. Edward Chamberlain, *If this is Your Land, Where are Your Stories?: Finding Common Ground* (Toronto: Alfred Knopf, 2003), the work of John Borrows, and Treaty 7 Elders and Tribal Council with Walter Hildebrandt, Sarah Carter, and Dorothy First Rider, *The True Spirit and Original Intent of Treaty 7* (Montreal: MQUP, 1996).

¹¹⁵ Michael Asch, (ed) *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference* (Vancouver: UBC Press, 1997).

¹¹⁶ Griffiths and Patenaude, "Aboriginal Peoples and the Criminal Law," in Silverman and Nielsen, *Aboriginal Peoples and Canadian Criminal Justice*, 73.

¹¹⁷ McCaul's Manuscript in Provincial Archives of Alberta, cited in R. G. Moyles, *British Law and Arctic Men: The Celebrated 1917 Murder Trials of Sinnisiak and Uluksuk, First Inuit Tried Under White Man's Law* (Saskatoon: Western Prairie Books, 1979), p9.

was not retributive or in search of vengeance. Thus, even when officially jurisdiction expanded there was discomfort regarding the “blind” application of colonial law. Similarly, a 1923 murder trial on Baffin Island, discussed in depth by Shelagh Grant, had the paired effect of expanding British jurisdiction to the Arctic and establishing Canadian claims to the north.¹¹⁸

It would seem then that by 1917, the Crown was established as the legal authority across Canada, but this was accomplished through practices on the ground, not in coherent application of imperial policies emanating from the colonial centres. Furthermore, each of these cases was limited in the reach that its interpretation could be stretched. In case law, as the law followed the flag, we see the gradual expansion of Canadian criminal justice alongside colonial westward expansion. This was the great aim of colonial law broadly speaking: to extend the law to mostly settler communities and gradually spread them geographically across the continent and jurisdictionally to the original inhabitants of the land.¹¹⁹ The nature of this expansion through uneven case law left open questions of sovereignty even as it laid the basis for the use of incarceration against Indigenous people.

Conclusion: Prisons of Ideas

When the Treaty 1 Elders told Archibald in 1871 that the incarceration of four of their own created “a cloud before them which made things dark,” their words were prophetic. The common gaol that held the four was qualitatively different from the penitentiary, but these negotiations took place at a historical precipice. After this point, the history of Indigenous peoples and the history of the penitentiary were tied. Because of the processes that the Treaty 1 Elders witnessed, Indigenous peoples in Canada would experience incarceration and criminalization on a cultural level, if not a personal one. Generalizations regarding the nature of Indigenous or Western justice should not be

¹¹⁸ Shelagh Grant, *Arctic Justice: On Trial for Murder, Pond Inlet, 1923*. (Montreal: McGill-Queens University Press, 2002).

¹¹⁹ Sidney Haring, *White Man's Law*, 34.

made lightly, but they were clearly grounded in distinct worldviews. Still, Indigenous peoples engaged with settler law in unique ways depending on time and place.¹²⁰ With the prison becoming the primary recourse for Indigenous peoples, and the liberal origins of the penal system, Indigenous peoples lost their sovereignty in matters of crime and justice.

The nineteenth century saw a marked shifts in the use of the penitentiary for Indigenous peoples. Under earlier legal regimes in Canada, British North America, and New France, there was an assumed sovereignty within Indigenous communities, where traditional law remained binding. Into the nineteenth century, especially after the 1876 Indian Act, Indigenous peoples came before the courts with increasing regularity especially for minor offences.¹²¹ Over the nineteenth century the penitentiary became an increasingly entrenched part of Indigenous history as a lived experience for many Indigenous people within an expanding liberal state. It remained this way until the post-WWII rise in urbanization of Indigenous peoples led to another rise in incarceration rates.

While Indigenous cultures had diverse laws, they shared features that contrast with euro-Canadian justice. First, they are rooted in sacred teaching, meaning that laws were gifts from the creator. The sources of these laws were maintained through oral traditions, which explains why settlers did not accept that Indigenous peoples had laws. Indigenous peoples also approached healing communally, so the whole community was engaged in restitution. This was done without a prison, but that ought not to suggest that these processes were not formalized or culturally maintained. The cultural basis of the prison meant that these Indigenous practices of healing could no longer exist inside the prison walls. These distinctions loom large when viewing the prison through an Indigenous historical consciousness. While it was not a straightforward process of one mechanism of justice replacing another, when by the twentieth century incarceration became the de

¹²⁰ See: Shelly Gavigan, *Hunger, Horses, and Government Men: Criminal Law on the Aboriginal Plains, 1870-1905* (Vancouver: UBC Press, 2012).

¹²¹ Gavigan, *Hunger, Horses, and Government Men*, 13-14.

facto mechanism for punishing Indigenous peoples, this system culturally alienated Indigenous peoples and eroded sovereignty by replacing older forms of Indigenous sacred law.

The penitentiary was an intellectual product its time. Indigenous peoples, as opponents or outsiders to the liberal order, necessarily needed to be reigned into this liberal dominance. The prison was one institution that set out to do that. Scholars have argued that the prison system in Canada is colonial, but they have built this argument by tracing histories of colonialism to the prison system.¹²² By exploring the prison in colonial terms *and* in light of the basic ideologies that supported it, this chapter has shown is that the prison was a central feature of the colonial apparatus. The purpose of the prison was to shape individuals based on the principles of liberalism. This means that the prison was the quintessential colonial institution because it set out in its bones to shape people into liberal Christian subject-citizens. For this reason the aims of the prison echoed policies being articulated in colonial centres: assimilation and extinction as Indians.¹²³ The prison is colonial because it was designed, built, and expanded across Canada as a colonial institution. When prisoners confronted that institution in the twentieth century, they faced the weight of their personal histories, but they were also facing over a hundred years of colonialism as operated in prisons. The blueprint of the prison system had not fundamentally changed well into the twentieth century, which is why the decolonization projects detailed later in this dissertation were so important. However, the settler colonial ethos of the prison meant that the colonial nature of the prison was not explicitly articulated or reflected upon by settler authorities. Still, the expansion of British law was inextricably shaped by settler colonialism. But while the prison was built of more than stone and iron, we cannot discount

¹²² See: Deena Rymhs. *From the Iron House: Imprisonment in First Nations' Writing*. (Waterloo: WLU Press, 2008) ; Michael Gauthier, "The Impact of the Residential School, Child Welfare System and Intergenerational Trauma upon the Incarceration of Aboriginals." MA Thesis, Faculty of Education, (Queens University, 2010). ; Elizabeth Grobsmith, *Indians in Prison: Incarcerated Native Americans in Nebraska*. (Lincoln: University of Nebraska Press, 1994) ;

¹²³ Here I echo the famous, oft-quoted justifications of the Residential School system, and the articulations by John A. Macdonald of the "great aim of our Indian Policy."

the physical, material realities that shaped experience of incarceration in the nineteenth and twentieth centuries.

Chapter Three: The Prison as a School of Liberalism: Indigenous Peoples within the Penitentiary, 1834-1950

In the building, maintaining, and operating of reform penitentiaries, the liberal thought became the penal deed. The expansion of Canadian liberalism into Indigenous lands was a colonial project, but without enforcement of the law, the lofty rhetoric of treaty negotiators, policymakers, and politicians would have been toothless. Still, the prison set out to do more than punish: it wanted to create a new kind of individual. It aspired to do this through education and penitence. The penitentiary system in Canada began with the 1834 *Penitentiary Act*, which echoed England's *Penitentiary Act* of 1779; it outlined the paired task of deterrence and reforming inmates to becoming industrial workers through "solitary imprisonment, accompanied by well-regulated labour and religious instruction."¹ But what did the prison teach? As an institution steeped in liberal colonial values, Indigenous inmates endured a crash-course in "civilization." For this reason, it is useful to consider the reform penitentiary as an institution that fit within what Michel Foucault termed "a whole series of 'carceral' mechanisms... which all tend, like a prison, to exercise a power of normalization."² In other words, the prison fit within a series of institutions that hoped to modify human beings to an ethic rooted in state power, or in this case, colonial power.

The colonial undertones to penal rituals are striking. Upon first admittance, inmates entered through the imposing penitentiary gates, designed to be imposing and instill the values of the emergent industrial capitalist liberalism. When inside the penitentiary, the inmate was searched, their belongings seized, their clothing burned, and they were given prison garb.³ The inmates' hair was cut short and they shaved, separating them from their previous life and giving them a new identity. The

¹ An Act to Provide for the Maintenance by the Government of the Provincial Penitentiary, (1834), 4 Will. IV.

² Michel Foucault, *Discipline and Punish: The Birth of the Prison* trans. Alan Sheridan, 2nd Edition (New York: Vintage Books, 1995, original 1977), p308.

³ Ted McCoy, *Hard Time: Reforming the Penitentiary in Nineteenth Century Canada* (Edmonton: Athabaska University Press, 2012), 141-145.

practice of keeping inmates hair short continued into the late twentieth century.⁴ Finally, they were assigned a trade to prepare them for re-entry into the Canadian industrial economy.⁵ This system was called the “Auburn System,” built on the model first constructed in 1820s at Auburn State Penitentiary in New York developed by Quaker prison reformers. In an effort to facilitate reflection, the Auburn model enforced total silence at all times, and minimized contact with the outside world. In Canadian prisons, the chaplain took on an increased level of authority and responsibility, often as a schoolteacher. This made the penitentiary a school of discipline, religion, industry, and English culture.

As part of a colonial network, the penitentiary resembled the residential school in both form and function. Most striking is the cutting of long hair, a practice that has become emblematic of the assimilatory goals and cultural damage done by institutionalizing Indigenous children. Upon incarceration, adults underwent these same processes.⁶ Prisons and residential schools trace their origins to the Bagot Commission Report discussed in the previous chapter. This was because the colonial ethos ran deep; without designing an explicitly colonial institution, the Penitentiary Act was a template that mimicked colonial institutions of liberal education. This so closely resembled residential schools as to make the comparisons impossible to avoid, even though the prison administrations never invoked residential schools as a model. In advancing the potential of the prison regarding Indigenous peoples, wardens and prison inspectors used the same language as residential school staff used for their pupils. They described inmates “before and after” their terms

⁴ The 1964 Standing Orders for Manitoba Penitentiary read, “At the time of reception and thereafter, a male inmate shall have his hair cut conservatively and in keeping with moderate practice. Unorthodox, distinguishing, and attention-attracting styles or extremely long hair shall be avoided.” “Manitoba Penitentiary Standing Orders,” Warden F.S. Harris, March 1, 1964.

⁵ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, May 15, 2013. See also: The Report of Donald Aeneas MacDonell Esq., Warden of the Provincial Penitentiary of Canada (Kingston), in Appendix No. 4 to the Sixteenth Volume of the Journals of the Legislative Assembly of the Province of Canada, (Ottawa: Queens Printer, 1858), Report not paginated.

⁶ Gauthier, Michael. “The Impact of the Residential School, Child Welfare System and Intergenerational Trauma upon the Incarceration of Aboriginals.” MA Thesis (Faculty of Education), Queens University.

of imprisonment, reminiscent of promotional material regarding Residential Schools. Prison staff infantilized the inmates, equating them with children. This served the dual function of assuming European superiority and “solving” the paradox of a liberal institution that was exclusionary regarding Indigenous peoples, which was a strategy of imperial liberalism.⁷ While the rituals of entry into the prison were applied to all inmates, they were developed according to the values of a culturally foreign liberal Christian citizenship, which explains the distinctly racialized nature of these rituals for Indigenous inmates.⁸ All of these practices were hallmarks of the Indian Residential School system, and reflected colonial policies of Victorian Canada.⁹

While there are direct links between Residential Schools and the penal system, it would be reductionist to interpret the penitentiary as an exact replication of the schools. For one part, the prison system was designed and built without a distinctly racial aim, but rather to transform all of its subjects to Christian citizens. In other words, while the residential school system was built to assimilate Indigenous children, the prison was built to reform adult convicts. Both aspired to take so-called deviants from the liberal order and turn them into productive citizens, but the schools self-consciously fulfilled a colonial agenda. Penitentiaries could easily fit that mould, but that was incidental to the colonial context and was not fundamental to their design. Secondly, it was adults who entered prisons, and administrators questioned the potential for Indigenous reform. This was logical given that the founder of Shingwauk Residential School, Rev. E.F. Wilson, termed

⁷ Uday Singh Mehta, “Liberal Strategies of Exclusion,” in *Tensions of Empire: Colonial Cultures in a Bourgeois World*, Frederick Cooper and Ann Laura Stoler, Eds (Berkeley: University of California Press, 1997), 79-80. This is discussed in more detail in the previous chapter.

⁸ These racial dynamics also played out against Asian and Black inmates who were also defined by the system according to racialized categories.

⁹ See: Furniss, Elizabeth *Victims of Benevolence: The Dark Legacy of William Lake Residential School*. 2d ed. (Vancouver: Arnel Pulp Press, 1995); Haig-Brown, Cecilia. *Resistance and Renewal: Surviving the Indian Residential School*. (Vancouver: Tillacum Library, 1988); Miller, J.R. *Shingwauk's Vision: A History of Native Residential Schools*. Toronto: University of Toronto Press, 1996); Milloy, John. *A National Crime: The Canadian Government and the Residential School System, 1879-1986*. Winnipeg: University of Manitoba Press, 1999.

Indigenous adults “the old unimprovable people.”¹⁰ Because adults were seen as less capable of achieving civilization, this institution was viewed with less optimism than the school.

The impact of prisons on Indigenous peoples was uneven, and they only received policy consideration when they were present in very high numbers. Therefore, western Canadian institutions drove policy regarding incarcerated Indigenous peoples. The most famous example was Manitoba Penitentiary at Stony Mountain where the Indigenous leaders from the 1885 resistance were housed. These western prisons also represented an ordering of the frontier, which had a literal dimension as the stone walls and panoptical construction of the institutions themselves assigned order to previously “wild” Indigenous land.¹¹ Indigenous peoples exist as spectral figures within prison records, but by reading against the grain this chapter shows how they experienced incarceration. This shows how in practical terms the prison functioned within a colonial network.

The Early History of the Reform Penitentiary in Canada

The prison system was built at a time of significant changes in the relationship between Indigenous people and the Canadian state. A new North American economy, political stabilization that marginalized their once vital military role in imperial disputes, Indigenous demographic decline relative to settler populations, and the racial quasi-scientific theories of the day marginalized Indigenous peoples.¹² Links between Indian policy and penal administration, while not directly stated, are evident when reading the sources available against the grain. While the reform penitentiary in Canada was originally designed for Canadian citizens, Indigenous peoples felt the impact of institutionalization as part of a larger colonial networks of carceral colonialism.

¹⁰ John Milloy, *A National Crime*, 26.

¹¹ For a good discussion of how land was given meaning and shaped according to cultures, see Colin Coates, *The Metamorphosis of Landscape and Community in Early Quebec* (Montreal: McGill-Queens University Press, 2000).

¹² Miller, *Skyscrapers Hide the Heavens*, 83-98.

The opening of Kingston Penitentiary in 1834, then known as the Provincial Penitentiary, began with the passage in 1833 of the *Bill for the Erection of a Provincial Penitentiary*, initiating its construction.¹³ A key problem in Upper Canadian society that the penal system attempted to remedy was the use of gaols for diverse purposes such as housing drunks, paupers, and debtors, while intermingling them with the insane and the hardened criminals.¹⁴ This was the beginning of a set of legislative moments which developed a carceral landscape, separating people into purpose-built institutions through the *Penitentiary Act* (1834), the *House of Industry Act* (1837), and the *Asylum Act* (1839). Specifically, the *Penitentiary Act* established the paired goals of reformation and deterrence, the historic hallmarks of the penal system, as the justification and purpose of the system.¹⁵ Everything about the construction of and routine in these institutions was meant to inculcate liberal, industrial values.¹⁶ As the designers of the prison, settlers believed in the perfectibility of the human psyche through Christian penance. Of the penitentiary, poorhouse, and asylum, it is the penitentiary that had the greatest staying power.

The traditional explanation for the birth of the penitentiary in Canada is that H.C. Thomson, a reformer and member of the House of Assembly from 1825 until 1834 succeeded in his humanitarian mission that traced back to an 1826 motion to the House that recommended the construction of the penitentiary. According to this interpretation, and in line with Whig historians who view the penitentiary as part of a progressive system of criminal justice, the Provincial Penitentiary was a response to brutal or ineffective methods of punishment, including fines,

¹³ Ted McCoy, *Hard Time*, 32.

¹⁴ Peter Oliver, *Terror to Evil-Doers*, 59.

¹⁵ *An Act to Provide for the Maintenance by the Government of the Provincial Penitentiary*, [1834], 4 Will. IV, c. 37.

¹⁶ For literature on the ideological role on prison architecture see: Norman Bruce Johnston, *The Human Cage: A Brief History of Prison Architecture* (New York: The American Foundation, Institution of Corrections, 1973) ; Robin Evans, *The Fabrication of Virtue: English Prison Architecture, 1750-1840* (Cambridge: Cambridge University Press, 1982) ; Norman Bruce Johnston, *Forms of Constraint: A History of Prison Architecture* (Chicago: University of Illinois Press, 2000). Prison Architecture also factors heavily into the theoretically driven work of Michel Foucault, especially in *Discipline and Punish*.

whipping, or execution.¹⁷ Scholars of this ilk take the authors of the *Penitentiary Act* at their word, viewing the only goals of the penitentiary as reformation and deterrence. They question which of those two were more important, but do not question the act's motivations. They argue that it was a collective moral panic that brought about the birth of the prison. More recently scholars have questioned whose interests the penitentiary served. In his famous work, *Discipline and Punish*, Michel Foucault argues that the prison refined punishments pioneered in public executions, creating a more effective institution for controlling the population.¹⁸ Historian Peter Oliver argues that the Canadian prison system reflected elite values and anxieties, and only indirectly reflected wider social concerns. He challenges the existence of that social panic, because outside of elite coverage of the so-called crime wave, little evidence supports its existence.¹⁹ His argument convincingly explains the crisis that so quickly enveloped the young institution; the penal system in Canada fell into a crisis because of contradictions between the goals of those who shaped the system and those who ran it.

Kingston Penitentiary quickly failed to live up to the ideals of deterrence and reformation articulated in the *Penitentiary Act*, and this failure became a recurring theme in Canadian penal history.²⁰ Within a decade, in 1849, a commission was appointed to investigate charges of sadism and poor administration that took place in the Provincial Penitentiary, and it concluded that “barbarous” punishments meted out within the walls were “disgraceful to humanity.”²¹ Although Indigenous peoples were not referred to as a particularly at-risk demographic, one example of

¹⁷ Rainer Baehre, “Origins of the Penitentiary System in Upper Canada,” *Ontario History* 69 (1977), 189. ; C.J. Taylor, “The Kingston Ontario Penitentiary and Moral Architecture,” *Histoire Sociale/ Social History* Vol. 13 (1980), 386. For the leading voice regarding this approach to criminal justice, see: Leon Radzinowicz, *A History of English Criminal Law and its Administration from 1750* (London: Stevens, 1948).

¹⁸ Foucault, *Discipline and Punish: The Birth of the Prison*, 2nd Edition, Trans. Alan Sheridan, (New York Vintage Books, 1995, original translation 1977).

¹⁹ Peter Oliver, *Terror to Evil-Doers: Prisons and Punishment in Nineteenth-Century Ontario* (Toronto: University of Toronto Press, 1998), xxi.

²⁰ Michael Jackson, *Justice Behind the Walls*, 19.

²¹ Reports of the Commissioners Appointed to Inquire into the Conduct, Discipline, and Management of the Provincial Penitentiary: With the Documents Transmitted by the Commissioners (Montreal: Rollo Campbell, 1849), 49.

inhumane treatment cited by the commission was when Warden Frank Smith shot an Indigenous inmate with an arrow another Indigenous inmate fashioned.²² Most of the witness statements collected for evidence spoke of Warden Smith frequently shooting “convicts” with arrows “made by Indian Abraham and others.” It went on, “Smith and other Keepers and Guards used to fire with the bow and arrow at targets, and at one another, while the convicts were at meals; this happened very often.”²³ The clearest evidence that First Nations inmates were specifically targeted came from an affidavit from Isaac Evrett, defined as “an Oneida Indian.” It reads at length:

John Abraham, of the same tribe of Indians, was a Convict in the said Penitentiary for the same period, with deponent, and while there thinks in the month of February in 1847, when entering the passage to their cells, No. 18 and 19, deponent was informed by Abraham that he had that day got one of his eyes injured, from the shot of a blunt arrow from a bow, by Frank Smith, one of the Stewards of the Institution. The day it was done, saw the said Smith have in his hands a bow; shortly after, saw the Convict Abraham’s head tied up with a white cotton handkerchief. Subsequent to having seen Abraham’s head tied up; the said Smith shot from the bow a blunt arrow at deponent, which struck him between the shoulders, which caused deponent to say to the said Smith, what made him do that? if he served him so again, that although a Convict, he would break his arrows as well as his head, as he would not be so abused.²⁴

The entire exchange suggests a culture of violence among the prison leadership. After this incident, Smith bribed Abraham with what Evrett where power was not entirely concentrated in the hands of the authority. This is one of the few documented examples of Indigenous resistance to those operating the system, which is suggestive that resistance was more common than the gaps of the records suggests. Also, the entire episode circulated around Indigenous craftsmen creating traditional hunting weapons, which also undermines some of the rhetoric of policymakers. What makes this all the more unusual is that at that time there were few Indigenous inmates recorded as

²² Reports of the Commissioners Appointed to Inquire into the Conduct, Discipline, and Management of the Provincial Penitentiary, 87.

²³ Reports of the Commissioners Appointed to Inquire into the Conduct, Discipline, and Management of the Provincial Penitentiary, 87.

²⁴ Reports of the Commissioners Appointed to Inquire into the Conduct, Discipline, and Management of the Provincial Penitentiary, 88.

incarcerated in Kingston. As of 1856, for example, of 395 inmates in the Provincial Penitentiary there were recorded only six “Indians,” a statistic that seems to indicate that this assault was targeted, though this is admittedly conjecture, and the warden could have shot the particular Indigenous prisoner out of either coincidence or a racial motive.²⁵ The commission was roundly critical of the administration of the institution, and it inspired a renewed focus on reform, even as the Auburn model, upon which the system was built a mere few years earlier, persisted.²⁶ In fact, the reticulation of the penal system in 1851 recommended a merger of the silent system based on the Auburn model and the Separate System, which was pioneered in Eastern State Penitentiary in Pennsylvania and Pentonville Prison in London, which put its subjects in complete isolation for the entirety of their sentences.²⁷ At Kingston Penitentiary, the inmates were kept in solitary confinement for a period following admission into the prison, and then brought out into the rest of the population, though the rule of silence continued to be applied. In the aftermath of the report, what was changed was a focus where the goal of the prison administration was to “err on the side of humanity,” and it did this by rearticulating the role of the prison chaplain.²⁸ Still, the disagreements on the purpose of the prison, whether it be to rehabilitate or to punish, remained unresolved.²⁹

Where Indigenous peoples fit within this newly reformed penal system was not altogether clear. Wardens, chaplains, schoolteachers, and administrators necessarily used the logic used in other colonial institutions to carve out a place for Indigenous inmates in the prison. In Upper Canada, there was also little systematic thought given to Indigenous peoples in prisons because the recorded

²⁵ Kingston Penitentiary Wardens Report, 1859, Report not paginated

²⁶ Ted McCoy, *Hard Time*, 61.

²⁷ For literature on these two systems, two deservedly revered works in the historiography are: Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850* (New York: Pantheon Books, 1978) and David Rothman, *The Discovery of the Asylum: Social Disorder in the New Republic* (Boston: Little Brown, 1971). For a more recent overview of the history of prisons, see: David Rothman and Norval Norris (eds) *The Oxford History of the Prison: The Practice of Punishment in Western Society* (New York: Oxford University Press, 1998).

²⁸ Michael Jackson, *Prisoners of Isolation: Solitary Confinement in Canada* (Toronto: University of Toronto Press, 1983), 28-29.

²⁹ Peter Oliver, *Terror to Evil-Doers*, 195-221.

number of inmates within the walls tended to be so small.³⁰ Thus, most of the ruminations concerning Indigenous peoples reflected individual cases. Administrators interpreted their role concerning Indigenous inmates in helping them to joining the European economy by training them in “civilization.” Therefore, the penitentiary became a school, and Indigenous inmates became pupils. As the role of chaplain schoolteacher often became one in the same, this individual was central to this education, as was the guidance of the institutional wardens who encouraged institutional innovation. Chaplains developed classes for Indigenous peoples that taught religion and academics. For example, in 1869 the Protestant chaplain of Kingston Penitentiary reported, “I have recommended an Indian Class to be formed, and the Warden has consented, for the benefit of uninstructed and heathen convicts, should any such occur.”³¹

These goals came together in the case of Augustus Johnson. Mr. Johnson was, “in every sense of the word, a ‘Wild Indian,’” in the words of the schoolteacher at Kingston Penitentiary, James Gardiner, who reported:

It will be remembered that in my Report for 1855, I mentioned more particularly two Indians, Peter Monture and Augustus Johnson, who knew nothing whatever when they came here, but especially Johnson who was, in every sense of the word, a “Wild Indian:” and a worshipper of the “white dog” which their Chief immolated once a year in presence of the assembled savages. He did not know a single word of English, French or any other language than the Indian, so that the circumstances in my favour in the teaching of him were any thing but favourable, but I must say, my humble efforts were attended with a success beyond the power of man, for when His Excellency the Governor General visited the Prison and pardoned him, he could speak the English language well, write an excellent hand, had learned the English grammar, and ciphering as far as practice, geography, and a little book-keeping. I also taught him to write the language of his own tribe, the Tuscarora, which has never been written by any one before him. By comparing the sounds of the letters in some of the modern languages of Europe, I found, strange as it may appear, that it seemed to combine all the sounds of the English, French, Spanish

³⁰ By end of the 19th Century, of a prison population that hovered around 1400 inmates, only 30-35 were listed as “Indian” in departmental reports. This may be misleading, because race was recorded based on visual appearance only, so many may have been registered as “white” or “Oriental.” These numbers should be read as a projection of the ideas of prison staff, and in that regard, staff did not perceive Aboriginal peoples as represented in prisons in significant numbers.

³¹ Charles Pelham Mulvaney, Protestant Chaplains Report, in *Second Annual Report of the Directors of Penitentiaries of the Dominion of Canada for the year 1869*, 24.

and German alphabets, so that by combining the letters, accents, etc, of these languages, I succeeded in forming an alphabet by which he was able to write every word in his own. He then commenced to translate portions of Scripture, &c, into Tuscarora, amongst the rest were the 100th Psalm, several chapters of the New Testament, the Creed, the Lord's Prayer, and the Ten Commandments, and a portion of a book sent to him by a lady in Kingston; he also told me if he lived, for his health at one time was very poor, that he intended translating the whole of the New Testament for the benefit of his tribe, and I have been informed since he left, that arrangements are being made by some societies to carry that into effect. He is now with the Oneida Indians teaching a large and flourishing School of something about a hundred children³²

Gardiner explained what he meant by describing Johnson as following Indigenous spirituality, speaking only Indigenous languages, and as unaccustomed to institutions that were central to Gardiner's "civilization."

Johnson's case was important for the penal apparatus because his successes, as described by the chaplain, bespoke to numerous areas of liberal colonialism. The central transition in Johnson's life was from Indigenous spirituality to Christianity, which reflected a wider shift from "savagery" to "civilization." His grasp of the English language and learning to read and write was also included as central to this transition. Interestingly, his contribution to the mission endeavor was defined as both a cultural intermediary during his incarceration and after release. After release, his role as an Indigenous catechist was central to the work of the mission at Six Nations. However, the symbolic import of his work transcribing the Tuscarora language into written text was arguably more significant. It bestowed a documentary order to the undocumented Tuscarora language. Even though Gardiner took credit for creating the alphabet, by translating parts of scripture, Johnson represented the ideal result of terms of incarceration. The chaplain of the provincial penitentiary also noted the change in Johnson, though he did not cite him by name, saying,

As an instance of the change of spirit which here sometimes, through the blessing of God, takes place in a Convict, it may be remarked that an Indian of the Tuscarora Tribe, who was brought up in Paganism, wholly ignorant of the

³² James T. Gardiner, "School Teacher's Report," *Penitentiary report, for the year 1856* (Ottawa : Hunter, Rose and Company, 1856), report not paginated.

English language, destitute of all religious knowledge, and in all the habits of vice and crime incident thereto, became here a new man.³³

That Johnson's case was celebrated from within the prison was eminently predicable. The way that this case was discussed parallels the more famous trope of children before and after tuition at Residential Schools, which were promoted as illustrating the reformatory power of the schools.³⁴ The penitentiary served its colonial purpose as it "taming" the so-called "Wild Indian." When he "became a new man," Johnson simultaneously fulfilled the colonial and carceral ambitions, which was reformation according to Christian principles.

The Indigenous Prison: Manitoba Penitentiary

Those in charge of the penal system gave Indigenous prisoners little thought until after confederation when the prison system expanded and Manitoba Penitentiary was built.³⁵ This was because with the construction of Manitoba Penitentiary, First Nation and Metis people became prisoners in significant numbers for the first time. Because the penal system was in its infancy and too few Native inmates were incarcerated in the reform penitentiary, there was no motive to address Indigenous peoples. In the construction of the Penitentiary in Manitoba in 1877, prison administrations gave Indigenous peoples consideration outside the anecdotal attention they had received to that point. Manitoba Penitentiary was unique in that it directly confronted issues of Indigenous incarceration. The prison represented the westward push of the state into Indigenous lands. Warden Bedson, Manitoba Penitentiary's first Warden, brought together the heretofore

³³ Hannibal Mulkins, "Chaplain's Report," *Penitentiary report, for the year 1856* (Ottawa : Hunter, Rose and Company, 1856), report not paginated.

³⁴ John Milloy, *A National Crime: The Canadian Government and the Residential School System, 1879-1996*, (Winnipeg: University of Manitoba Press, 1999), 3-10.

This also echoes the way missionaries wrote about Indigenous conversions.

³⁵ These are Kingston Penitentiary, St Vincent de Paul (1873), Manitoba Penitentiary (1877) British Columbia Penitentiary (1878), and Dorchester Penitentiary (1880)

disparate strains of liberalism, Indigenous populations, and the penal state. In short, Bedson made the colonialism of the penitentiary explicit.

Manitoba Penitentiary began as a municipal gaol-house in Lower Fort Garry, a fur trading post and sale-shop for Rupert's Land. In 1871 it became the home for the first prison in Manitoba. When Manitoba entered Confederation, the subsequent report of the Inspector of Penitentiaries noted that while there was no commission set out "for the management of penal affairs," that the system that existed under the HBC could not carry on unaltered, and the commissioner anticipated the introduction of a new penitentiary as part of this process of state expansion.³⁶ In reviewing the year 1871 in "our humble little province," *The Manitoban* lauded the achievements of the previous year, writing that "the man who shall write the history of 1871 will have the material for a magnificent record."³⁷ The paper situated Manitoba within a global and local context. It noted the influence of the Métis Resistance of 1869-1870, inter-racial conflict between the French and English, and the establishment of a stable government. This included the establishing of the rule of law through building a police force, a census, electoral mechanisms, a code of laws, and a new jail. The existing jail was in use as a military hospital, so settlers adapted a stone building formerly used by the HBC, transforming it into a penitentiary. Immediately after discussing the construction of the Penitentiary, the report discussed "the question of the Indians," which the author erroneously believed were "resolved" by treaties that ceded the land and subjected them to settler laws. The paper concluded, "Out of the chaos in which the arrival of the Lieutenant-Governor found us order and peace have been evoked."³⁸ Thus, the construction of the penitentiary symbolized the completion of the legal expansion of the Canadian state.

³⁶ Fourth Annual Report of the Directors of Penitentiaries of the Dominion of Canada for the Year 1871 (Ottawa: LB Taylor, 1872), 5.

³⁷ "Manitoba, The History of a Year," *The Manitoban in Journals of the House of Commons of the Dominion of Canada from the 26th March to the 26th May, 1874... Being the 1st Session of the Third Parliament of Canada, Session 1874* (Ottawa: Hunter Rose, 1874), No. 6, 158.

³⁸ *Ibid.*, 158-159.

Settler contemporaries saw the penitentiary building itself as representative of the process of making order out of chaos by ordering the landscape. A panoptical institution modelled on Kingston Penitentiary, Manitoba Penitentiary replaced the stone fort at Lower Fort Garry in 1877. Samuel Bedson became its first warden. During construction, the Inspector of Penitentiaries J.G. Moylan reported, “When the new Penitentiary, now in the course of erection, will have been completed, affording adequate means for the safe custody of the inmate, and for carrying on those industrial employments so essential to the good order and discipline of all such institutions, it is but reasonable to conclude that Mr. Bedson will be found equal to all the requirements as Warden.”³⁹ Those “industrial employments” were necessary because the reformatory project of the penitentiary was rooted in the reformatory potential of work and Christianity. Thus, industrial work was part of the process of training to enter liberal society. Bedson was seen as the ideal candidate for Warden in spite of his complete lack of experience because of his military background. He had no penal experience, but was an expert in discipline and individual responsibility.

Manitoba Penitentiary was appropriate as a metaphor for the ordering of “wild” land just as the prison itself reformed the convict because of its failures. By 1878 there were already concerns voiced regarding the fire risk because of construction materials and lack hose with which to fight fires. As this was the only penitentiary that could hold inmates in an already remote province, weak points in fire safety were especially alarming. In addition, there were no drains on the east side of the prison, so when rains came they flooded the entire eastern wing. In 1879 Warden Bedson was bed-ridden three months with Typhoid fever, which the penitentiary’s surgeon attributed to poor drainage in the penitentiary.⁴⁰ Finally, the heating system was built for mild Ontario winters and it

³⁹ Jas. G. Moylan, “Report of the Minister of Justice as to Penitentiaries in Canada for the Year Ended 31st December, 1875,” (Ottawa: Maclean and Roger, 1876), 24-25.

⁴⁰ Samuel Bedson, *Report of the Minister of Justice as to Penitentiaries in Canada for the Year Ended 30th June, 1879* (Ottawa: MacLean and Roger, 1878), 163.

was not powerful enough for Manitoba's harsh climate.⁴¹ After years of pleading with the inspector of penitentiaries to visit the prison at Stony Mountain, Bedson finally got his wish in 1878. The Inspector then reported that because of grave errors in the construction of the prison, the penitentiary was in "shamefully defective condition." He went on to write in the harshest tone, "Anything more unsuited to the purpose for which it was intended, judging by the plan, it were difficult to conceive."⁴² In "ordering" the landscape, colonists created more problems than they solved. Also, if the prison was meant to convey the power of the law, the problems within it represented the failings of the law and the disorder that came with the settlement.

The man tasked with running the penitentiary also represented the mission of the penitentiary. Samuel Bedson captured the connections between liberalism, Indian policy, the correctional system in Canada, and a belief in the onward march of Canadian "civilization." Bedson was every bit the product of liberal Canada; like his father before him, Samuel Bedson also began his career as a private in the military.⁴³ Upon the dissolution of his brigade after the 1871 Red River campaign, he became the warden of Lower Fort Garry Federal Penitentiary and moved to become the first warden of Stony Mountain Penitentiary.⁴⁴ Bedson became famous for adapting his military training to penal life, quickly garnering a reputation for instilling order in penitentiaries. His firm belief in the capacity to reform prisoners through training in religion, academics, and trades became his trademark. Samuel Bedson's tenure at Manitoba Penitentiary became a model of penal administration throughout the country. In 1882, because of severe disciplinary problems at St Vincent de Paul Penitentiary in Quebec and the removal of its warden, Bedson was assigned to

⁴¹ Samuel Bedson, "Manitoba Penitentiary Annual Report," *Report of the Minister of Justice as to Penitentiaries in Canada for the Year Ending 31st December, 1877* (Ottawa: MacLean and Roger, 1878), 126.

⁴² J.G. Moylan, *Third Annual Report of the Inspector of Penitentiaries of the Dominion of Canada for the Year 1878* (Ottawa: MacLean and Roger, 1878), 15.

⁴³ Sessional papers of the Dominion of Canada : volume IV, third session of the first Parliament, session 1870 (Ottawa : I.B. Taylor), 118.

⁴⁴ Lee Gibson, "Bedson, Samuel Lawrence," in *Dictionary of Canadian Biography*, vol. 12, University of Toronto/Université Laval, 2003–, accessed May 1, 2014, http://www.biographi.ca/en/bio/bedson_samuel_lawrence_12E.html.

regain order within this unruly institution over the span of two months, thanks to his record as an exceptional administrator and disciplinarian.⁴⁵

For all his innovations, Samuel Benson was committed to the same mission as the Upper Canadian institutional personnel. In an annual report submitted as Warden of Manitoba Penitentiary, he illustrated the good conduct of prisoners and the success of the new penitentiary with another “success story.” Two “Sioux Indians” were incarcerated for three years between 1871 and 1873, and Bedson wrote that they had embraced what he saw as the uplifting potential of their terms of incarceration. In telling these two men’s stories, Bedson fastidiously maintained the literary trope of Indigenous “civilization.” He began by describing them on first arrival as, “most troublesome” and prone to attempting escape. After three years in Manitoba Penitentiary, Bedson bragged, they were working in the prison, one as an orderly and the other at the shoe shop. Equally importantly, both learned to speak English. Thus, two Indigenous men who were “totally unfit for civilization” or “industry” became the image of economic participation. Bedson closed this narrative by writing,

One of them, ‘Ma-ha-ha *alias* Frighten’ appeared before me and stated that he wished to work like the white man, and when he got out of prison he intended seeking employment instead of going back to his band, where he would have frequently to steal to obtain a living.⁴⁶

Like in Johnson’s case, Ma-ha-ha represented the carceral and colonial ambitions of assimilation through education in liberal, industrial values.

Bedson was a penal innovator who still believed in the model upon which Kingston Penitentiary was originally built. For example, he developed a system whereby inmates could communicate their needs with guards without breaking the code of silence by waving wooden rods painted white, where one tip was marked black for a non-pressing concern, while the other was

⁴⁵ *Report of the Minister of Justice as to Penitentiaries in Canada for the Year Ended 30th June, 1882* (Ottawa: Maclean Roger, 1883), 64, 122.

⁴⁶ Samuel Bedson, “Manitoba Penitentiary Report.” *Sessional Papers: Third Session of the Third Parliament*, vol 9 no. 14, (January 31, 1876), p138.

painted red for an emergency.⁴⁷ However, Bedson was most optimistic regarding spiritual and educational programming. Within two years as the Warden of Manitoba Penitentiary, Bedson designed an education program for Indigenous inmates that he described as “eminently successful.” reporting,

The expiration of the terms of punishment in the case of Indian prisoners is not unfrequently (sic) looked upon by themselves with positive regret. They enter ignorant and superstitious, and easily moulded for good or bad. The routine of prison life, and the opportunities constantly thrust upon them for moral and intellectual improvement, is seldom lost, and they leave... radically changed for the better, in almost every particular.⁴⁸

This program was explicitly designed for the “uplifting” of Indigenous inmates so that they could live within the confines of “civilized” society. Under the tutelage of Rev. Gabriel Cloutier, the Roman Catholic Chaplain in the institution, classes were given specifically to the Indigenous inmates in English, French, and Cree so inmates would dutifully fulfill their roles in the Euro-Canadian economy. Writing of the class, Bedson praised its successes in writing,

The class consists of Indians only. Most of them at the opening of the school understood English very imperfectly; they now can read and write, and their progress is most marked, and much greater than could have been expected. They show great diligence, and seem most anxious to learn. The school greatly relieves the monotony of the imprisonment, and they look forward with pleasure to the hours spent in receiving instruction.⁴⁹

Unfortunately, the record falls silent on the Indigenous peoples’ responses to these programs, except for the growing enthusiasm administrators had for it.⁵⁰ This program continued because the warden and staff saw it as good correctional policy that maintained order in the institution. One guard,

⁴⁷ Samuel Bedson, , *Third Annual Report of the Inspector of Penitentiaries of the Dominion of Canada for the Year 1878* (Ottawa: MacLean and Roger, 1878), 149.

⁴⁸ Samuel Bedson, “Manitoba Penitentiary Annual Report,” *Report of the Minister of Justice as to Penitentiaries in Canada for the Year Ending 31st December, 1877* (Ottawa: MacLean and Roger, 1878), 127.

⁴⁹ Samuel Bedson, “Manitoba Penitentiary Report,” *Sessional Papers of the Fourth Session of the Third Parliament of the Dominion of Canada*. Vol 8 No. 15 (January 7, 1877), 180.

⁵⁰ This gets to a persistent problem in studying the history of Indigenous peoples through the documentary record. As stated by Lenore Keeshig-Tobias, “The most we can hope for is that we are paraphrased correctly.” Cited in Ute Lischke and David McNab, *Walking A Tightrope: Aboriginal Peoples and their Representations* (Waterloo: Wilfrid Laurier University Press, 2005), 1.

according to Cloutier, was overheard “wishing that all the prisoners would behave as well as the Indians.”⁵¹ This, it was affirmed, was the product of the dedicated work of staff and educators within the walls, and of course the firm guidance of Bedson himself.⁵² The record is frustratingly silent regarding whether those participating in the program were interested in its goals, or if they even had a choice whether they would attend.

Father Cloutier, Roman Catholic chaplain at Stony Mountain Penitentiary, addressed how prisons could operate regarding Indigenous peoples. In his 1884 report he summarized the program of instruction and captured the colonial mindset whereby these programs were developed:⁵³

The leading event of the year has been the departure of fifteen Indians, who were discharged on account of good conduct. They left the institution towards the middle of April. They had been instructed in the truths of religion, and His Grace, the Archbishop of St. Boniface, had been so good, in compliance with an invitation, as to come and confer on them the rite of baptism. The usual imposing ceremonial made a deep impression on the susceptible imaginations of the Indians. The Actions of the Government in this matter is beyond all praise. The Indians are big children, and their sensitive hearts cannot fail to have been touched when they were discharged before the expiration of the full term of their sentence. They understood that the whites were not their enemies; they understood that in every society there are men who rule, and others who are ruled; that if the law is not to remain a dead letter, it must be upheld; that respect for the law is to their own advantage, and its violation a cause of trouble, and that the welfare of all demands that its violators be punished. They understood all this in a general way; but their convictions were shaken when they were told that their punishment was for their own good.

...

Their discharge by remission, as a reward for good conduct, may, perhaps, produce another result. They will tell what has been done for them; they will make known the real purpose held in view by those who administer the laws, and they will point out the duties devolving upon those who are subject to those laws. They will help to remove the mistrust existing amongst the Indians towards the officials of the Government, and will inspire them with that confidence which is

⁵¹ Sessional Papers of the Dominion of Canada, Volume 9, Second Session of the Fifth Parliament, Session 1884, (Ottawa : MacLean, Roger, 1884), p115.

⁵² The previous Chaplain, Lacombe, reported, “I am happy to say that I feel very well satisfied with the management of Mr. Bedson, the Warden. I have always considered him ‘the right man in the right place,’ and every time I visit the institution this impression is more confirmed.” A. Lacombe, Catholic Chaplain, “Report of the Catholic Chaplain,” August 8th, 1878, [Sessional papers of the Dominion of Canada: volume 8, first session of the fourth Parliament, session 1879(Ottawa: MacLean, Roger, 1879), 160.

⁵³ Most federal penitentiaries had two chaplains, a Roman Catholic and Protestant chaplain. Most often the protestant chaplain was Methodist.

essential to all amicable relations. This will be a great step towards their moral and intellectual improvement.⁵⁴

This submission showed the hopes that the penal system had in facilitating the goals of Indian policy, as it clearly saw the “improvement” of Indigenous individuals as part of a larger process of assimilation and civilization.

What is most striking about this statement is the way that Cloutier self-consciously identified the lesson of the penitentiary as a colonial one, tying the projects of Christianity and colonialism in what Ted McCoy has called “evangelical colonialism.”⁵⁵ McCoy argued that in Cloutier the church granted moral authority to the colonial state.⁵⁶ That this came from a clergyman echoes other colonial histories during this era. The prison served not only to teach inmates Christianity and citizenship, but also that in this new world order that Indigenous peoples were in an unequal relationship as the colonized. While Cloutier understood the penitentiary as a colonial institution, he also articulated a benevolence that underpinned the system that fit within a tradition of articulating colonial practices as uplifting. In explicitly noting that “whites were not their enemies,” he assumes a common goal for Indigenous and non-Indigenous peoples alike. He positioned himself as able to assist Native inmates in reaching the aims that they themselves should hope for.

Cloutier also illustrated how the infantilization of Indigenous peoples played a vital role in colonialism. In describing the Indigenous men as “big children,” he illuminated the contradictions of the penal state. Infantilizing Indigenous peoples (and categorizing them as wards of the state) excluded them from full participation with the Canadian body politic, a goal that administrators claimed to aspire towards. The projection of Indigenous people as children was not absolute, because their incarceration was contingent upon their adulthood. However, articulating the notion

⁵⁴ G. Cloutier, “Report of the Roman Catholic Chaplain, Manitoba Penitentiary,” *Sessional Papers of the Third Session of the Fifth Parliament*, Vol 8 No. 15, 48 (July 4, 1884), 80.

⁵⁵ Ted McCoy, *Hard Time*,

⁵⁶ Ted McCoy, *Hard Time*, 130.

that Indigenous peoples were children was not an inconsequential remark: it maintained the logic of the state in incarcerating Indigenous people. It provided a means when the liberal value of individuality and equality did not necessarily apply. Within the racial, scientific theories of the time, Indigenous peoples were the juveniles within the family of races, and that logic they did not hold the same rights as those who had reached “racial maturity.” Thus, liberal elites carried on rhetoric of equality and social inclusion while maintaining practices of exclusion.⁵⁷

In writing that inmates learned that “there are men who rule, and others who are ruled,” he explicitly defined the colonial underpinnings of the system as a driving purpose of the penitentiary. McCoy tied the creation of a self-conscious social hierarchy to the education Indigenous peoples received in the prison. It is important that Cloutier did not feign that the class brought Indigenous peoples into the position of the rulers, which rhetoric of “uplifting” and “assimilation” suggested. Rather the class taught them their position within the existing hierarchy. This reflects an understanding that adults were “un-improvable,” and that they could not adapt in the same ways as children. This was the logic that went into the creation of the residential school, and was a reason that many administrators were unsure how they ought to treat Indigenous inmates. While later generations would not be so forthright, this purpose remained ingrained in the penal system.

But this was not the only mention of the release of fifteen Indigenous inmates that year. While the chaplain reported that these inmates were released for their behavior and apparent rehabilitation, the institutional surgeon offered another interpretation of these events. W.R.D. Sutherland wrote in his report that the departure of “fifteen Indians” took place because they were “suffering from hereditary disease, quite incurable, and clearly aggravated by the confinement of

⁵⁷ Most of the literature on the exclusionary force of liberalism focuses on women. See: Lykke de la Cour, Cecilia Morgan, and Mariana Valverde: “Gender Regulation and State Formation in Nineteenth-Century Canada,” in Greer and Radforth, eds., *Colonial Leviathan*, 161-91.

prison life... they grew daily worse, until it seemed that nothing further could be done for them.”⁵⁸

This was consistent with nineteenth century medical views of Indigenous peoples as genetically inferior, as outlined in Mary-Ellen Kelm’s work, *Colonizing Bodies*.⁵⁹ The surgeon effectively recommended that the fifteen be released so they could die outside the prison rather than inside it.⁶⁰ If the conduct of the government was indeed “above all praise,” as Cloutier put it, then what then was the purpose of incarceration? It is useful to consider this question within the wider framework of Indian policy of the nineteenth century. The purpose of the Indian Act was to assimilate all Indigenous peoples into the dominion, and to do so quickly. This meant integrating Indigenous peoples into the European economy, but to do so as independent, enfranchised citizens. But what of those adults who were seen as incapable of assimilation? The fifteen who left the prison to die fit the best-case scenario for penal administrators. In this case, the prison was seen as successful because it neutralized and subjugated a population of fifteen Indigenous peoples. They left the prison to die, but they died baptized.

The Cost of Incarceration

While administrators worked under the belief of the uplifting potential of incarceration, Indigenous peoples bore the cost of incarceration on their bodies, communities, and economies. Inmates suffered ill-health when confined in the penitentiary at rates far higher than other racial groups, and this health crisis amongst Indigenous inmates was described along racial lines. They also experienced political marginalization, which in some cases was the explicit purpose that certain

⁵⁸ W.R.D. Sutherland, “Surgeon’s Report, Manitoba Penitentiary,” Sessional Papers of the Third Session of the Fifth Parliament, Vol 8 No. 15, 48 (July 4, 1884), 80-81.

⁵⁹ Mary-Ellen Kelm, *Colonizing Bodies: Aboriginal Health and Healing in British Columbia 1900-1950*. (Vancouver: UBC Press, 1998).

⁶⁰ There is a similar history that took place in residential schools, where critically sick children would be released shortly before they died.

political leaders were imprisoned.⁶¹ The most famous example of the political marginalization within the prison was the 1885 resistance and the subsequent incarceration of the Cree and Métis leadership. But political issues were larger than the incarceration of political leadership; incarceration of any Indigenous person signified loss of sovereignty. Removal of inmates also had significant costs for Indigenous communities who lost the ability to heal collectively, and whose economies were impacted by the removal of individuals. The cost of incarceration for Indigenous peoples politically and physically were seen by penal administrators as necessary growing pains as Indigenous peoples adapted to the new colonial political and economic realities.

Indigenous peoples were marginalized and victimized within the penal system because of class-based discrimination in addition to racial discrimination. Having friends in places of influence could and did reduce sentences for inmates, and lacking these connections meant that terms of incarceration tended to be longer. The protestant chaplain at Kingston Penitentiary noted this when he submitted, “Another source of trouble is the fact that the initiative in procuring pardons arises from private friends, the consequence being that the man with friends and influence, who has sinned against light and knowledge, gets off with a shortened term, while his friendless fellows, generally the more ignorant, often Negro or Indian, serve their whole term.”⁶² This comment emphasizes that Indigenous peoples, while they were subjected to unique strains within the culturally foreign and socially disruptive confines of the prison, they were also subject to the regular stresses of incarceration. Because Indigenous inmates were typically poor and lacked connections of many inmates, they experienced harsher realities during their terms of incarceration.

The most obvious cost of incarceration against Indigenous peoples specifically was in health. Those working in prisons as surgeons, chaplains, and wardens cited statistics that show Indigenous

⁶¹ Blair Stonechild, “The Indian View of the 1885 Uprising,” in F. Laurie Barron and James B. Waldram (eds), *1885 and After: Native Society in Transition* (Regina: University of Regina Press, 1986), 166.

⁶² Protestant Chaplains Report, Kingston Penitentiary, January 1875, p19

peoples experienced higher rates of illness and mortality within Canadian penitentiaries. These administrators invariably interpreted these statistics in racial terms. The same chaplain that praised Augustus Johnson as an example of the potential of the penitentiary noted the high mortality rates of Indigenous peoples in the Provincial Penitentiary by writing, “It is remarkable and very suggestive, that the ravages of death should have been so fearful among these decaying races.”⁶³ While across Canada Indigenous inmates experienced higher rates of illness and death, the reports from Stony Mountain and British Columbia Penitentiary most often reported these statistics because they had higher proportions of Indigenous peoples. The surgeon of British Columbia Penitentiary reported a rise in the number of hospital cases which he attributed to, “increased severity of the chronic forms of disease among the Indian convicts – that race, apparently, not able to withstand the depressing effects of confinement so well as the whites or Chinese.”⁶⁴ The following year the Inspector of Penitentiaries noted in his report that “Indians especially, if their health be impaired, pine away rapidly in confinement. There have been marked instances of this liability to languish and die among the Indians who have been imprisoned in Manitoba and British Columbia Penitentiaries...” The inspector even developed an informal policy of releasing Native inmates based on this logic of Indigenous frailty. While Sarah Carter has shown that more intensive concern with medicine among First nation and using “medical knowledge” as a colonial tool intensified in the twentieth century, penal surgeons and inspectors preceded this by “medicalizing the Indian problem” decades before this was a common practice in the mainstream medical establishment.⁶⁵ He went on to state, “Unless the crime be very serious or the convict a dangerous character, it were clemency well exercised to

⁶³ Hannibal Mulkins, “Chaplain’s Report,” *Penitentiary report, for the year 1856* (Ottawa : Hunter, Rose and Company, 1856), report not paginated. (He was speaking of death rates for Aboriginal and Black inmates)

⁶⁴ C. Newland Trew, M.D., “Report of the Surgeon, British Columbia Penitentiary,” *Sessional Papers of the Fourth Session of the Fourth Parliament of the Dominion of Canada*, Vol 7 no. 12, (1882), 93. He repeated this assertion in the following year’s surgeon’s report as well. (*Sessional Papers of the First Session of the Fifth Parliament of the Dominion of Canada*, Vol 16 no. 29, (1883), 135.)

⁶⁵ Sarah Carter, “Diagnosing the Discursive Indian: Medicine, Gender, and the ‘Dying Race.’” *Ethnohistory* Vol. 52 No. 2 (Spring, 2005), 371-373.

liberate an Indian prisoner whenever the Surgeon certifies that his health *begins* to fail, as delay in his case is likely to prove dangerous.”⁶⁶ Even while institutions reported mortality rates much higher than of the general prison population, these numbers were deflated because it became common practice to pardon inmates who were terminally ill shortly before their death. The most famous example of this practice was when Big Bear was pardoned while terminally ill so that he would not become a martyr.

Administrators constructed Indigenous ill health as the result of the disjuncture between Indigenous lifestyles and the realities of daily life within institutions, specifically the diet and regimented life. In other words, Indigenous frailty was understood as connected to cultural aversions to confinement because those inmates were adapted to life on the open plains. The medical construction of Indigenous frailty was part in parcel with the colonial underpinnings of the prison. First Nations and Métis prisoners were seen as part of a wild landscape that was incompatible with the structured life or physical environment that the prison provided. Kingston Penitentiary’s surgeon reported, “With respect to the Indian, there is no class of Criminals whose state of incarceration differs so much from his previous free mode of life as his does; therefore, from his first admission to the Prison till the day of his release, he carries on his aspect strong manifestations of dejection and despondency.” The surgeon went on to argue that this mental despondency manifested itself in “physiological degradation.”⁶⁷ This comment was repeated by the Surgeon in British Columbia Penitentiary in 1885 concerning the deaths of three Indigenous peoples and one person recorded as “Chinaman”: “From a long experience of the Indian population here, I am confident that very few, if any, are free from the taint of constitutional weakness, or worse, and that a sentence to ten years’

⁶⁶ J. G. Moylan, Inspector for Penitentiaries in Canada, *Report of the Minister of Justice as to Penitentiaries in Canada for the Year Ended 30th June, 1882* (Ottawa: MacLean and Roger, 1883), 12. (emphasis added)

⁶⁷ James Sappon, “Surgeon’s Report,” *Penitentiary report, for the year 1856* (Ottawa : Hunter, Rose and Company, 1856), report not paginated.

imprisonment is very nearly equivalent to a life sentence.”⁶⁸ The surgeon then charted this tendency to fall ill and die inside the prison. By 1887 the Inspector of Penitentiaries confirmed this sentiment in his overview of the annual reports: “Confinement has produced a bad effect upon the health of nearly all the Indians who have been committed to the penitentiary.”⁶⁹ In 1902 the Manitoba Penitentiary surgeon argued that greater rates of tuberculosis among Indigenous inmates showed what many administrators had long been arguing. He wrote: “I think that to the Indian a ten-year sentence means death if not sooner liberated.”⁷⁰ The protestant chaplain from Kingston Penitentiary expressed the sentiment in similar terms: “The Indian, more especially, can scarcely spend the full period of the shortest sentence, for which they can be sent to the penitentiary, and be found healthy and free from scrofula at the time of their liberation.”⁷¹ The surgeon was not alone in noting the physical effects of cultural alienation and disjuncture. The warden of Stony Mountain reported that when Indigenous inmates died in custody, “the cause of death in each case was due to that constitutional condition largely prevalent and fatal among them [Indigenous inmates]... as I have previously pointed out the Indians cannot bear confinement as well as whites or Chinese.”⁷² Manitoba Penitentiary’s 1888 report also noted that, “Several Indian prisoners were in hospital, for long terms, during the year. Confinement has produced a bad effect upon the health of nearly all Indians who have been committed to the penitentiary.”⁷³ These reports all noted that Indigenous peoples were ill because they were inherently inclined to become so, which was part-in-parcel with their assumed inability to adapt and change.

⁶⁸ C. Newland Trew, Surgeon’s Report, British Columbia Penitentiary, Report of the Minister of Justice as to Penitentiaries in Canada for the Year Ended 30th June, 1885 (Ottawa: MacLean and Roger, 1885), 90.

⁶⁹ *Twelfth Annual Report of the Inspector of Penitentiaries of the Dominion of Canada for the Year Ended 30th June, 1887* (Ottawa: A. Senecal, 1888), xxxiii.

⁷⁰ R.W. Neill, M.D., Surgeon’s Report, Manitoba Penitentiary, Sessional Paper No. 34, Department of Justice Report on Penitentiaries, 1902, 63.

⁷¹ Annual Report of the Protestant Chaplain, Protestant Chaplain’s Office, Kingston Penitentiary, January 1st, 1870.

⁷² Annual Report of the Surgeon, British Columbia Penitentiary, July 1st 1882, Sessional Papers (Victoria 46, no. 29, 1883)

⁷³ Manitoba Penitentiary, Annual Report *Sessional Papers* no. 11 (1888), xxiii.

In a physical way, the failure of Indigenous health was interpreted as the necessary, if unfortunate effect of Indigenous societies' transition into the liberal order. Because Indigenous poor health was interpreted as racially and culturally driven, inmates' illnesses represented the failure of Indigenous peoples to adapt to the new realities of the Canadian liberal state. Mary-Ellen Kelm situated Indigenous health at the locus of colonial relationships, arguing that settlers constructed Indigenous bodies as naturally sick because of the state of colonialism, and that it was contingent on the administrators to prepare Indigenous bodies for "civilized life."⁷⁴ While her study focuses on the colonial health and healing establishment in British Columbia, the same patterns were true within the penitentiary. This logic of constitutional weakness was never extended to settler prisoners or penal staff who similarly fell ill. For example, Warden Bedson's illness, while caused by similar factors such as poor drainage and diet, was interpreted as the physical effect that stemmed from his commitment to the prison's administration. In other words, his falling ill was interpreted as demonstrative of his virtue, while Indigenous illness was a sign of weakness. This construction of Indigenous ill-health within the prison was one common theme in the reporting during the nineteenth and early twentieth centuries.

Indigenous inmates also understood their failing health as connected to the cultural disjuncture they experienced when in the prison, but instead of defining it in terms of inherent Indigenous weakness, inmates understood the prison as a barrier to traditional avenues for healing. In the only case where Indigenous languages appear in the reports of prison administrators, the Roman Catholic chaplain in Stony Mountain Penitentiary recorded young men who were dying in prison saying, "ayo otatchi ayayah; estitotemak ayayan, gakekon," which he translated to, "If I were

⁷⁴ Mary-Ellen Kelm, *Colonizing Bodies: Aboriginal Health and Healing in British Columbia 1900-1950*. (Vancouver: UBC Press, 1998), xvi.

not here; if I were with my people, I would recover.”⁷⁵ The physical toll of incarceration on Indigenous bodies and the few instances where Indigenous voices come through in the colonial record show a disjuncture between Indigenous and settler approaches to healing. This quotation does not signal a constitutional weakness in Indigenous bodies, but it does point to alternative approaches to healing that were inhibited within the penal system.

While the immediate costs of incarceration were taken out on Indigenous bodies, the loss of Indigenous sovereignty was the longest lasting legacy of incarceration. This echoes the “great aim” of the Canadian Indian policy famously articulated by Prime Minister John A. Macdonald in 1887 as “do away with the tribal system and assimilate the Indian people in all respects with the other inhabitants of the Dominion as speedily as they are fit to change.”⁷⁶ The political costs of incarceration are most clear in the incarceration of Indigenous leadership following the 1885 Resistance. Over this period the Cree chiefs who resisted liberalism yet promoted nonviolence were arrested, tried, and caged in Stony Mountain Penitentiary. During his trial Mistahi-maskwa, commonly known in English as Big Bear, stated, “At present I am as dead to my people” because of his sentence, recognizing how removal from his people symbolized his social death.⁷⁷ This metaphorical death transformed into literal death when Mistahi-maskwa was released from prison with tuberculosis and died months later. This same narrative was true for Pihitokahanapiwiwin, known in English as Poundmaker, who was imprisoned in Manitoba Penitentiary; he too was released as an act of clemency, and shortly thereafter died of an apparent ruptured blood vessel.⁷⁸

⁷⁵ Roman Catholic Chaplains report, July 2, 1885, cited in William G. Edwards, *Stony: A History of Manitoba Penitentiary (Stony Mountain Institution)* (Stonewall, Manitoba: Interlake Publishing, 2004), p33. I have been unable to identify the language used, which is attributable to the many ways to spell Indigenous languages, the possibility that the original author misheard or poorly transcribed the sentence, and my own lack of fluency in Indigenous languages. In personal correspondence Ryan Heavy Head told me that it seems to have “a Siouxan sound.”

⁷⁶ Return to an Order of the House of Commons, dated 2 May 1887, Canada, *Sessional Papers (No. 20b)*, 1887, p37.

⁷⁷ H.R. Halpin's testimony, "The Queen vs. Big Bear," Canada, *Sessional Papers (#52)*, Vol. 19:13 (1886), pp 217-218.

⁷⁸ 1886 Annual Report of the Department of Indian Affairs for the Year Ending December 31, 1886, (Ottawa: Queen's Printer), liii.

These men's deaths illustrate the links between the penitentiary and Indigenous political and physical bodies. The men became symbolic of the loss of sovereignty and their insistence of Indigenous self-governance in the face of an expanding liberal state. In the years since his death, Mistahi-maskwa has come to represent the meaning of incarceration both in marginalizing Indigenous peoples, undermining their self-governance and sovereignty, and that Indigenous peoples bore the brunt of their incarceration.⁷⁹ It was because of the prison's firm root in liberal individualism and colonial ideologies that it fit seamlessly into a web of colonial institutions during the nineteenth century. Even though Indigenous peoples were most often incarcerated for petty crimes and horse thievery,⁸⁰ Indigenous incarceration was always political. The prison was part of this political project where sovereignty was eroded through incarceration.

But those inside the prisons were not the only Indigenous peoples who suffered for the incarceration. Removal of Indigenous peoples had social impacts on the communities from which they were removed. Many First Nations social networks are held together through teachings regarding the life cycle. Though the form of these teachings differ, a common thread is the importance of existing within community as one moves within life stages. The community played a key role in affirming and assisting individuals through teaching and ceremony as they moved into new phases of life. Individuals also gained new responsibilities that correlated to the new stage

⁷⁹ We see this in numerous avenues. Biographies have pointed to Mistahi-maskwa's incarceration as central to his legacy. See: Hugh Dempsey, *Big Bear: The End of Freedom* (Toronto: Douglas and McIntyre, 1984 ; J.R. Miller., *Big Bear (Mistahimusqua)* (Toronto: ECW Press, 1996) ; Rudy Wiebe, *The Temptations of Big Bear* (Toronto: McClelland and Stewart, 1973)

We also see this played out in Rudy Wiebe's collaborative work with Yvonne Johnson, which came much later than his biography of Mistahi-maskwa. See: Rudy Wiebe and Yvonne Johnson, *Stolen Life: Journey of a Cree Woman* (Toronto: A.A. Knopf Canada, 1998). On page 14, Johnson traces her lineage directly to Big Bear, and this in turn serves as a key device throughout the text. As a result, Susanna Egan has critiqued the book, and Deena Rymhes has agreed with the critique, that the work serves as an attempt to replace Big Bear with a similar hero in Johnson. See Suzanna Egan, "Telling Trauma: Generic Dissonance in the Production of *Stolen Life*," *Canadian Literature*, vol 167 (2000), 18. ; Deena Rymhes, *From the Iron House*, p64.

This has also happened in Indigenous prison writings to a lesser degree. Yvonne Johnson traced her lineage to Big Bear in *Stolen Life*, 14

⁸⁰ Ted McCoy, *Hard Time*, 125.

where they found themselves. In *Ojibway Heritage*, Anisinaabe scholar and educator Basil Johnston communicates these teachings through the story of the four hills of life. Each of the four hills represents a development in the life cycle, beginning with a hill covered with infants, then youth, adults, and Elderly peoples. Each hill represents a stage of life where one learns skills and contributes to the community in a particular way.⁸¹ Other teachings have seven stages of life. For example, the Saulteaux Elder Danny Musqua taught this kind of teaching in the seven fires of life, which processes of learning and growth throughout the life cycle, moving from conception to birth, birth until walking, walking to seven years, little men and women, young adulthood, adulthood, and ultimately old age and death.⁸² Among the Midaywin, as told by Elder Liza Mosher, there are seven stages of life, and if one does not fulfill one stage they cannot advance to the next, meaning that individuals remain spiritually stunted.⁸³ Kim Anderson summarized the role and significance of these life stages as necessary to maintain the “responsibilities, ceremonies, and interdependency” that are crucial to the health of Indigenous communities.⁸⁴ Removing an individual from society, therefore, makes it impossible to maintain the social responsibility, ceremonies, and interdependency upon which Indigenous communities relied. As more and more Indigenous peoples spent time away from communities in prisons, this problem became more pronounced. While it is not the place of this author to communicate the teachings themselves, their role within the social fabric of Indigenous communities was vital in maintaining social relations, and incarceration tore this fabric apart.

Incarceration meant that Indigenous approaches to community healing rooted in Indigenous law could not function. Because Indigenous laws were communal in experiences of harm and

⁸¹ Basil Johnston, *Ojibway Heritage* (Toronto: McClelland and Stewart, 1976), 109-118.

⁸² Diane Knight, *The Seven Fires: The Lifelong Process of Growth and Learning as Explained by Saulteaux Elder Danny Musqua*, (Project Paper, Masters of Education: University of Saskatchewan, 1999), 40.

⁸³ Lisa Mosher, ““We Have Gone Back to the Original Teachings,” in *In the Words of Elders: Aboriginal Cultures in Transition*, ed. Peter Kulchyski, Don McCaskill, and David Newhouse (Toronto: University of Toronto Press, 1999), 141–165.

⁸⁴ Kim Anderson, *Life Stages and Native Women: Memory, Teachings, and Story Medicine* (Winnipeg: University of Manitoba Press, 2011), 10.

approaches to healing, removing the transgressor from the community denied the community an opportunity to heal. These approaches to healing are outlined in the previous chapter, but in removing Indigenous peoples, the society as a whole suffered. This was part of a larger pattern of social disruption that came with colonialism. The prison was a physical manifestation of this pattern. Thus, terms of incarceration had profound impacts on the home communities from which offenders hailed.

The prison created liberal subjects, or at least that is what it intended to do, but it did so at great cost to Indigenous peoples. This toll was most obviously taken on Indigenous people's physical bodies, though that was only the most immediately clear effect of incarceration on Indigenous people. Colonizers were correct in their assertions that without penal institutions the law itself would become "a dead letter."⁸⁵ Thus, while the expansion of jurisdiction took place through case law, interpretation of treaties, and in common practice, it was not until the prison was built that the effects of this loss of sovereignty had effects on Indigenous individuals and communities. Removal of individuals sent shockwaves through Indigenous societies by disrupting social structures rooted in sacred teachings. In other words, the colonial role of the prison could only be enacted at great individual, social, and cultural cost to Indigenous peoples.

The Twentieth Century: The More things Change, the More they Stay the Same

Over the first half of the twentieth century, Indigenous peoples experienced a penal system that stagnated. The prison continued on the status quo, while they were also subjected to newly severe Indian Policies under Duncan Campbell Scott's tenure as the head of the Department of Indian Affairs. In spite of numerous calls for reform in the penal system over the first half of the

⁸⁵ G. Cloutier, "Report of the Roman Catholic Chaplain, Manitoba Penitentiary," Sessional Papers of the Third Session of the Fifth Parliament, Vol 8 No. 15, 48 (July 4, 1884), 80.

twentieth century, an unreceptive penal administration resisted these recommendations. Historian Peter Oliver has noted that for all the humanitarian rhetoric and calls for reform, what is most striking in the prisons is how much the early twentieth century prison resembled the nineteenth century iteration of the system.⁸⁶ By 1965, penal administrators themselves accepted this as a reality,

Resistance to change – usually reflecting the state of public opinion – was one of the most notable characteristics of Canada’s penal system for many generations. A noteworthy example is Kingston Penitentiary, a visible remnant of an earlier provincial system that was inherited by our federal Justice Department at the time of Confederation. But the bequest was more than just one walled enclosure of buildings.⁸⁷

Numerous commissions and critics called for significant change in the penal system, and these calls were dismissed or ignored. The Victorian principles that established the penal system directed the administration of prisons well into the twentieth century, meaning that Indigenous prisoners continued to endure a prison system that was a continuation of the Residential School system. However, there was also a renewed interest the goals of rehabilitation as the penal population spiked, which the 1909 Penitentiary Inspector’s report linked to urbanization.⁸⁸ This rise in penal populations strained existing approaches to imprisonment. Since work was viewed as central to rehabilitating prisoners, when there was not enough work for inmates to perform rehabilitation could not happen.⁸⁹

In 1914, responding to a hue and cry from the media against Kingston Penitentiary, a Royal Commission was tasked to evaluate the state and management of Kingston Penitentiary, the conduct of employees and officers there, and whether the system that operated there was capable of

⁸⁶ Peter Oliver, *Terror to Evil-Doers*, p506.

⁸⁷ Canadian Penitentiary Service Annual Report, 1965, p1.

⁸⁸ Douglas Stewart, “Annual Report of the Inspector of Penitentiaries for the Fiscal year, 1908-9,” Sessional Paper no 34, Vol XLIV, (Ottawa: July 24, 1909), page 2.

⁸⁹ Stewart, “Annual Report of the Inspector of Penitentiaries for the Fiscal year, 1908-9,” p5. ; Ted McCoy, *Hard Time*, 19-33.

rehabilitating offenders.⁹⁰ This report was damning against the system as a whole, criticizing both the school and hospital in Kingston Penitentiary as not worthy of their name, the “unscientific” use of flogging shortly before release, and an administration governed by “political jealousies and religious animosities” that hampered the operation of the prison.⁹¹ This report recommended changes that echoed the 1849 Brown Commission’s call for a return to rehabilitation as the guiding framework for Kingston Penitentiary. In an editorial titled “Crimes against Criminals,” *The Globe and Mail* referred to Kingston Penitentiary as “barbarous and indefensible.”⁹² While the characteristic of press coverage before the report were tabled were accurate, this pattern continued after the report because the recommendations were so swiftly buried, making virtually no changes in the administration of the penitentiary. The Inspector for Penitentiaries dismissed the report by questioning the motives and methods of the commissioners. Co-Inspectors Douglas Stewart and W.S. Hughes characterized the penal principles articulated in the Royal Commission as an example where “sentimentalism is still paraded as ‘modern’ penology,” rewarding criminals with comfort. This response even went so far as to comment, “Agitation for the encouragement and propagation of crime can boast its origin in antiquity, but is in no sense modern.”⁹³ The inspectors also challenged the commission’s approach to research for the report, writing

Methods were resorted to that have no precedent in the records of official investigation. In the absence of reliable evidence, the scum of Canadian criminality and even insane convicts were called, their sworn ‘evidence’ recorded and published in the local press as facts... It is only necessary to consider the character of the methods adopted to realize that whatever discredit may result will not attach to the institution.⁹⁴

⁹⁰ Canada. Royal Commission on Penitentiaries. *Report of the Royal Commission on Penitentiaries*, (Ottawa: King’s Printer, 1914), p5.

⁹¹ 1914 Royal Commission Report, pages 14-17, 41-43.

⁹² “Crimes against Criminals,” *The Globe and Mail*, January 14, 1915, page 4.

⁹³ Douglas Stewart and W. S. Hughes, Inspectors, “Report of the Inspector of Penitentiaries,” Sessional Paper No. 34, Vol. L No. 25, (Ottawa: 1914), page 6-7.

⁹⁴ Stewart and Hughes, “Report of the Inspector of Penitentiaries,” 1914, page 6-7.

Given such an unreceptive administration, predictably no policy changes came about in response to this report.

Alongside a penal administration that stubbornly refused to move beyond the Victorian origins that had profoundly colonial overtones, the policy context in the Department of Indian Affairs was similarly committed to Victorian ideals. It was becoming clear by the early twentieth century that the assimilationist policies of the past had not yet worked. However, over this span, as discussed in the 1996 Royal Commission on Aboriginal Peoples, “initially the direction of change was to tighten the screws of the system rather than to consider alternatives.”⁹⁵ Under the tutelage of Duncan Campbell Scott, who was Deputy Superintendent of the Department from 1913 to 1932, Indian policy became increasingly punitive through extending the policy of “the Bible and the Plough.”⁹⁶ Biographer Brian Titley characterized Scott’s impact on Aboriginal Affairs as directed by his Victorian understanding that the best future for Indigenous people was as White Canadians. Scott set to achieve this goal of assimilation through stern orders to his agents that failure to apply the goals of the department could and often would lose their jobs.⁹⁷ Scott believed that Indigenous peoples would soon disappear over his entire career in spite of continued evidence to the contrary.⁹⁸ In 1920 he said: “I want to get rid of the Indian Problem.... Our object is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic, and there is no Indian Question, and no Indian Department.”⁹⁹ This was to be done in part through the application of colonial law on Indigenous lands.

⁹⁵ Royal Commission on Aboriginal Peoples, Volume 1 - Looking Forward Looking Back, PART ONE The Relationship in Historical Perspective, Chapter 6 - Stage Three: Displacement and Assimilation http://www.collectionscanada.gc.ca/webarchives/20071211050911/http://www.ainc-inac.gc.ca/ch/rcap/sg/sg17_e.html#57

⁹⁶ J.R. Miller, *Skyscrapers Hide the Heavens* 3rd Ed. (Toronto: University of Toronto Press, 2000), 254-282.

⁹⁷ Brian Titley, *A Narrow Vision: Duncan Campbell Scott and the Administration of Indian Affairs in Canada* (Vancouver: UBC Press, 1988), 37-45.

⁹⁸ Titley, *A Narrow Vision*, 203.

⁹⁹ DC Scott, Quoted in Miller, *Skyscrapers Hide the Heavens*, 281-282.

Inmate populations spiked again in the two decades following the 1914 Royal Commission on the prison system, which coincided with a rise in urbanization. In a 1929 address to the Annual Congress of the American Prison Association, the Superintendent of Penitentiaries in Canada commented that the “ever increasing number of inmates has become a serious problem,” one that stretched the resources and necessitated hiring underqualified correctional officers. Because of these strains on the system, those in charge of penitentiaries in Canada saw that the system was not working.¹⁰⁰ Within a year this issue was addressed in the construction of Collins Bay Penitentiary, which opened in 1930 in Kingston, Ontario. Opening Collins Bay, temporarily remedied the problems of overcrowding, but left the system unaltered.

The most important study of the modern penal system in Canada, and the one that initiated changes in philosophy of incarceration, was the 1938 Archambault Report, which was commissioned after a series of violent episodes inside Canadian prisons to inquire and report on the treatment of convicts, construction of prisons, organization, appointment of workers and promotion within the penal system, administration, rehabilitation, cooperation between government and agencies, and conditional release.¹⁰¹ It condemned the system as it operated, writing:

The undeniable responsibility of the state to those held in its custody is to see that they are not returned to freedom worse than when they were taken in charge. This responsibility has been officially recognized in Canada for nearly a century but, although recognized, it has not been discharged. The evidence before this commission convinces us that there are very few, if any, prisoners who enter our penitentiaries who do not leave them worse members of society than when they entered them. This is a severe, but in our opinion, just indictment of the present and past administrations.¹⁰²

¹⁰⁰ Address delivered by the Superintendent of Penitentiaries at the Annual Congress of the American Prison Association, on September 25, 1929, in , “Annual Report of the Inspector of Penitentiaries for the Fiscal year, 1930,” (Ottawa: July 24, 1930), page 10-11.

¹⁰¹ Archambault, Joseph (Commissioner), *Report of the Royal Commission to Investigate the Penal System of Canada* (Ottawa: King’s Printer, 1938), v.

¹⁰² Archambault Report, 100.

These were the same criticisms from the Brown and MacDonnell Commissions that preceded, but Archambault took the critique further. Instead of calling for a renewed commitment to rehabilitation and reform of the convict, it rejected the Auburn Model for prisons and recommended developing medium and minimum security institutions, expanding programming to include social events and physical activities, and recommended establishing the National Parole Board.¹⁰³ Media coverage of this commission was a combination of horror at the goings-on within prisons, stoked by the violence that led to this commission, and appreciation for the openness with which the commission set about its work; for an institution that was historically secretive, the Archambault Commission signaled a move towards increased accountability to the Canadian public.¹⁰⁴ Through all these changes, Indigenous peoples were not given policy consideration because admittance registers did not show a significant number of Indigenous peoples.¹⁰⁵ WWII interrupted the implementation of the report, but it represents a key shift in the history of penal thought, and one that would ultimately change the daily lives of those inside penitentiaries.

This was also a period of increasing Indigenous political activism which, while having antecedents in earlier periods of colonization, took on a new shape. Indigenous peoples attempted to speak against colonial policies with a unified voice. These activists outside the prison did not necessarily directly critique the prison, but they took on the colonial basis of society. Eventually prisoners used this language to critique the prison directly. By the 1930s significant changes took place in the position of Indigenous peoples in political dialogue as political organizations began to take shape regionally and gain political capital. During this decade long-term patterns of demographic decline were reversed, and the Indigenous population in Canada began to climb

¹⁰³ Archambault Report, 109-110

¹⁰⁴ "Secrecy not in the Public Interest," *The Globe and Mail*, (Toronto: August 14, 1939), 6.

¹⁰⁵ In the reports of Inspectors of Penitentiaries, while the total of incarcerated peoples more than doubled, the Aboriginal population showed no sign of upward growth. Numbers of Incarcerated Aboriginal peoples never passed a total of 100 until into the 1960s. This suggests that identifying the racial origin of an inmate was improperly cited, because by the mid-1960s dramatically high incarceration rates were reported.

again.¹⁰⁶ This was also the period of formation of local and regional political organizations, including the Native Brotherhood of British Columbia in 1931, the Indian Association of Alberta in 1939, and the Federation of Saskatchewan Indian Nations 1944.¹⁰⁷ These newfound organization was characterized by historian J.R. Miller in his seminal work, *Skyscrapers Hide the Heavens* as the beginnings of a new era of confrontation in Indigenous history in Canada.¹⁰⁸ While Indigenous communities began the processes of confrontation in the 1930s onwards, the hegemony within the penal system was still too severe for outright confrontation of this particular manifestation of colonialism in any sustained way. This was to change in the following decades.

Conclusion

As the prison system shifted from an intellectual project to a lived reality, administrators adapted the system to fit Indigenous people within it. When they did so the colonial assumptions that underpinned Indigenous incarceration shone through. The lived realities of penal life, from the structure and routine that defined each day to the religious and industrial instruction that inmates were given and to the racial rituals of entry all give speak to the unique place of Indigenous inmates. As each prison functioned in isolation from one another, the ad-hoc nature of the system also defined the ways that Indigenous people fit into prisons. Regardless, racism was built into the system both through the policies that guided the system and the individuals who implemented them. It was not until the later nineteenth century that Indigenous peoples were given systematic consideration.

The penitentiary of 1950 was a product of liberal colonialism designed a hundred years prior. It resisted change for the first half of the twentieth century in spite of numerous calls for reform and re-evaluation. What this means is that the hallmarks of the nineteenth century prison went

¹⁰⁶ Miller, *Skyscrapers Hide the Heavens*, 314.

¹⁰⁷ Miller, *Skyscrapers Hide the Heavens*, 322.

¹⁰⁸ Miller, *Skyscrapers*.

fundamentally unchanged until a series of significant changes in penology in the late twentieth century. In the early 1950s, the prison was still run according to the vision laid out by Canada's carceral pioneers. This included use of the silent system, a central role of the prison chaplain, discourse of penitence and reformation of the criminal, and a set of liberal ideals rooted in an industrial capitalist society. The prison system changed in significant ways after 1938, but the colonial underpinnings of the system remained because the ultimate aims of prisons were rarely questioned or examined. Thus, the aims of protecting society and reforming the inmate continued to guide policy. Reforms that came about in the system reconsidered the "hows" but not the "whys" of incarceration. When considering the prison as an institution of colonial education where Indigenous peoples shouldered the burdens of their incarceration at a personal and societal level, "reformation" became a synonym for assimilation à la the Residential School system. These hallmarks of the prison system always maintained its imprint on the penal system.

The cost of adapting to the liberal state was paid by Indigenous peoples at the personal, communal, and political levels while in prisons. Personally, inmates experienced ill-health and cultural disjuncture as a result of incarceration. They died at higher rates than their non-Indigenous counterparts, and they were separated from their communities and their cultural approaches to healing and correction. Removing those convicted of crimes disrupted Indigenous communities in the same way as residential schools. In the case of crimes that Indigenous community members agreed were taboo, removal of the offender meant that communities too were unable to heal. In other cases, Indigenous cultures themselves were criminalized and those following their traditional ways were sent to jail. Finally, incarceration represented a loss in self-governance and Indigenous sovereignty.

When Indigenous communities and inmates confronted the penal system in the twentieth century, they confronted a quintessentially colonial institution with roots as deep as any colonial

institution. The penitentiary preceded most of the infrastructure of Canadian colonialism, including the Department of Indian Affairs, the government-funded Residential School system, and the Numbered Treaties. When Indigenous peoples experienced incarceration, it was a colonial crucible that they bore at great personal, social, and political cost. This continued well into the twentieth century. Therefore, the full significance of these prisoners' actions in confronting the system in the 1960s and 1970s through the Native Brotherhoods can only be fully appreciated with the longer historical timeline.

PART TWO: CONFRONTING A COLONIAL INSTITUTION

Chapter Four: “The First Real Indian Studies Program,” 1950-1970

Prisons were never isolated from the rest of society. Instead they were microcosms of wider social patterns; as Indigenous inmates confronted the penal system, they were part of a much larger process of decolonization. Between 1950 and 1970, Indigenous peoples began processes that led to decolonization of the prison. Before Indigenous prisoners could decolonize the prison by carving out Indigenous space within the institution, first they had to organize themselves so they could confront this system. Thus, rather than becoming a laboratory within which the state could shape human souls, the prison became a more nuanced stage for societal engagement and intercultural dialogue. This chapter documents the reformation of the penal system and the emergence of the Native Brotherhoods and several community organizations that made it possible for Indigenous peoples to confront the penitentiary system.

The Canadian Penitentiary Service underwent a series of changes between 1950 and 1970 that dramatically altered Indigenous experiences of incarceration. While the silent system operated in most penitentiaries in 1950, the Canadian Penitentiary Service diversified over this period. It built minimum and medium security institutions, ended the silent system, developed programming that targeted inmate subgroups, and opened of penal rule. Still, these changes altered the method, not the goal, of corrections. These changes to the method of correction were the product of decades of advocacy and study, as well as demographic changes in Canadian penitentiaries and the larger society. Rapid urbanization and rising inmate populations made change necessary as the six institutions that existed in 1950 - Kingston Penitentiary, Manitoba Penitentiary, BC Penitentiary, Collins Bay Penitentiary (Kingston), Prison for Women (Kingston), and Dorchester Penitentiary (NB) – could not handle demand. By 1970 there were significant policy changes in corrections, but none of them directly concerned Indigenous peoples. Therefore, during this period the

infrastructure that would later support an intercultural dialogue was emerging, but the dialogue itself had yet to begin.

Over this period Indigenous inmates began organizing at the grassroots level within the prison. Their efforts marked the beginning of a movement that played a pivotal role in the decolonization of the penal space. This began in Prince Albert Penitentiary in Saskatchewan through new organizations called “Native Brotherhoods.” The creation and expansion of the Native Brotherhood movement became a conduit through which Indigenous peoples advocated for rights and promoted Indigenous spirituality and culture behind bars. The movement spread because, ironically, the penal administration was uncomfortable with its existence, and transferred inmates to try to end the movement. Ed Buller remembered,

They [CSC] don't necessarily look at things as this will help ease some of the internal things as a first instance. They look at how to promote safety and security. I would bet, and from what I've heard from some of the Brothers, is that it was the transfers of inmates from one institution to the other that started to make the movement more of a national movement within CSC.¹

These inmates were engaging in a decolonizing project, confronting the colonial institution of the prison. Significantly, Indigenous prisoners were twice marginalized through colonial and carceral processes. The magnitude of their subjugation speaks to the significance of the Brotherhood movement.

Finally, outside the prisons, Indigenous people creatively responded to the new challenges of urbanization and a new political context. The organizations that formed created the infrastructure which Indigenous inmates and their supporters would later use to challenge the penal system. The Friendship Centres first established in the 1950s were an established national movement in urban centers by the 1970s. They were community-run organizations that assisted newly urban Indigenous

¹ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 13, 2014.

peoples adapt to the new realities of city life. Friendship Centres formed a set of social agencies in cities that eventually creatively responded to the needs of Indigenous inmates. Elders who often worked through the Friendship Centres became involved in the lives of prisoners, though these Elders would take a much greater role in prison work later on. These Elders became a key link between prisoners and their culture, making it possible for the Brotherhoods to achieve their goals of celebrating their culture and helping prisoners heal while they were serving time. Additionally, political organizations like the Native Indian and regional organizations like the Federation of Saskatchewan Indians formed and began advocating for Indigenous rights in new ways. These political organizations, while initially avoiding the topic of Indigenous incarceration, had a role later on in advocating for Indigenous rights inside the prisons.

The Canadian Penitentiary Service was designed to assure regional and institutional variation. The logic was that regional and institutional personnel could more easily respond to the local needs of inmates if they were not encumbered by federal policy. Furthermore, as institutions of different security levels opened, programming options differed dramatically. For example, in a minimum security institution far more freedom of movement existed than in a maximum security institution, so programs tended to originate from lower-security institutions. Finally, the administrative staff had a significant impact on each institution. This gave each institution a personality, and that personality drove or hampered program innovation. Thus, if a warden was open-minded, it was far more likely that Indigenous programs would emerge within his institution.² Therefore, within prisons there are examples of freedom of cultural expression and of hegemonic rule, and these histories coexisted in the same correctional regime.

² Christie Jefferson (Parole Board Officer) interview with the author, February 10, 2014. Jarvis-Brownlie makes a similar argument concerning Indian Agents and the application of federal regulations in *A Fatherly Eye: Indian Agents, Government Power, and Aboriginal Resistance in Ontario, 1918-1939* (Toronto: Oxford University Press, 2003).

Hitherto I have emphasized the role of the prison as one of the key institutions that contributed to the history of colonialism in Canada. This was because it embodied the liberal values and racial thinking that defined the colonial bureaucracy. Connections between the Indian Residential School system and the emergence of the penal system in Canada have reinforced this point. In the twentieth century, especially after the emergence of the Native Brotherhood movement that this and the following chapter outlines, the narrative in this dissertation shifts from one of colonialism to decolonization. Also, in the twentieth century Indigenous resistance comes through more clearly in the written historical record. George Manuel, once the head of the National Indian Brotherhood, cautioned against misinterpreting new forms of resistance and renewal Indigenous history in the twentieth century:

It is very much a mistake to identify the cultural and political renaissance that is going on among Indian societies today [1974] with a *new Indian resistance*. The fact of the matter is that there was never a time since the beginning of colonial conquest when Indian people were not resisting the four destructive forces besetting us: the state through the Indian agent; the church through the priests; the church and state through the schools; the state and industry through the traders.³

Manuel went on to define the renaissance in terms of renewal rather than innovation. He identified the resurgence of languages, culture, and political organization as “the fruit of the accumulated labour of our grandfathers.”⁴ George Manuel explained why Indigenous Canada appeared so unique in the latter portions of the twentieth century. He wrote,

If it appears that we are only now awakening and discovering a new strength, it is because the current climate of political, social, and economic forces is allowing what was always beneath the surface to emerge into the light of day.⁵

³ George Manuel and Michael Posluns, *The Fourth World: An Indian Reality*, (Toronto: Collier-Macmillan, 1974), 69. (italics original)

⁴ George Manuel, *The Fourth World*, 69.

⁵ George Manuel, *The Fourth World*, 70.

This was true of the penal context. Prior records are silent regarding Indigenous activism within the walls, which is because few inmate productions were noted except through violence. When, in 1964, Indigenous inmates began the Native Brotherhood in the federal prison in Prince Albert, Saskatchewan, they continued a long tradition of Indigenous resistance and innovation within the penal system and outside it. They embodied a movement that had emerged across Canada and in the United States, and they brought it into the prison for the first time.

Also, as we shall see, the colonial patterns that characterized the nineteenth-century penitentiary did not cease to influence corrections in the twentieth century. While the prison system did change, during this period that Indigenous peoples began to be incarcerated in enough numbers to constitute a significant minority in Canadian prisons. This was because of the many issues facing Indigenous peoples in Canadian cities. Indigenous over-incarceration is one of the most oft-cited implications of the colonial history of Canada, largely because it is a quantifiable. That does not recognize that overrepresentation is a more recent phenomenon. Recent literature on historical trauma can illustrate the ways that colonization effected generations of Indigenous peoples long after the first iteration of marginalization through colonial practices.⁶ Native incarceration is therefore rooted in historical processes that have simultaneously led to economic marginalization, social degradation, attempts at cultural destruction, and political alienation. I chose to focus on the innovative programs and movements begun at the initiative of inmates and community members, but the need for those movements came not only from the historical memory of colonial trauma, but the daily lived experience of colonialism.

⁶ The notion of historical or intergenerational trauma came largely from the fields of psychology and social work. Practitioners noted how the trauma experienced by parents seeped into their children and effected their lives in often devastating ways. See: Swinomish Tribal Mental Health Project. "A Gathering of Wisdoms: Tribal Mental: A cultural Perspective." in *Intergeneration Trauma in the Tribal Community* 2nd Ed. (LaConner, WA: Swinomish Tribal Mental Health, 2002), 77-114. ; Maria Yellow Horse Brave Heart, "The American Indian Holocaust: Healing Historical Unresolved Grief, *American Indian and Alaska Native mental Health Research* Vol 8 No. 2 (1998), 56-78.

This chapter uses a chronological approach to consider how Indigenous prisoners organized from inside the prisons and how outside organizations supported them. It looks at this time period in two phases. First, from 1950 to 1964 significant changes took place within the prison system and in the communities that supported prisoners. Prisons allowed social interaction within the institution, and sociopolitical change in Indigenous Canada took place, largely through political organizations and the emergence of Friendship Centres that responded to urban Indigenous migration. The second period began around 1964 when a group of Cree-speaking Métis men were incarcerated in Prince Albert Penitentiary, and they formed the first Native Brotherhood, ushering in a new era in the history of Canadian penitentiaries and Indigenous activism within them.⁷ These organizations quickly spread throughout Western Canada to promote their goals of healing and cultural education.

1950-1964: Community Development, Correctional Reform

Virtually no programming or grassroots organization took place before 1964, but over a decade and a half from 1950 to 1964, several changes laid the groundwork for later developments within Canadian prisons. Two changes defined this period. The first was a major migration of Indigenous peoples into cities that began in the 1950s and expanded over following decades. Indigenous communities struggled to cope with the new pressures and challenges that came with urbanization, and they did so in creative ways. This included social and political organization, as well as establishing services for urban Indigenous peoples. The second was a philosophical change in the administration of prisons as a long overdue implementation of the 1938 Archembault report which recommended a shift from retributive to rehabilitative punishment in prisons. With rising penal

⁷ As discussed in more detail later in this chapter, the records of when each group began are relatively unclear. The Prince Albert group certainly began in either 1963 or 1964, but both dates are noted. The chronology outlined here is as accurate as possible and reflects the nature of the growth of the movement.

populations came changes in the system to accommodate this rush of inmates. Thus, Indigenous inmates were placed in a context of change both in Indigenous Canada and penal Canada.

The most significant demographic change over this era within Indigenous communities was the migration from rural to urban communities, a pattern that grew exponentially every decade over the remainder of the century. Urban studies and Indigenous studies scholars Mary Jane Norris, Stewart Clatworthy, and Evelyn Peters have shown that while the 1951 Canadian census recorded a small urban Indigenous population of 11,015, or 6.7% of the Indigenous population, within ten years that number doubled, and by 1971, 90,705 of the Indigenous population in Canada lived in cities, making up 30.7% of Indigenous Canada.⁸ They show that during the 1950s and especially by the 1960s massive urban migration defined Indigenous demographic profiles. While these numbers are statistically significant in totals of the entire population, they represent an “almost wholesale exodus” amongst Indigenous young people specifically. The implications of this were wide ranging, and a demographic trend linked to the rise of the American Indian Movement in American and Canadian cities in the subsequent decades.⁹

Urban dwellers supply a disproportionate number of the penal population. As early as 1909 the inspector general for the Canadian Penitentiary Service explained rising penitentiary populations by directly tracing it to increasing urbanization.¹⁰ In 1952, this sentiment that urbanization caused the emergence of a criminal class was articulated by the commissioner of penitentiaries who reported that along with this movement to the cities, the dependency of youth, family breakdown, “the increasing materialism and secularism of modern life,” and “the tempo of modern living” all

⁸ Mary Jane Norris, Stewart Clatworthy, and Evelyn Peters, “The Urbanization of Aboriginal Populations in Canada,” in *Indigenous in the City: Contemporary Identities and Cultural Innovation* edited by Evelyn Peters and Chris Anderson (Vancouver: UBC Press, 2013), 34.

⁹ Karine Duhamel, *Rise Up – Make Haste – Our People Need Us!': Pan-Indigenous Activism in Canada and the United States, 1950-1975* (PhD Thesis: University of Manitoba, 2013), 161.

¹⁰ Douglas Stewart, “Annual Report of the Inspector of Penitentiaries for the Fiscal year, 1908-9,” Sessional Paper no 34, Vol XLIV, (Ottawa: July 24, 1909), page 2.

raised incarceration rates.¹¹ That prisoners were increasingly drawn from cities was in step with the rising percentage of the Canadian population more generally that came to live within cities. That did not, however, stop penal administrators from echoing clerical rhetoric of the “unholy” or “sinful” city, and raising the alarms regarding the effect these dens of iniquity had on young people.¹²

When Indigenous peoples moved to cities they faced a set of unique challenges as Indigenous peoples in a culturally foreign land that offered them little to no cultural and community support and few prospects at employment. These pressures led to high unemployment and formed what historian Karine Duhamel refers to as the “literal and figurative space” of skid row.¹³ This was the legacy of centuries of colonial policies and practices, and the short term effects of a Residential School system that alienated Indigenous peoples from their home communities but did not prepare Indigenous youths to enter the workforce.¹⁴ Urban Indigenous migration was caused in large part by colonial policies that made Indigenous peoples unable to maintain economic and social ties in their home communities, and they moved to cities in pursuit of employment. In a study commissioned by the Department of Indian Affairs, Hugh Brody articulated the appeal of skid row in that it offered

¹¹ Penitentiary report, 1952, page 7.

¹² Joan Sangster shows in her study of female juvenile delinquency that delinquency was often linked to class, and that youth delinquency was assumed to be localized to the downtowns of the city and to particular races, including Native girls. Therefore, urbanized Native people fit two definitions of the constructed “delinquent.” Joan Sangster, *Girl Trouble: Female Delinquency in English Canada* (Toronto: Between the Lines, 2002), 6-7.

But it was much more than delinquency that supported the assumption of “godlessness” that came with the city. Many scholars of religion in Canada and abroad have identified the myth of the “Godless City” as a central preoccupation of the modern era. See: Callum Brown, *The Death of Christian Britain: Understanding Secularism, 1800-2000* (New York: Routledge, 2001), 18-29 and 145-69. ; Nancy Christie, “Young Men, and the reation of Civic Christianity in Urban Methodist Churches, 1880-1914,” *Journal of the Canadian Historical Association*, 17:1 (2006), 79-106. ; Hannah Lane, “Tribalism, Proselytism, and Pluralism,” in Nancy Christie (ed) *Households of Faith* (Montreal and Kingston: MQUP, 2003).

¹³ Duhamel, *Pan-Indigenous Activism in Canada and the United States*, 54.

¹⁴ For literature on the legacy of Residential schools, see: Elizabeth Furniss, *Victims of Benevolence: The Dark Legacy of the Williams Lake Residential School* 2nd ed. (Vancouver: Arsenal Pulp Press, 1995). ; Cecilia Haig-Brown, *Resistance and Renewal: Surviving the Indian Residential School* (Vancouver: Tillacum Library, 1988). ; J.R. Miller, *Shingvauk's Vision: A History of Native Residential Schools* (Toronto: UTP, 1996). ; John Milloy, *A National Crime: The Canadian Government and the Residential School System, 1879-1986* (Winnipeg: University of Manitoba Press, 1999).

Indigenous young people a sense of community, a way of life, an alternative to middle class sobriety that they did not have the resources to attain, and escape from the isolation of life on reserves.¹⁵

Related to these demographic trends of the 1950s, a dramatic increase in the reported number of Indigenous peoples in Canadian prisons was recorded over the following twenty years. The Manitoba Justice Inquiry of 1991 noted that, when tracing the number of Indigenous peoples in Canadian prisons, it was not until after WWII that the trend towards overrepresentation was noticeable.¹⁶ While the numbers of Indigenous peoples incarcerated is fraught, as the only official mechanism to determine intake numbers was through self-identification of the inmates by their race, this increase of the recorded number of Indigenous peoples indicates that a shift in incarceration patterns had taken place. Whether it was a change in reporting or a genuine rise in incarceration, Indigenous peoples were perceived by administrators as a significant minority in prisons. In 1950, for example, the Inspector of Penitentiaries reported that of a carceral population of 4750, only 48 were Indigenous.¹⁷ By 1967, a federally sponsored report cited what they referred to as “shocking” numbers of Indigenous peoples in federal and provincial institutions.¹⁸

Indigenous communities experienced unemployment, homelessness, and alcohol abuse, all problems that were rooted in cultural and social alienation; they addressed these problems by adapting Indigenous cultures for urban contexts through friendship centres. Over the 1950s a number of independent friendship centers developed to address the needs of Indigenous peoples as

¹⁵ Hugh Brody, *Indians on Skid Row*, (Ottawa: Northern Science Research Group, Department of Indian Affairs and Northern Development, 1971), 7.

¹⁶ A.C. Hamilton and C.M. Sinclair, Commissioners. *Report of the Aboriginal Justice Inquiry of Manitoba: Public Inquiry into the Administration of Justice and Aboriginal People*, 1991, Chapter 3.

¹⁷ Annual Report of the Inspector of Penitentiaries for the Fiscal year, 1949-50,” Sessional Paper no 34, Vol XLIV, (Ottawa: July 1950).

¹⁸ Canadian Corrections Association, *Indians and the Law*, (Ottawa: Canadian Welfare Council (Liang Report): August 1967 Pages 42-46

they moved to cities.¹⁹ The first opened in 1951 with the “North American Indian Club” in Toronto. Shortly thereafter, a second opened in Prince Rupert in 1958, in Vancouver, and by 1959 the Indian and Métis Friendship Centre of Winnipeg opened its doors.²⁰ The Department of Indian Affairs remarked on the Friendship Centre movement in 1963 in glowing terms when they dedicated their top story in *The Indian News* to the achievements of these Friendship Centres in Toronto, Kenora, Sudbury, London, Winnipeg, the Pas, Battleford, Prince Albert, Regina, Edmonton, Prince Rupert, Vancouver, and Whitehorse.²¹ These centres offered employment services, personal counselling, housing, social development, and a constructive alternative to life on skid row. They were also places where newly urbanized First Nations peoples articulated their Indigenous identities and navigated cities in a twentieth century Indigenous way.

A new era in Indigenous political history began in the 1940s and 1950s. Long-term trends of opposition to colonial policies crystalized through the formation of regional and national political organizations of Indigenous peoples. The Federation of Saskatchewan Indians formed in 1944, the Indian Association of Alberta in 1939, and the Native Brotherhood of British Columbia in 1933 to present an articulate voice for Indigenous peoples.²² These groups were unique because they became better organized at the regional level and funding changes meant that political concerns could be more effectively expressed. Still Indian policy from Ottawa went largely unchanged.²³ By 1951, following the revisions to the Indian Act that repealed the ban on hiring a lawyer in relation to land claims, Indigenous political organizations became increasingly visible and vocal in advocating for the rights of Indigenous peoples within the Canadian state.

¹⁹ Document No. NCJ-15, Native Counselling Services of Alberta Submission to the National Conference on Native People and the Criminal Justice System. Prepared in Cooperation with the Indian Association of Alberta, Metis Association of Alberta, and other Native organizations

²⁰ NAFC.ca/about/our-history

²¹ “Friendship Centres and Clubs Make Indians Feel at Home,” *The Indian News* Vol 7 no. 1 (Ottawa: Department of Indian and Northern Affairs, Dec 1963), 1-2.

²² J.R. Miller, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada* 3rd ed. (Toronto: UTP, 2000), 322.

²³ Miller, *Skyscrapers Hide the Heavens*, 314-327.

The prison system also underwent a period of change as it responded to increasing incarcerated populations, though the system failed to recognize that the percentage of Indigenous peoples within the walls was also rising. In other words, while prisons underwent a period of rapid change, none of these changes meaningfully responded to the needs of Indigenous peoples. In fact, in the 1951 Report on the Inspector of Penitentiaries, the Penitentiary Commission approved removal of seven tables from its statistics, including the one that identified the racial origin of inmates by penitentiary, that they understood as “having no particular statistical data or because of difficulties in securing accurate source information.”²⁴ In 1950, the prison was still run on the Silent System developed in Auburn Penitentiary in New York State, but in the cultural milieu that characterized the post-WWII penitentiary, the silent system was challenged by reformers and administrators alike Alcoholics Anonymous also pioneered new programs in prisons, as by 1950 the program was functioning in four of seven institutions.²⁵ While A.A. showed a new approach to crime and the criminal, the introduction of sport was the greatest departure from previous penal systems. The Warden of Kingston Penitentiary described the introduction of physical activity through softball as “a decided success” with encouraging results, convincing him to enlarge and expand the program over the summer.²⁶ The following year the penal presses achieved institutional sanction with the publication of the *Kingston Penitentiary Telescope*, an inmate-written and produced newsletter that accompanied the educational mission of the penal system. A few years prior any inmate communication or dialogue with the outside world was kept to a minimum. Another radical change in prisons was the crafts and hobby-work which inmates could produce and sell during their

²⁴ The data no longer collected include: ‘racial origin by penitentiaries, by conjugal condition, by previous penal record and racial origin of female inmates by religion; birthplace by social habits; nature of offence by mental and physical condition; physical condition by mental condition.’ (1951 report, page 113) That institutions no longer recorded race could be because of the difficulties in determining the race of an inmate with any certainty, or it could be because that information was not seen as important in developing a treatment plan.

²⁵ Canadian Penitentiary Service, “Annual Report, 1950,” 20.

²⁶ Canadian Penitentiary Service, “Annual Report, 1950,” 54.

terms of incarceration, yet another move away from older approaches to inmate labour as part of rehabilitative processes. Rather than working for the purpose of labour alone, the training was intended to keep the prisons financially viable and to teach prisoners the value of work while giving them marketable skills.²⁷

By 1956, the federal government appointed the Fauteux Committee to examine the criminal justice system. It published a report that reiterated the recommendations from Archembault, but modernized and adapted them. This report created an institutional openness to innovation and experimentation. The committee reported, “Our investigations have convinced us that what is required is not merely attention to some matters of minor detail in the correctional field, but rather concentrated attention to many matters of fundamental principle.”²⁸ Like the reports that went before, Fauteux emphasized rehabilitation over punishment and criticized the use of force inside the penitentiary. It also recommended the abolition of the Auburn style penitentiary in favour of programs that facilitated societal integration and a medical approach to corrections. The medical approach to corrections reimagined the offender as “ill” and in need of “treatment,” so the sentence needed to be long enough for the duration of “treatment,” but not too long to make the prisoner unable to rejoin society. Special types of offenders were explicitly defined as mentally ill and therefore in need of a medical solution, especially regarding sexual offenders. Included in this shift was the development of the National Parole Board and the construction of institutions of a varied character, initiating medium and minimum security institutions for “segregation, classification, and treatment” of offenders.²⁹ It also recommended the development of specialized programming for

²⁷ Canadian Penitentiary Service, “Annual Report, 1951,” 65. This was a throwback to the original houses of correction that emerged in Amsterdam and England before the formation of the reform penitentiary, where industry was instilled by contracting out inmate labour.

²⁸ Gerald Fauteux, Commissioner, *Report of a Committee Appointed to Inquire into the Principles Followed in the Remission Service of the Department of Justice Of Canada* (Ottawa: Queen’s Printer, 1956), p5.

²⁹ Fauteux Report, p41, 80-83. The Penal Press and inmate material productions are both subjects of their own chapters, and are therefore not expanded upon here.

narrowly defined interest groups, including alcoholics, drug addicts, sex offenders, and psychotics. This did not identify Indigenous peoples as a particular interest group, but it provided a framework where Indigenous peoples could eventually be recognized as a unique group, with specific needs particular to their cultural background. The Fauteux report was unique because these calls were taken up and genuine change in the administration of penitentiaries began in earnest.

Indigenous peoples also began to receive consideration during institutionally, on an ad-hoc basis, and in a way that did not consider Indigenous culture. The most important change in this era was the formation of a Native Brotherhood, an educational group formed at the impetus of the warden at Manitoba Penitentiary. This was distinct from the Brotherhood movement which would begin at the grassroots level in the early 1960s for a number of reasons. The warden of Stony Mountain wrote of this group,

A new and very interesting group was started last September, called 'The Native Brotherhood', made up of Indians and Metis (Half-breeds, quarter breeds, etc.) It was rather difficult getting the men to participate for a month or so, but they have become more vocal and more interested in participating as the months go by and we have a very interesting and active membership at the present time. In fact, it is felt that this group is one of the most important in the Institution and it is regretted that we did not start organizing the Indians several years ago.³⁰

He reported that Indigenous peoples were hesitant to join the group, but after enrollment one of the members “took top honours” in the Dale Carnegie course, an academic program for inmates. He also wrote, “Two of the Indians sing in the choir and many of them attend church regularly. We have also had full cooperation from the Department of Indian Affairs and have been privileged with a visit from various Indian Department Heads at a Tuesday noon hour meeting.”³¹ The Department of Indian Affairs attributed the formation of the Brotherhood to roughly thirty Métis and ten Treaty Indians in their national publication, *The Indian Record*. This disagreement between the DIA and the

³⁰ Warden C.E. Desrosiers, “Protestant Chapel” Annual Report of Manitoba Penitentiary, (1960), p116

³¹ Warden C.E. Desrosiers, “Protestant Chapel” Annual Report of Manitoba Penitentiary, (1960), p117.

Warden on who created the program is suggestive of the motives behind each publication. The warden promoting his pet project and the DIA presenting itself as a friend to Indigenous inmates. Both agreed, however, that the class made Indigenous peoples into model inmates. The DIA reporting cited the rehabilitation officer at Stony Mountain as attributing the Brotherhood as making the inmates involved “perhaps the best behaved in the institution.”³²

There are interesting parallels between this educational program and the one pioneered by Warden Bedson in 1877. Both were essentially western-focused educational programs: Bedson’s for industrial and religious training and Desrosiers’ for academic subjects. Both measured success by how much the inmates progressed in their fluency in the English language. Both organizations were developed by prison administrators for the benefit of Indigenous peoples without understanding the cultural basis from which Indigenous programming necessarily had to come. In both cases, the churches that worked in the penitentiary were cooperative in the promotion of these programs, even though the program was not expressly religious. Finally, both were supported by the Department of Indian Affairs, who saw value in working with the Penitentiary Service to promote their own goals of assimilation.³³ This shows that the colonialism inherent within the system still existed in the 1950s. In the 1960s this would be challenged, as Indigenous inmates began promoting their own goals independently of governmental aspirations for them. This grassroots organization would differ from the movement begun at the initiative of penal or federal authorities.

1964-1970

After 1964 Indigenous groups emerged within prisons that supported and organized Indigenous inmates. These organizations were not explicitly political, and they varied by institution,

³² “Rehabilitation of Prisoners,” *Indian Record*, (October, 1959), p2.

³³ “Rehabilitation of Prisoners,” *Indian Record*, (October 1959), page 2.

but they would ultimately become a key conduit for challenging the system from within. A similar movement in the United States has been described as “the first real Indian Studies program in the country.”³⁴ Eventually these Indigenous inmates developed programs that promoted their culture, supported one another, and advocated for correctional change from the inside. While individual chapters carried different titles, they formed a national movement in federal and provincial institutions across the country. They had similar goals, albeit with variation depending on their culture and institution. These early organizations understood that the criminal justice system did not relate to Indigenous peoples, and that the only hope they had for rehabilitation was in reconnecting with their culture.

There is some disagreement over the early history of this movement, specifically where and when it began. The Métis and Non-Status Indian Commission, which put considerable emphasis on the role of Native Brotherhoods placed the starting date of the Brotherhood in the late 1950s in Stony Mountain Penitentiary, then still called Manitoba Penitentiary.³⁵ This has been repeated in studies and briefs from within the movement and external observers alike.³⁶ Others, however, have posited the movement as originating in 1963 or 1964 in Prince Albert Penitentiary, and this is the most credible date because there are no archival references to the group between 1958 and 1964.³⁷ The reason for this disagreement is a different definition of what the Brotherhood was. While the 1958 group was termed a “Native Brotherhood,” it was distinct from the Brotherhoods that formed in the 1960s and onwards. First was the impetus behind these groups. While the group from 1958 started at the administration’s initiative, the latter group was a grassroots movement commenced at the prisoners’ initiative. Secondly, the prisoner-driven Native Brotherhood was developed on an

³⁴ Clyde Bellecourt, Quoted in Peter Matthiessen, *In the Spirit of Crazy Horse* (New York: Viking Press, 1980), 34.

³⁵ Native Council of Canada. *Métis and Non-Status Indian Crime and Justice Commission*. (1977), 56.

³⁶ Charlie Hill, “Research Report to the Department of Justice and the Department of the Solicitor General (Canada) Concerning the Native Brotherhoods in Penal Institutions in Canada,” (1975). ; Christie Jefferson, *Conquest by Law*, 126.

³⁷ Acc No 1987.366, box 6, File “Native Brotherhoods 1972-1979” Alberta Native Brotherhood of Indian and Metis Meeting, Drumheller Institution, September 11, 1973

Indigenous cultural basis, rejecting the European approach to education practiced in most prison programs. The 1960s Brotherhoods were successful because they marked a departure from the imposition of western approaches to rehabilitation, and instead interpreted the cause of incarceration as cultural disjuncture and the loss of identity.³⁸

Inmate-run Brotherhoods began in Prince Albert with a group of Cree-speaking Métis men. As individuals who had a grasp on their cultural heritage and maintained their language, the Métis leaders of the original Brotherhood at Prince Albert were uniquely equipped to organize a grassroots movement. Reflecting on the role of these men, Charlie said,

The Métis people, the ones that I knew, especially the ones from Alberta, they all spoke Cree. Cree and English. But because of the residential schools, a lot of people on reserves had lost their language already, and it was the Métis who were maintaining the teachings and the language... I found that the Métis people were the ones who were carrying the teachings, and the people on reserves were trying to improve their European way of thinking... So anyway, it was those people that I learned from. I guess there was only two or three of us Status Indians in there at the time.³⁹

Leaders within the Native Brotherhood movement also, after their release, became advocates in the political, literary, and correctional worlds. Joe Blyan, Harry Daniels, and Joseph Mercredi all experienced incarceration at Prince Albert, and these men became the core leadership of the Native Council of Canada in the early 1970s, which was the political arm for Non-Status Indians in Canada. During their tenure at the Native Council of Canada the organization became a key advocate for justice for Indigenous inmates. Joe Blyan, who in 1964 was part of the Prince Albert Native Brotherhood and by 1965 was its President, for example, held several roles in the Brotherhood until 1970 when he joined the “total Native movement in Canada,” including the Metis Association of Alberta and the Native Council of Canada.⁴⁰ He credited his inspiration to struggle for justice for

³⁸ Provincial Archives of Alberta, Acc No 1987.366, box 6, File “Native Brotherhoods 1972-1979”

³⁹ Charlie (former prisoner), interview with the author, November 4, 2013.

⁴⁰ Native Council of Canada. *Métis and Non-Status Indian Crime and Justice Commission*. (1977), xiiiv-xiv.

Native peoples as rooted in the Brotherhood while he was in prison.⁴¹ Joseph Mercredi, a residential school survivor and a “graduate” of Prince Albert Penitentiary started Louis Riel Lodge, a halfway house in Edmonton. In a unique protest, he attached a ball-and-chain to his leg, locked it, mailed the key to the Prime Minister, and hitchhiked across the country to protest the lack of justice for Indigenous peoples.⁴² Harry Daniels, referred to by his friends as “Harry the Dog,” also endured incarceration during this time. He later became the President of the Native Council of Canada, and a prominent advocate for Indigenous peoples in prisons across Canada.

Soon after the establishment of the Prince Albert Native Brotherhood, the movement spread to other correctional institutions. In 1963 Native inmates in British Columbia Penitentiary formed a Native Brotherhood, which a member of the Vancouver Kiwanis Club at a 1967 meeting of the Company of Young Canadians called “one of the best ideas for the Indians” as they served time in prisons.⁴³ At Drumheller, an institution that only began accepting inmates in 1967, the Native Brotherhood became a part of the social life of the institution within months of first opening the doors to the prison.⁴⁴ The Drumheller group, the Indian and Metis Brotherhood Organization, known as IMBO, soon became one of the most active and politically engaged groups of inmates in Canadian prisons. Quickly after this group’s formation, the Native Brotherhood emerged as a regional movement with a foothold in every prison from Stony Mountain Penitentiary westward.

The movement was remarkable in the consistency of its message and goals, even though they had considerable variation in name, relationship to their host institution, and level of external community engagement. A number of common themes run throughout the Brotherhood’s (and

⁴¹ Native Council of Canada. *Métis and Non-Status Indian Crime and Justice Commission*. (1977), xv.

⁴² Native Council of Canada. *Métis and Non-Status Indian Crime and Justice Commission*. (1977), xvii.

⁴³ Minutes of the Meeting held on November 17, 1969 to discuss the request from the Indian Educational Club for assistance in developing an Indian Post Release Centre in the Vancouver Area,” The Bob Stewart Archives, United Church of Canada BC Conference, Box 1355 Ex Calay Folder 608.

⁴⁴ Trent University Archives - 82-014 - box 3 of 4, Big Lodge Society, 1977-7882-014 - box 3 of 4, Collins Bay Native Brotherhood, 1973-78, Big Lodge Society Minutes, Thursday June 8, 1978 (Minutes also in Summer Inmate Project, 1977 file)

later, the Native Sisterhood's) literature, programming, and proposals. The first was unity. Because prisoners tended to be from diverse cultural backgrounds, maintaining unity was a challenge. This meant cultural adaptation was necessary. For example, western prisons held predominantly Cree prisoners, but the Brotherhoods could not assume that all Indigenous inmates would find those practices meaningful. This became a greater challenge when the movement moved to Ontario and the population was even more diverse. The Native Sisterhood, founded in 1971 and discussed in detail in chapter seven, had the greatest challenge in this regard. As the only federal women's prison, Kingston's Prison for Women held inmates were from across Canada. The second theme was kinship, which explains the purpose of the term "Brotherhood" as this movement's chosen moniker. Indigenous societies were and remain largely kin-based in social structure, which is why the notion of brotherhood resonated for the Indigenous prisoners. The third theme was the importance of culture in healing. Implicit within this, and often explicitly stated by groups, was that the Canadian penal system could not be a place of healing for Indigenous peoples. In discussing the origins of the Native Brotherhood movement, the Native Brotherhood of Indian and Metis from Drumheller Penitentiary in Alberta explained that in prisons, "There is no other organization or rehabilitative force which holds the promise of reaching the Native or Metis person."⁴⁵ Using culture for rehabilitative purposes was the link whereby Indigenous organizations and the institutional staff could find common ground. Both held rehabilitation as an articulated goal.

Native Brotherhoods and their communities sought to achieve balance, something that was lost in the history of the colonial relationship between Indigenous peoples and the Canadian state.⁴⁶ Indigenous communities became unbalanced because of skewed gender relations, colonial

⁴⁵ Alberta Native Brotherhood of Indian and Metis Semi-Annual Workshop, May 25 and 26, 1973, Drumheller Institution, Alberta, Provincial Archives of Alberta, Acc No 1987.366, box 6, File "Native Brotherhoods 1972-1979"

⁴⁶ Solomon, *Songs For the People*, 19, 22, 41-44, 58.

hegemony, environmental misuse, and the distribution of economic opportunities.⁴⁷ In all of these spheres, inmates saw the problem as imbalance that was caused by Euro-Canadian power structures that stemmed from a philosophy of materialism. Speaking about what Elder Art Solomon taught her while in prison, Priscilla George said:

Healing means being in total balance and harmony -- physically, emotionally, psychologically, spiritually. It doesn't necessarily mean that we have no pain whatsoever; it means getting into harmony with the rest of Creation... It means getting back into balance between men, women and children.⁴⁸

The importance of identity was connected the importance of balance because a person could not have internal balance if they did not accept their Indigenous identity. This was an underlying philosophical motive behind teaching inmates their cultural heritage; without it, they could not heal.

Native Brotherhoods and the Indigenous community organizations that supported them had complex relationships.⁴⁹ Brotherhoods began in the 1960s while community organizations began working with them in the early 1970s. Also, Brotherhoods tended to be more radical than community groups who tried to gain access into prisons to serve inmates. Prisoners responded at a more visceral level to injustices they experienced within the criminal justice system. The CEO of Native Counselling Services of Alberta, Allen Benson described the relationship between his agency and the Brotherhoods in Alberta in the following terms: “In some cases Brotherhood, there was a disconnect between the cultural staff, the Elders, even some of the agency work and what the Brotherhoods were doing because the Brotherhoods were seen by some as too radical.”⁵⁰ Periods of incarceration have long been linked to radicalization of activists, from the Black Panthers like George Jackson and Malcolm X, to American Indian Movement leaders in the United States like

⁴⁷ Rev. Stanley McKay, RCAP Open Discussion, Churches Special Consultation, Ottawa, Ontario, November 8, 1993.

⁴⁸ RCAP Public Consultations, Vancouver, BC 93-03-11 Priscilla George, PG 410.

⁴⁹ These are groups like Native Clan, Native Counselling Services of Alberta, Allied Indian and Metis Society, and other regionally based service organizations.

⁵⁰ Allen Benson (CEO, Native Counselling Services of Alberta), interviewed by the author, March 30, 2014.

Dennis Banks and Dino and Gary Butler, who in the 1980s played an important role in Canadian correctional history. It is therefore unsurprising that there was a difference in tone between these organizations, even if their goals were largely the same.

On the other hand, the Brotherhoods also were never distinct from the wider context of Indigenous activism that was gripping the continent during this era. Scholars who study American Indian history in United States prisons note that Red Power activism ushered in by AIM and other militant groups brought about changes in the correctional system, even if that was minimal. The prison served as an incubator for Indigenous activism within the US prison system, despite its failure to establish significant rights to culture and spirituality within the system itself.⁵¹ Prison also became a potent symbol in the first widely publicized protest that took place on Alcatraz Island, the site of one of the most notorious and recognizable prisons in the world, which just so happened to be eligible for return to the First Nations according to a clause in the Treaty of Fort Laramie which stipulated that unused federal land would be returned to whatever First Nations traditionally occupied the area.⁵² Clyde Bellecourt and Eddie Benton Banai, two founders of the American Indian Movement, met in Minnesota's Stillwater State Prison where they organized a group of 46 American Indians. Clyde Bellecourt described this organization as offering, "education about being Indians, instead of just rotting in prison making license plates. I guess we had the first real Indian Studies Program in the country."⁵³ In her study *Indians in Prison*, Elizabeth Grobsmith argued that were it not for Indigenous militancy of the 1960s and 1970s, changes could not have taken place as they did in Nebraska prisons.⁵⁴ Activism in the USA was marginally influential on the work of inmates in

⁵¹ William Archambault, "Imprisonment and American Indian Medicine Ways: A Comparative Analysis of Conflicting Cultural Beliefs, Values, and Practices," in *Native Americans and the Criminal Justice System* edited by Jeffrey Ian Ross and Larry Gould (Boulder, CO: Paradigm Publishers, 2006), 144.

⁵² Warrior, Robert and Smith, Paul Chaat. *Like a Hurricane: The Indian Movement from Alcatraz to Wounded Knee*. (New Press, 1996), 10.

⁵³ Clyde Bellecourt, Quoted in Peter Matthiessen, *In the Spirit of Crazy Horse* (New York: Viking Press, 1980), 34.

⁵⁴ Elizabeth Grobsmith, *Indians in Prison: Incarcerated Native Americans in Nebraska* (Lincoln: University of Nebraska Press, 1994), 9-10.

Canadian prisons, but in this early period it was Canadian political and social mobilization that had the greatest influence on inmates in prairie institutions.

Seeing their incarceration within colonial history also helped prisoners make sense of their incarceration, which was overwhelmingly for minor offences.⁵⁵ Viewing their incarceration within colonial processes helped inmates see what caused them to lose their cultural balance and gave them a plan to restore themselves. In a submission to a 1975 conference (discussed in detail in chapter five), the Native Inmate Assistance Project articulated this sentiment in the following terms:

For the real problem is the result of the attitude of inferiority and dependency that has been instilled in native people over the past one hundred years. The real poverty, in all its manifestations, material deprivation, psychological oppression, political alienation, cultural exploitation and social degradation is the direct and inevitable consequence of the attitudes and structure of a white society.⁵⁶

Howard Adams famously articulated this response to colonial histories in *Prison of Grass*.⁵⁷ But understanding the root cause of Indigenous incarceration was not the same as shirking responsibility for actions. As Charlie expressed the impact of teachings,

One of the first things that I learned was that you have to take responsibility for your own actions. Now I used to pay lip service to that, but it just lip service. When I learned the traditional teachings, I really learned that sincerely.⁵⁸

These teachings harkened back to the Indigenous laws that governed society historically, but were adapted for the context of the Canadian prison as necessary.

⁵⁵ Many have argued that Aboriginal peoples were incarcerated for mostly minor offences, yet still were classified as high security in the system. Some examples of reports that found this conclusion are: Canadian Corrections Association, *Indians and the Law*, (Ottawa: Canadian Welfare Council (Liang Report): August 1967), 42-6. ; Document No. NCJ-75, Statement by Hon. W. Helen Huntley, Solicitor General – Alberta, Adult Corrections and Law Enforcement, National Conference on Natives and the Criminal Justices System, (Feb 5, 1975), 3-4. ; Elizabeth Grobsmith, *Indians in Prison: Incarcerated Native Americans in Nebraska*. Lincoln: University of Nebraska Press, 1994), 182-4. ; Solicitor General Canada. Task Force on Aboriginal Peoples in Federal Corrections. *Final Report*. (Ottawa: Solicitor General Canada, 1988), 27. ; Native Council of Canada. *Métis and Non-Status Indian Crime and Justice Commission*. 1977.

The 1988 Task Force on Aboriginal Peoples in Federal Corrections questioned the data when they noted that Aboriginal peoples tended to be convicted for crimes against the person, though still served shorter sentences on average (though still served a longer percentage of those shorter sentences). See pages 26-7 of the report.

⁵⁶ Document No. NCJ-41, Native Inmates Assistance Program, Submission to the 1975 Edmonton Conference, p3-4.

⁵⁷ Howard Adams, *Prison of Grass: Canada from a Native Point of View* (Saskatoon: Fifth House, 1975), 141-149.

⁵⁸ Charlie (former prisoner), interview with the author, September 9, 2013

Within the Department of the Solicitor General, Indigenous issues were not a priority, meaning that sustained policy assessment and innovation was not forthcoming. In 1967 the Canadian Correctional Association, the precursor to the current National Associations Active in Criminal Justice released a study that commented on the need for study and policy development for Indigenous offenders, but it fell on deaf ears.⁵⁹ The Hon. Warren Allmand reflected on the ambivalence in Ottawa regarding Indigenous concerns during his time in parliament after 1965:

The real depth of the problems, the seriousness of the problems, were not as visible as they became. The problems were probably there, but they were not visible because of communications or because of leadership, or whatever, even because of interest. People making policy tend to react to what is in the news. Well these things weren't in the news.⁶⁰

This changed in 1969 with the release of the White Paper on Indian Policy, which thrust Indigenous concerns into the national spotlight. Indigenous activism developed in Canada, especially when Indigenous political leaders were able to unite Indigenous voices across Canada in response to the Trudeau government's 1969 *Statement of the Government of Canada on Indian Policy*, popularly referred to as 'The White Paper'.⁶¹ In response to the *White Paper*, the newly formed National Indian Brotherhood began advocating for reform in numerous spheres, most prominently education with their policy statement, *Indian Control of Indian Education*.⁶² Furthermore, in British Columbia, the 1973

⁵⁹ Canadian Corrections Association, *Indians and the Law*, Ottawa: Canadian Welfare Council (Liang Report): August 1967. Surprisingly, the 1966 Hawthorne Report had nothing to add on the condition of Aboriginal prisoners. While many of the socio-economic factors that shaped the economic and educational development of Aboriginal peoples were the same, and the report did put an emphasis on the legal status of Aboriginal peoples in Canada, they never ventured into the criminalizing effects of the problems the report identified.

⁶⁰ Warren Allmand (Former Solicitor General and Member of Parliament) interview with the author, September 30, 2013.

⁶¹ Harold Cardinal, *The Unjust Society: The Tragedy of Canada's Indians*. (Edmonton: M.G. Hurting Ltd, 1969), 1 ; George Manuel and Michael Posluns. *The Fourth World: An Indian Reality*. (Toronto: Collier-Macmillan Canada, 1974), 126. ; Ben Swanky, *National Identity or Cultural Genocide?* (Toronto: Progress Books, 1970).

Note that the term "White Paper" is because the policy proposal was in fact a White Paper, meaning it was a paper that presented a government policy while inviting feedback on the policy itself. That "feedback" came in a swift, unanimous, and loud opposition from the Aboriginal political world. While the racial overtones to this problematic piece of proposed legislation are appropriate, that was coincidental.

⁶² Incidentally, the language of the National Indian Brotherhood's contribution to the 1975 Edmonton Conference discussed in this chapter borrowed language directly from this document on education. The paper was revised and released as *First Nations Control of First Nations Education*, echoing the same goals and position yet again in 2013.

Supreme Court case of *Calder v Attorney General of British Columbia* brought forward by the Nisga'a of northern British Columbia ushered in the modern land claims era in Canadian history.⁶³ J.R. Miller identifies this late twentieth century as an era of "Conflict and Confrontation."⁶⁴ He and other scholars have noted advances in self-government in Indigenous history, particularly in cases of political autonomy at the band level,⁶⁵ land claims cases,⁶⁶ wildlife management,⁶⁷ and social services in urban areas through friendship centres. For example, by 1969 the Canadian Penitentiary Service Deputy Warden's Conference recognized Indigenous inmates' needs in a conference report. It said, "They state that the white man does not understand their problems. There should be an effort to recruit Indians or Metis, with degrees in the behavioral sciences, as counsellors in the three institutions in the Prairie Provinces."⁶⁸ This was the beginning of change within the correctional sphere. Awareness of Indigenous issues within prisons was increasing, no staff members knew how to tackle these issues.

During this time the first study conducted by the federal government to evaluate the criminal justice system pertaining to Indigenous peoples was completed. It was a radical document for its time. Gilbert Monture's *Indians and the Law*, a remarkably short report, especially considering the breadth of material covered, critiqued all stages of the criminal justice system from arrest to release. Regarding incarceration, the report noted, "Few institutions in this country have special programs geared to the Indian people as a group, even in those institutions where the majority of inmates are

⁶³ See Arthur Ray, *Telling it to the Judge: Taking Native History to Court* (Vancouver: UBC Press, 2012).

⁶⁴ J.R. Miller, *Skyscrapers Hide the Heavens* 3rd ed. (Toronto: UTP, 2000), 336-363.

⁶⁵ Alfred, Taiaiake (Gerald). *Heeding the Voices of our Ancestors: Kahnawake Mohawk Politics and the Rise of Native Nationalism*. Toronto: Oxford University Press, 1995.

⁶⁶ J.R. Miller, *Skyscrapers Hide the Heavens* 3rd ed. (Toronto: UTP, 2000), 336-363. ; Hamar Foster, Heather Raven, and Jeremy Webber (eds.). *Let Right Be Done: Aboriginal Title, the Calder Case, and the Future of Indigenous Rights*. Vancouver: UBC Press, 2007.

⁶⁷ John Sandlos, *Hunters at the Margin: Native People and Wildlife Conservation in the Northwest Territories*. (Vancouver: UBC Press, 2007) ; Hans Carlson, *Home is the Hunter: The James Bay Cree and Their Land*. (Vancouver: UBC Press, 2009)

⁶⁸ Opening Remarks, Canadian Penitentiary Service Deputy Wardens' Conference, (Quebec: May 12-16, 1969), 9.

of Indian extraction.”⁶⁹ It then detailed a number of systemic inequalities within the correctional system as it operated. For example, because Indigenous peoples were from rural and reserve communities in greater numbers than non-Indigenous peoples, their chances of developing a workable release plan was significantly more difficult, and as a result Indigenous peoples served more of their sentences, often until mandatory release.⁷⁰ Also, because of cultural confusion and lack of understanding of criminal justice processes, Indigenous people tended to plead guilty to avoid confrontation in courts.⁷¹ Because of these systemic and cultural barriers to justice, the Monture report concluded that Indigenous peoples were “frustrated, resentful, confused, and cynical.”⁷² It recommended addressing these problems by encouraging Indigenous cultural practices and a degree of self-governance within the correctional sphere. While no concrete plans were offered for Indigenous inmates, this opened the door at a policy level for Native Brotherhoods to take on the task.

Penal administrators were uncomfortable with the spread of Native Brotherhoods and grassroots inmate movements because they misunderstand the Brotherhood movement and erroneously viewed them as gangs. Several tactics were used to stop the spread of this type of movement. One was through punishments that had a long history within the correctional administration. Christie Jefferson, a long-time advocate for change in the administration of prisons, and the organizer of a pivotal 1975 conference, discussed below, articulated this period in the following terms:

⁶⁹ Gilbert Monture, *Indians and the Law: A Report Prepared for the Honourable Arthur Laing, Minister of Indian Affairs and Northern Development*, (Ottawa: Canadian Corrections Association, August 1967), 48.

⁷⁰ Monture, *Indians and the Law*, 49.

⁷¹ Canadian Corrections Association, *Indians and the Law*, Ottawa: Canadian Welfare Council (Liang Report): August 1967, p39-49. This was also discussed in more detail by Rupert Ross, though in a later time period. Ross’s study shows that little changed for Aboriginal peoples in northern Ontario in this regard over the subsequent decades. Rupert Ross, *Dancing with a Ghost: Exploring Indian Reality*. (Markham, ON: Octopus Books, 1992).

⁷² Canadian Corrections Association, *Indians and the Law*, Ottawa: Canadian Welfare Council (Liang Report): August 1967, 17.

As people tried to push for the kinds of things that were recommended in the 1967 report, they were met with stonewalling and a true oppression. I mean it was a rough period. Anybody who stepped up got very tough treatment and maximum security, the hole, you know. Pretty rough stuff.⁷³

Bobby Woods said in a 1992 interview for a National Film Board production, “Today it’s different. We have a sweat lodge there now, we have pipes coming in now, and we have Elders coming in now. So we have come a long way. But there was a lot of guys that did time in the hole for us to have what we have now. A lot of guys lost a lot of good time over the things that we have now. A lot of guys.”⁷⁴ Outright opposition to the Brotherhoods was rare compared to a more nuanced interference with the movement’s development.

Institutions also tried to stop these organizations through transferring their leadership to different penitentiaries in the region and around the country. Legal scholar Michael Jackson explains this practice, “Transfers from one institution to another are an integral part of a modern prison regime.”⁷⁵ While the use of transfers was not officially punitive, many of those who were transferred felt that this was essentially their purpose.⁷⁶ Bob Royer, in his book *Occupied Canada*, describes this pattern of moving inmates,

Prison authorities took quick exception to the Brotherhood and tried to break it up by transferring main spokesmen like Donny Yellowfly to other prisons, but in the long run all they succeeded in doing was spreading the Brotherhood out across the Country. A whole generation of Indian leaders was in fact forging a network that would sustain them when they took to the streets seeking change.⁷⁷

While his case history is difficult to track, Yellowfly spent time in many prisons in both the Western and Ontario regions of CSC.⁷⁸ Within a short period of time, what began as an isolated inmate

⁷³ Christie Jefferson (Parole Board Officer) interview with the author, February 10, 2014.

⁷⁴ *The Spirit Within*. Directed by Gil Cardinal and Wil Campbell (Montreal: National Film Board, 1991). VHS.

⁷⁵ Michael Jackson, *Justice Behind the Walls: Human Rights in Canadian Prisons* (Toronto: Douglas and McIntyre, 2002), 435.

⁷⁶ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, September 9, 2013.

⁷⁷ Robert Calihoo and Robert Hunter, *Occupied Canada: A Young White Man Discovers his Unsuspected Past* (Toronto: McClelland and Stewart, 1991), 66.

⁷⁸ PAA, Acc No 1987.366, box 6, File “Native Brotherhoods 1972-1979” Alberta Native Brotherhood of Indian and Metis Meeting, Drumheller Institution, September 11, 1973

group in Prince Albert became a region-wide movement, with most institutions in Alberta, Saskatchewan, and Manitoba having a Brotherhood of their own.⁷⁹ Other than determining the chronology of when specific groups began, it is difficult to trace any direct links between institutions, but it is clear that through inmate transfers the movement spread quickly.

Prisoners had many reasons for joining the Native Brotherhood. One was the free coffee. Because the defining feature of incarceration was monotony, any reason to get out of the cell and into a social event was worthwhile. This motivation and the loose structure of the groups meant that often non-Indigenous inmates participated in the Brotherhood's activities. Ed Buller reflected on that saying, "One of the interesting things was that the free coffee was a big pull. Because of that, non-Indigenous people joined the Brotherhoods as well. They did in significant numbers at times. It was a chance to get out of the cells and get free coffee."⁸⁰ Charlie remembered in a recent interview, "anything out of the cell is good, even if you were phony or pretending, you can still go [laughs]..." When asked whether that was a problem for committed Brotherhood members he responded: "Nobody asked. They understood we were all in the same boat."⁸¹ The break that the Brotherhoods offered from the monotony could and did lead to more significant political, cultural, and spiritual development among the inmates.

The second reason for joining was protection. In many cases, when inmates talked about the Brotherhoods as a self-help group, a common descriptor for the Brotherhoods at the time, the notion of self-help was more attuned to helping inmates exist within the prison. Ed Buller put it in the following terms:

You saw substantial mixture of individuals coming in for various reasons, but those were the early days. They were not politicized. They were not involved with spirituality or culture so much as day to day survival and self-help. And self-help

⁷⁹ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 13, 2013.

⁸⁰ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 13, 2014.

⁸¹ Charlie (former prisoner), interview with the author, September 9, 2013.

was more “how do you do this, how do you get to do this, how do you keep from getting caught doing this?” So it was the ins and outs of prison culture.⁸²

In his memoir, *Skid Row Eskimo*, Anthony Apakark Thrasher assessed his decision to join the Brotherhood as one made for his personal safety. As an Inuk, Thrasher did not feel securely placed in any one racial prison subculture, so he joined the Native Brotherhood as a type of protection.

According to Thrasher

There were scores of Indians and half-breeds among the prison population, and as another form of security, I joined the Native Brotherhood. It was a good idea but it had its bad side.

Racial tension was running high between whites and Indians and niggers. As an Eskimo, I was in the middle. I didn't exactly fit into any of those groups. At the same time, I wasn't against any of them either. I chose the Brotherhood because I knew a lot of Indians up North and on the street. But joining meant I had to take the side of the Indians in any fight that took place.

And there were a lot of them.⁸³

This passage reminds that institutions themselves still suffered the problems of violence and isolation inherent within prison culture.

As the movement matured, so did the reasons for joining the Brotherhoods. The most often articulated reason, and the reason for attending given by the leadership, was for rehabilitation, unity, and kinship. The Native Brotherhood was a surrogate family that helped the inmates survive their period of incarceration and, they hoped, heal in a culturally sensitive and relevant way. Groups changed from promoting themselves as a social group to one that focused on culture and spirituality at different speeds. Institutions like Prince Albert, Prison for Women, and Collins Bay moved faster than others like Millhaven, BC Penitentiary, and institutions in Quebec. In proposing these

⁸² Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 13, 2014.

⁸³ Anthony Apakark Thrasher, in collaboration with Gerard Deagle and Malan Mettrick. *Thrasher: Skid Row Eskimo* (Toronto: Griffin Press Limited, 1976), 122.

programs to administrative staff, this emphasis on culture was also the reason given for the program.⁸⁴

At the same time that prisoners were mobilizing within institutions, community organizations were beginning to develop programs for Indigenous peoples in contact with the law. The friendship centres eventually responded to the needs of Indigenous inmates, but those inmates needed to organize first to articulate their needs. Ed Buller, who had tenures as both the director of the National Association of Friendship Centres and the Native Canadian Centre in Toronto, said, “I think you have to consider the reactive relationship. We at the Toronto Friendship Centre did inmate liaison work unofficially for Southern Ontario facilities until the Aboriginal Justice group of Toronto took it over. That is one of the things that Friendship Centres did was start programs and then hand them over to someone else.”⁸⁵ In a similar way, the Edmonton Native Friendship Centre opened in 1963 and by 1964 one of their employees, Chester Cunningham, was spending most of his time as a courtworker in the municipal court building, eventually even acquiring an office in the courthouse because of the amount of time he spent there.⁸⁶ This service became so important that the program became an independent association across Alberta, the Native Counselling Services of Alberta (NCSA). This officially formed in 1970 as Native Courtworker Service and was renamed NCSA in 1971.⁸⁷

The oldest, best funded, and most influential courtworker program and community advocacy organization was NCSA. It was funded originally through the Metis Association of

⁸⁴ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 13, 2014. ; Charlie (former prisoner), interview with the author, September 9, 2013.

⁸⁵ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 13, 2014.

⁸⁶ Document No. NCJ-15, Native Counselling Services of Alberta Submission to the National Conference on Native People and the Criminal Justice System. Prepared in Cooperation with the Indian Association of Alberta, Metis Association of Alberta, and other Native organizations (page 2)

⁸⁷ Document No. NCJ-15, Native Counselling Services of Alberta Submission to the National Conference on Native People and the Criminal Justice System. Prepared in Cooperation with the Indian Association of Alberta, Metis Association of Alberta, and other Native organizations

Alberta, but shortly thereafter abandoned that funding structure to better maintain their position as a non-political agency. They accessed alternative funding through federal, provincial, and private sources. NCSA's influence was possible because of the unique skill set of Chester Cunningham, who was willing to work with corrections on the administrators' terms. Because he was willing to 'speak the language' of corrections, his organization achieved considerably more recognition and funding than more aggressive organizations. According to Christie Jefferson,

Chester played the game more. He was very acceptable. And I don't mean this as a negative thing. He did amazing things. But he would go to conferences and speak to government officials, and he could make money like you wouldn't believe. That man was so good at proposals and managed the money well. He was good at choosing who was going to run things.⁸⁸

In other words, Cunningham was a pragmatist, willing to work within the realm of what was possible within the correctional system. This pragmatic bent allowed him to develop programs within institutions which slowly led to increased access to Indigenous cultural and spiritual groups. This organization became a model for programs across the country.

One key position pioneered by NCSA was the Aboriginal Liaison Officer (ALO), which was an individual funded by NCSA who served as a cultural mediator. This person communicated between Brotherhoods, Indigenous communities, and institutional staff. While the introduction of programs in prisons was central to the decolonization of the penal space, the Aboriginal Liaison Officer made this process possible by maintaining lines of communication with the institution. NCSA envisioned themselves as the centre of a triangle that connected three points which were the community, court, and correctional services.⁸⁹ In order to occupy this space NCSA created this new institutional role to facilitate dialogue between the administration, communities, and the inmates in Fort Saskatchewan and Prince Albert Penitentiaries beginning in August 1972 and June 1973,

⁸⁸ Christie Jefferson (Parole Board Officer) interview with the author, February 10, 2014.

⁸⁹ Native Counselling Services of Alberta Submission to National Conference on Native Peoples and the Criminal Justice System, Document No. NCJ-15, page 9

respectively.⁹⁰ Soon most institutions in Western Canada had an ALO. This position linked Indigenous inmates to their community, and facilitated work within the institution by maintaining relationships with the administration and staff. For example, because the Drumheller Penitentiary had an open-minded warden in the early 1970s, an active inmate population, and an engaged external community. That is how within a year of hiring the Aboriginal Liaison Officer, Elders facilitated the one of the first Sweat Lodge ceremonies held in a Canadian prison. While Elders had worked in prisons previously, this was the first time they were able to conduct an Indigenous spiritual ceremony in a federal prison.⁹¹ CSC's record suggests that the motivating factor in allowing Indigenous programming was the development of "good corrections," broadly defined as practices that resulted in pacified prisoners in peaceful institutions.⁹² In 1973 there were four ALOs working within institutions, through third-party contracts from agencies like NCSA or Native Clan of Manitoba. These individuals worked in Drumheller, Stony Mountain, Saskatchewan Penitentiary, and at the regional headquarters for the Western Canadian Region of the Canadian Penitentiary Service.⁹³ Part of the reason the Aboriginal Liaison Officer program was so successful was because all of those involved had something to gain from their work. Inmates maintained community connections, communities were able to work with Indigenous inmates, and administrators were able

⁹⁰ Native Counselling Services of Alberta, in Cooperation with the Indian Association of Alberta, Metis Association of Alberta, and Other Native Organizations, "Native Counselling Services of Alberta Submission to the National Conference on Native Peoples and the Criminal Justice System" Document No. NCJ-15, 3-6.

⁹¹ Thérèse Lajeunesse & Associates Ltd. "Selected Urban Aboriginal Correctional Programs In Canada: A Program Review," APC 12 CA (1994), 77.

This breakthrough represented an institutional aberration rather than a common pattern, though CSC presented this moment as a landmark in the development of restorative justice and human rights in Canadian prisons. See: Correctional Service Canada, *50 Years of Human Rights Developments in Federal Corrections: Commemorating the 50th Anniversary of the United Nations Universal Declaration of Human Rights* (Ottawa: Correctional Services Canada, 1998).

⁹² Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 14, 2014..

⁹³ "Memorandum: Employment of Persons of Indian Origin and Ex-Inmates Within the Canadian Penitentiary Service, December 7, 1973, from the Commissioner of Penitentiaries to the Solicitor General," Library and Archives Canada, RG 73, 1985-87/026, box 46 file 220-F3 vol 2 "Federal Provincial Conference on Corrections"

to develop programming for Indigenous peoples within a penal system that was hurtling towards specialization, where programs were specifically targeted for inmate sub-groups.

Many other organizations applied the approach pioneered at NCSA in the 1970s. Native Clan, a service organization built on the same model as NCSA in Manitoba and headquartered in Winnipeg opened in 1972 and quickly began providing ALOs to Stony Mountain.⁹⁴ In British Columbia multiple groups developed programs independently of each other. An established agency, the Native Courtworkers' Association of British Columbia, and the Union of BC Indian Chiefs both proposed programs to supply workers who would assist Indigenous peoples accused of crimes to navigate the judicial system. Lou Demarais, director of Aboriginal programs, in an interdepartmental memo cited "sensitive issues involved in the interrelationship of your local organizations," which stemmed from this competition for contracts to work with inmates.⁹⁵ Compounding this was that the Allied Indian Metis Association (AIMS), a group that ran a halfway house under the leadership of Andy Anderson served much the same clientele, leading to concerns that the service was being addressed by two or even three agencies.⁹⁶ By 1972 the Native Clan Organization, Inc. was established in Manitoba, creating a network of organizations that worked with Indigenous inmates in Canada. These types of community organizations played a key part of in the development of institutional programming within prisons as well, though they did not enter into formal relationships with the Canadian Penitentiary Service prior to the 1970s.

Ontario was unique because no agency rose to prominence as the supplier of First Nations workers within prisons. By 1974 there was an Aboriginal Liaison Officer working from AIMS house in Ontario serving the needs of Indigenous inmates in that region.⁹⁷ The agency went so far as to

⁹⁴ Library and Archives Canada, Historical Research RG 73, 1986-87/026, bos 2 file 105-2

⁹⁵ LAC, "Associations, Clubs, Societies - General - Native Courtworker Association of British Columbia," BAN 2000-00235-8, file 155-N18

⁹⁶ Ibid.

⁹⁷ Trent University Archives, Acc No 82-014 - Box 3 out of 4, AIMS ONTARIO

bring Andy Anderson, who had helped to set up AIMS in Ontario based on British Columbia's successful model, only to see the house fail to live up to the ideals articulated in its constitution.⁹⁸ The problems with AIMS in Ontario started with the reality that the Brotherhoods did not support it. Ed Buller remembered of AIMS Ontario: "It had very little or no support as far as I could see. It was operated by an ex-offender who had little or no skills in organization, so I think it didn't last, it didn't have any traction around the Brotherhoods."⁹⁹ In 1976 the president of AIMS admitted "the handwriting is on the wall for me" when the Regional Reception Centre and Millhaven Institution would not allow him entry to meet with the Brotherhoods there. In 1976 the Brotherhoods at Millhaven and Collins Bay both expressed their frustrations. The chairman of the Collins Bay Native Brotherhood wrote, "We do not have to vegetate while in prison waiting for AIMS, we, all the Brotherhoods and the Sisterhood can start our own (program)."¹⁰⁰ While successful programs had been developed outside of Ontario, they did so because they meaningfully engaged with the Brotherhoods. Groups like AIMS failed because they attempted to work without first establishing consensus with the Brotherhoods. Thus, the Brotherhoods were central to successful services in prisons. By 1977 AIMS was floundering, and ultimately failed to continue operation.¹⁰¹ In their absence, the work of Elder and Liaison services carried on almost entirely on the initiative of Art Solomon and Ernie Benedict.¹⁰²

One way that these kinds of organizations worked with inmates was through assisting and facilitating Elders who worked with inmates in unofficial capacities. Beginning in the late 1960s, Elders began entering prisons as volunteers on an ad-hoc basis and at the whim of institutional personnel. Elders began coming into prisons, but they did so informally and faced many systemic

⁹⁸ LAC, Allied Indian and Metis Society, Ontario Region, RG 73, Acc 1986-87/026, box 8, file 155-A10-1, part 1

⁹⁹ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 14, 2014.

¹⁰⁰ Trent University Archives, Acc No 82-014 - Box 3 out of 4, AIMS ONTARIO

¹⁰¹ LAC, Allied Indian and Metis Society, Ontario Region, RG 73, Acc 1986-87/026, box 8, file 155-A10-1, part 2

¹⁰² Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 14, 2014.

and individual barriers to entry. Elders' work was the early iteration of what eventually became an entrenched part of Indigenous corrections. Access to the inmates was one barrier Elders had to overcome to work with inmates. Since institutions viewed Indigenous cultural programming as serving primarily a social need, Elders had the same restrictions of movement as any other visitor in the institution limiting them to visiting hours within designated spaces where many of the practices associated with Indigenous spirituality could not take place.¹⁰³ Elders also could not counsel offenders during times of personal or institutional crisis if there was a lockdown or it was outside visiting hours, which was often when Elders were most needed.

Another problem was the inability to bring sacred items into the prison. Upon entry staff desecrated sacred bundles and pipes during routine visitor searches or refused to allow sacred medicines into the prisons because administrators viewed these medicines with suspicion.¹⁰⁴ This was a pattern of treatment for Elders who went into the prisons. For many Elders, this was too great a disrespect, and they decided not to enter the prisons at all. Others decided to enter prisons without sacred items so that they could not be defiled through the searches. Allen Benson reminisced on when Elders first started to go into prisons,

Back in those days there was a lot of fear and nervousness about doing it because their bundles would be touched and affected. Because they are going inside such a sick place and not feeling like they are safe and secure. Not with the offenders so much as with the system. But originally that thinking about taking their pipes in and their medicine bundles was a big, big issue for a lot of them. Many of them didn't come in right away. Some of them never did. Some of them gradually came in and got convinced to come in and "ok, this isn't bad, we should do this to help out people." And in stories from talking to some of the Elders who said even their families didn't support them to go in. The other thing that happened back then was there wasn't a real recognition of how important it was to get out and help our boys in jail or our women. It took a long time to convince people in our community how important it was to invest in those people's lives while they were in jail.¹⁰⁵

¹⁰³ Regional Elders and Traditional Peoples Council Minutes, October 22, 1989 Anglican Church of Canada Archives, GS 92-28, Box 2 Folder 7, "Criminal Justice and Human Rights," ; Native Council of Canada. *Métis and Non-Status Indian Crime and Justice Commission*. (Ottawa: Native Council of Canada, 1970), 59-62.

¹⁰⁴ Art Solomon, *Songs for the People*, (Toronto: NC Press, 1990), 106.

¹⁰⁵ Allen Benson (CEO, Native Counselling Services of Alberta), interviewed by the author, March 30, 2014.

Bobby Woods, the former inmate who worked as an Elder in western institutions, remembered the ways that his sacred items were defiled. He said,

There were times when I came into the institution after I got out, and I brought my pipe in to do a ceremony for the brothers. They took all my stuff and dumped it out, and went through it with a fine, thin comb. And what they were looking at, if they didn't understand they wanted me to explain to them for. They even took my pipe stem and blew through it to see if there were any drugs in the pipe stem. That's the kind of stuff we had to put up with for a long time.¹⁰⁶

This forced a question of whether it was appropriate or possible for Elders to conduct the ceremonies that they were given. Often sacred items like sweet grass or sage was labelled contraband and could not come into the prison. Art Solomon, an Ojibwa Midaywin Elder from North Bay who worked with the inmates in Ontario, could not take sacred tobacco into the prison, so he substitute sacred tobacco with a cigarette for prayer circles. Sacred tobacco was forbidden while commercial products were not.¹⁰⁷ What resulted was cultural innovation, adapting cultural practices to a restrictive and colonial environment. Not every person was comfortable with this new arrangement, but those who were motivated not by the legalism of the ceremony but by prisoners' needs.

What remained consistent was that Elders were simultaneously teachers and a surrogate family for inmates. This rounded out the kinship structures built by the Brotherhoods. One inmate from Joyceville Penitentiary expressed this relationship in the Brotherhood's newsletter writing, "The Elders who share with us their wisdom, and faith, we have learned a lot from them. We would like to think of them as our parents, because they show us love and [they] care, and being in jail, we miss that so much."¹⁰⁸ Elders like Art Solomon entered prisons with their families, and for men and women separated from support networks and families, this reminded them of their inherent

¹⁰⁶ *The Spirit Within*. Directed by Gil Cardinal and Wil Campbell (Montreal: National Film Board, 1991). VHS.

¹⁰⁷ Art Solomon, *Songs for the People*, (Toronto: NC Press, 1990), 106.

¹⁰⁸ Danny Hachey, "Thanks," *Native Brotherhood Publication* 1974, Trent University Archives, Canadian Association in Support of Native Peoples (CASNP) Fonds, Acc. No. 82-014, box 3, File title, "Joyceville Native Brotherhood"

worth.¹⁰⁹ Elders also turned inmates' feelings about their Native roots from what for many had become a point of shame into a celebrated part of their self-identity.¹¹⁰

Conclusion

Over the twenty years from 1950 to 1970, Indigenous peoples, especially in Western Canada began to directly confront the penal system. With little fanfare, the emergence of the Native Brotherhoods reshaped the penal landscape in Western Canada. By 1970, the movement was at the cusp of becoming national through inmate transfers. Policy changes over these two decades made this shift possible, and the emergence of the Brotherhood pushed Indigenous peoples into the policy and programming agenda of subsequent administrations. The penal system underwent a philosophical shift in this period, originally called for in the Archembault report, and ultimately enacted in the aftermath of the Second World War. Indigenous inmates and communities also began to confront the long history of colonial marginalization that manifested itself in over-incarceration of Indigenous peoples in the twentieth century. This meant that in addressing the symptom of the prison, they addressed the colonial basis of Canadian society. It is for this reason that the work done within prisons ought to be seen as one part of a larger political movement of decolonization in Canada.

There were many reasons that this era saw such dramatic change in the administration of prisons. The prison of the twentieth century was a place of significant negotiation and dialogue between interest groups, especially after the 1950s when philosophical changes in the penal regime began to shape the experience of incarceration. Administrations were willing to engage with their constituents in more meaningful ways. At the same time, small Indigenous communities that grew

¹⁰⁹ Eva Solomon (Art Solomon's Daughter), Interview with the author, April 30, 2013

¹¹⁰ Pride as Native people was a common theme in prison writings by inmates.

out of the friendship centres and courtwork programs began to support inmates. Finally, inmates themselves began to advocate for their cultural needs through Native Brotherhoods, forcing the institutions to respond.

This is not to say that the decolonization that prisoners achieved was complete, or even dramatically altered life in all penitentiaries. In higher security institutions like Millhaven or Prince Albert, problems came about when Indigenous people's cultural practices challenged the established protocols within the penal system. This was most often the case regarding sacred items or bundles, which were often defiled when Elders took them into the prison. As the following twenty years show, the nature of the carceral system inhibited healing in an Indigenous way was if not impossible, unlikely within prisons. Even though prisoners decolonized the institution as much as possible, the structure of prison life ensured ongoing colonialism. Many times inmates criticized the system for trying to create model prisoners, who could not live effectively outside the institutions rather than facilitating genuine healing.

This period laid the foundations for dialogue, which was a first step in decolonizing the prison. In practicing Indigenous cultures within the walls, prisoners transformed the meaning of their incarceration. They made the prison a place where inmates could learn their Indigenous culture, heritage, and spirituality. In practicing their cultures within the walls, they decolonized the prison and made it possible, if not to rehabilitate, to live through the experience of incarceration so that Indigenous communities could help inmates rehabilitate on the "outside." In short, Indigenous peoples confronted the machinery of colonization in the penitentiary and worked towards transforming it into a place where healing might take place. Still, there were considerable growing pains to endure.

Chapter Five: “Our Objective is to Get our People out of Jail and Keep Them out of Jail”¹¹¹: 1970-1978

A pivotal conference held in 1975 in Edmonton reshaped Indigenous corrections. Warren Allmand, who was the Solicitor General between 1972 and 1976, called the conference for two reasons. The first was an increasing awareness at the policy level of issues of overrepresentation of Indigenous peoples in federal corrections. The second was Allmand’s personal experience from a visit to Prince Albert, Saskatchewan. Jim Sinclair, a leader in Métis politics, gave Allmand a tour of the city in a car full of Indigenous people. Allmand remembered:

All of a sudden, they pointed out to look behind us, and there was an RCMP car following us. So I said, ‘He just happens to be there, he isn’t following us.’ They said, ‘Well, watch.’ So we were going quite slowly and we weren’t breaking any laws. The fellows in the car were all Aboriginal except myself. They would turn right at the next corner and the police car would turn right, and we would turn left and the police car would turn left, and so on. This went on for a while because they were trying to demonstrate to me that without having done anything wrong we were being followed by the police. All of a sudden the police car, in the manner in which they do this, zoomed in front of us with another police car there stop us. The RCMP officers get out of the car, come over and asked to speak to the driver and asked for his license and registration as if something was wrong. ... So then I started asking questions. Why were you following them? Of course I got no answer.¹¹²

Allmand, who is best known for his role in abolishing the death penalty in Canada, was deeply aware of the injustices Indigenous people faced when they came into contact with the criminal justice system. This episode paired with statistical data that corroborated his understanding of problems in the criminal justice system. He called the 1975 Edmonton conference titled “Natives and the Criminal Justice System,” which was comprehensive in both attendance and in scope. This

¹¹¹ Document No. NCJ-49, Brief of the Native Brotherhood of Indians and Metis to be presented to the Kerby Board of Review, Metaskiwin, May 3rd, 1974.

¹¹² Warren Allmand (Former Solicitor General and Member of Parliament) interview with the author, September 30, 2013.

conference brought together figures from all agencies and ministries of the federal, provincial, and territorial governments involved with criminal justice, Indigenous political leaders, community organizations, and Brotherhood leaders. Together they made over 200 recommendations, and government officials made promises that seemed to position Indigenous corrections well for the future. Political problems within Indigenous Canada and a lack of long-term commitment by officials, however, ended the momentum created in the early 1970s. The promise of the Edmonton conference never came through. This chapter assesses the effects of the 1975 conference on the history of Indigenous incarceration. It outlines the whirlwind decade of the 1970s from the expansion of the Native Brotherhoods and the advancement of Indigenous issues leading to the 1975 conference, the impact and character of the conference itself, and the factors at the political and institutional levels that resulted in disappointment. It shows that struggles within the prisons were never a straightforward conflict between Indigenous peoples as inmates and settler-Canadian administrators.

The Native Brotherhood movement achieved a national scope when in 1970 Charlie, a Mohawk man from southern Ontario was transferred from Western prisons to Joyceville Penitentiary in 1970. He took the Brotherhood movement to Kingston, Ontario. Within years the movement had taken a hold in Ontario, and with its spread to Quebec and the Maritimes it became national within Canadian penitentiaries. Community organizations developed programs to work with Native inmates, particularly through Aboriginal Liaison Officers and Elders. Some institutions were increasingly open to Indigenous programming, even hosting the first sweat lodges in Canadian prisons during this era, albeit with significant modification from their traditional forms.

The Edmonton conference of 1975 had the possibility to usher in a new period of consultation, innovation, and programming for Indigenous peoples. A Federal Advisory Committee was struck to ensure that the recommendations from the conference would not be shelved. Officials

promised the recommendations would be implemented, and communities seemed willing to work towards justice in Canadian prisons. More importantly, through this conference inmates gained a greater voice. Still, this optimism proved to be ill-founded, as 1976 proved to be a year of considerable crisis within Indigenous correctional spheres. That year, three Indigenous inmates committed suicide in a single week at Prince Albert Penitentiary. This initiated a sit-down strike in the institution, and were joined by the majority of the prison population. Finally, a series of riots in major penitentiaries like Kingston Penitentiary and BC Penitentiary shattered the illusions that positive change was indeed taking place. By 1977 a parliamentary review, which was conducted independently of the 1975 conference, was underway to examine and recommend changes in the prison system.

This chapter shows the complexity of Indigenous corrections, as Brotherhoods, communities, and the penal establishment all had conflicting, contentious, and dynamic motives and goals. It also shows that relationships between Indigenous community organizations, Indigenous political groups at the national and regional levels, governments of various levels, correctional staff, and inmates all had periods of conflict with each other. Indigenous corrections was not nor had ever been a straightforward confrontation between Indigenous peoples and a colonial institution. Instead, alliances shifted based on changes in priorities, personalities, and pragmatic concerns. This is why historical approaches of colonization and decolonization are incomplete. Understanding the ways that colonization took place requires a more nuanced understanding of neocolonialism.

1970-1975: Native Brotherhoods Spread in Size and Influence

The first half of the 1970s was a pivotal era in Indigenous history when prisoners, their supporters, and correctional staff began to engage with each other in meaningful ways. In 1970, the Native Brotherhoods became a truly national movement with the expansion of the Brotherhood and

Sisterhood into the Ontario region. During this time Indigenous communities also pioneered the position of the Aboriginal Liaison Officer, originally through NCSA. This role explicitly functioned to maintain dialogue between Indigenous peoples, inmates, and the institutional staff. This position sustained the cultural dialogue within the prisons. Finally, during the 1970s the penitentiary service began to put significant effort into addressing the issues facing incarcerated Indigenous peoples. This was through the appointment of a new Solicitor General in Warren Allmand who in 1971 took the position and was especially motivated to address the needs of Indigenous peoples, the openness in penal institutions, and a growing awareness that allowing cultural practices was “good corrections” because it kept a level of decorum and peace in institutions.

In the wider correctional landscape, 1971 was the beginning of a five-year period within the Canadian Penitentiary Service marked by a series of violent episodes, ultimately culminating in a review of the penal system in Canada. This began with one of the most destructive riots in the history of the Canadian Penitentiary Service, which took place in Kingston Penitentiary. It initiated a period of volatility within the system, especially when compared to the relative placidity that reigned over the decade prior. In the commission of inquiry into the events at Kingston Penitentiary, J.W. Swackhamer argued that the riot indicated a failure of the penitentiary to rehabilitate, and had become solely a place of punishment, which echoed the reports following the riot at Attica State Penitentiary in New York the previous year.¹¹³ Swackhamer identified a cultural rift between the inmates and staff of the institution that created an environment of that was “extremely antagonistic and bitter.”¹¹⁴ In his conclusion, he stated that “Rehabilitation cannot even be contemplated let alone conducted in such an environment. At Kingston it was not seriously attempted.”¹¹⁵ Between

¹¹³ Swackhamer, *Report of the Commission of Inquiry into Certain Disturbances at Kingston Penitentiary During April, 1971* (Ottawa: Queen’s Printer, April 24, 1972), 36.

¹¹⁴ *Ibid.*, 38.

¹¹⁵ Swackhamer, 56.

1971 and 1976, rioting took hold of the Kingston, Millhaven, British Columbia, and Laval institutions.¹¹⁶ In response to this violence, the penal system was primed for change, as the clear evidence of the problems within the system created a new opportunity to rethink correctional practices, including the needs of specific minority prison populations as well.

During the early 1970s the Native Brotherhood movement expanded over this period into Ontario. While the majority of Indigenous peoples in federal prisons were incarcerated in Western Canada, there was also a sizable minority in Ontario. These inmates tended to be as active as those in Western Canada, but in Ontario the network of support communities around inmate communities still needed to develop. The movement spread with the transfer of Charlie, a Mohawk man, who had been transferred from western institutions to Joyceville Penitentiary. This was a voluntary transfer that Charlie requested to be closer to his home. After stints in Fort Saskatchewan, Prince Albert, and Stony Mountain Penitentiary, he was well versed in the mission and purpose of the Native Brotherhoods. Almost immediately upon his arrival at Joyceville, he asked Warden Art Trono about the Brotherhood, which at that time did not exist. This is his memory of that conversation:

When I went in, that was in June 1970, I said, “What about the Native Brotherhood?” He says, “What are you talking about?” So I said, “Well, out west we had a Native Brotherhood of Aboriginal people.” Native people. Native was the name I used then. So he said, “Well, we don’t have one here.” This was the classification officer talking. So I said, “Then we need to start one up.” So I talked with him and I met with the warden and told him what it was and what you do, and that the reason for it was: to maintain a link with society at large so that when you get out you aren’t institutionalized and that there is some chance to learn some of the traditional teachings, and blah blah blah blah blah. So we started up having weekly meetings and working with the classification officer and we started inviting people from outside.¹¹⁷

¹¹⁶ For an overview of each of these incidents, see: Chapter 3, “Report to Parliament by the Sub-Committee on the Penitentiary System in Canada, p19-33.

¹¹⁷ Charlie (former prisoner), interview with the author, Sept. 9, 2013.

Charlie was a motivated organizer and Trono was open to Indigenous programming, so by November 1970 the Native Brotherhood had emerged in Joyceville. It was based on similar experiences in the West, but with a focus on the teachings from the local cultures, specifically Mohawk and Ojibway.¹¹⁸ Thus, the convergence of key individuals who were open and eager to initiate change spread the Brotherhood movement nationally. Soon the movement spread in much the same way that it expanded years earlier in the Prairie Region and British Columbia. Over this period inmate transfers and the hosting of public events where prisoners from other institutions were invited became a catalyst for the development of the movement. From 1971 to 1972 Brotherhoods and the Native Sisterhood began in Collins Bay and Prison for Women, Millhaven, and Warkworth.¹¹⁹ By 1975, when the Canadian Association in Support of Native Peoples published a special issue of their newsletter specifically on Native Brotherhoods, they were functioning in eighteen institutions from Western Canada, Ontario, and the Atlantic Region of the Canadian Penitentiary Service.

Elder services in Ontario during these years began almost entirely on the shoulders of two older men: Arthur (Art) Solomon and Ernie Benedict. Art Solomon was an Anishinabec Midewewin spiritual leader who was influential in several movements from the late 1960s, working with mining unions in Sudbury, the American Indian Movement in Canada, the World Council of Churches, and the United Nations. He also helped form a Native Craft Guild, the University of Sudbury Native Studies program, and the Indian-Eskimo Association (IEA) that later transformed into the Canadian Alliance in Solidarity with Native People (CASNP), mobilized Indigenous peoples and their allies.¹²⁰

¹¹⁸ Joyceville Penitentiary Native Brotherhood, *The Talking Leaves*, 1(1) (1975), no pages.

¹¹⁹ Trent University Archives, Acc No 84-024, box 3 of 4, Big Lodge Society, 1977-7882-014 - box 3 of 4, Collins Bay Native Brotherhood, 1973-78, "Big Lodge Society Minutes, Thursday June 8, 1978"

¹²⁰ For extensive biographical details, see Arthur Solomon, *Songs for the People: Teachings on the Natural Way*, edited by Michael Posluns, (Toronto: NC Press, 1990).

The Midewewin are a medicine society of the Anishinabe. Followers of the Midewewin are typically medicine keepers of their people. For more information, see: Michael Angel, *Preserving the Sacred: Historical Perspectives on the Ojibwa Midewewin*. (Winnipeg: University of Manitoba Press, 2002)

His wife Eva and their children contributed to his work in all of these spheres, as he brought his family into prisons to support offenders, for which Art is best remembered.¹²¹ Ernest (Ernie) Benedict had a similarly varied life. He was described as a “traditional leader, storyteller, soldier, mentor, and scholar.”¹²² He was a Mohawk traditional person, one of the first Indigenous peoples to earn a bachelor’s degree (which he earned in 1940 at St. Lawrence University), a force in the Native Studies movement especially as it was forming at Trent University in the 1950s, a WWII veteran, and the founder of Akwesasne Notes, a prominent Indigenous newspaper. He was especially involved in academia, but put considerable emphasis on working within communities.¹²³

Both of these men had an attitude of respect to the teachings and humility in their own abilities. Neither referred to themselves as Elders, though many used that term in reference to them. Instead, they called themselves older men who were still learning.¹²⁴ For example, in introducing himself at an Elders’ Conference at Trent University in 1980, Ernie Benedict said,

I hope you are not expecting that I will know everything but again I am one of those who are just learning. But I would like to point out some of the things that I have learned in talking and in listening to the people who are part of the traditional way.¹²⁵

Both steadfastly refused to accept payment for their services, never asking for anything in return for teaching and conducting ceremonies within the prisons. If money was given, they would accept it, but this was a gift according to traditional teachings, never a wage or salary. Another defining feature of both of these men, and a point that many make in remembering their gifts to Indigenous

¹²¹ Eva Solomon (Art Solomon’s Daughter), Interview with the author, April 30, 2013

¹²² St. Regis Mohawk Tribe, “Press Release: Saint Regis Mohawk Tribe Honors the Passing of Ernie Benedict,” January 18, 2011. http://www.srmt-nsn.gov/_uploads/site_files/SRMTHonorsThePassingOfErnieBenedict_01182011.pdf

¹²³ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 13, 2014.

¹²⁴ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 13, 2014.

¹²⁵ Ernest Benedict, 1980 Elders Conference, August 27, 1980, (Ojibwe Cultural Foundation: Manitoulin Island, Ontario)

prisoners, was their presence. Both would travel great distance to meet with people they knew to be in need of support, be it personal, cultural, spiritual, or social.¹²⁶

While the principles of Brotherhood were derived from largely Metis and Cree traditions, it was modified for the more heterogeneous inmate populations in Ontario. Rather, Brotherhoods adopted a decidedly local focus based on the teachings of Elders and local communities who worked with the inmates. While the principles of celebrating Indigenous identities, maintaining unity, and healing through ceremonies were the same, in Ontario there was a Haudenosaunee and Anishinaabe bent to the ceremonies and teachings. Art Solomon was one of the first Elders to visit Kingston area prisons, especially the Prison for Women, where he gave teachings from his Midewewin spirituality. One central principle of Solomon's spirituality was balance.¹²⁷ Part of this desire for balance was a consistent condemnation of power relationships in any form. Anthropologist Michael Posluns noted that this stemmed from Anishinaabemowin, the Anishinaabe (Ojibwa) language itself, which lacks gendered pronouns and has avoided many of the gendered hierarchies that permeated western societies.¹²⁸ Solomon's understanding of the need for wholeness and balance as the basis for healing shaped his work in prisons, and by extension the outlook of the prisoners as well.¹²⁹

This was not always the case in Ontario, and some Elders had problems with the type of "Native Spirituality 100" that was promoted by other self-styled "native spiritual advisors."¹³⁰ Within Ontario institutions traditions had to be adapted, as the inmate populations were constituted of Haudenosaunee, Anishinaabe, Inuit, Métis, and Plains and BC First Nations.¹³¹ Still, because of cost-saving measures, inmates tended to be incarcerated near the place of their initial arrest, meaning

¹²⁶ Eva Solomon (Art Solomon's Daughter), Interview with the author, April 30, 2013. ; Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 13, 2014.

¹²⁷ Solomon, *Songs For the People*, 19, 22, 41-44, 58.

¹²⁸ Michael Posluns, Introduction to *Songs of the People*, 9.

¹²⁹ RCAP Public Consultations, Vancouver, BC 93-03-11 Priscilla George, PG 410.

¹³⁰ This was the term used by Ed Buller in our interview, August 13, 2014.

¹³¹ The membership of the brotherhoods were often recorded in their newsletters.

that there was a higher proportion of inmates from local communities. Some commentators believed that individuals who self-promoted as Elders brought in spirituality that was divorced from the land and cultural milieu of the region.¹³² One former inmate who served time in Prince Albert, Millhaven, Collins Bay, and some prairie regions went to North and South Dakota after release to learn Lakota spirituality and then came to Ontario to work with inmates. He was a key figure for several years in provincial and federal institutions in Ontario.¹³³ He and Art Solomon were often in conflict because this self-styled “Elder” accepted payment for his ceremonies and wielded his title of “pipe carrier” to control the Brotherhoods. This individual would later note:

One of the things we believe strongly in is our spiritual program. We would like to introduce, to bring into institutions, such things as potlatches and pipe ceremonies that do not exist even on the outside as well as in institutions. It is now beginning to take form across the country.¹³⁴

Because these self-styled “Elders” were often vocal in their self-promotion, often prisoners or prison administrations would seek them out to conduct ceremonies. However, there could also be a negative effect. Many of the inmates were from the region, so this spiritual training did not serve them well upon release. By learning “Native Spirituality 100,” they were more culturally confused by the different ceremonies in their home communities, which shook their personal and spiritual self-confidence.¹³⁵ When a team of Elders worked together to develop ceremonies which would be appropriate, like was the case in the Regional Elders and Traditional Peoples Council, these problems were addressed intentionally and thoughtfully, but when the impetus was on an individual the nuanced differences between First Nation, Métis, and Inuit ceremonies went ignored.¹³⁶ This

¹³² Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 13, 2014.

¹³³ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 13, 2014.

¹³⁴ Minutes of the Parliamentary Sub-Committee, Issue No. 24, Thursday, February 3, 1977, 163.

¹³⁵ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 13, 2014.

¹³⁶ Laurel Claus-Johnson (Advocate for Aboriginal Prisoners), Interview with the author, August 15, 2013.

shows a tension between a “pan-Indianism” that some individuals promoted and a more culturally and geographically rooted spirituality guided by Elders like Art Solomon and Ernie Benedict.

Still, conducting ceremonies within the prison grounds meant creative adaptation was necessary. In some cases this meant using alternatives for sacred medicines because of rules surrounding contraband in prisons. In one of the earliest sweat lodges, the warden at Stony Mountain was faced with a dilemma. He understood and respected the rehabilitative potential of Aboriginal ceremonies, but he had serious concerns for the safety and security of the institution. This forced him to find an alternative to the traditional sweat lodges. Ed Buller told this story:

This comes down as a story I've heard a couple times. No dates, but they told me. It was a name I knew as a warden, but I've forgotten. The problem was the Grandfather rocks, erecting a structure inside the institution, and fire. Now this is the story, the warden could agree to building of the lodge, the structure, but he had difficulty with inmates around axes, wood, and fire. So he arranged for a pipe, a long duct, to go from one of the buildings to one of the sweat lodges to pump steaming hot air into it. Now that's a story. I don't know the veracity of it, but there were individuals like that who saw the benefit of it.

The accuracy of the story notwithstanding, it tells of a dynamic in corrections. Even in the most open institutions and under wardens who sympathized with and encouraged Indigenous cultural practices, the prison was still a prison. This meant that to exist within the institutional space of the prison, inmates and Elders needed to adapt to the realities of prison life, which was possible because of the transformative nature of ceremonies themselves. Those involved showed that ceremonies did not nor ever had existed in a historical vacuum. By adapting ceremonies for the prisons, prisoners and Elders decolonized the prison through prayer and ceremony. At the same time, the ongoing influence of the prison on those ceremonies eventually became part of the simultaneous process of neocolonialism.

During the early to mid-1970s, the Native Brotherhood movement also expanded the types of programs available. Once established in institutions, the Brotherhoods could shift their efforts away from ensuring that they could continue to operate, and could branch out and innovate the

kinds of programming and activism in which they were engaged. Many Native Brotherhoods and the Sisterhood began communicating with one-another, developing a community of like-minded people incarcerated across the country. Sharing their newsletters was the most effective way to communicate with one-another, though institutional censors could and did control the message of these newsletters.¹³⁷ They also developed craftsmanship and handicrafts groups, which they used to reclaim their cultural heritage. The creations that they made in these workshops were important both as a marketable skill on release and for the cultural training that came with the Indigenous approaches to working with crafts.

The activities of the Brotherhoods behind bars also mirrored the wider context of increasingly public protests and political organization by Indigenous peoples across Canada. After the 1969 White Paper and especially into the early 1970s, Indigenous peoples confronted governments directly. Warren Allmand saw the connections between activism inside and outside the prisons in his time as Solicitor General, reflecting,

There was an increasing activism of Aboriginal people at all levels. You know, their political organizations became more active during the '70s and you had fellows like George Erasmus and Jim Sinclair. He (Sinclair) was quite a force in Indigenous politics in Saskatchewan. You had the leadership and activism and advocacy, so it related both to what was visible, both in and out of the prison. Sometimes outside, with respect to all the social problems and the incarceration rates and so on, it wasn't just those who were inside who were advocating on this, it was also some of the political organizations.¹³⁸

Prominent Indigenous political and academic figures like Howard Adams, George Manuel, and Harold Cardinal began to take up the concerns of inmates alongside advocacy for Aboriginal and treaty rights, education, and economic justice.¹³⁹ George Manuel expressed in his book, *The Fourth*

¹³⁷ See: Al Sinobert, "The Long and Bitter Trail: Editors Note," *Tribal Ways* 74 (1974), np.

¹³⁸ Warren Allmand (Former Solicitor General and Member of Parliament) interview with the author, September 30, 2013.

¹³⁹ Howard Adams Fonds, R10982, v1 file 28, 'Advocacy, Aboriginal Prison Inmates - Correspondence and related material'

World, that “the height of Canadian racism is achieved in Canadian prisons,” citing statistics to defend his claims.¹⁴⁰ He went on to argue that in the face of this racial system, the Native Brotherhoods “are doing the greatest work towards long-term rehabilitation” with help from outside and initiative from within.¹⁴¹ Howard Adams, in 1972, published a newspaper article in the *Toronto Star* titled, “Canada is Filling Its Prisons with Indians,” and in it he roundly condemned the criminal justice system for convicting Indigenous peoples for minor charges which often stem from “the frustrations of living in a racist and colonial society.”¹⁴² Adams maintained communications with inmates who asked questions regarding the wider struggle for Indigenous rights, and how they could help in their positions within the prison.¹⁴³

In 1970, the Department of Indian Affairs and the Ministry of the Solicitor General initiated a joint project to hire Indigenous peoples and train them for jobs in corrections. This project set out to hire forty Native individuals from the Western Region. They would train in Kingston for six weeks and then serve as Correctional Officers, Guidance Counselors, and Assistant Parole Officers.¹⁴⁴ The press release for this program directly linked it to the recommendations from the 1967 study on Indigenous peoples and the law.¹⁴⁵ Within a year, advocates proposed that prisons be built on reserves and staffed by Indigenous peoples, citing this training program as part of their rationale. The Attorney General for Alberta quickly dismissed the idea, arguing that the cultural and

¹⁴⁰ George Manuel, *The Fourth World*, 185.

¹⁴¹ George Manuel, *The Fourth World*, 187.

¹⁴² Howard Adams, “Canada is Filling its Prisons with Indians, Says Professor,” *The Toronto Star* Saturday, October 21, 1972, p13.

¹⁴³ Library and Archives Canada, Howard Adams Fonds, R10982, v1 file 28, 'Advocacy, Aboriginal Prison Inmates - Correspondence and related material'

¹⁴⁴ Acc No GR1983.223/257 volume 12“Correctional Institutions on Reserves” (Former 24.C.47) Attorney General’s Office TF Roach (police liaison Officer) to John Hart (deputy attorney General) “Re: Correctional Services - Generally” (January 28, 1970)

¹⁴⁵ Provincial Archives of Alberta, Attorney General’s Office Department of the Solicitor General News Reslease, January 15, 1970. Acc No GR1983.223/257 volume 12 “Correctional Institutions on Reserves” (Former 24.C.47) The report cited was: Canadian Corrections Association, *Indians and the Law*, (Ottawa: Canadian Welfare Council (Liang Report): August 1967.

social baggage that comes with working in prisons would be too much for Indigenous guards to handle. This particular letter included the following words

To train and staff a Correctional Institution with Indians from the Reserve where the institution is established, would, it is submitted, be one of the greatest problems to be overcome. Experience has already shown that Indian Band Constables are generally ineffective as Peace Officers on their home Reserves, due to their close relationships and ties with almost every family residing on the Reserve.

This would be immeasurably increased in operating custodial units if any degree of discipline is to be maintained, in my experience and that of others who have worked, lived and assisted with the Indians for many years. It is just too much to expect that an Indian could accept any degree of enforcement of discipline from being placed in a special position.

Perhaps I should also point out that our experience over the past several years with Correction Officers of native ancestry has left much to be desired. When engaged they are enthusiastic workers, but soon become tired of the routine, regimentation and the daily requirement of working a shift. Absence is the rule rather than the exception, and within a few months there have been instances of reporting to work while under the influence of liquor, and they have to be sent home. There is failure to report and gross lateness, generally culminating in the resignation of the employee or else, as has been experienced, he fails to come back to work after several days absence.

The other approach suggested, to recruit from other reserves and then transfer those engaged to avoid the relationship problem, has been tried with regard to Indian Constables and the results have been most unsatisfactory. Resentment is almost certain to occur and any degree of strictness is construed as being brutal, overbearing and against the native on the Reserve where he is employed. Another problem is that of language, as there are various dialects and if not understood, have caused criticism and embarrassment.”¹⁴⁶

The above letter fell to a default position of cultural incompatibility, this time with Indigenous peoples being viewed as unable to hold a position of authority. Furthermore, these cultural challenges were seen as heightened in prisons relative to areas where the government had direct experience.¹⁴⁷ The social worker whose advice guided the above letter went into further detail on the assimilative goal of the prison, arguing that building prisons on reserves “would only isolate the Indian further from assimilation with the balance of the population.” He offered as proof of his assessment his evaluation of past experiences regarding Indigenous Correction Officers, which he

¹⁴⁶ Alberta Archives, Acc No GR1983.223/257 volume 12“Correctional Institutions on Reserves” (Former 24.C.47) Attorney General’s Office, Dept of the Attorney General – From JD Lee to Hon Edgar H. Gerhart, June 7, 1971

¹⁴⁷ Alberta Archives, Acc No GR1983.223/257 volume 12“Correctional Institutions on Reserves” (Former 24.C.47) Attorney General’s Office

said “has left much to be desired.” The government employee cited absenteeism, workplace drunkenness, lack of commitment to the work, and ultimately resignation or termination of employment.¹⁴⁸ This was the context of the early 1970s. Even though strides were made in inmate organizations and Indigenous community groups, true innovation was rejected by colonial authorities. Acting based on experiences with the Indian Constable program of the RCMP and advice from the Department of Indian Affairs, correctional authorities advised against this program. The Morley jail was never built. Similarly, in 1972 Clarence Dennis of the British Columbia Native Courtworkers Service also recommended a plan for an all-Native institution on donated traditional land, and this proposal fell similarly flat.¹⁴⁹

While programs had yet to be effectively implemented, the penal administration was willing to listen to innovative ideas.¹⁵⁰ By 1972 a Special Programs Division formed to respond to the needs of minority groups within prisons, naming Native inmates, women, and sexual offenders in an effort to provide more innovative programming. Having said that, there was still little understanding of the cultural basis necessary for healing, especially within the correctional world. Programs that came from the Special Programs Division during this era originated from the top, followed the one-size fits all approach, which is to say they applied the same approach to Indigenous prisoners as they did with other inmates, only they did so through segregation. In 1974 the consultation branch of the Solicitor General’s office created the position of “National Consultant, Native Peoples,” which

¹⁴⁸ Acc No GR1983.223/257 volume 12“Correctional Institutions on Reserves” (Former 24.C.47) Attorney General’s Office Dept of the Attorney General – From JD Lee to Hon Edgar H. Gerhart, June 7, 1971

¹⁴⁹ Library and Archives Canada, “Associations, Clubs, Societies - General - Native Courtworker Association of British Columbia,” BAN 2000-00235-8, file 155-N18

¹⁵⁰ “Bernard Cloutier to Mr. L. Zeitoun, Personal communication, August 5, 1977,” Library and Archives Canada, RG 73 Department of the Solicitor General Fonds, Acc. No. 1989-90/047, File 200-N-16 v.6, “Natives and the Law Ministry Committee, Ontario”

promoted Indigenous issues as a focal point within justice related programs, including policing, incarceration, and parole.¹⁵¹

1975 Conference: Natives in the Criminal Justice System

When Warren Allmand was the Solicitor General for Canada from 1972 to 1976 Indigenous peoples gained a sensitive ear at the highest level of corrections. Allmand, more than any person in his position before then, was motivated to address the problems facing Indigenous peoples in the criminal justice system. Christie Jefferson, who in the Solicitor General's office as a young criminology graduate at that time, commented on Allmand's treatment of Indigenous incarceration as a key issue: "He was personally very committed. In fact I'm not sure what would have happened if it hadn't been for Warren Allmand. He deserves a lot of credit."¹⁵² While Allmand was most famous for abolishing the death penalty in Canada, he also drove policy concerning Indigenous inmates. Over the early period of his tenure as Solicitor General, Allmand visited the inmate committees as well as the wardens and guard's committees. Allmand was increasingly aware of injustice facing Indigenous peoples in prisons because of anecdotal and statistical evidence. Irrefutable evidence of problems in the justice system and increased political capital held by Indigenous peoples at this time led Allmand in 1975 to call a conference in Edmonton. This conference became a focal point for correctional recommendations for the rest of the decade in Indigenous corrections and echoed for decades. While the promise of the conference eventually was never met, the process of attempting to implement recommendations from this conference and the ultimate failure to do so characterizes most of Indigenous corrections for the following decade.

¹⁵¹ Native Policy and Program Review Group Progress Report, Programs Branch Secretariat, Department of the Solicitor General, p8.

This was akin to the ALO, but a single figure at the national level.

¹⁵² Christie Jefferson (Parole Board Officer) interview with the author, February 10, 2014.

Still, in 1975 there were few innovative programs outside the Native Brotherhood that addressed the needs for Indigenous inmates.¹⁵³ Complicating the lack of programming was that many communities were ill-equipped to handle rehabilitation. They were too overwhelmed with other concerns like education reform or political self-determination. As a result, inmates experienced nearly total alienation from their communities.¹⁵⁴ Allmand saw the need for more Indigenous control of programming at all levels of the criminal justice system. For the first time in over fifteen years, there was a Federal-Provincial Conference on Corrections, which included representatives of each provincial, governmental, and territorial government. It specifically identified Indigenous offenders as an over-incarcerated but underserved minority within the Canadian justice system.¹⁵⁵

By February 1975, the proposed conference became a reality, and it was a remarkable event in the history of Canadian corrections. Provincial and federal ministers, correctional authorities at all levels, representatives from the Royal Canadian Mounted Police, National Parole Board, and Canadian Penitentiary Service, leaders of the Native Council of Canada, Inuit Tapisariat, Friendship Centres, National Indian Brotherhood, Native Women's Federation, and the Native Law Student's Association, and leaders of the Native Brotherhood and Sisterhood movement all attended in Edmonton.¹⁵⁶ This included, along with Allmand, Secretary of State Roger Tassé, Minister of Indian Affairs and Northern Development Judd Buchanan, representatives from each province, and the head of the Correctional Services of Ontario. It also included influential leaders from Indigenous

¹⁵³ Ministry Committee on Native People and the Law, "Policy Paper: Native People and the Criminal Justice System," Submitted to the Senior Policy Advisory Committee, (April 1, 1975), p6, LAC, RG 73, Acc. No. 1983-84/237, Vol 107 File 1140-161 file packet 1, "Ministry Committee on Native People and the Law"

¹⁵⁴ Christie Jefferson (Parole Board Officer) interview with the author. February 10, 2014.

¹⁵⁵ Ministerial Statements, Agenda, Communiqué, and Other Related Documents, Federal-Provincial Conference on Corrections, December 12-14, 1973, Chairman Hon. Warren Allmand, Solicitor General of Canada

¹⁵⁶ Warren Allmand (Former Solicitor General and Member of Parliament) interview with the author, September 30, 2013. For a brief overview of the conference, see: Solicitor General Canada. *Native Peoples and Justice: Reports on the National Conference and the Federal-Provincial Conference on Native Peoples and the Criminal Justice System, Both Held in Edmonton, Feb. 3-5, 1975.* (Solicitor General Canada: Ottawa, 1975).

communities, including Harold Cardinal, Gloria George of the Native Council of Canada, George Manuel of the National Indian Brotherhood, and Jimmy Johannes of the Inuit Tapisariat of Canada, to name a few. Finally, representation was present from NCSA, Native Clan, the Ontario Native Women's Association, and leaders of the Brotherhoods.

A sense of optimism permeated the conference. Helen Huntley, Solicitor General for Alberta, opened the conference by saying,

In the 13 months since the decision to have this conference was first announced much planning and preparation has taken place. The officials from my Department and from our Provincial Government worked at it with great enthusiasm. From the outset the primary objective has been to ensure that it would not be a superficial or showcase conference. Our sincere desire has been and continues to be the achievement of positive results. To that end each person and department has worked with dedication.¹⁵⁷

In his opening remarks, Warren Allmand hoped that this conference would be able to “more clearly identify the problem and suggest appropriate action programs.” He continued by saying, “Our expectations of this Conference are high, and so they should be. The right people are here. We share a determination to gain a better understanding of the problems we face and to move towards their solution.”¹⁵⁸ Inmates from Ontario offered in a brief: “We represent the frustrations, the fears, the pain and if you listen well, the hopes of those of us who are subjects of a system which is alien to our society.”¹⁵⁹ Kitty Maracle commented in the general session on the impact that the inmates had on the proceedings, saying,

There is one more message that the inmates have asked me to express. When they came here they were terribly frustrated and because of the help and the assistance and the willingness of everyone to listen to them and let them express their views and their problems – and they did get some answers – unanimously they have said, ‘We are leaving here and our frustrations are going to stay here because we don’t have them now.’¹⁶⁰

¹⁵⁷ Verbatim Report, Document No. NCJ-48, 4-5.

¹⁵⁸ Ibid., 4.

¹⁵⁹ Document No. NCJ-51, Recommendations: Native Inmates of Ontario, January 1975

¹⁶⁰ Verbatim Report, Document No. NCJ-48, p92.

Although this optimism would ultimately be short lived, it expressed the sense of momentum that the conference garnered for participants. Political leaders expressed commitment on behalf of their departments. Indigenous political organizations declared solidarity, and articulated a better understanding of the situation facing Indigenous offenders. Those present seemed sincere.

A number of themes ran through this conference, and influenced the actions of inmate groups in the years to come. First, there was agreement in submissions to the conference that correctional officers needed sensitization and awareness training regarding Native peoples. Numerous groups reported that the problems facing inmates originated in staff ignorance regarding Indigenous culture. The conference participants noted that cultural training for Correctional Officers would be an effective approach to addressing the issues. Second, the source of over-incarceration was identified as colonialism. Therefore, they argued that the prison needed an overhaul, not program-level modification as prisons as they were could not be places of rehabilitation for Indigenous prisoners. In short, while prisoners and advocates wanted to improve the system, they understood that their efforts would have a limited effect within the colonial context. Third, all present recommended the employment of more Indigenous people at all levels of the criminal justice system. This was difficult to address because recruitment drives were notoriously unsuccessful at increasing numbers of Indigenous employees. Fourth, the Indigenous representatives demanded greater respect for their culture and spirituality, which was received with verbal agreement but limited change in daily life within institutions.¹⁶¹

At least in the rhetoric, the conference voiced the need for a unified effort to develop programs across Canada, in contrast to the isolated experiments up to that point. In fact, the

¹⁶¹ Vern Jones (Liaison Officer) to Bill Donihue, October 1977, Provincial Archives of Alberta, Acc No 1987.366, box 6, file "Native Counselling Services of Alberta, 1974-1977."

problems that a lack of unity created were explicitly mentioned in the report on the administration of justice in urban areas. Bill Wilson acting as speaker addressed the conference:

This is a purely personal opinion and doesn't reflect any of the feeling of the people, Indian or otherwise, in my group, it struck me that a lot of the discussion that took place in our group took the form of Indian versus non-Indian. It often resulted in Indians saying something and non-Indian people not believing it. That, unfortunately, seems to be the history of Indian-white relations. White people just don't believe us when we tell them we are discriminated against and oppressed by the justice system. I say that with all due respect to the people in our group, because the people in our group were as open minded and probably as qualified as any group you will find concerned with the Indians and law.

The other thing that bothers me, and on this I will conclude – the other thing that bothers me is that, while there was conflict Indian-versus-white man, the thing that really bothered me, even in our group, as small as it was, there was a conflict of Indian versus Indian. If we are going to get our shit together, we have to get rid of that kind of conflict, and I would hope that the Ministers won't seize on that, as they have all too often in the past, as an excuse to say 'The Indians don't have it together. Therefore, we don't have to do anything'. --- (Applause)¹⁶²

How new programs looked varied by the organizations that submitted briefs. The Native Inmate Assistance Project of Kingston, Ontario noted the need for national program development from political and governmental organizations.¹⁶³ The National Association of Friendship Centres suggested that the Native Courtworker program be expanded nationally.¹⁶⁴ The Native Council of Canada recommended a national standard for cultural sensitivity.¹⁶⁵ The National Indian Brotherhood recommended first and foremost First Nations control of punishment, which again echoes the underlying issues of sovereignty that inform debates on Indigenous incarceration. Their policy proposal echoed, in some places almost verbatim, their more well-known policy statement,

¹⁶² Report on the Administration of Justice – Urban (Chair Bill Wilson, recorder Noel Starblanket, comments by Wilson), Verbatim Report, Document No. NCJ-48, 47.

¹⁶³ Document No. NCJ-53, Report: Native Inmate Assistance Project, August 31, 1974

¹⁶⁴ Document No. NCJ-9, A Current Summary of Recommendations from Member Centres, National Association of Friendship Centres, December 3, 1974

¹⁶⁵ Document No. NCJ-10, Submission to the Conference, Native Council of Canada, prepared in cooperation with the Native Counselling Services of Alberta, Native Clan of Manitoba, Member Associations of the Provinces and Territories, and other Native organizations

“Indian Control of Indian Education.”¹⁶⁶ This was also evident in the recommendations that came out of the conference.¹⁶⁷ One workshop recommended the creation of a committee which would maintain the momentum of the conference.¹⁶⁸

At this conference, inmates and community organizations focused on increasing contact with urban and reserve communities, developing programs for Indigenous inmates, and teaching prisoners about their cultural and spiritual heritage as a strategy to rehabilitate. Delegates made twenty-one recommendations specifically concerning institutions; four of these were adopted by the Federal Ministers’ meeting held on the third day of the conference. These recommendations were: (1) incarceration as close to home as possible and in a community based treatment facility, (2) the encouragement of educational, social, and cultural programs from within the prisons, (3) recognition and support from the administration and Native groups, and (4) developing new training standards for Correctional Officers to include cultural sensitization regarding Native offenders.¹⁶⁹ The volumes of submissions and over 200 recommendations from this conference have been reiterated in many studies and reports, sometimes adding to the list but infrequently contradicting the recommendations.¹⁷⁰ After the Edmonton conference a Federal Advisory Council was struck in an effort to maintain the momentum and implement the recommendations. The achievements of this conference seemed genuine and would be long-standing. One prisoner from British Columbia addressed the conference by saying,

¹⁶⁶ Document No. NCJ-78, Statement of the National Indian Brotherhood to the Federal-Provincial Ministers Conference on Native Peoples and the Criminal Justice System.

¹⁶⁷ Referral List of Recommendations from the Conference on Native Peoples and the Criminal Justice System, prepared by Christine Jefferson, Department of the Solicitor General, recommendation G2b

¹⁶⁸ Document No NCJ-76, Summary of Workshop #3 (b) presentation to Plenary Session, National Conference on Native Peoples and the Criminal Justice System

¹⁶⁹ Christie Jefferson, “Referral List of Recommendations from the Conference on Native People and the Criminal Justice System,” 2-3.

¹⁷⁰ Solicitor General Canada, *Native Peoples and Justice: Reports on the National Conference and the Federal Provincial Conference on Native Peoples and the Criminal Justice System, Both Held in Edmonton, Feb. 3-5, 1975*. (Ottawa: Solicitor General Canada, 1975), 3-4.

Ladies and gentlemen, I am one of the native inmates from the B.C. delegates. On behalf of the people that I represent in the B.C. Penal Institute I wish to thank the ministers here for allowing us to be here and have some say in the programming and the recommendations that are being put down here today, and I want to add to that the presentations here today have been really excellent and I really appreciate that.¹⁷¹

Ultimately, in spite of the lofty language, the government agencies involved in the Federal Advisory Council did not have the political will to supply the funding to move the conference recommendations forward.¹⁷² While this committee met several times following the conference, it quickly became clear that no policy change would result from this conference because of turnover in personnel and personality rifts within the Native groups, as well as the entrenchment of patterns of operation in the criminal justice system.¹⁷³

1975-1982: Internal Politics and the Decline of Optimism

At the Federal-Provincial Ministers Conference, the ministers established a Federal Advisory Council which would continue the work that began at the conference. On this council was a representative from the Native Council of Canada, the Inuit Tapisariat, the NAFC Friendship Centres, the National Women's Federation, the National Indian Brotherhood, and the Native Law Student Association, as well as the ministers represented at the Federal-Provincial meeting.¹⁷⁴

Warren Allmand later reflected on this committee, "We wanted to make sure that the recommendations and the things that we did at the conference didn't fall off the shelves. So we put in place apparatuses to keep this thing alive... This was on both sides. On the Aboriginal side there

¹⁷¹ Verbatim Report, Document No. NCJ-48, p120.

¹⁷² Christie Jefferson (Parole Board Officer) interview with the author, February 10, 2014

¹⁷³ Christie Jefferson (Parole Board Officer) interview with the author, February 10, 2014. This process whereby the recommendations were shelved or underfunded is explored in much more detail in the next chapter.

¹⁷⁴ Document No. NCJ-80, Federal-Provincial Ministerial Conference on Native Peoples and the Criminal Justice System, February 5, 1975, Verbatim Report (Unrevised Text), 138-9.

were committees, we had joint committees, and more meetings that tried to adopt new ways of doing things.”¹⁷⁵

It quickly became obvious that the funding promised at the conference would not be forthcoming, and government commitments were not as sincere as their rhetoric suggested. In 1977, explaining the lack of direct action resulting from the conference, the Federal-Provincial Conference of Attorneys General and Ministers Responsible for Corrections explained that of the 200 recommendations, many of them were statements of principle rather than concrete steps to be taken, and poor wording made concrete steps difficult to implement.¹⁷⁶ In a follow-up meeting of the Federal Advisory Council that was held in Montreal on March 17, 1976, the changing representatives from numerous government departments made it difficult to maintain the momentum from the 1975 Edmonton conference. Lack of continuity was frustrating for the Native organizations on the Federal Advisory Committee, with Chester Cunningham of NCSA expressing his feelings explicitly. In an article in *The Native Perspective*, Gary George argued that because of lack of funding, already obvious disagreement between the Status and Non-Status organizations, and a complete lack of inmate representation, the council was “a waste of time.”¹⁷⁷ The most hopeful perspective offered in this article came from Bill Badcock of the Native Law Students Association, who argued that despite the imperfections of the council, it was the only vehicle that the native organizations had at the political level, and was therefore worth saving.¹⁷⁸ This led to a decision to reorganize the committee to include only Native organizations, with government officials included

¹⁷⁵ Warren Allmand (Former Solicitor General and Member of Parliament) interview with the author, September 30, 2013.

¹⁷⁶ Federal-Provincial Conference of Attorneys General and Ministers Responsible for Corrections, “Action Taken by Federal Government in Response to Proposals from 1975 Federal-Provincial Ministers’ Conference on Natives and the Criminal Justice System, June, 1977 (Ottawa, June 27-30, 1977)

¹⁷⁷ Gary George, “Canadian Advisory Council Conference Waste of Time” *Native Perspective* (March, 1976) appended to: Canadian Penitentiary Service, *Background Material on Native Progress*, (August 11, 1976)

¹⁷⁸ *Ibid.*

by invitation only.¹⁷⁹ Part of this reorganization included changing the name of the Federal Advisory Council to the Canadian Aboriginal Justice Council.

This was not, however, the beginning of a harmonious relationship among the Native organizations. Internal political conflicts between status and non-status organizations led to the ultimate dissolution of the council. The change in leadership at the Native Council of Canada (NCC) was the catalyst to conflict. While Gloria George had been the president at the NCC, and her tenure was marked by cooperation and amicable relations with others on the Federal Advisory Council. In 1977 Harry Daniels was named president and with him came the men who, with him, began the Native Brotherhood in Prince Albert in the 1960s. This included the commissioners of the Métis and Non-Status Indian Crime and Justice Commission: Harry Daniels, Joe Blyan, Joseph Mercredi, and Robert Royer, as well as Liz Loyer who served in a support role. Having been radicalized while in prison, these men maintained their political activism at the provincial and national levels. They entered leadership profoundly dissatisfied with the government, and frustrated by the unwillingness of other organizations to directly confront the government. Joe Blyan, for example, after release from Prince Albert Penitentiary ran for and won positions in regional friendship centres, Métis Associations, and eventually the NCC. He described himself after his release in 1970: “I’ve challenged everything they’ve thrown my way... I’m still the same bull-headed Indian as I always was, I haven’t given up, I’m still going at it.”¹⁸⁰ This was the approach the NCC took in its dealing with political differences both with government agencies and other Indigenous political groups. This was an ironic turn of events, because the men who founded the movement caused the breakdown of

¹⁷⁹ “Advisory Council Streamlined,” *Native Perspective*, April 1976, appended to “Background Paper on the Federal Advisory Council, subsequently the Canadian Aboriginal Justice Council (1975-78)”

¹⁸⁰ York University Archives and Special Collections, Inventory #F0382, *Our Native Land* - Joe Blyan, Michael Posluns Fonds, York University.

cooperation on behalf of Indigenous prisoners at the national political level, largely because they were unwilling to compromise on issues of justice.¹⁸¹

Shortly after being named chair of the Canadian Aboriginal Justice Council, Harry Daniels dominated the council and directed its priorities to align with the political agenda of the NCC. Reflecting on the state of the council, the Solicitors General's department expressed its discomfort with the council in 1978:

The CAJC as it now exists is politically-oriented and solidly based on the current priorities of the Native Council of Canada whose president, Mr. Harry Daniels, is Chairman of the CAJC. This association has made it impossible for the CAJC to fulfill its mandate as an advisory council on Native issues for the past year.¹⁸²

This conflict ultimately pitted the National Indian Brotherhood, who represented Status Indians exclusively, against the NCC who spoke for the Métis and Non-Status Indians. Christie Jefferson sat on the FAC and Canadian Aboriginal Justice Council over this period until she left in frustration for the lack of action on the part of government. She said:

There were deep divisions which are well known particularly between the status and the organization and me taking on status. There was also personality, so you had people like Roberta (Jamieson), one of the first First Nation lawyers, very outspoken and very powerful. Harry the Dog from the penitentiary background as were a number of people he pulled in to the organization. Really pissed off that Metis and non-status Indians were getting such a raw deal. The status (organizations) were seen as being very afraid of potential loss of status and what that might look like and watering down rights and so on. They came together to plan the meeting, but by the time the second meeting was over all hell broke loose.¹⁸³

By 1978, the newly formed council was under great stress and the council collapsed. In proposing an entirely new organization to replace the defunct council, several Native leaders wrote that the FAC “got off to a very good start and was equally useful to the Native organizations and the government.

¹⁸¹ In this way these men were opposites to those at NCSA, especially Chester Cunningham.

¹⁸² “Background Paper on the Federal Advisory Council, subsequently the Canadian Aboriginal Justice Council (1975-78), 7.

¹⁸³ Christie Jefferson (Parole Board Officer) interview with the author, February 10, 2014.

Changes in leading personalities on the native side and stresses between native organizations and between some organizations and the federal government led to a gradual but persistent weakening of the structure until it finally collapsed in 1978.”¹⁸⁴

The final death knell for the council came at a meeting scheduled for June 19, 1978. The Ministry of the Solicitor General tried to get the organizations to meet to get back to the original aim of the Federal Advisory Council distinct from the existent one, but Harry Daniels and the NCC proposed an autonomous Canadian Aboriginal Justice Council, a proposal that was signed on by the National Association of Friendship Centres, the Inuit Tapisariat, and the Native Women’s Association of Canada. This was opposed by the National Indian Brotherhood and the Native Law Students Association, who advocated a return to the relationship that was established in 1975, the issues that plagued the intervening years notwithstanding.¹⁸⁵ Reflecting on this as the aftermath of the 1975 conference, Christie Jefferson said, “Some progress has been made, but there was a tremendous amount of momentum lost.”¹⁸⁶ Warren Allmand echoed this sentiment, saying, “Things like that never end up perfect because of the human beings who are on the field. It was two steps forward and one step back or three steps forward and four steps back.”¹⁸⁷

One legacy of the conference was that inmates finally confronted their communities and political leaders in Indigenous, federal, and provincial positions for perceived negligence regarding Indigenous inmates.¹⁸⁸ They further expressed the effects of this negligence at all levels. The most meaningful impact of the conference was in uniting together of Indigenous political, community,

¹⁸⁴ Anonymous background paper, “Proposed Canadian Advisory Council on the Native Peoples and the Criminal Justice System,” (Solicitor General unpublished policy paper), 2.

¹⁸⁵ “Background Paper on the Federal Advisory Council, subsequently the Canadian Aboriginal Justice Council (1975-78), 8-9.

¹⁸⁶ Christie Jefferson (Parole Board Officer) interview with the author, February 10, 2014.

¹⁸⁷ Warren Allmand (Former Solicitor General and Member of Parliament) interview with the author, September 30, 2013.

¹⁸⁸ Document No. NCJ-64 (F), Recommendations of Workshop 6: Institutions – Urban – Rural, Chairman Kitty Maracle, Recorder W. Badcock *National Conference on Native Peoples and the Criminal Justice System*. Volume 1, (Febrary 3-4, 1975. Edmonton, AB), 3.

and inmate leadership. The Native Inmate Assistance Program submitted a history of the Native Brotherhood group, and it identified the early development of the still-young group as defined by, “not so much a matter of misconceptions as a complete lack of awareness of the native inmate.”¹⁸⁹

Bob Francis, from the Department of Justice, summarized his personal impressions of the conference writing:

The whole thrust, I think, of the conference during the past few days is to sensitizing those involved in the criminal justice system to the particular needs of the individuals coming in contact with that system. Such sensitizing would involve far greater community involvement, including active involvement by groups and individuals which, in turn, would ensure understanding and recognition of cultures and values.¹⁹⁰

Although this dialogue failed to establish policy change organizations hoped for, it did lead to developments in the community-level approach to correctional institutions. The conference also was an opportunity to exchange ideas among the network of Brotherhood organizations across the country, as communication was previously rare, mostly taking place through inmate transfers.¹⁹¹ This meant geographically distant inmates could learn of progressive developments and programs at other institutions, such as the 1972 Drumheller Sweat Lodge, and they could then use these examples to pressure for similar programs. Therefore, at the grassroots level, the conference was an important moment.¹⁹² In short, policy level changes recommended at the 1975 conference were never implemented, but at the grassroots level the conference was an opportunity to organize.

The Edmonton conference represented a high point in the hopes for Indigenous community members. It was the coming-together of all involved in the percolating field of Indigenous corrections. Reflecting back on the impact of the conference, Christie Jefferson said, “The hope

¹⁸⁹ Document No. NCJ-41, Native Inmates Assistance Program, *National Conference on Native Peoples and the Criminal Justice System*. Volume 1, (February 3-4, 1975. Edmonton, AB), 2.

¹⁹⁰ Bob Francis, Department of Justice, in “Verbatim Report,” Document No. NCJ-48, *National Conference on Native Peoples and the Criminal Justice System*. Volume 1, (February 3-4, 1975. Edmonton, AB), 120-121.

¹⁹¹ Christie Jefferson (Parole Board Officer) interview with the author, February 10, 2014

¹⁹² Christie Jefferson (Parole Board Officer) interview with the author, February 10, 2014.

would be then to take as many as those ideas and be able to put them in a context in which the politicians would have to pay attention and make declarations. The whole idea was of having the politicians there for that final day was to get them to make promises.”¹⁹³ This seemed to happen, as Warren Allmand said,

Now, we move into the third section and this is a very important item because here we shall decide what sort of mechanism we shall set up to make sure that what was started here and started the preparation for this conference is not forgotten and is not shoved under the rug, and that those things that we agreed to do here today are, in fact, done.¹⁹⁴

Those at the conference were hopeful, but with the benefit of hindsight Christie Jefferson called this hope naïve: “Promises are easy. As soon as the camera was off, it was business as usual.”¹⁹⁵

The failure of the Federal Advisory Council to maintain its existence illustrated a wider trend in the relationship between Indigenous inmates and the political organizations that they believed were not speaking for them. This was best summarized by the Drumheller Native Brotherhood, who penned a scathing letter that condemned both the government and the Indigenous political establishment. Signed by Percy Whitford and Rick Yellow Bird, president and vice president respectively, this letter merits quotation at length. It speaks to a wider malaise within Indigenous corrections felt by communities, political leaders, and inmates alike. They wrote:

We would like to offer our opinion on this matter as it sits uncomfortably with us as a group. We are aware of the conditions that force many of us into these warehouses of misery. We are trying to rehabilitate ourselves according to our own distinctions; sharing what knowledge we have as brothers. Further, it is quite clear to us that the CANADIAN PENITENTIARY SERVICES carries the burden of failure amongst our people. It is further evident that this burden will proceed in the same direction of failure with respect to ‘rehabilitation.’ Why?

The White paternalistic attitude prevails and the period of the last 400 years, we have become painfully aware what this attitude does to the Indian people as a Nation. In the past, request for assistance from our various communities has been exercised and expressed without any notable amount of

¹⁹³ Christie Jefferson (Parole Board Officer) interview with the author, February 10, 2014.

¹⁹⁴ Document No. NCJ-80, Federal-Provincial Ministerial Conference on Native Peoples and the Criminal Justice System, February 5, 1975, Verbatim Report (Unrevised Text), 127.

¹⁹⁵ Christie Jefferson (Parole Board Officer) interview with the author, February 10, 2014.

success. This time, we approached this dire problem by offering our services to the majority of Indian communities including all other communities.

We wish to bring to your attention what a Native has imposed upon him through being placed within the paternalistic consequence. A Native in prison has to go through the double transition process upon his release; the White Society and the Indian society. A person of Native ancestry faces a double culture shock. Small wonder at the high rate of recidivism amongst our people, when we are alienated from our people by our people.

We, as a group of Indians, are compelled to think in terms of the possibility that there is a lack of interest amongst various organizations which are supposedly representing us at various levels. There is a dire need for rehabilitation processes amongst our people and we are aware that we are subject to the basic need.¹⁹⁶

The failure of the FAC enunciated a longer-term problem with a perceived lack of interest from Indigenous political organizations. While the NCC was a persistent advocate after Harry Daniels came to the presidency, they were the exception, not the rule. In fact, the NCC was equally frustrated by the lack of concern from other organizations, especially the National Indian Brotherhood.

The lack of progress at the political level following the conference was mirrored by problems at the institutional level, which came to a head in April 1976 at Prince Albert Penitentiary. Within the span of a week, three Indigenous inmates died in the institution. Two were officially ruled as suicides, while the other was determined to be death by suffocation.¹⁹⁷ The Native Brotherhood in Prince Albert, the 1977 Parliamentary Sub-Committee on the Penitentiary System, and the Metis Society of Saskatchewan all referred to all three deaths as suicides.¹⁹⁸ Immediately following the three deaths, the Native Brotherhood organized a sit-down strike in the prison yard. For four days 300 inmates from all cultural backgrounds sat in the prison yard to protest the conditions in the prison. According to Blair Pelletier of the Inmate Committee, “What happened there was that the sit-in we had was scheduled as a 24-hour thing, a peaceful demonstration concerning the deaths of natives,

¹⁹⁶ Provincial Archives of Alberta, Acc No 1987.366, box 6, File “Native Brotherhoods 1972-1979”

¹⁹⁷ Report to Parliament by the Sub-Committee on the Penitentiary System in Canada, p20.

¹⁹⁸ Report to Parliament, Metis Society of Saskatchewan

suicides.”¹⁹⁹ Simultaneously, the Métis Association of Saskatchewan demanded a full public inquiry into the situation at Prince Albert Penitentiary. At the time, because of press coverage of the events in the penitentiary, the Right Hon. J.G. Diefenbaker, then MP from Prince Albert brought up the issue in the House of Commons. He asked Warren Allmand, then still Solicitor General, what he would do to ensure that this situation was resolved, and what measures would be taken to ensure this situation did not rise again in the future. Allmand responded by assuring Diefenbaker that the strike had been settled, everybody was back in their places without incident, and the 1975 conference gave the measures through which the concerns of the inmates would be dealt with. When Allmand noted that a commission was not needed, Diefenbaker bluntly retorted, “You would not say that if you knew the conditions there.”²⁰⁰

The pressure this strike placed on the institution was curtailed in the discovery of a tunnel that some inmates had dug with the intention of escaping. The strike ended because tunnel gave cause to lockdown the institution. When questioned about this incident, Warren Allmand stated to the House:

It is true that during the sit-down strike a number of inmates, not all of them, were involved in digging a tunnel in an attempt to escape. I might say that although they had dug about 60 feet, they were far away from freedom... They were 25 feet from the wall, but what they did not know was that the wall extends into the ground some ten feet; they would have had a difficult time getting past it through a tunnel or in any other way. It was a lot of work for nothing.²⁰¹

As part of the 1977 Parliamentary Task Force on the Penitentiary System in Canada, the commissioners spoke to the inmate committee and the Native Brotherhood at Prince Albert. They said that following the sit-down nearly all privileges were taken away, as per normal procedure following incidents like this, and sixty people were placed in segregation. The Native Brotherhood

¹⁹⁹ Minutes of the 1977 Parliamentary Sub-Committee, Issue No. 18, Thursday, January 20, 1977

²⁰⁰ House of Commons Debates, 30th Parliament, 1st Session, Vol. 12 (April 8, 1976), 12612.

²⁰¹ House of Commons Debates, 30th Parliament, 1st Session, Vol. 12 (April 8, 1976), 12661.

bore the brunt of the disciplinary action because of their leadership in the beginning of the strike.

Blair Pelletier reflected on this, saying,

It turned out to be a jailbreak which not just natives but the whole population that was in that sit-in did not know about. When it was all over they came down on the Native Brotherhood, because they were the ones who started it because they were concerned about the three deaths. It looked as if they had plotted the whole thing for a jailbreak. To my knowledge, there were no natives involved in the jailbreak at all.²⁰²

In spite of this, the 1977 Parliamentary Report called this penitentiary “The most successful maximum security institution in the Canadian system, largely because of its enlightened management.”²⁰³

The problems facing Indigenous people within the system were not contained to Western Canada, though demographics made it the most obvious there. Ontario inmates were increasingly active, working through the Canadian Association in Support of Native People, which built an advocacy network whereby the Native Brotherhoods were able to speak to governments and administrations. Robert O’Connor authored a scathing letter from his cell in Joyceville Penitentiary condemning the colonial origins of the penal system and the neglect he experienced from Indigenous political organizations, writing,

We have our own inside groups with outside volunteers, but they do not have either the time nor the money to help us with inside self-help programs or pre-release programs. Native organizations avoid us like the plague. They wish to forget we are natives also. We need native counsellors working inside penal institutions; we need native half-way houses; we need native inside involvement in pre-release programs. In order for men to care about themselves, they have to know others will care as well. Sometimes your own people make you ashamed to be one of them. They make you feel like you’re an intruder. With your help, we can help ourselves, and by helping ourselves we have a chance of cutting the odds on returning to less than 50/50.²⁰⁴

²⁰² Minutes of the 1977 Parliamentary Sub-Committee, Issue No. 18, Thursday, January 20, 1977, 22.

²⁰³ Report to Parliament by the Sub-Committee on the Penitentiary System in Canada, 21.

²⁰⁴ Letter from Robert O’Connor of Joyceville Penitentiary to the Symposium on Natives and the Criminal Justice System, held at Carleton University, Ottawa, October 21, 1976., Quoted in Christie Jefferston, *Conquest by Law*, APC 8 CA (1994), p111.

O'Connor's voiced essentially the same concern as the Prince Albert strikers, which is the conditions within the prisons and a nearly total lack of community connection while incarcerated.

Thanks to the ongoing violence in the penitentiary system that began with the 1971 riot in Kingston Penitentiary and culminated in a number of violent events in 1976, 1977 was a year of reexamination of the penitentiary system. The Report to Parliament by the Sub-Committee on the Penitentiary System in Canada noted that, "by 1976 the prison explosions were almost constant," bearing out this statement with statistics: from 1932 to 1974 there were 65 major incidents in the Canadian Penitentiary Service, but in 1975 and 1976 there were 69 major incidents, including major riots in St Vincent de Paul, British Columbia Penitentiary, and Millhaven Penitentiary.²⁰⁵ The Subcommittee concluded that the system was in a "state of crisis" and needed practical, organizational, and philosophical overhaul.²⁰⁶ It also noted that the violence within the system, while troubling, was not new. Rather, the public was newly aware of long-standing violence thanks to changing relationships between the Canadian Penitentiary Service and the press.

Concerning Native inmates, the authors of the report concluded that the system was fundamentally flawed and that Indigenous peoples are overrepresented within prisons, but they struggled to point to a specific examples of discrimination.²⁰⁷ The commissioners noted that this was a difficult task because the task force was struck out because of problems with the prison system in its entirety. The commissioners questioned how they could identify some discrimination as racially motivated and other discrimination as integral to the system and effecting inmates regardless of ethnic or racial origin. The commissioners repeatedly asked Native witnesses whether they saw discrimination within the system against Indigenous peoples, and often these resource people

²⁰⁵ Report to Parliament by the Sub-Committee on the Penitentiary System in Canada, p5.

²⁰⁶ Mark MacGuigan (chairman), *Report to Parliament by the Sub-Committee on the Penitentiary System in Canada*, Second Session of the Thirtieth Parliament, 1976-77 (Ottawa: Ministry of Supply and Services Canada, 1977), 2.

²⁰⁷ Minutes of the Parliamentary Task Force on the Penitentiary System in Canada.

responded in ambivalent or negative terms. Bob Royer of the Native Council of Canada reported for the *Métis and Non-Status Indian Crime and Justice Commission*, and he responded to the question of discrimination saying, “I think I would be safe in saying that there is a general misunderstanding of Indian people in general in society... I do not find it surprising that there is a miscommunication in response to the native inmate and the correctional scope...”²⁰⁸ Royer communicated how discrimination within the prisons was reflective of discrimination they faced outside the prisons. In frustration, one of the commissioners asked an organization that worked with Indigenous prisoners in the BC region, “Have you any evidence, which we have been seeking but have yet failed to find in any of our visits across the country, of discrimination in the prison system against native inmates?”²⁰⁹ What they were looking for was empirical data that would show discrimination against inmates *after* they were incarcerated. In other words, according to the study greater rates of incarceration were indicative of larger social ills, and the blame for this could not be placed on the penal system. The challenges Nielson encountered demonstrate the problems with treating the prison as an isolated phenomenon. Treating the prison in isolation mischaracterizes the system. Eventually the commissioners found the discrimination they were looking for in lower parole rates for Indigenous prisoners.²¹⁰

In the end, the only recommendation the Sub-Committee made concerning Indigenous peoples was this:

Native peoples and others whose environment has been primarily non-urban often find that the penitentiary experience is a particularly destructive one. We believe that a classification based on such a background, not necessarily related to race, is both rational and legitimate, and that specialized institutions such as wilderness camps would prove to be a more constructive setting in which such persons could seek personal reformation.²¹¹

²⁰⁸ Minutes of the 1977 Parliamentary Sub-Committee, Issue No. 34, Friday, February 25, 1977, 33.

²⁰⁹ Minutes of the 1977 Parliamentary Sub-Committee, Issue No. 28, Monday, February 14, 1977,

²¹⁰ Indian Homemakers Association Interview, *House of Commons, Minutes of Proceedings and Evidence of the Sub-Committee on the Penitentiary System in Canada*, Standing committee on Justice and Legal Affairs, Issue No. 28, Monday, February 14, 1977

²¹¹ Report to Parliament by the Sub-Committee on the Penitentiary System in Canada, p145.

While special consideration of Native peoples was granted, rural inmates were also grouped into this category, and no promotion of Indigenous culture as an end in itself was recommended by this commission.²¹² Still, the focus on Indigenous inmates during the commission shows an awareness of their concerns in corrections, even if it was misunderstood. This developing awareness meant that in 1978 the Solicitor General's annual report included an entire page devoted to Native services.²¹³ This was the beginning of enshrining cultural and spiritual practices in policy, which ultimately fostered a new kind of colonialism.

The Native Council of Canada, in their *Report of the Métis and Non-Status Indian Crime and Justice Commission*, did not have the same difficulty pointing to examples of discrimination that Indigenous people faced within penal institutions. There were several reasons that the NCC report was far more critical concerning the situation of Indigenous peoples. The first is that unlike the Parliamentary commission, the NCC set out specifically to assess the conditions facing Indigenous inmates rather than identify broad problems facing all offenders. This meant that the report did not have to distinguish between racially motivated and general oppression. Second, all of the commissioners had experienced incarceration.²¹⁴ The report looked at their statistics of Indigenous incarceration, which they gleaned from government reporting, and they explained imprisonment as reflective of colonial environments.²¹⁵ In no uncertain terms, the commissioners concluded that the failure of the criminal justice system would lead policymakers, "to build more institutions which will be filled with more and more Native people until one day the whole of the Native population will at

²¹² Minutes of the 1977 Parliamentary Sub-Committee, Issue No. 24, Thursday, February 3, 1977, 163-4.

²¹³ Annual Report of the Solicitor General's Office, 1977-78, 40.

²¹⁴ Native Council of Canada, *Métis and Non-Status Indian Crime and Justice Commission*, (Ottawa: Native Council of Canada, 1977), iv.

²¹⁵ Native Council of Canada, *Métis and Non-Status Indian Crime and Justice Commission*, 7-9.

some point in their lives be incarcerated, whether it be in foster homes, residential schools, reform schools, provincial, federal, or territorial prisons.”²¹⁶

The report took overrepresentation as proof of discrimination, and endeavored to identify the cause of that discrimination and remedies for the problems facing Native inmates. The conclusions of the 1977 report echoed the NCC submission to the 1975 Edmonton Conference. It called for greater recognition of the Brotherhoods, hiring of more Indigenous people in the criminal justice system, especially in prisons, integrating Indigenous culture into the programs in institutions, and according greater respect to Native spirituality. They noted the lack of Elders and Aboriginal Liaison Officers, improper disciplinary practice, unnecessary transfers, and culturally insensitive staff. This reflected ongoing dialogue and advocacy that the NCC engaged in separate from the commission. For example, in one case a member of the Matsqui Native Brotherhood, disciplinary action taken against a Brotherhood member in the institution, but then was transferred to BC Penitentiary, an action that the Brotherhoods and the NCC took to be a second discipline for a single offence, which went against penal policy. In this correspondence, Harry Daniels noted separate treatment of Indigenous inmates, which the institutional staff at Matsqui and the National Parole Service headquarters rejected outright, noting that transfers were not officially disciplinary measures.²¹⁷

The commissioners emphasized the role of the Native Brotherhoods, which is understandable since the commissioners played a key role in the formation of the movement. Special focus went to the institutional view of the Brotherhoods, as they quoted many inmates who demanded greater respect for the movement beyond its social function. Inmates were upset that the

²¹⁶ Native Council of Canada, *Métis and Non-Status Indian Crime and Justice Commission*, vi-vii.

²¹⁷ LAC, “Associations, Clubs, Societies – Native Council of Canada,” RG 73, Acc No 1986-87/026, File 155-N27

cultural, spiritual, and rehabilitative value of the Brotherhood was ignored because administrators only noted the group's the social function. One inmate commented,

Although in this institution the Brotherhood is still looked upon by the administration/staff etc. as a place where the Indians go to drink coffee and read newspapers, I feel that the Brotherhoods do, and should, provide, if allowed by the administration, opportunities for our members to be exposed to Cultural and Social programs which would enable each member to become aware of himself as an Indian and as a person.²¹⁸

This inmate showed a maturation of the movement. This was a common theme, where the report recommended that the inmates be allowed to reach their full cultural potential within the institutions. As they saw it, the Brotherhoods and Sisterhoods were not encouraged to expand, but rather they were “merely tolerated or allowed to exist.”²¹⁹

Conclusion

The 1970s was a tumultuous decade in the history of Canadian corrections, though it also witnessed the greatest expansion in Aboriginal programming at the local level. The decade began with the expansion of the Brotherhood movement into Ontario and, shortly thereafter, across Canada. Community organizations, who had largely grown out of the Friendship Centre movement in the early 1970s, began to expand their programming, pioneering the Aboriginal Liaison Worker program, which would continue in different guises into the twenty-first century. Elders began to work more intensively in prisons. The Canadian Penitentiary Service, witnessing these changes in the programs available to Indigenous people, developed positions and programs to facilitate these specialized programs. All of this change was further stoked when leadership changed at the national Solicitor General's department, as Indigenous people gained a sympathetic ear at the highest level.

²¹⁸ Anonymous Aboriginal inmate, quoted in Native Council of Canada, *Métis and Non-Status Indian Crime and Justice Commission*, 59.

²¹⁹ *Ibid.*, 60.

In the years following the 1975 conference on Natives and the Criminal Justice System, while that conference had been held up as an example of the progress in the history of Indigenous corrections both then and today, it failed to maintain the momentum in the following years. This represents a pattern in the history of Indigenous corrections. Like a pendulum there are moments of excitement and optimism followed by periods of stagnation. At the conference itself, Solicitor General Warren Allmand said, “Our expectations of this Conference are high, and so they should be. The right people are here. We share a determination to gain a better understanding of the problems we face and to move towards their solution.”²²⁰ The 1975 conference represented the apex of the pendulum’s swing. In the years following, the pendulum reversed trajectory with conflict between Status and Non-Status organizations, lack of progress within institutions, and ongoing confrontation between Indigenous peoples and the Canadian state. This is not to say that there was no progress in Native programming, but rather that programming continued to evolve at the community level, was ad-hoc, and varied by region and institution. Problems within the institutions went unaddressed over this period. That comes from a persistent unwillingness to explore alternative approaches to healing from the correctional policies and procedures that had long guided penal policy in Canada. Even after the 1977 Parliamentary review of the penal system, penal administrators refused to overhaul the system that they themselves stated was in disarray.

The promise of the 1975 conference was squandered by internal political squabbling that characterized Native politics of the era. Leadership change at the Native Council of Canada and, shortly thereafter, the Federal Advisory Committee allowed the personal conflicts between Indigenous political leaders to inhibit the work of the FAC. Paired with the lack of commitment from politicians, the national momentum of the era ended and led to a context where programs were

²²⁰ 1975 Edmonton Conference Verbatim Report, Document No. NCJ-48, 6-7.

evolving and communities were still innovating within the prisons, but they worked largely independently of each other. This was the situation leading into the 1980s when a number of changes again led to developments in Indigenous corrections. The structures for advocacy were built before 1975. With the passing of Indigenous rights provisions in the Constitution Act along with the Charter of Rights, both passed in 1982, Indigenous people across Canada seized the opportunity to pressure in new ways for their rights, bolstered by the guarantee of those rights. Indigenous inmates followed suit.

Chapter Six: Professionalization, Neocolonialism, and the Development of Indigenous Programming, 1978-1996

In the twenty years following the 1977 Sub-Committee report that recommended both immediate and long-term change in the correctional system, the administration of prisons went through another period of revision. This time Indigenous corrections fit within plans to revise the system. By this era special programs were integrated into the system, and the role of Indigenous communities and inmates were vital in this development. This was due to changing dynamics in penal administration following the tumultuous decade of the 1970s, in Indigenous corrections at the political level, and in the grassroots mobilization of inmates. Over this period, the entire penal apparatus was rewritten with the passage of the Corrections and Conditional Release Act (CCRA) in 1992 which remains the guiding legal framework for the penal system in Canada.

The key shift in this period was a transition where cultural programming transformed from community control to institutional control. While the penal system had long been uncomfortable with Indigenous culture and spirituality, Brotherhoods and their supporters changed the relationship between CSC and Indigenous people. Although penal administrations had long opposed the development of Indigenous programming, they passed a number of policies, commissioners' directives, and ultimately laws that encoded Indigenous cultural practices inside CSC. On the one hand, this assured Indigenous inmates of the right to practice their culture and a legal basis to claim their rights to ceremonies and programs. These were demands that had been made over the entire history of Indigenous corrections. In some ways this was the penal administrations finally making good on their promises from 1975. On the other hand, as CSC became increasingly involved in monitoring Indigenous cultural practices, they ultimately took control over the organizing and running of these programs. They did this through circumventing these community organizations and contracting directly with individuals to provide services rather than contracting their services to

Indigenous organizations. CSC then controlled the practice of spirituality within the institutions and guided the implementation of these policies. This was a double-edged sword, taking control away from Indigenous peoples who had fought for these programs. The most dramatic example of this was the opening of a CSC run healing lodge in 1996.¹ While this allowed Indigenous Elders increased access to prisoners, codification of Eldership was part of a shift away from ceremonies that were guided by Indigenous community involvement to a service delivered by CSC. This chapter assesses how, by taking control away from the communities that were best equipped to run programs, CSC began a process of neocolonialism. In an ironic turn, the codification of the right to culture became the key mechanism to recolonize Indigenous peoples behind bars.

1978-1982: Policy Stagnation, Regional Innovation

Following the dissolution of the Federal Advisory Council, Indigenous corrections was in flux. The national body was unable to operate thanks to internal political differences, and the Federal government had demonstrated a half-hearted commitment to change. This makes the four year period from 1978 to 1982 something of an anomaly in the history of Indigenous corrections. Because communication channels closed, this period was a time when regional innovation was the only way to develop cultural programs for prisoners. Therefore, during this period the regional groups that were intensely involved in corrections created and operated services and facilitated ongoing dialogue with inmates and administrations.²

This is not to say that the penal apparatus was stagnant, indeed quite the opposite. Following its re-examination of the penal system in the 1970s, the National Penitentiary Service underwent another period of renewal, analogous to the revision of the system following the Archambault report

¹ This is explored in more detail in chapter seven.

² Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 14, 2014.

from 1938 that recommended a philosophical change from punishment to rehabilitation as the driving goal of incarceration. After 1977, recommendations to overhaul the system led to changes in the structure of the penal system. This coincided with the constitutional debates of the early 1980s which questioned the nature of Indigenous rights, leading to Section 35 of the Constitution Act that affirmed Aboriginal and treaty rights under Canadian law. The most obvious indicator of structural change was the adoption of the new name, the Correctional Service of Canada (CSC) in 1979, replacing the Canadian Penitentiary Service.³ This change centralized the National Parole Board and the Penitentiary Service under one body. In 1981 the Solicitor General commissioned a study group called the Correctional Law Review (CLR) to conduct a comprehensive review of federal policies regulating the criminal justice system, including the police, courts, penitentiaries, and conditional release as part of this overhaul. The CLR initiated processes that ultimately rearticulated the legislative basis of the penal system in Canada. The CLR identified Indigenous interactions with the criminal justice system as a primary concern, devoting its seventh working paper to the topic. By 1981, those in the CLR understood that none of the Solicitor General's previous efforts to establish programming for Indigenous prisoners had gained traction. Furthermore, Indigenous overrepresentation had risen since the early 1970s, so in December 1980 the Native Policy and Program Review Group was formed.⁴ By 1981, they had proposed several program models, many of which relied on community involvement, but the political will to implement them remained elusive.

Through the reorganization of the late 1970s and early 1980s, Indigenous peoples took on increased responsibility inside prisons. One of the greatest needs articulated by policymakers was the need of a citizenry that was actively involved in correctional programming. Reporting on the

³ Jim Vantour, *Our Story: Organizational Renewal in Federal Corrections*. Ottawa: Correctional Services Canada, 1991.

⁴ Native Policy and Program Review Group, Progress Report, January-June 15, 1982, Programs Branch Secretariat, Ministry of the Solicitor General

philosophical and organizational changes that characterized the 1970s and were implemented by 1978, the Canadian Penitentiary Service stated:

More and more [professionals] are looking outside the system for help, trying to mobilize previously untapped resources in the community that can assist the offender both during his incarceration and after his release. The Inmate Program Branch is in the forefront of this trend, as witnessed by its keen interest in the increased use of volunteers in institutions and its continuing development of community-based programs for special inmate groups.⁵

The report identified Indigenous programming as at the vanguard of this institutional shift, but neglected to mention that the impetus for this change was at the prodding of Native organizations.

The report read, “The principle of finding outside organizations to provide specialized services geared to the needs of Native inmates has gained universal acceptance in the penitentiary system.”⁶

They then further went on to sing the praises of the Aboriginal Liaison Officer program:

The key figure in these organizations is the Native liaison worker, a skilled para-professional who offers a variety of services, such as individual counselling, and support and assistance to Native inmates in developing and successfully carrying out their release plans. The liaison worker is seen as a valuable link between the Native inmate population and institutional staff, complementing the latter in their efforts to encourage participation by Natives in social development activities.⁷

In 1981 the Solicitor General stated that, because of implications of the government’s Throne Speech, they would prioritize the need to “establish a partnership with voluntary agencies and local community organizations,” as well as addressing the needs of minority groups, including Native peoples.⁸ The combination of a formal awareness of the value of community involvement and a regional approach to corrections made it possible to respond to Indigenous inmates in ways that respected the diversity their cultures. In other words, the intercultural distinctions between regional Indigenous cultures were respected because policies encouraged regional program variation.

⁵ Library and Archives Canada, “Administration - Organization, Offender Program,” RG 73 Acc 1986-87/026, Box 3, File 107-0-5

⁶ Ibid.

⁷ Ibid.

⁸ Ministry of the Solicitor General, “Strategic Overview,” (April 1981), p5.

Unsurprisingly, Native Counselling Services of Alberta took the lead in developing programs for inmates. As policies drove the emphasis on Native programming to regional organizations, institutional staff favoured organizations that they already had existing relationships with. The most obvious answer to this was NCSA. Between 1974 and 1982, NCSA changed from a small service organization that struggled to find its position between governments, institutions, and their responsibility to clients, to becoming the largest Native service organization in all of Canada. This was driven by demographic change and a resource boom in the province.⁹ NCSA began operation of a correctional camp at Beaver Creek, expanded the role of Aboriginal Liaison Officers, and continued to operate programs for Indigenous offenders as developed in the previous decade.

Ontario was a problematic spot in Indigenous programming because of the diversity within the Indigenous population within Kingston-area institutions. Several organizations provided services to penitentiaries, all the while the two Elders, Art Solomon and Ernie Benedict, continuing their work with the inmates. Ed Buller explained the complex history in Ontario in the following terms:

Elder [and Liaison] services in Ontario has a terrible history. If it wasn't for just a couple of old men who went into institutions on their own accord basically, there would really be no consistency available in services. For years, CSC attempted to find a carrier agency in Ontario to contract with. The first was the Metis Local #6 that I got involved with. There was one point when Chester Cunningham, who was then Executive Director of the Native Counsel of Services in about '82, and I was brought to Kingston to ask whether we would do it. Chester from Alberta and me from Toronto.¹⁰

This took place after AIMS Ontario collapsed (discussed in the previous chapter) when administrators from Ontario could not find an alternative group to deliver these kinds of services.

The implementation of innovative regional programs did not equate to greater cultural understanding by correctional staff. In 1978 Solicitor General Francis Fox noted the cultural divide

⁹ Marianne Nielsen, "Surviving In-Between: A Case Study of a Canadian Aboriginal-Operated Criminal Justice Organization," (PhD DIss, Department of Sociology, University of Alberta, 1993), ch. 6, 2-3.

¹⁰ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 14, 2014.

within penal institutions when he wrote in a statement on the Inmate Programs division of the Canadian Penitentiary Service:

I suggest that we are still suffering from the syndrome of custodial staff viewing program staff as ‘do-gooders’ and ‘bleeding hearts.’ On the other hand, many professionally-trained staff members view the correctional officers as punitive, insensitive and sadistically inclined people. This schism must be eradicated from our system and I therefore support any training or organizational development program designed to accomplish this objective.¹¹

Even though more program staff and volunteers worked within institutions, the culture among the Correctional Officers and institutional staff shaped the institutional culture. Because the Canadian penal system prioritized the protection of society over rehabilitation, the culture of the officers was a significant impediment to change within many institutions. This problem was compounded by the ongoing difficulty CSC encountered in hiring and retaining Indigenous employees. These problems were rooted in colonial history and distrust of the penal system. By 1982, a number of regional programs existed within various institutions across Canada, and they were largely outside the direct control of CSC. After the passing of the Charter of Rights and Freedoms and Indigenous provisions in the Constitution Act, corrections entered a new phase where Indigenous cultural practices were defended as a right, not a privilege.

1982-1992: Indigenous Culture as Correctional Policy

During the 1980s, CSC took a new approach to Indigenous corrections. Instead of the policy of “benign neglect” that characterized the post-1975 era, in the 1980s CSC shifted Indigenous concerns within the penal system into a more central position. This was part of a larger overhaul of the penal system that had emerged from the tumultuous decade of the 1970s. At the same time, the Brotherhoods became more radicalized with increasingly close ties to Red Power movements.

¹¹ Library and Archives Canada, “Administration - Organization, Offender Program,” RG 73 Acc 1986-87/026, Box 3, File 107-0-5

Finally, Indigenous community organizations reached the height of their influence for in the 1980s, with increasing funding and more complex and numerous programs for Native inmates, from Elder services, liaison officers, and camps for inmates.

This era began with the Constitution Act and the Charter of Rights and Freedoms. The Canadian Charter of Rights and Freedoms, which constitutes part 1 of the Constitution Act, guarantees “freedom of conscience and religion, freedom of thought, belief, opinion and expression, freedom of peaceful assembly, and freedom of association.”¹² This charter affirms that Indigenous inmates were legally free to practice their religious practice, and by forbidding ceremonies in prisons, CSC broke the law. Furthermore, Section 35 of the Constitution Act reads: “The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.”¹³

Anishinaabe legal scholar John Borrows argues that this charter commitment to Aboriginal and treaty rights legally obliges the federal government of Canada to actively uphold these rights.¹⁴ This guaranteed Aboriginal and treaty rights, which has often been invoked in cases regarding title to the land, but has ramifications concerning rights to self-determination, sovereignty, and so on.

Aboriginal and treaty rights have two key dimensions, the first being property rights, including land rights including resources on traditional land, and the second being political rights to self-government. Indigenous peoples have taken this definition of territorial and political rights as meaning that they have “the right to maintain ways of life that are distinct from those of recent immigrants to Canada.”¹⁵ The recognition of rights to land and resources, which is what section 35 has been most often used for, carries with it a recognition of the ongoing validity of Indigenous

¹² Constitution Act, Enacted by the Canada Act, 1982 (IK), c. 11; proclaimed in force April 17, 1982.

¹³ Constitution Act, 1982

¹⁴ John Borrows, *Canada's Indigenous Constitution*, (Toronto: University of Toronto Press, 2010), 185-186.

¹⁵ Michael Asch, *Home and Native Land: Aboriginal Rights and the Canadian Constitution* (Agincourt, Ontario: Methuen Publications, 1984), 37.

customary law through which that title would be recognized.¹⁶ Therefore acknowledgement of Aboriginal and treaty rights carries with it the potential for self-governance.¹⁷ Between the guarantee of Indigenous rights and the assurance of freedoms of religion, thought, expression, and peaceful assembly, the Brotherhoods and Indigenous community organizations had a compelling legislative basis to pressure for greater rights in penal institutions. They used this to great effect.

It did not take long before these new legal principles met their first major test of the applicability in the Canadian penal system. On March 30th, 1983 Dino and Gary Butler, two cousins from the Siletz Nation in Oregon, began a spiritual fast to protest for their right to practice spirituality in at Kent Institution, a maximum security penitentiary in Agassiz, British Columbia. The Butlers came to Canada after careers in AIM that included participation in the 1973 confrontation at Wounded Knee, where a 71 day standoff ended in the death of two AIM activist and two FBI agents, for which Butler was acquitted.¹⁸ Dino Butler “a young AIM warrior,”¹⁹ came to Canada to advocate on behalf of Leonard Peltier. When incarcerated at Kent, they began the hunger strike because they were denied the right to practice their spirituality in a pipe ceremony or a sweat lodge. While three institutions – Stony Mountain, Drumheller, and Mountain Institution – had already held sweat lodges, the Warden at Kent was unreceptive to Indigenous spirituality, which reflects the fact that Kent was a maximum security institution. The inmates on strike and the Canadian Association in Support of Native Peoples pressured the administration to honour Indigenous spirituality on that grounds, specifically referencing the need for access to sacred items and ceremonies on the grounds that the Charter of Rights protected freedom of conscience and religion.²⁰ This episode also

¹⁶ The case of *Regina v Sparrow* was the first case that rested on an argument based on section 35 of the Charter. It affirmed the Aboriginal right to fish.

¹⁷ William Pentney, *Aboriginal Rights Provisions in the Constitution Act, 1982*, (Masters of Law Thesis, University of Ottawa, 1987), 191, 232. ; John Borrows, *Canada's Indigenous Constitution* (Toronto: UTP, 2010), 119.

¹⁸ For a full, albeit one-sided summary of the trial and its context, see: Matthiessen, *In the Spirit of Crazy Horse*, 284-321.

¹⁹ Matthiessen, *In the Spirit of Crazy Horse*, 116.

²⁰ LAC, Associations, Clubs, Societies – General – Canadian Association in Support of Native Peoples, BAN 2000-00235-8, box 37, file 155-C24, part 5

represented the first direct connection between the militant brand of Indigenous activism of the American Indian Movement (AIM) in the United States and penal activism in Canada. James Waldram has incorrectly attributed the origin of Indigenous spirituality behind bars to the Butlers' strike in 1982.²¹ In fact, these men tapped into a well-established movement that had been functioning for over a decade, with antecedents well before that. Still, the strike became a polarizing moment in the history of Indigenous corrections.

The incident gained national attention. On the 23rd day of the strike, former Solicitor General Warren Allmand asked the sitting Solicitor General Robert Kaplan if he would intervene in the dispute. Kaplan was less than sympathetic, responding,

[N]ative religious ceremonies have not been permitted in the past. I decided to change that. I asked the Correctional Service of Canada to design a policy permitting native spiritual observances in institutions. They have designed a policy. The native people in Kent are dissatisfied with that policy, and tried to get an injunction under the Charter... I think the Indians are going a long way when they characterize this new policy, which first allows religious observance in institutions and native observance, as a form of genocide, and I think it not unreasonable that there should be some restrictions on the amount of religious material and equipment which each Indian should be allowed to have in his cell. I want to review the policy, as I say, but I am very pleased that a great deal of progress has been made on this subject in a very short time.²²

The self-congratulatory tone is typical both of correctional policymakers and of parliamentary debate. What was remarkable was that later that week, Kaplan was faced with similar questions from another member of parliament. This time, he took a sterner tone, saying:

I have no sympathy at all for that hunger strike which is under way on the West Coast, especially since those Indians involved in it spent several weeks fattening up before the strike began.
We have an enlightened policy on native spirituality. The Indians took me to court in British Columbia and the policy was sustained as being consistent with the Charter of Rights. We have already built three sweatlodges at other institutions and federal penitentiaries across the country without the need for anyone going on a hunger strike, and without the need for questions being asked of me by the NDP.

²¹ For details on this event, the most thorough narrative comes from James Waldram, *The Way of the Pipe*, 5-9.

²² House of Commons Debates, 32nd Parliament, 1st Session, Vol. 22 (April 22, 1983), 24762.

Further, two of these strikers are American Citizens. If they would prefer to be imprisoned in the enlightened conditions in the United States, they can apply for a transfer to their own country. I can assure them that I will give my approval to that request for transfer.²³

This response was characteristic of the new attitude towards Indigenous peoples within CSC. While CSC saw a need for change in Indigenous corrections, they tried to reform the system without reexamining its Western cultural basis. This was not the tone reported in the media, where articles in *The Globe and Mail* referred to the prison review that was initiated by the strike, and omitted the apprehension with which Kaplan received the question of Indigenous rights in CSC institutions.²⁴

The strike ended after 34 days, with provisions granted to the Indigenous inmates to practice their spirituality in Kent institution. Within a year, most of the leaders were transferred from Kent, in what was characterized as another attempt to stop the activism of Indigenous inmates. An unnamed inmate was quoted in *The Way of the Pipe* reflecting on the meaning of these transfers, saying: “The way he (Dino Butler) explained it to me was pretty neat. He says they are not breaking up our circle, they are only making it bigger. He says where you are going, they probably need you down there to do some work.”²⁵ This is reminiscent of the origins of the Brotherhood movement, as it grew from transfers out of Prince Albert Penitentiary. The long-term effect of the hunger strike are difficult to assess; however, following the hunger strike CSC began to more directly promote policies that encouraged traditional spiritual practices in carceral settings, but there was no direct link between the strike and future policy changes.²⁶ Furthermore, while James Waldram has pointed to the Butlers’ fast as a moment of “rediscovering the pipe,” they in fact entered a milieu where considerable legwork had been done within corrections and in Indigenous communities.²⁷ Still, this

²³ House of Commons Debates, 32nd Parliament, 1st Session, vol 22 (April 27, 1983), 24902.

²⁴ “Native Hunger Strike Triggers Prison Review,” *The Globe and Mail* (April 23, 1983), 12.

²⁵ Anonymous inmate quoted in Waldram, *The Way of the Pipe*, 14.

²⁶ “Native Spiritual Rites given Prison Approval,” *The Globe and Mail* (November 23, 1985), C12.

²⁷ Waldram’s first chapter is titled, “Rediscovering the pipe,” and he begins with the incident at Kent.

episode represented the coming-together of years of frustration that followed the promise of institutional change and Indigenous programming as articulated at the 1975 conference. After this hunger strike, a number of studies and reports moved CSC towards a system that more fully integrated the norms and values within the Charter of Rights.

The integration of Indigenous services and provisions within CSC policy came about due to people who were willing to work with the system, not because of violent or abrasive protests. It was not in the demands of AIM inspired protesters from within and outside the prison walls, but rather increasing recognition over the 1980s that Indigenous programming, which had been met with suspicion and hesitation, was indeed “good corrections.”²⁸ In other words, allowing Indigenous spirituality and cultural programming within the walls was an effective method to achieve peace in the institution. This was best illustrated during a riot in Drumheller Institution, a multi-security-level institution in Alberta, where Native Brotherhood members sat down in passive protest and did not take part in the violence.²⁹ They credited their actions with the teachings from the Elder and their spirituality.³⁰ Individuals who worked with the system, like Chester Cunningham at NCSA or Joe Couture at CSC, had considerable influence in the reports and studies that followed, and shaped penal policy. Restructuring and Indigenous programming in the 1980s, for example, was informed the work of Joe Couture, an Elder and psychologist who worked as a cultural intermediary. His 1983 policy paper “Traditional Aboriginal Spirituality and Religious practice in Federal Prisons” explained Native spirituality using correctional jargon, giving CSC the language necessary to integrate Elders into correctional practice.³¹ For example, he took the norms of social responsibility and explained it using terminology like “rehabilitation” and “recidivism” which policymakers understood. CSC took

²⁸ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, May 15, 2013.

²⁹ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 13, 2014

³⁰ Solicitor General Canada. Task Force on Aboriginal Peoples in Federal Corrections. *Final Report*. (Ottawa: Solicitor General Canada, 1988), 51.

³¹ Joe Couture, “Traditional Aboriginal spirituality and Religious Practice in Federal Prisons,” (Ottawa: Correctional Services of Canada, 1983).

this document and used it in the beginnings of the process of codification of Indigenous programming.

The first major report following the hunger strike came in 1984 in response to another “flurry of violent incidents” that again attracted negative attention to the Canadian penal system.³² This violence led to a commission headed by John Carson, a professor of human resource management and the former head of the Public Service Commission of Canada. The commissioners had the broad mandate of studying the entire penal system. This time Indigenous concerns were more central to the study. Significantly, Chester Cunningham, founder and CEO of NCSA, was a member of this commission, and both the NCSA and the Native Brotherhood of Edmonton Institution submitted briefs to the Advisory Committee. Their submissions emphasized the bureaucracy and red tape which made it difficult for program innovation to take place. One Brotherhood member from BC Penitentiary specifically noted the problems in the administration of prisons, and minimized the role of inter-inmate violence as the cause of problems in institutions. He concluded his submission in these words:

It seems like I have blamed the administrative levels for the most of the trouble, but, I really think that drugs and racial wars and other excuses that the administration feeds the public are false. I have been in prison for a long time now and I have yet to witness a racial war and I’m probably the soberest (sic) person I have ever known. As a matter of fact the only problem with drugs in this institution is that there is not enough to go around. I have yet to see any drugs that the administration has described in the newspapers such as heroin, talwin and them kind of drugs.

Of course, I could give you a million stories of incidents that I have seen inside the prison where the inmates are blamed and are the ultimate victims of what they were supposed have done. (sic)³³

³² John Carson, Commissioner, *Report of the Advisory Committee to the Solicitor General on the Management of Correctional Institutions (Carson Report)*, (Ottawa: Solicitor General, 1984), i.

³³ Kenneth Noskiye, Letter to Chester Cunninham, *Briefs Submitted to the Advisory Committee to the Solicitor General on the Management of Correctional Institutions*. (Unpublished reports: 1984). Available online at <http://www.publicsafety.gc.ca/cnt/rsrscs/lbrr/ctlg/dtls-en.aspx?d=PS&i=26206738>. Accessed January 6, 2016.

Despite evidence to the contrary, John Carson reported that CSC was “functioning well,” but that Indigenous peoples needed consideration at the policy level.³⁴ He noted that efforts at Native recruitment, which had been an area of emphasis since the 1970s, had been “singularly unsuccessful,” and that incarcerated Native populations were growing at double the rates of non-Indigenous people since 1960.³⁵ He further acknowledged development in Elder and Liaison Officer programs, particularly noting that every Prairie institution had an on-site Native Elder, but he also recognized that the programming available was uneven and staff remained predominantly culturally ignorant.³⁶ Carson noted that programs needed to respect “regional and cultural uniqueness,” a principle that supported Indigenous programming, especially in western institutions.³⁷ This was the first major report on the system in its entirety that gave sustained attention to the needs of Indigenous peoples in federal institutions. Unlike those that preceded, the Carson Report argued that the cause of overrepresentation of Indigenous peoples was rooted in cultural misunderstanding and the fact that the prison was not rooted in Indigenous worldviews or cultures. It recommended, therefore, that all levels of CSC needed to be educated on Indigenous culture, and that alternative approaches to incarceration be explored for Indigenous peoples.³⁸ Chester Cunningham’s inclusion on the advisory committee and these recommendations indicated an institutional recognition of the cultural needs of Indigenous peoples. While programs had been developed in the past, this cultural argument was new to CSC. Carson’s conclusions led to an Organizational Review Task Force, which concluded that CSC was rigid, authoritative, and inflexible, recommending delegation to regional and institutional authorities.³⁹ The response to this indictment was a drive towards decentralization,

³⁴ Carson, *Report on the Management of Correctional Institutions*, 1.

³⁵ Carson Report, 27, 50,

³⁶ Carson Report, 23, 50-51.

³⁷ Carson Report, 19.

³⁸ Carson Report, 50-51. Recommendations 49-50.

³⁹ Cliff Scott, “Report of the Organizational Review Task Force,” (Ottawa: Correctional Services Canada, October 22, 1985)

which made for a receptive audience in CSC for innovative programs proposed by Indigenous communities who were increasingly willing to work with inmates.⁴⁰

Carson's recommendations for direct policy-level consideration of Indigenous needs in corrections led to further studies that promoted Indigenous cultural and spiritual programming, including Elder and Aboriginal Liaison Officer services. Don McCaskill, in his 1985 report on the criminal justice system in Manitoba, recommended that CSC formally adopt a policy of contracting with external organizations for Liaison Officers, that they standardize its policies in this regard, and initiate discussions that would review contracts intermittently.⁴¹ McCaskill recommended implementing Couture's policy paper on Indigenous people and federal corrections, but noted that this was the first of what must be many steps to reduce the number of Indigenous offenders. He also added that CSC should expect increased pressure from Native peoples regarding policy and program development.⁴² Finally, McCaskill recommended the creation of a national group of Elders, much like already existed for chaplains. They would support the work that Elders did and would validate the credentials of individual Elders, as CSC did not have the community connections to do so themselves.

The Correctional Law Review quickly recognized that the position of Indigenous peoples was one of the main areas that they needed to address. Even though they did not originally identify Indigenous issues as a key policy area, they devoted their seventh working paper to the subject. They

⁴⁰ For example, the National Indian Brotherhood addressed incarceration in strikingly parallel terms to how it addressed education reform. See: National Indian Brotherhood, "Indians and the Criminal Justice System: A Brief Presented by the National Indian Brotherhood to the National Conference on Native Peoples and the Criminal Justice System," Document No. NCJ-21, Submission Books Vol. 1, page 1.

This submission used the language from their more famous policy document, "Indian Control of Indian Education" (1972) almost verbatim, showing the common themes across advocacy and activism in relation to government institutions.

⁴¹ McCaskill, Don. *Patterns of Criminality and Correction Among Native Offenders in Manitoba: A Longitudinal Analysis*. (Saskatoon, Correctional Services of Canada, 1985), 131.

⁴² McCaskill, Don. *Patterns of Criminality and Correction Among Native Offenders in Manitoba*, recommendation 7, page 82. ; Archives of the Anglican Church of Canada, Criminal Justice and Human Rights, GS 91-08, Box 2, Folder 10, Minutes - CJC, 1987-1990

identified the problems facing Indigenous peoples in Canadian prisons, and offered tentative solutions for implementation at the legislative and policy level.⁴³ The working paper identified Indigenous peoples as “a group warranting specific attention” because of their unique legal status under the Constitution, their position as “a traditionally disadvantaged group,” and because of their statistical overrepresentation and sheer numbers.⁴⁴ The *Correctional Law Review* proposed a two-pronged approach to the problem of Indigenous overrepresentation in prisons and dictated the following decade of policy development from CSC. First, CSC was to move towards greater involvement of Indigenous people in the administration of criminal justice broadly and punishment specifically, even going so far as to raise the possibility of total Indigenous control of the criminal justice system in certain institutions.⁴⁵ Secondly, CSC was to put into law provisions that protect Indigenous programming, especially of a cultural and spiritual nature.⁴⁶ The paper recommended policies that would recognize Native spirituality as an “official” religion within CSC, designating Elders and “spiritual advisors.” This gave Elders the freedom and responsibilities equivalent to an institutional chaplain, provided a native Elder under the chaplaincy service, and developed a Native Elders Council that would oversee = religious rights in accordance with Commissioner’s Directive 750, which governed freedom of religion under the heading, “Chaplaincy Services.” For Native spiritual leaders, this included pipe ceremonies, burning of sweetgrass, religious fasting, and sweat lodge ceremonies.⁴⁷

CSC responded by delegating funds and authority to Indigenous organizations like NCSA and by funding Elders Councils, two related but distinct entities that creatively responded to Indigenous concerns in the early 1980s. New policies began to address the need for institutional

⁴³ *Correctional Law Review*, *Working Paper no 7*, iii.

⁴⁴ *Working Paper no 7*, 1.

⁴⁵ The closest this second recommendation came to reality was at Okimaw Ohci, discussed in chapter seven.

⁴⁶ *Working Paper No. 7*, 26.

⁴⁷ *Working Paper No. 7*, 29-39.

recognition of Indigenous spirituality, funding for programs, access to inmates, the prevention of desecration of sacred bundles, and the problem of cultural insensitivity from guards.⁴⁸ This was not entirely new, as NCSA had been working in institutions regionally, but in the 1980s this became a national rather than a regional pattern. Communities also became more involved through the formation of Elders Councils, organizations where Elders presented a unified voice to CSC, developed collaborative programs, and supported one another financially, emotionally, and spiritually. As Eldership was formalized by CSC, many of those who once refused the title of “Elder” took it on as it became necessary to gain access to inmates and the ability to function as a spiritual leader.⁴⁹ In most cases, the same people who served as Elders in the 1970s continued in this new capacity.

One approach was to contract Elders through community organizations like NCSA. NCSA matched Elders to the institutions where they could be the most valuable. They recognized that the teachings given while the inmate was in prison was a starting point for life-long healing processes, and that upon release the inmates would continue their spiritual education in their home communities.⁵⁰ It was therefore important that inmates understood that while there were common trends in teachings, inmates and Elders respected cultural variation among incarcerated Indigenous peoples. Community level involvement in this capacity expanded across Canada through organizations like the Allied Indian and Metis Society in British Columbia, and the Native Clan Organization in Manitoba. The Canadian Association in Support of Native People took an active

⁴⁸ Badcock, W.T. “Problems of Native Offenders in the Correctional System.” *Canadian Journal of Criminology and Corrections*. Oct. 1976. 281-289. ; Cunningham, Chester. “The Native Offender.” In *The Offender*, edited by C.H.S. Jayewardene, 60-66. Dept of Criminology, University of Ottawa, 1976. ; Art Solomon, *Songs for the People*, (Toronto: NC Press, 1990), 106. ; Joe Couture, “Traditional Aboriginal Spirituality and Religious Practice in Federal Prisons: An Interim Statement on Policy and Procedures,” Working Paper #1, Draft #3, (Edmonton: November 1983), 12.

⁴⁹ Regional Elders and Traditional Peoples Council Minutes, October 22, 1989 Anglican Church of Canada Archives, GS 92-28, Box 2 Folder 7, “Criminal Justice and Human Rights” ; Native Council of Canada. *Métis and Non-Status Indian Crime and Justice Commission*. (Ottawa: Native Council of Canada, 1970), 59-62.

⁵⁰ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, September 9, 2013.

interest in Indigenous inmates and supplied Elders to Ontario prisons in Ontario, and the Native Women's Association of Canada brought Elders into Prison for Women.⁵¹ While community organizations entered into contracts with Elders to ease their financial burden, those organizations were careful to make the implications of these funds clear: moneys compensated Elders for their time, not as payment for ceremonies. That was a freely offered gift.⁵² Thus, when describing the role of Elders these organizations did not directly assign them tasks. For example, in a proposal for a youth diversion project, the Native Clan Organization noted that Elders would “teach and pass on their knowledge of Indian traditional values,” using terminology that gave the Elders flexibility to use their gifts without overextending themselves.⁵³

The other approach was through regional Elders' Councils that provided a mechanism through which Indigenous community members could vet Elders. This gave credibility to the Elders in the eyes of CSC by adapting traditional electoral mechanisms of community nomination. The councils were rooted in the Indigenous communities both at home and in the prisons, and therefore knew who could appropriately function as an elder in the prison. These regional councils began in Western Canada and spread across the country in the following years, becoming a resource for programming because they functioned as a substitute for formal schools and degrees that denoted chaplains of faiths recognized by CSC. This formality appealed to CSC administrators who otherwise had no mechanism to determine who was an Elder.

Ontario's experience in this regard illustrates the unique dynamics that Elders' Councils encountered. Unlike in the Prairie Region of CSC, where the Native population was the largest and most homogeneous, Ontario prisons had diverse Indigenous populations, less infrastructure for

⁵¹ Christie Jefferson (Parole Board Officer) interview with the author, February 10, 2014..

⁵² Allen Benson (CEO, Native Counselling Services of Alberta), interviewed by the author, March 30, 2014.

⁵³ “Proposed Pilot Program – Cultural Awareness 1978,” Library and Archives Canada RG 73 Solicitor General Canada Fonds, Acc. No. 1990-91/256, box 43 File 7300/6/4-17, “Corrections – Consultation Projects – Manitoba,”

Native spiritual practices, and fewer working relationships inside CSC. Therefore, to organize Elders' visits to prisons advocates first needed to develop working relationships with prison staff. Art Solomon addressed these challenges by forming the Regional Elders and Traditional Peoples' Council to "help facilitate Native spiritual and cultural experience and to assure the needs of Native prisoners are met."⁵⁴ This meant that the council had to navigate the cultural needs of its clientele without reducing spirituality to a pan-Indianism that resembled all Indigenous cultures while devoting themselves to none.⁵⁵ It traversed these challenges by ensuring that it had the same diversity as the inmate population.⁵⁶ The council was made up of the following individuals: Art Solomon was Ojibwa and a follower of the Midewiwin, but other council members were drawn from intentionally diverse backgrounds. Fred Wheatley and Ben Spanish were both Ojibway, Wheatley self-identified as an Elder, and Spanish chose the moniker, "traditional person." James Mason, David Jock, Joanne Longboat, and Laurel Claus-Johnson were all Mohawk and Wanda Whitebird was a traditional Micmac woman and a Native Courtworker in the Atlantic region.

The council developed a calendar organized around changes in the seasons where inmates gathered with guests from the community and Brotherhoods from nearby institutions for feasting and celebration.⁵⁷ Each ceremony had linkages across Indigenous cultures while being mainly based on teachings connected to a particular First Nation. Laurel Claus-Johnson, a traditional Mohawk woman who worked on the Regional Elders and Traditional Peoples Council, understood this council as "warming the soil...preparing the earth for the things that were coming along."⁵⁸ Another example of progress that came after this time was the recognition at parole hearings of involvement

⁵⁴ Regional Elders and Traditional Peoples Council Minutes, October 22, 1989 Anglican Church of Canada Archives, GS 92-28, Box 2 Folder 7, "Criminal Justice and Human Rights," ; Native Council of Canada. *Métis and Non-Status Indian Crime and Justice Commission*. (Ottawa: Native Council of Canada, 1970), 59-62.

⁵⁵ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, September 9, 2013.

⁵⁶ Laurel Claus-Johnson (Advocate for Aboriginal Prisoners), Interview with the author, August 15, 2013. I included the names of all council members at her request.

⁵⁷ Laurel Claus-Johnson (Advocate for Aboriginal Prisoners), Interview with the author, August 15, 2013.

⁵⁸ Laurel Claus-Johnson (Advocate for Aboriginal Prisoners), Interview with the author, August 15, 2013.

in Brotherhood groups as comparable in rehabilitative value as Alcoholics Anonymous, one of the main joint accomplishments between Elders and the Brotherhoods. That the changing of the season ceremony began under the council and continues today illustrates one legacy of this particular group in Ontario. Having external parties who could speak on behalf of the Brotherhoods became beneficial, especially those who walked the path between the administration and inmate needs with particular grace.

When CSC entered into contracts with Indigenous community organizations for services in prisons it established an ideal relationship between CSC, Indigenous communities, and inmates. Because of the legacy of changes in the system in the 1970s and the ongoing work of a small group of dedicated and innovative individuals working within the prisons, several successful programs were developed, including the intensification of work by Elders within the prisons. Indigenous organizations were able to have meaningful input into the correctional practice inside prisons which was only done after two decades of creative intercultural dialogue.

1987-1996: Formalizing of Programs and Loss of Community Control

From 1987 to 1996, CSC encoded Indigenous practices in its institutions in policy, and then eventually into law in the 1992 Corrections and Conditional Release Act (CCRA). The CCRA replaced the Penitentiary Act as the guiding policy framework for federal penitentiaries. It was the culmination of many years of revision, and re-articulation of the philosophy and goals of the penal system. This was a period of what CSC referred to as a time of “Institutional Renewal,” and it was during this institutional reorientation that Indigenous corrections was reshaped.⁵⁹ For Indigenous peoples, this was a period where, somewhat ironically, simultaneous processes encoded Indigenous

⁵⁹ Jim Vantour, *Our Story: Organizational Renewal in Federal Corrections*. (Ottawa: Correctional Services Canada, 1991).

cultures in CSC policy, but also stripped Indigenous communities of much of their control within the correctional system. In creating policies that protected Indigenous cultural programming, CSC took over the funding of those programs, contracting directly with individuals who they saw as service providers, including Aboriginal Liaison Officers and Elders. This was an example of neocolonialism behind bars.

Recognizing Indigenous spirituality as a legitimate expression of spirituality comparable to institutional Judeo-Christian faiths redefined whom an Elder was, how they were selected, who they were accountable to, and how spirituality could be practiced within prisons. One key shift over this five year span was an intellectual change where CSC viewed Indigenous spirituality in terms of service delivery. This meant the role of institutional Elder moved towards that of course instructors, chaplains, case workers, and parole officers. This shift was completed with the employment of Elders, which established a new relationship between Elders, CSC, and communities. This took control away from the communities that once supported Elders. It made CSC itself the final authority on matters related to Indigenous cultural programming, much to the chagrin of those who had served as Elders previously. Unlike during early 1980s, Indigenous programming was organized and controlled by CSC who did not understand the cultural or spiritual significance of practices associated with spirituality. This mean initiatives became the responsibility of CSC rather than the communities who pioneered these types of programs. Moreover, the role “the Elder” served was defined by set of positive features that CSC identified and which reflected the clinical perspective of European rehabilitation. Thus the role of the Elder was reconceived as an institutional role defined by a set of clear duties. This motivated Dale Stonechild and Art Solomon to include explicit mention in their information kit for CSC that as a rule no Elder can conduct all ceremonies.⁶⁰

⁶⁰ Dale Stonechild and Arthur Solomon, *Native Spirituality Information Kit*, (Ottawa: Correctional Services Canada, 1997), 2.

On January 1, 1987 the CSC Commissioner entrenched Indigenous programming in CSC policy in Commissioners Directive 702 (CD 702). The directive's stated objective was: "To ensure that the needs and constructive interests of native offenders are identified and that programs (including native spiritual practices) and services are developed and maintained to satisfy them."⁶¹ Six of its twelve recommendations concerned Elders: three established CSC-run Regional Councils of Elders and three related to the daily life in institutions. Each of the five CSC regional authorities were to establish a Regional Council of Elders that would report directly to the Deputy Commissioner. This format reflected earlier councils but it differed because the control and initiative rested in the hands of CSC, limiting community control of spiritual practices within the prisons.⁶² Still, because John Stonechild, a respected Elder from Saskatchewan was in charge of assembling the original council, it was a wise decision that for a time had success in defending the integrity of Elder services.⁶³ CD 702 recommended that directors of institutions hire Elders who would be responsible for Native spiritual ceremonies much like chaplains ran services according their faiths. This ensured financial compensation and freedom of movement within the prisons for Elders.⁶⁴ Still, the enactment of this act was limited by provisions for safety, and the onus was on the inmates to request these kinds of services, something that many inmates did. However, by 1988 this had not become the reality in most institutions because enforcement mechanisms were insufficient.⁶⁵ The realities of administrative inflexibility, limited resources, and often disconnected communities on "the outside" slowed the implementation of these policies.

In the late 1980s and early 1990s several reports and recommendations pressured CSC to further integrate Elder services as outlined in CD 702. The Correctional Law Review's Working

⁶¹ 1987 Commissioner's Directive 702, "Native Offender Programs" Policy Objective

⁶² Laurel Claus-Johnson (Advocate for Aboriginal Prisoners), Interview with the author, August 15, 2013.

⁶³ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 14 2013.

⁶⁴ 1987 Commissioner's Directive 702, "Native Offender Programs"

⁶⁵ Correctional Law Review, "Working Paper Number Seven," (Ottawa: Solicitor General Canada, 1988), 52-53.

Paper Number Seven noted that the unique cultural, social, and spiritual backgrounds of Indigenous inmates made the correctional system incompatible with Indigenous peoples as it echoed CD 702, including affirming that Elders needed to hold the same institutional status as chaplains.⁶⁶

Essentially, this working paper recommended that the ideas inherent within existing policies needed to be more closely followed and enforced. By the early 1990s, Justice Commissions on Aboriginal Peoples and Federal Corrections were released in Alberta, Manitoba, and Saskatchewan, and they all recommended that Indigenous Elders be further utilized in the rehabilitation of offenders.⁶⁷ The *Report of the Saskatchewan Indian Justice Review Committee* was the most thorough in considering the role of Elders, recommending that Elders be integrated into all parts of the criminal justice system, including sentencing, institutions, parole, and release.⁶⁸ All of these commissions recommended policy level consideration of Elders in penitentiaries.

A Task Force on Aboriginal People in Federal Corrections set out to find ways to implement the recommendations of the Correctional Law Review and the provisions from CD 702, and submitted its final report in 1988. It was established in 1987 to outline the processes that Indigenous peoples went through in their incarceration and to offer plans for improvement. One of the first conclusions it reached was that Indigenous specific programs within corrections needed to be made to fit within the already existing structures of corrections and parole.⁶⁹ This missed the point that Indigenous community members and inmates had been making since the 1970s, and even as early as the nineteenth century. The prison was philosophically based on an entirely western worldview. It fundamentally differed from Indigenous methods of correction. CD 702 had recommended that

⁶⁶ Correctional Law Review, "Working Paper Number Seven," iii, 34.

⁶⁷ A. C. Hamilton and C.M. Sinclair, commissioners, *Report of the Aboriginal Justice Inquiry of Manitoba / Public Inquiry into the Administration of Justice and Aboriginal People* (1991), Chapter 11. Justice R.A. Cawsey, Commissioner, Task Force on the Criminal Justice System. *Justice on Trial: Report of the Task Force on the Criminal Justice System and its Impact on the Indian and Metis People of Alberta*. (Alberta, 1991), 6-16. Recommendation 6-16.

⁶⁸ Patricia Linn, *Report of the Saskatchewan Indian Justice Review Committee* (Regina, SK: 1992), 16.

⁶⁹ Solicitor General Canada. Task Force on Aboriginal Peoples in Federal Corrections. *Final Report*. (Ottawa: Solicitor General Canada, 1988), 15.

Elders become institutional assessors at parole hearings like chaplains had long done because the National Parole Board did not recognize traditional practices as rehabilitative. Policymakers assumed that Elders could advise the board on behalf of an inmate, but because the National Parole Board was still run on a clinical model, the measures could only have a limited effect.⁷⁰ In spite of these recommendations, without a dramatic overhaul of the prison system, there was no way that Indigenous approaches to justice could coexist within that system. While many innovative community members, Elders, and inmates modified their traditional ceremonies and practices for the prison, the goal of the Task Force had no possibility of success because they failed to appreciate the magnitude of the gulf between the penal system and Indigenous approaches to justice.⁷¹

These policies and studies were put into law with the 1992 Corrections and Conditional Release Act (CCRA), a total revision of the legal basis of the penal system, replacing the antiquated Penitentiary Act. The impetus behind the CCRA was to keep it in step with legal developments, especially the Charter of Rights and Freedoms.⁷² As reflected in its title, it covered the entire criminal justice system, namely penal institutions and conditional release through parole and community reception centres. The act rearticulated the motives behind the penal system in Canada, something that would guide all policies and procedures within the system. Section 3.1 reads, “The protection of society is the paramount consideration for the Service in the corrections process.”⁷³ This shows that rehabilitation was of secondary importance, and while it was a priority within the CCRA, it was only insofar as it did not conflict with the goal of social protection.

The CCRA consolidated and legally enforced policy changes that had developed since 1987 in Indigenous corrections in sections 81, 82, 83, and 84. (See Appendix 1) Section 83(1) reads, “For

⁷⁰ Solicitor General Canada, Task Force on Aboriginal People in Federal Corrections, Sept 1988, 37-38.

⁷¹ See chapter 1 for more on this topic.

⁷² Library and Archives Canada, Acts and Legislation - Departmental - Corrections and Conditional Release Act - General, Acc 2000-00234-X, box 36, file 125-C3 vol 1

⁷³ Corrections and Conditional Release Act, S.C. 1992, c. 20, Section 83(1)

greater certainty, aboriginal spirituality and aboriginal spiritual leaders and Elders have the same status as other religions and other religious leaders.”⁷⁴ In addition to validating existing policy, the CCRA established the National Aboriginal Advisory Committee and led towards an intentional shift towards self-governance in the field of penal administration. The CCRA answered calls for change in the prison system that Indigenous peoples had been calling for since the late 1960s, by ensuring freedom of movement and access to spirituality, and it gave inmates and advocates a legal argument for more programming.

In consultations leading to the CCRA, most Indigenous communities skirted the issues of penal reform and instead focused on issues of sovereignty in issues of crime and punishment, and repeatedly requested provisions for Indigenous control of the criminal justice system.⁷⁵ Towards this end, Section 81(1) of the CCRA provided the legislative basis for community-run correctional facilities with Indigenous community organizations. This section reads,

The Minister, or a person authorized by the Minister, may enter into an agreement with an aboriginal community for the provision of correctional services to aboriginal offenders and for payment by the Minister, or by a person authorized by the Minister, in respect of the provision of those services.⁷⁶

These were new kinds of institutions. The new policy recognized that Indigenous healing could not take place without considerable assistance from Indigenous communities. By 1999, two healing lodges were opened under Section 81 provisions – the Stan Daniels Healing Centre managed by NCSA and Waseskun Healing Centre managed by an independent body led by Stan Cudek.

However, while it created the legal framework for Section 81 Healing Lodges, it also created problems for Elders and liaison workers who lost connections to their communities with this new funding structure. The position of the liaison worker was pioneered by NCSA in the 1970s as a way

⁷⁴ Corrections and Conditional Release Act, S.C. 1992, c. 20, Section 83(1)

⁷⁵ Library and Archives Canada, “Memorandum to Cabinet, CCRA, March 12, 1991,” in “Acts and Legislation - Departmental - Corrections and Conditional Release Act - General,” Acc 2000-00234-X, box 36, file 125-C3 vol 1

⁷⁶ Corrections and Conditional Release Act, S.C. 1992, c. 20, Section 81(1)

to maintain communication between the communities and the inmates, and in doing so they kept lines of communication open with the institutional staff as well. Still, the key purpose of ALO's services was to keep Indigenous inmates connected to their communities to avoid further alienation of inmates while they were incarcerated. When corrections took over the hiring and paying of the liaison workers through directly contracting individuals, the connection between the community and the inmates was lost, thereby disrupting the key purpose that the position was developed in the first place.⁷⁷ Laurel Claus-Johnson remembered when the Regional Elders and Traditional Peoples' Council lost their contract, stating:

I'm being right out there by saying that the existing power structure is based on power. It's based on power and control, and so you need to know who is coming and going in prisons, probably more so, so corrections felt that they would move their spiritual responsibilities for all prisoners to a program notion, and so that's when I think that elders started being hired for that.⁷⁸

She remembered being in favour of hiring Elders, but did not anticipate the effects that professionalizing Elders would have. For Elders, community connections and support was both a validation mechanism and to assist them in working with offenders. Without this community connection, many Elders felt unable to continue their work.

This leads questions surrounding the motives of CSC in hiring Elders and liaison workers, since there were significant and predictable problems that stemmed from this new policy. The first was control. Corrections was uncomfortable with programs with which they did not have a firm grasp on both the operations and direction. Indigenous correctional programs were almost totally outside the immediate control of CSC because they developed at the grassroots level. Laurel Claus-Johnson interpreted the new policy of CSC running Elders councils independently as part of a pattern of establishing, maintaining, and consolidating power in the correctional world.⁷⁹ Allen

⁷⁷ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 13, 2013.

⁷⁸ Laurel Claus-Johnson (Advocate for Aboriginal Prisoners), Interview with the author, August 15, 2013.

⁷⁹ Laurel Claus-Johnson (Advocate for Aboriginal Prisoners), Interview with the author, August 15, 2013.

Benson, reflecting on the loss of control from within NCSA regarding the provision of Elders and Liaison Workers to Alberta prisons commented,

When something works that they don't understand, but it also may not work according to their standard because they don't understand the worldview, so they try to take it and put their control on it with their ideals of how it should be run without understanding properly the culture. Without understanding the proper protocol. Without understanding the teachings.⁸⁰

Because they did not understand the cultural basis of the work of Elders or Aboriginal Liaison Officers, administrations reshaped them to fit the clinical model of the prison (in the case of the ALOs) or the same function as any other chaplain (in the case of Elders). This led to a new power dynamic between Elders, Liaison Workers, and the institutional administrations. Unlike when the communities facilitated the work of Elders, wardens held much more power in this relationship because they were the Elders' employers. This led to situations when the Warden and the Elder disagreed on a point of policy or practice, and the Elder was fired.⁸¹

The other reason behind the new policy was optics. A persistent problem within corrections was the understaffing of Indigenous people. This problem was articulated as early as 1967, and was repeated in nearly every study, protest, and commission that looked at the situation of Indigenous prisoners. Over the latter half of the twentieth century, the number of Indigenous people in federal custody rose considerably, further skewing the disproportionate ratio of Indigenous inmates to Indigenous staff. Furthermore, recruitment efforts had been largely unsuccessful. As a result, CSC was under considerable pressure to bring more Indigenous people under their employ, yet traditional approaches to doing that had been unsuccessful. By contracting directly with ALOs and Elders rather than contracting them through outside organizations, the statistical disparity between number

⁸⁰ Allen Benson (CEO, Native Counselling Services of Alberta), interviewed by the author, March 30, 2014.

⁸¹ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 13, 2013. I have no statistical evidence to show how often this actually happened, but the important point is that the policy framework made this possible. This arrangement created an unequal and awkward relationship between Elders and prison staff and administrations, driving away some Elders.

of inmates and number of staff appeared to shift in favour of CSC. This was done at the cost of the connections between inmates and Indigenous communities, connections upheld by the liaison workers and Elders. According to Ed Buller:

What happened was that the initial intent behind the liaison services was lost, because they were to be the bridge between the Brotherhoods and the communities. It was a matter of control. Certainly it helped address the recurring criticisms of the number of non-Aboriginal people working for CSC. As the number of non-Aboriginal employees increased, the ratio of Aboriginal workers was seen to decrease. By making Liaison Workers and Elders CSC employees, what they did was they upped their numbers and improved the ratio, so that they could say that there was a significant number of Aboriginal people working for CSC.⁸²

What this means is that in the 1990s CSC changed the optics of their staffing without having more Indigenous peoples working behind bars. Communities lost control of the programs they had pioneered, Indigenous workers in various capacities lost the support those communities offered, and CSC managed its image

Finally, Indigenous peoples themselves defined the attempts to control programming as yet another case of racism enacted through the structures of CSC. In the years leading up to the institutionalization of Indigenous services, Fran Sugar and Lana Fox, two prisoners at P4W who were vocal critics of the system, explained:

It is racism, past in our memories and present in our surroundings, that negates non-Native attempts to reconstruct our lives. Existing programs cannot reach us, cannot surmount the barriers, of mistrust that racism has built. It is only Aboriginal people who can design and deliver programs that will address our needs and that we can trust. It is only Aboriginal people who can truly know and understand our experience. It is only Aboriginal people who can instill pride and self-esteem lost through the destructive experiences of racism.⁸³

This racism identified by these incarcerated Indigenous women, while vocalized in the harshest of terms, identified the key problem with the institutionalization of Indigenous culture. Those who

⁸² Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 13, 2014.

⁸³ Fran Sugar and Lana Fox, *Survey of Federally Sentenced Aboriginal Women in the Community* (Canada: Task Force on Federally Sentenced Women, 1990), 16.

took over the programs could not understand the basis of Indigenous cultural programming, and attempts to take over these services were doomed without meaningful buy-in from the Indigenous community. This buy-in had existed with community directed programming, but was not sustainable based on this new programming model.

Defining Elders as pseudo-chaplains used the most appropriate language the administrators had, but equating the two roles obscured more than it enlightened. First, assuming that Indigenous Elders and prison chaplains performed the same tasks did not change the system in such a way to make concessions for Indigenous ceremonies.⁸⁴ For example, because many Elders and inmates promoted the sweat lodge, which was a healing and cleansing ceremony, the administrations defined this as the only ceremony in a way that paralleled a church or chapel service. Since the sweat became the pseudo-chapel and the Elder was the pseudo-chaplain, it then followed that the Elder ought to facilitate the ceremony. This ignored that the ceremony was not a universal practice and that not every Elder could conduct them.⁸⁵ However, when an Elder hesitated or refused to engage in a practice he or she was not comfortable with, they met opposition from both inmates and the institution.⁸⁶ Defining Indigenous programming as akin to the work of a chaplain also narrowed the role that Elders played in the lives of inmates, as Elders' work concerned cultural education, healing, and spiritual guidance. In the eyes of many inmates, this was a more holistic role than the institutional chaplain held.⁸⁷ It ironically also meant that Elders were assigned a wider variety of institutional tasks including caseworkers, advocates, and psychologists: James Waldram described this reality as the Elder-as-therapist.⁸⁸ These new duties and obligations were reflected in the CSC

⁸⁴ James Waldram, *The Way of the Pipe*, 16-17.

⁸⁵ Joe Couture, "Traditional Aboriginal Spirituality and Religious Practice in Federal Prisons: An Interim Statement on Policy and Procedures," Working Paper #1, Draft #3, (Edmonton: November 1983), 7.

⁸⁶ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 13, 2014.

⁸⁷ Joe Couture, "Traditional Aboriginal Spirituality and Religious Practice in Federal Prisons," 5-6.

⁸⁸ Waldram, "Aboriginal Spirituality in Corrections: A Canadian Case Study in Religion and Therapy" *American Indian Quarterly*, Vol. 18, No. 2 (Spring, 1994), 200.

strategic plan for 1991-1996 that at the same time sent more resources to Elders while assigning them these new roles.⁸⁹ The result was a CSC imposed pan-Indianism on Elders who felt pressured to act outside their teachings or comfort zone. Narrowing the practice of spirituality to a fixed set of practices missed the nuanced teachings that gave ceremonies meaning. This was in spite of the reported understanding by CSC that Indigenous peoples did not constitute a heterogeneous group.⁹⁰

Sacred medicines were also misunderstood by administrators who either did not think of them at all or thought of sacred tobacco as a contract rather than a covenant. While sweet grass and sacred tobacco became more accepted in the prisons, administrators did not understand the teachings that went with sacred items. In offering and accepting sacred tobacco, both parties agreed to enter into covenant, meaning that the exchange of tobacco placed sacred duties on both parties; those accepting tobacco committed to the giver, while the individual offering tobacco conveyed their respect to the person and commitment to honour the gifts of that person.⁹¹ Thus, when institutions offered tobacco as part of the contractual process, staff understood that Elders were committing to them but not that they were also entering into a covenant. In addition, gathering medicines was not considered in these contracts, so Elders had to gather medicines on their own time, meaning they were taxed beyond what the administration acknowledged or appreciated.⁹²

The hiring and payment processes also caused concern for Indigenous inmates and community members. Regarding the validation processes, whereas chaplains had seminaries to denote their institutional training, no such structure existed in traditional spirituality. CSC addressed this situation by posting job advertisements in the same way correctional officers or psychiatrists were recruited. The applicant and the institution together decided who could serve in this capacity,

⁸⁹ Proposed Resources – Aboriginal Corrections, April 18, 1991 Memo to Greg Fyffe from Ed Buller and John Evans including the CSC Strategic plan for 1991-1996. Department of Public Safety Private Archives.

⁹⁰ Carson Report, 17.

⁹¹ Allen Benson (CEO, Native Counselling Services of Alberta), interviewed by the author, March 30, 2014.

⁹² Allen Benson (CEO, Native Counselling Services of Alberta), interviewed by the author, March 30, 2014.

eliminating the role communities had played. According to some Elders, CSC also opened the door for abuses of the system as individuals began to pursue the title and salary alone.⁹³ When CSC hired Elders, they determined who an Elder was, and this attracted people to the position for financial gain or the title. This led to problems regarding what Joe Couture referred to as “Popcorn Elders,” which was a sarcastic reference to individuals who believed that if they entered a sweat, with enough heat, they “popped” into Eldership.⁹⁴ Laurel Claus-Johnson summarized the changes saying, “We end up having, not so much tongue in cheek as ‘Oh my God, is that real?’ A card carrying Elder.”⁹⁵ Exacerbating these problems was the problem that community-nominated Elders were turned away because they were not on CSC’s list of employed spiritual practitioners turning back the clock for those who had long served this role, making them act as volunteers as was the case 1960s.⁹⁶

Finally, there was disagreement on the impact of CSC paying Elders. Community organizations and councils understood that the Elders worked for the creator and were assisted financially by communities. In contrast, CSC assumed that Elders worked for them.⁹⁷ Some community members and Elders were uncomfortable with the implications of payment for services. Many Elders saw accepting payment for their services as contrary to their teachings and felt they could not accept this funding. Others understood the financial strain of visiting prisons an unnecessary burden Elders endured. Financial incentives also served as a measurable symbol that showed the value of those peoples’ contributions to the lives of inmates and institutions.⁹⁸ Compensation for their time was seen as a practical solution to programming problems. It was an underfunded solution, though, as in 1987 the Native National Advisory Committee noted that

⁹³ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, September 9, 2013.

⁹⁴ Joe Couture, “The Role of Native Elders: Emergent Issues,” in *A Metaphoric Mind*, (Edmonton: Athabasca University Press, 2013), 78.

⁹⁵ Laurel Claus-Johnson (Advocate for Aboriginal Prisoners), Interview with the author, August 15, 2013.

⁹⁶ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, September 9, 2013.

⁹⁷ Allen Benson (CEO, Native Counselling Services of Alberta), interviewed by the author, March 30, 2014.

⁹⁸ Irene Fraser, Anglican Church Archives. GS 91-08, “Criminal Justice and Human Rights, Box 2 file 7 “Committee on Justice and Corrections - correspondence, 1988 - 1989 re death penalty, natives, prisons, women”

spirituality programs were floundering because “we are paying the Elders ‘peanuts.’”⁹⁹ It also meant that in the eyes of some inmates Elders became tainted with increasingly close relations to CSC.¹⁰⁰

That CSC misunderstood Indigenous spirituality is not surprising. The diversity within institutions was a difficult challenge even for Indigenous community members. Inmates who often were being newly introduced to Indigenous spiritual teachings and they requested sweats as the primary ceremony. However, introducing programs as contracted and run by CSC disrupted relationships between Indigenous peoples and the correctional apparatus. Furthermore, because the prison limited healing and rehabilitation as practiced through traditional spirituality, bringing spirituality into the prison without re-examining the system was a superficial gesture. For this reason several programs were developed, especially in Ontario and Alberta, to reconnect Indigenous inmates to the land so that they could heal.¹⁰¹

The CCRA was important in the history of Indigenous corrections, but at the time there was some understanding that the recommendations would not necessarily require significant overhaul in the realm of Indigenous corrections. In an internal memo, CSC noted that the recommendations from the CCRA as pertaining to Indigenous peoples essentially echoed the recommendations in CD 702. Because this directive had been operational for five years, and little new programming came from this document.

Conclusion

Structurally, the period from 1978 to 1996 had the most dramatic change in the ways that Indigenous peoples existed in prisons. In 1978, the position of Indigenous programming existed at

⁹⁹ Department of Public Safety Archives, Recommendations from the Native National Advisory Committee Meeting with the Working Group on the Reintegration of Native Offenders in the Community, June 19, 1987, 3.

¹⁰⁰ Native Counselling Services of Alberta, “Young Offenders Courtworker Programs: A Program Review,” (Edmonton: NCSA, 1985)

¹⁰¹ See the Burwash Native Peoples Project or Bison Correctional Camp run by Native Counselling Services of Alberta

the initiative of community organizations at the bequest of Native Brotherhoods. Through a series of policy developments, the responsibilities of communities were chipped away, causing Indigenous peoples to lose influence within institutions. One way that this manifested itself was in changes to funding relationships in Indigenous programming. In 1978 there was a policy that favoured financing Liaison Officers and Elders through organizations through which CSC had built relationships. This arrangement was the most fruitful because it gave organizations a meaningful voice in the staffing and programming within the institutions. As policies like CD 702 were implemented, ultimately culminating in the CCRA, there was a shift in the power structures, putting Indigenous workers in an awkward position. They had to balance the needs of inmates, the desires of the institutions, and their own abilities and teachings.

The shifting relationship between Indigenous peoples and CSC was also manifest in the change from an arrangement that emphasized regional variation within Indigenous programming into more rigid policy frameworks that applied to all cultural groups, regardless of cultural difference. This imposed a pan-Indianism behind bars because those forming the policies and directives were culturally unaware of the differences in cultural practices. While this was the most obvious in Ontario, it informed cultural practices across Canada. Thus, Indigenous cultures were modified to a degree according to western expectations through policy. While this was different from criminalization, it skewed Indigenous cultures according to the realities of the prison and the misconceptions of those in positions of power.

This does not fit into any neat narrative of “progress” or “decline.” Even the narrative of decolonization suggests a certain linear quality to the history of corrections. When interpreting the changes in prisons as subsequent processes of colonization, decolonization, and neocolonization, the complexity of Indigenous history behind bars becomes more evident. A new set of cultural practices had to be developed in order to work within the prison, which was part of decolonization,

but when the state took over these practices through new penal policy, that coopted these processes and tried to modify Indigenous culture through neocolonial practices. This process played out across Canada, but the nature of the prison makes these culturally creative movements easier to identify and discern the pressures that shaped this new culture. Through this dialogue, Indigenous peoples adapted and created new cultural forms and expressions through modification of traditional cultures and ceremonies. The prison itself also changed, as restorative justice and specialized programming became defining features of the twentieth century prison. This was in part because of the pressure from Indigenous communities and inmates. Even the physical space of the prison was modified in the construction of sweat lodges. In tangible ways, the efforts of Indigenous peoples shaped the penal system.

Still, in the yards of prisons across Canada, during this era and into the present, there are spaces designated for Indigenous people to conduct ceremonies. For many inmates, this was their first exposure to their cultural heritage, which ironically they could only gain while incarcerated.

According to Laurel Claus-Johnson,

They actually have more [spiritual freedom] than we do out here now [at the Friendship Centre]. It just occurred to me. And I'm happy about that. I would like to think that I had a part in that... Now prisons are actually protected. That energy that was put in there has protected an element of sacredness about the ground.¹⁰²

In spite of all the issues surrounding pan-Indianism in the prison, power struggles and attempts to seize control in administering programs for Indigenous people, and political struggles both within Indigenous politics and with governments at federal and provincial levels, Indigenous inmates now had a space to pray. And they prayed with their sacred medicines.

¹⁰² Laurel Claus-Johnson (Advocate for Aboriginal Prisoners), Interview with the author, August 15, 2013.

**PART THREE: CULTURAL RESPONSES TO
INCARCERATION**

Chapter Seven: Double, Triple, and Quadruple Standards: Native Women in Canadian Prisons

Indigenous women occupy a unique place in the history of Canadian corrections as the most marginalized, oppressed, and vocal minority within Canadian penitentiaries. Fran Sugar, an inmate in Kingston's Prison for Women and critic of the penal system wrote,

Native women face double, triple and quadruple standards when entering the prison system. Number 1 is because we are women, number 2: we are Native, number 3: we are poor, number 4: we do not usually possess the education necessarily equivalent to the status quo.¹

Sugar illuminates the braided histories that constituted the legacies of racism and discrimination facing incarcerated Indigenous women. The stresses, systemic barriers to healing, and history of colonialism that faced all incarcerated Indigenous peoples applied to them. Their unique context as Indigenous women meant that these realities applied in greater measure.

Women have fit uncomfortably within the history of incarceration in Canada. Ellen Adelberg and Claudia Curry articulated this position of women within the Canadian prisons in their edited collection, *Too Few to Count*, noting that there were not enough women in penal institutions for policy or program development, yet enough for the injustice of the system to be a significant black mark on the justice system in Canada.² Until the 1990s there was only one institution for women in Canada: Kingston's Prison for Women. Known by its shorthand, P4W, this institution was constructed in 1934 because administrators were uncomfortable holding women in institutions alongside men. Women were housed in a separate building inside the walls of Kingston Penitentiary, then called the Provincial Penitentiary, but that was deemed to be an inappropriate place to hold

¹ Fran Sugar, "Entrenched Social Catastrophe," *Native Sisterhood*, (Prison for Women, 1988), 26. (note that "cystem" was intentionally spelled in this way, as a critique of the "justice system." This narrative technique was also used regarding the words justice (just-us) and Canada (KKKCanada).

² Adenberg and Currie, eds. *Too Few to Count: Canadian Women in Conflict with the Law*. (Vancouver: UBC Press, 1987), 11-21.

women. Reformers began calling for closure of P4W as early as the 1938 Archembault report, and this continued through many subsequent reports, commissions, studies, and papers that reiterated this basic claim.³

Incarcerated Indigenous women experienced unique strains within prisons specifically because they were Indigenous. In February of 1972, Indigenous women in Prison for Women formed the Native Sisterhood in response to gendered histories of colonial and domestic violence. While prison transfers were the most common mechanism whereby the Brotherhood/Sisterhood movement spread, the Kingston area prisons were geographically proximate to each other and Indigenous prisoners were occasionally granted passes to attend public events such as pow-wows at other institutions. Charlie, who formed the Joyceville Native Brotherhood and in doing so brought the Brotherhood movement to Ontario, was asked to come in for consultation regarding this the formation of the women's Sisterhood, but it was ultimately the efforts of the women that made this group a success.⁴ These incarcerated women recognized that women were traditionally valued and honoured, and that their life histories spoke to the loss of traditional Indigenous values and relationships. For this reason, the Native Sisterhood was one of the first groups to move beyond the social function of the group and begin to explore their traditional spirituality.⁵ They were also unique because the history of P4W was different from any other prison. This is because as the only federal women's prison, it housed women from across Canada. Also, the policies guiding female incarceration were consistently an afterthought in administration of prisons.

There was no single Indigenous female experience of incarceration. P4W is unique because the experiences of women within it were the most diverse from any institution in the Canadian penal

³ Arbour Report, 240-241.

⁴ Charlie (former prisoner), interview with the author, November 9, 2013.

⁵ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 14, 2014.

archipelago. Speaking of Indigenous movements against colonial oppression, Patricia Monture-Okanee noted,

We have organized to resist our political oppression and to rebel against it. We have also organized to resist the way in which our work is marginalized and all the forms of socially sanctioned violence against us. We have organized along racial and cultural affiliations. Women have organized around our philosophical positions as well as our professional associations. To suggest there is a single women's movement is ludicrous. Similarly, there is not a single Aboriginal women's perspective or movement. Aboriginal women are women of many different nations and many different experiences.⁶

This was no less true in P4W than in the rest of Canada. Monture-Okanee was deeply involved in the lives of women in the prison by volunteering her time to work with inmates and advocating on their behalf. Therefore her comments are informed by a deep understanding of both the common struggles Indigenous women faced and the differences between experiences and life histories of incarcerated Indigenous women.

In the women's prison, Indigenous women responded in culturally creative ways to the distinctly colonial space of the penitentiary. Because women from across Canada found themselves in Prison for Women in Kingston, and incarceration limited the possibilities for conducting ceremonies, the women needed to be resourceful in how they framed their cultures. The Native Sisterhood was a group of similarly motivated women who supported one another. This included navigating the differences between them. The Sisterhood offers a window into the nature of Indigenous identities in the twentieth century in response to pan-Indigenous collaboration in Canada and colonial contexts influencing them. This chapter outlines how incarcerated Indigenous women responded to intertwined histories of racial and gendered violence with the formation of the Native Sisterhood, how their use of traditional spirituality and culture shaped the experience and meaning of incarceration. and how they and their support organizations played a key role in the

⁶ Patricia Monture-Angus, "Organizing Against Oppression: Aboriginal Women, Law and Feminism," in Patricia Monture-Agnus, *Thunder in my Soul: A Mohawk Woman Speaks* (Halifax: Fernwood Publishing, 1995), 169.

closure of P4W and construction of Okimaw Ohci Healing Lodge in 1996. These processes were part of a story of colonization, decolonization, and neocolonialism in Canadian prisons. This chapter explores themes of Indigenous space in greater detail, and poses the question of whether an Indigenous prison can exist, based on the challenges facing Okimaw Ohci.

In looking at the history of P4W and the role of Indigenous women within it, I make two arguments. First, I argue that the Native Sisterhood was a culturally creative force within prisons, as it was inclusive of cultures across Canada without reducing any of them. This required cultural innovation. This process shows the dynamics of decolonization and the sometimes-creative nature of resistance to colonial hegemony. This provides a window into how Indigenous identity formation took place across Canada.⁷ Second, I argue that while decolonization is possible in a limited measure within prisons, it is not possible to build an “Indigenous Prison.” The contours of the system are too closely tied to the colonial origins of the penal system in Canada. Therefore, while the processes of decolonization and cultural creation undertaken by the Sisterhood was significant, the nature of incarceration meant that decolonization could never be complete inside P4W, Okimaw Ohci, or any other prison.

Women in Canadian Prisons: Thoughts and Afterthoughts

The prison system as a whole is symptomatic of deeper social ills facing women. This was best articulated by the criminologist from the University of Montreal who, in an interview with a federally run magazine on the criminal justice system *Liaison* said in 1977,

Women’s prisons are not any worse than women’s lives. They are a very good reflection, though archaic and anachronistic, of what we are, what we do, and what we live. We are drab. We do not do very important things. We cannot expect jails

⁷ Note that it would be a mistake to read this as an apology for colonialism. That Aboriginal peoples responded to colonial hegemony in creative ways does not mean that the colonial hegemony itself is a benefit to Aboriginal peoples.

to elevate the situation of women. It's just that the fate and roles of women are changing so rapidly that the anachronistic character of our prisons is more visible.⁸

During a parliamentary review of the penal system conducted in 1978, a prison guard who worked at Kingston Penitentiary since 1948 reflected on the position of the P4W throughout his career. He remembered asking a fellow Correctional Officer about the building across the street from the main penitentiary, and the guard responded by telling him, “that is prison for women, but don't worry because it is closing.”⁹ Over the entire life of P4W, similar sentiments were expressed, but the process directly leading to closure only began in the 1990s, and the last inmate left P4W in 2000. This speaks to the position of P4W within the psyche of penal staff and policymakers. This was also characteristic of the historic place of women within corrections, including the period leading up to the opening of P4W. Instead of operating based on theories of female corrections, women were placed within a framework built for male inmates and adapted based on a paternalistic logic and sexist assumptions of femininity.¹⁰

Women historically fit into the wider carceral system as an afterthought within a penal system was designed for men. This was the product of statistical realities whereby women constituted a much smaller proportion of the total incarcerated population. Adelberg and Currie argued that for incarcerated women, there were “too few to count;” that scholars, correctional administrators, and even feminists failed to give incarcerated women sustained attention.¹¹ They go on to argue that without systematic study and policy development regarding incarcerated women, common practices fell back on “sexist assumptions of appropriate female behaviour.”¹² One

⁸ Marie Andrée Bertrand quoted in Lynda Laushway, “Female Crime – A Reflection of Societal Values?” Vol 3 No 4, April 1977, 10

⁹ 1977 Parliamentary Report, 135.

¹⁰ Kelly Hannah-Moffat, *Punishment in Disguise: Penal Governance and Federal Imprisonment of Women in Canada* (Toronto: UTP, 2001), 71-72.

¹¹ Intro, Adelberg and Currie, eds. *Too Few to Count: Canadian Women in Conflict with the Law* (Vancouver: Press Gang Publishers, 1987)

¹² *Ibid.*, 17.

prisoner, Sheelach Coopers, argued that the way that women were treated in penal institutions in Canada “reveals a fascinating mixture of neglect, outright barbarism, and well-meaning paternalism.” She attributes this as well to the smaller total number of offenders and lower significance attributed to their crimes. She goes on to show how women were placed wherever there was space “in whatever manner suited the needs of the larger male offender population.”¹³ This combination of paternalism and neglect shaped the history of female incarceration in Canada until the closure of P4W began in 1990.

Until P4W was opened in 1934, women were housed in male institutions as necessary, though this was not understood to be a permanent or ideal solution to the problem of female federal offenders. This is borne out in the incarceration statistics maintained by the wardens and submitted in their annual reports. By 1849, the Brown Commission recommended the construction of a new, separate building within the walls of the Provincial Penitentiary at Kingston. The report read: “The portion of the north wing which the female convicts now occupy, is not adapted in any way to carry out the penitentiary discipline... A suitable building must... be erected before any reform can be attempted with success.”¹⁴ While this “solved” the immediate problem of male and female interactions among the inmate populations, it created bureaucratic problems for administrators who saw both sexes as leading the opposite astray. That men corrupted women and women corrupted men had long been the assumption upon which policy was based. The 1914 Royal Commission on Penitentiaries submitted that,

The dozen women prisoners are housed in a new and suitable building, separate and distinct from all other buildings. It appears that this department is conducted in a satisfactory manner. Yet it should be stated that the interests of all concerned

¹³ Sheelagh (Dunn) Coopers, “The Evolution of the Federal Women’s Prison,” In Adelberg and Currie, eds. *Too Few to Count: Canadian Women in Conflict with the Law* (Vancouver: Press Gang Publishers, 1987), 127.

¹⁴ Report of the Royal Commission to Inquire and then Report upon the Conduct, Economy, Discipline and Management of the Provincial Penitentiary (Brown Commission Report), 1849, 74.

would be best served if these few inmates were transferred to an institution for women.¹⁵

None of these reports recommended policy or practical change in the operation of a women's prison. However, they were united in their understanding that the sexes intermingling was problematic for inmate management, which reflected the explicit concern administrators had for sexualized women who they feared would lead men astray.

The 1921 Nickle Report, which was commissioned to inquire into the status of incarcerated women, was the first report that gave the issue of female incarceration any direct and sustained attention, and it recommended opening a separate institution for women. This commission was unique because when it recommended an entirely new institution for women, it faced no political opposition.¹⁶ It proposed opening an institution designed and run specifically for women, "outside and away a bit from the male prison."¹⁷ The physical design of the institution was based on gendered assumptions. For example, the prison for women was unique because it had no surveillance towers, which were seen as unnecessary given the assumed character of female inmates as timid and unlikely to attempt escape, so surveillance to prevent escape was unnecessary. Simultaneously, these same administrators also viewed women as hypersexual, transgressive and threatening. It was this kind of gendered logic that underpinned the entire prison that was the most striking. The report read,

Without doubt some of the women, more particularly at certain periods, are thrown into a violent state of sexual excitement by the mere sight of men, more often by their being or working contiguously to the female quarters and my attention was called to an instance of this group of cases where a sedative had to be given to soothe desire.¹⁸

¹⁵ Royal Commission on Penitentiaries 1914, 8-9.

¹⁶ Kelly Hannah-Moffat, *Punishment in Disguise: Penal Governance and Federal Imprisonment of Women in Canada* (Toronto: UTP, 2001), 83.

¹⁷ Nickle Report, p5. LAC, RG 73, Vol 105, file 4-1-14, "Investigation by WF Nicle re Female Prison, Kingston, 1921.

¹⁸ Nickle Report, p3. LAC, RG 73, Vol 105, file 4-1-14, "Investigation by WF Nicle re Female Prison, Kingston, 1921.

Nickle went on to discuss the various levels of “flirtation” which all prisoners were susceptible, in relation to both other prisoners and guards.¹⁹ Furthermore, the prison was built with an explicit purpose of “building female character” in the inmates.²⁰ The decision to build P4W was, therefore, based on sexist assumptions regarding the character of women, specifically delinquent women.

The prison was finally complete in 1934 when it welcomed its first wards, but criticism of that system was quick and constant. In 1938, a mere four years into the operation of the women’s prison, the Archembault report recommended its closure because of the stresses that came with holding women within the prison in Kingston regardless of their province of origin. It read: “It has been strongly represented that it is unfortunate that females from provinces in the far east and the far west of Canada have to be brought such great distances to serve their terms, because all of the normal ties with their families and friends in their own communities are thereby broken.”²¹ It recommended instead that female incarceration should fall to the jurisdiction of the provinces to circumvent challenges of distance, especially because female crime lent itself towards provincial sentences.²² These concerns were reiterated in numerous reports, culminating in the final Task Force Report on Federally Sentenced Women, which was released in 1990.²³ The 1977 MacGuigan Report, released upon completion of the parliamentary task force on the prison system, summarized the history of a century and a half of P4W, writing:

One area in which women have equality in Canada—without trying—is in the national system of punishment. The nominal equality translates itself into injustice.

¹⁹ Nickle Report, p4. LAC, RG 73, Vol 105, file 4-1-14, “Investigation by WF Nicle re Female Prison, Kingston, 1921.

²⁰ Kelly Hannah-Moffat, *Punishment in Disguise*, 84-85.

²¹ Archembault, 41.

²² Archmbault, 41.

²³ Report of General RB Gibson Regarding the Penitentiary System of Canada, 1947.; Fauteux, 1956; Report of the Canadian Committee on Corrections (Ouimet), 1969 ; Royal Commission on the Status of Women (1970) ; National Advisory Committee on the Female Offender (Clarke), 1977 ; National Planning Committee on the Female Offender (Needham), 1978 ; Joint Committee to Study the Alternatives for the Housing of the Federal Female Offender (Chinnery), 1978 ; Progress Report on the Federal Female Offender Program, 1978 ; Canadian Advisory Council on the Status of Women, 1979 ; Canadian Human Rights Commission, 1981 ; Canadian Bar Association, 1988 (Jackson) ; Standing Committee on Justice and Solicitor General on its Review of Sentencing, Conditional Release, and Related Aspects of Corrections (Daubney), 1988 ; Task Force Report on Federally Sentenced Women, 1990

But lest the injustice fail to be absolute, the equality ends and reverts to outright discrimination when it comes time to provide constructive positives — recreation, programs, basic facilities and space — for women.²⁴

It then went on to condemn the building of P4W by quoting a former, though unnamed commissioner who said the institution was “unfit for bears, much less women.”²⁵

Over the twentieth century, a number of realities inhibited the development of programming in the prison for women. The first was cost. Correctional policymakers approved or rejected programs and services based on a cost-benefit analysis that was based entirely on the number of inmates served by dollars spent. Prison for women was built with a capacity of 100, and in 1966 a medium security wing was added, bringing the capacity to 150.²⁶ Segregation by sex was a central aim in correctional programming, and therefore the funds that went into programs for men could not benefit incarcerated women. Because P4W was significantly smaller than the average male institution, which housed roughly 400 to 600 inmates,²⁷ the correctional arithmetic was skewed and programs were difficult to fund.²⁸ Regardless of whatever warden was in charge at the time, and there were wardens who supported additional programming, this financial reality inhibited their efforts. Therefore female inmates were faced with concerns common to all prisoners to a greater degree because of organizational issues at P4W. Another problem is that while inmates of all security levels lived within the system, the prison was run for the highest security classification offenders.

²⁴ Report to Parliament by the Sub-Committee on the Penitentiary System in Canada, Second Session of the Thirteenth Parliament, 1976-77, (MacGuigan Report), 134.

²⁵ A Former Commissioner of the Canadian Penitentiary Service, *Ibid*, p 135. Frustratingly this Commissioner was not named in the report. This is an oft-used quote, though erroneously attributed to MacGuigan himself, rather than the Commissioner that MacGuigan quoted.

²⁶ LAC, Prison for Women Physical Security Survey, February 1974, RG 73, Vol 469 file 1.1

²⁷ This number is gleaned from annual reports of the Canadian Penitentiary Service. There is a wide variety in numbers, but the smallest male prison population recorded before 1968, other than new institutions or special handling units, was 299, while the largest female population was 120 in the Kingston Prison for Women.

²⁸ This led the Canadian Association of Elizabeth Fry Societies (CAEFS) to request a higher per diem for female inmates than their male counterparts to compensate for the lower total inmate populations. See: LAC, Administration - Prison for Women, Acc 2000-00234-X, Box 9, File 107-1-430 part 2

This meant that inmates classified at medium security were often housed in maximum security wings of the prison, and therefore were limited in their freedom of movement and programming.

Tensions felt by all Indigenous inmates were especially acute in P4W. Indigenous women were further removed from their communities. Kim Pate said, “Women were dragged all across the country to Prison for Women... The need to stay closer to home was a huge issue. So the Sisterhood, even more so than the men, became the community of support for the women. I mean, it really became like family.”²⁹ In developing parole and release plans, it was not feasible for inmates to return to their communities because of the cost of relocation and the lack of parole services such as parole officers in rural or reserve communities. Because the women did not have roots in the nearby urban areas, they could not develop an acceptable release plan in the city, the women served a greater percentage of their sentence.³⁰ This separated women from their families, which caused further strain on them, their children, and their communities. This alienation from family was evident in the literature these women produced, which contained poetry, essays, and open letters that discussed the role of the incarcerated women in the lives of their children, the loss of this connection through incarceration, and in many cases regrets that they were unable to be responsible for their families. For example, Jo-Ann Mayhew explained in an editorial for *Tightwire*, “The dislocation of Native Women represents the most brutal form of outrage being tolerated by the Justice System. These women suffer not only geographic and family difficulties but are also placed in a situation where “rehabilitation” is standardized by an alien set of cultural norms.”³¹ Indigenous women also were also alienated by advocates who worked for Indigenous inmates but did not address the gendered realities facing these women. According to Christie Jefferson, the gendered

²⁹ Kim Pate (Executive Director of the Elizabeth Fry Society, Canada), interview with the author, February 28, 2014.

³⁰ LAC, Associations, Clubs, Societies - NACO. RG 73, 1986-87/026, box 14 file 155-N13 part 2: Kingston Whig-Standard, “Brotherhood: Some Provide Little More than Companionship,” Greg Eurliuk, Staff Reporter (Kingston, Thursday April 1, 1976) 1-3.

³¹ Jo-Ann Mayhew, “From Isolation to Community..” *Tightwire*, Summer 1989, 10.

experience of the criminal justices system among Indigenous women remained outside the attention of most advocacy groups working on behalf of Indigenous inmates until the 1980s or even 1990s.³² Finally, because P4W was in Ontario, Indigenous programming was slower to develop compared to institutions in Western Canada, which was in line with trends in the male system as well.³³

Life Histories of Indigenous Women in P4W

When Indigenous women entered P4W, they did so as the result of violent personal and cultural histories. For the Indigenous women who found themselves in the Canadian penal system, this history of “paternalism and neglect” was confounded by histories of violence. This violence took many forms. According to Anna McGillivray and Brenda Comaskey, Indigenous women experienced lives of intimate violence at the hands of men before they ever entered the prison.³⁴ Indigenous women at P4W made the same point to a task force on Aboriginal women in prisons in clear terms:

There is no accidental relationships between our convictions for violent offences, and our histories as victims. As victims we carry the burden of memories of pain inflicted upon us, of violence done before our eyes to those we loved, or rape, of sexual assaults, of beatings, of death. For us violence has beget violence: our contained hatred and rage concentrated in an explosion that has left us with yet more memories to scar and mark us.³⁵

This private violence stemmed from the personal and cultural histories of colonialism and racism. According to Patricia Monture-Angus, “Violence is not just physical... For Aboriginal women, the psychological battering in a violent relationship is twinned in our experience of the social and

³² Christie Jefferson (Parole Board Officer) interview with the author, February 10, 2014.

³³ While Native Counselling Services of Alberta, Native Clan in Manitoba, Allied Indian and Métis Society in British Columbia, and Federation of Saskatchewan Indians in Saskatchewan pioneered programs for inmates in their regions, Ontario was a problem region in this regard. Chapters 3-5 document this in much more detail.

³⁴ Anna McGillivray and Brenda Comaskey, *Black Eyes all of the Time: Intimate Violence, Aboriginal Women, and the Justice System* (Toronto: UTP, 1999).

³⁵ Fran Sugar and Lana Fox, *Survey of Federally Sentenced Aboriginal Women in the Community* (Canada: Task Force on Federally Sentenced Women, 1990), 8.

political reality. Racism and colonialism and psychological violence with the same effects as overt physical violence.”³⁶ Fran Sugar and Lana Fox were two incarcerated women who authored the 1990 submission to the Task Force on Federally Sentenced Women, which was commissioned as part of the process leading to closure of P4W, that they were in prisons as adults because of their upbringing: “Aboriginal women who end up in prison grow up in prison, though the prisons in which they grow up are not the ones to which they are sentenced under law.”³⁷ They went into more detail regarding what specifically this meant, which merits extended quotation:

No amount of tinkering with prisons can heal the before-prison lives of the Aboriginal women who live or have lived within their walls. Prison cannot remedy the problem of the poverty of reserves. It cannot deal with immediate or historical memories of genocide that Europeans worked upon our people. It cannot remedy violence, alcohol abuse, sexual assault during childhood, rape and other violence Aboriginal women experience at the hands of men. Prison cannot heal the past abuse of foster homes, or that indifference and racism of Canada's justice system in its dealings with Aboriginal people. However, the treatment of Aboriginal women within prisons can begin to recognize that these things ARE the realities of the lives that Aboriginal women prisoners have led. By understanding this, we can begin to make changes that will promote healing instead of rage.³⁸

What Sugar and Fox illuminate is the many histories that intersect in the lives of Indigenous women, especially at P4W, though the realities, they explained, transcend this institution. Rather than defining themselves only within their shared colonial history, they expressed numerous interrelated histories of cultural, social, political, familial, and carceral violence. This is in line with recent scholarship that has tied histories of colonialism and dispossession to sexual violence as both a historic and contemporary legacy of those processes.³⁹

³⁶ Patricia Monture-Angus, “Organizing Against Oppression: Aboriginal Women, Law and Feminism,” in Patricia Monture-Angus, *Thunder in my Soul: A Mohawk Woman Speaks* (Halifax: Fernwood Publishing, 1995), 170.

³⁷ Fran Sugar and Lana Fox, *Survey of Federally Sentenced Aboriginal Women in the Community*, 6.

³⁸ Sugar and Fox, *Task Force on Aboriginal Women in the Community*, 8.

³⁹ See for example: Andrea Smith, *Conquest: Sexual Violence and American Indian Genocide* (Cambridge: South End Press, 2005). Interestingly, many prison writings echo scholarly literature on the topic, even though the world of prison writing and academic writing rarely interact. I discuss this in relation to literature on genocide in: Seth Adema, “Not Told by Victims: Genocide as Story in Aboriginal Prison Writings in Canada, 1980–1996.” *The Journal of Genocide Research* 17(4), December 2015: 453-471

This violence was explicitly articulated by Indigenous members of the 1990 Task Force on Federally Sentenced Women, written by prisoners Fran Sugar and Lana Fox. Under the subtitle “prison is ‘living with labels and the violence of racism,’” Indigenous inmates and parolees talked about this violent history. One inmate put it in the following terms:

It is racism, past in our memories and present in our surroundings that negates non-native attempts to reconstruct our lives. Existing programs cannot reach us, cannot surmount the barriers of mistrust that racism has built. Physicians, psychiatrists and psychologists are typically White and male. How can we be healed by those who symbolize the worst experiences of our past?⁴⁰

Another parolee put it in these terms:

The critical difference is racism. We are born to it and spend our lives facing it. Racism lies at the root of our life experiences. The effect is violence, violence against us, and in turn our own violence. The solution is healing: healing through traditional ceremonies, support, understanding and the compassion that will empower Aboriginal women to the betterment of ourselves, our families, our communities.⁴¹

Violence became a personal, family, national, and cultural history for Indigenous women. This gendered, racial violence made the history of female Native inmates different from their male or non-native counterparts, even though men still experienced gendered violence of a different sort.

These narratives of private, cultural, and colonial violence are especially striking in comparison to the place of Indigenous women in traditional societies. Members of the Native Sisterhood understood their life and cultural history as antithetical to the traditional position of women. That is why they pursued Elders like Art Solomon and Ernie Benedict to teach them the ways of their ancestors in an effort to heal. This was the genesis of the Native Sisterhood. Ed Buller remembered:

They (the Sisterhood members) were probably the first, or one of the first, to look at their culture as people, but also as women. In my dealings with them from the

⁴⁰ Aboriginal Parolee, Member of the Task Force Steering Committee and Member of the Aboriginal Women’s Caucus, quoted in *Creating Choices: The Report of the Task Force on Federally Sentenced Women*, (April 1990), 8.

⁴¹ Aboriginal Parolee, Member of the Task Force Steering Committee and Member of the Aboriginal Women’s Caucus, quoted in *Creating Choices: The Report of the Task Force on Federally Sentenced Women*, (April 1990), 8.

1970s, the majority if not all of them had been victims of one thing or another in their life, exclusionary of what they did to get themselves behind bars. So it's the idea of them as victims that began to have them talk about themselves and their culture. They talked about how victimization became normalized. They started looking around for outside Elders to explain it, because it wasn't always like this.⁴²

Many Elders and scholars have also pointed to traditional societies as a model of egalitarianism in contrast to the position of Indigenous women in 20th century Canada. P4W troubled Anishinaabe Elder Art Solomon because of his impulse against the penal system in its entirety and also the way he viewed the woman's place in society. He wrote that women needed to be honoured because, "the woman stands between man and God."⁴³ Solomon saw P4W as worse than an injustice against the women because separating them from society would hurt all Indigenous peoples. In an effort to show these women their fundamental human worth, Solomon taught them their place in society through his teachings. He also taught that women were central to any society, and that when the heart of the women was broken the society fell.⁴⁴ Haudenosaunee legal scholar Trish Monture pointed to the role of child-rearing as giving women power.⁴⁵ Cree Elder and activist Verna Kirkness noted the cultural difference between origin stories as the root of differential gender roles in traditional society compared to Judaeo-Christian cultures. She wrote, "Native people accept and adhere to the doctrine that the female was created simultaneously with the male that neither was accorded supremacy, and that each was made dependent upon the other for existence...The concept of equality and balance was central to all traditional teachings."⁴⁶ Sociologist Carol LaPrairie points to the economic changes wrought by the colonial enterprise as creating conflict between Indigenous men and women. To LaPrairie, this conflict came about because expectations of gender roles in traditional society and the "available or achievable roles" within colonial contexts "was so great as to

⁴² Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 14, 2014.

⁴³ Arthur Solomon, "The Woman's Part," *Drumeller Native Brotherhood Newsletter*, (Summer 1984), 13.

⁴⁴ Marge Friedel, RCAP Public Testimony, Edmonton, ALTA 92-06-11, PG 205

⁴⁵ Patricia Monture, 5.

⁴⁶ Verna Kirkness, "Emerging Native Woman," *Canadian Journal of Women and the Law*, Vol 2 no 2 (1987/88), 409.

produce tension, anxiety, frustration, and anger, to which men reacted in different ways.”⁴⁷ What these scholars and Elders show collectively is that Indigenous women were traditionally held in high esteem, even though the reason for this varies based by the speaker and their cultural perspective.

Federally sentenced Indigenous women in Canada grew up with racial and gender discrimination as part of wider patterns of colonialism. Provisions within the Indian Act specifically targeted Indigenous women in Section 12(1)(b), which eliminated women of their status if they married a non-status man.⁴⁸ Using this provision of the Indian Act, and situating it within the wider context of Indian policy in Canada, Kathleen Jamieson explains that the Indian Act was and remains, “A law which discriminates against them (women) on the grounds of race, sex, and marital status.”⁴⁹ She further argues that the gendered norms set out within the worldview articulated and promoted within the Indian Act seeped into Indigenous communities who seemed to be developing an understanding that women who marry outside of their culture needed to be penalized, though this did not extend to men.⁵⁰ Furthermore, political life within First Nations and in the National Indian Brotherhood had become paternalist and alienated Indigenous women within their own communities. The women of Tobique Reserve in New Brunswick famously confronted both the barriers from within Indigenous social and political communities and this section of the Indian Act which was ultimately repealed in 1985.⁵¹ These political issues facing Indigenous women were compounded by life histories marked by abuse, marginalization, and intimate violence at the hands of men, as articulated by Anne McGillivray and Brenda Comaskey in *Black Eyes all of the Time*.⁵² What

⁴⁷ Carol LaPrairie, “Native Women and Crime in Canada: A Theoretical Model,” in Adelberg and Currie, eds, *Too Few to Count*, (Vancouver: Press Gang Publishers, 1987), 107.

⁴⁸ Indian Act, Section 121)(b).

⁴⁹ Kathleen Jamieson, *Indian Women and the Law in Canada: Citizens Minus* (Ottawa: Minister of Supply and Services Canada, April 1978), 1.

⁵⁰ Jamieson, *Indian Women and the Law in Canada*, 75.

⁵¹ Janet Silman, *Enough Is Enough: Aboriginal Women Speak Out*. (Toronto: University of Toronto Press, 1987).

⁵² Anna McGillivray and Brenda Comaskey, *Black Eyes all of the Time: Intimate Violence, Aboriginal Women, and the Justice System* (Toronto: UTP, 1999).

the women of Tobique also showed was that the power structures under the band council often favoured men over women. This was the political manifestation of domestic stresses that faced many of the Indigenous women who became incarcerated.

Statistics of the incarceration of Indigenous women are startling because they show evidence of these violent histories. In 1969, the predecessor organization to the Native Counselling Services of Alberta quoted a report that noted up to 80% of the provincial female inmate population in the province was Indigenous.⁵³ This was corroborated by the Alberta Attorney General's Office that included an assessment of Indigenous women and incarceration in their annual reporting beginning in the 1970s. In 1972, they noted that Native women's sentences were shorter, but they constituted a majority of the inmate population.⁵⁴ In Saskatchewan, the Indian Probation Project of the late 1970s quoted this number as 90% in the women's prison.⁵⁵ Similar statistics exist in Northern Ontario provincial jails, where this percentage was similarly high, even up to 100% of the Kenora jail.⁵⁶ Most of those serving shorter provincial sentences did so for lesser crimes like forgery, petty theft, or alcohol related crime. In other words, incarceration of Indigenous women skews towards those crimes motivated by socioeconomic and social disadvantage.

The realities of violent life histories are encapsulated in the life of Ms. Cree, the literary creation of Fran Sugar, an inmate in P4W. Sugar wrote this story on the model of a sentencing report and published it in the Native Sisterhood press.⁵⁷ Ms. Cree represented the impact of colonialism. The following is the life history of Ms. Cree:

⁵³ Request for financial assistance for employment of Native Court Workers by the INDIAN ASSOCIATION OF ALBERTA and the METIS ASSOCIATION OF ALBERTA to HUMAN RESOURCES DEVELOPMENT AUTHORITY, LEGISLATIVE BUILDING, Edmonton, Alberta, June 6, 1969, Provincial Archives of Alberta, Acc No 1987.366, box 6, File "Native Counselling Services of Alberta, 1969-1973

⁵⁴ Annual Report of the Corrections Branch of the Attorney General's Office, 1972, 65.

⁵⁵ LAC, Indian Probation Project (SK) RG 73, 1989-90/083, box 14 file 7300-6/3-6 part 1, Comprehensive Evaluation of the Saskatchewan Indian Probation Project, September 22, 1978.

⁵⁶ Anna Willow, *Strong Hearts, Native Lands: The Cultural and Political Landscape of Anishinaabe Anti-Clearcutting Activism* (Albany: State University of New York Press, 2012).

⁵⁷ These presses are discussed in detail in chapter eight.

Ms. Cree is eighteen years old, a single parent with 2 children. She lives in the city of _____ where the offence took place. She was convicted of manslaughter and sentenced to 4 years. Her parents are deceased. She has 2 sisters and 2 brothers. Ms. Cree was a housewife whose sole income was social assistance

Ms. Cree entered the institution with a grade 4 level of education. She quit school due to problems in her foster home. Ms. Cree has not been involved in an education upgrading program. She has been offered a job cleaning yet has refused this placement because she feels the school supervisor does not treat her or other native students properly. As a result she will not work anywhere in the institution.

Ms. Cree was first arrested at age 16 for uttering and forging documents. She was put on one year's probation which she completed successfully. The subject displays no responsibility for her criminal involvement. The subject clearly has a drug and alcohol problem. Her institutional participation is limited to Native Sisterhood. The writer strongly suggests that Ms. Cree remain a maximum security inmate. The writer is not in support of community release at this time. Day parole denied. Full parole denied. Escorted temporary absence denied for one year. Ms. Cree was involved with a would-be serious incident with a number of her friends on May 1 19__ when security staff were proceeding to dispel an incident in another part of the building. As a result of Ms. Cree not being able to remain charge free for any length of time, her cavalier attitude, her activities and friendships with many known drug dealers in the institution, it is the writer's opinion that Ms. Cree meets #2 and #3 criteria under Bill C67-68.

Ms. Cree is a danger to society, to herself and the staff members of the institution. Ms. Cree is being referred under Bill C-67-68. Ms. Cree's sentence expires January 199_. Next case management review scheduled December 198_.⁵⁸

This fictional case history illuminates the reality that the majority of Indigenous women in the penal system were victims of abuse themselves separate from the crimes that led to their incarceration.⁵⁹

This reality is borne out in of life histories of inmates as well as anecdotally through interviews, inmate writings, and submissions to the 1996 Royal Commission on Aboriginal Peoples. For example, one P4W inmate told her life history to RCAP interviewers. It included a broken home with an alcoholic father, institutionalization in foster homes, abuse at the hands of clergy, and sexual, mental, and physical abuse at the hands of her community. She concluded her testimony by saying,

⁵⁸ Fran Sugar, "Entrenched Social Catastrophe," *Native Sisterhood*, (Prison for Women, 1988), 26.

⁵⁹ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 14, 2014.

“I know deep down inside that there is a lot of pain and hurt within each individual in this institution.”⁶⁰

Over the twentieth century, policymakers and administrators attempted to develop new approaches to the issues facing federally sentenced Indigenous women, but it was in the creation of the Native Sisterhood that inmates saw as the best avenue for healing. Ellen Adelberg and the Native Women’s Association of Canada put this in the following terms:

Almost all the healing experiences that Aboriginal women who have been in prison report in our interviews lie outside the conventional prison order. They come through the bonds formed with other women in prison, through the support of people on the outside, and from the activities of the Native Sisterhood.⁶¹

The correctional context regarding Indigenous women in the 1970s was one where policymakers saw problems, yet were unable to proffer workable solutions. In 1969, the Canadian Committee on Corrections reported over-incarceration of Indigenous women in provincial and federal jails as a “striking factor” that underlined the relationship between social disadvantage and terms of incarceration in the prairies.⁶² When discussing the experiences of Indigenous women, this report noted that the offences for which Native women were convicted reflected their social disadvantage and called for programs for Indigenous inmates which could help these women navigate their unique historical and contemporary challenges.⁶³ This awareness of the social roots of the incarceration of Indigenous women created a context where innovative programs could emerge. But it was not a federal, provincial, or even a correctional policy that helped the inmates heal in the 1970s. It was the Native Sisterhood.

⁶⁰ Sandy Paquachon, RCAP transcripts, Prison for Women, Kingston, Ontario, March 31, 1993, p 84-90. Quoted in RCAP, *Bridging the Cultural Divide* (Ottawa: Minister of Supply Services, 1993), 140-141.

⁶¹ Ellen Adelberg and the Native Women’s Association of Canada, “Aboriginal Women and Prison Reform,” in Adelberg and Currie, eds, *In Conflict with the Law: Women and the Canadian Justice System* (Toronto: UTP, 1993), 83.

⁶² Report of the Canadian Committee on Corrections: Towards Unity: Criminal Justice and Corrections, March 31, 1969, 395.

⁶³ *Ibid.*, 403.

The Native Sisterhood

In the 1970s a core group of women in P4W emerged and organized a Native Sisterhood. While Indigenous prisoners are often noted because of their uniquely marginalized status and the violence that led to closure at P4W, they also played a central role in decolonizing the prison system. Their efforts resisting the prison, alongside their supporters, significantly reshaped the way women's prisons were operated and structured. As a case study, the Native Sisterhood illuminates the dynamics and tensions that existed within Indigenous inmate groups as well as its unique goals. When speaking of the movement as a whole, advocates and inmates themselves would refer to the "Brotherhoods and the Sisterhood;" while this was done because of the gendered pronoun, the singular Sisterhood in contrast with the plural Brotherhoods is apt. The Sisterhood set out to help each other heal by reclaiming Indigenous culture and spirituality while in prisons. In doing so they were culturally creative, since the cultural diversity of the group and the correctional context required it. While the need to develop inclusive approaches to Indigenous spirituality was necessary in all penal institutions, the fact that there was only one federal women's prison meant that this was all the more necessary.⁶⁴ Because of this diversity, the programming that the Sisterhood developed was inclusive, leaving space for various cultural performances and expressions.

The development of the Native Sisterhood fits patterns of eastward spread of the Native Brotherhood Movement in Canada. In November of 1970, Joyceville began its Native Brotherhood and with that came the expansion of other chapters of the movement in Ontario and eastern Canada, including the Native Sisterhood which began in 1972. There were several unsuccessful attempts to organize a Sisterhood prior to 1972. Because the Joyceville Brotherhood had already been established, in 1971 Indigenous women from P4W went to events hosted by the existing

⁶⁴ Ed Buller, Kim Pate, Christie Jefferson, Eva Solomon, and Laurel Claus-Johnson all brought up this same point. See also the discussion of the calls for closure earlier in this chapter.

Brotherhood. These women discussed the possibility of starting their own Sisterhood. According to Charlie there were several attempts to form a Sisterhood before it was finally established in 1972.⁶⁵ In 1971 Charlie went twice to give advice and guidance on the purpose, role, and functioning of the Brotherhoods. In 1972 the Native Sisterhood began, and by August of that year they included an announcement concerning the group in the penal press for the institution. To that point they had been meeting on Wednesday evenings for several months, and these meetings included bringing in outside visitors, viewing films, discussions, and a social time. A leader of the group commented on the goals of the group in this article, writing, “It is hoped that during the coming months this group will become more active and get down to the business of solving some of the problems that the Native people encounter.”⁶⁶

In P4W inmates began mobilizing in meaningful ways. Longer sentence lengths allowed a cadre of leaders to develop. Christie Jefferson put it this way:

There is something about the Penitentiary. Partly because with the province you’re getting this turnover in population. So it’s really hard to develop leadership, etc. But if you are sitting there doing a 20 year bit, you got a lot of time to hone your skills. I think it really just kind of played out that way.⁶⁷

In the 1990s especially, when the process that led to closure of the prison began, this strong leadership group was especially important. While Indigenous women’s experiences of incarceration went beyond the limits of the federal prison system, the federal institution loomed large in inmates’ imaginations and as a lived reality for Indigenous prisoners. The degree of political influence wielded by the women in P4W was much larger than was the case in any provincial institution.

While the intent of the group was to heal by reclaiming traditional culture, they did not exclude non-Indigenous women either. The inclusion of non-Native women in the Sisterhood and

⁶⁵ Charlie (former prisoner), interview with the author, November 4, 2013.

⁶⁶ “The Native Sisterhood Group,” *The Voice Inside*, August 1972, 3.

⁶⁷ Christie Jefferson (Parole Board Officer) interview with the author, February 10, 2014.

the wide invitations to the community to attend these events speaks to a philosophy of human kinship that underpinned the Sisterhood.⁶⁸ Ed Buller remembered, “They were very open to non-Aboriginal women to take part in the Sisterhood. In fact they promoted the participating of non-Aboriginal women, particularly those who don’t fit into the general population.”⁶⁹ Kim Pate remembered the origins of the Sisterhood’s leadership in the following terms:

It was a combination of the women inside, certainly there was a core group, and not all Indigenous women. There were women who were invited in by Indigenous women to participate. So for example there was Gale Haury, who a lot of people thought or maybe still think that she is Indigenous, she actually had South Asian ancestry, but she was welcomed into the Sisterhood in part because she was very political. She knew how to challenge the authorities.⁷⁰

A sister at P4W wrote in 1984 to her “coppertone sister,” that “As we all know we are Brothers and Sisters in this Creation! Native or non-Native we should all help each other! But due to the hatred going on in this world it is most important that the Native people should be more close as Brothers and Sisters.”⁷¹ Once the group was established, some members politicized the Sisterhood and made them more confident as a group in demanding rights as Indigenous people and as women; these people included Fran Sugar, Yvonne Johnson, Joey Quinn, and Sandy Pequasiot, and the leadership group expanded over the years as new women became involved with the Sisterhood over their terms in P4W.⁷²

Over the 1970s the group gained influence, but worked in isolation from Indigenous political organizations, with the exception being the Native Women’s Association of Canada. In

⁶⁸ It is difficult to discern why the Sisterhood was more open to non-Native members than most Brotherhoods were. One likely explanation is that the Brotherhoods were more invested in discourses related to Indigenous rights and self-governance. The infighting between status and non-status groups related to prison programming reflects these wider political concerns. The Sisterhood, I believe, was engaged in a unique struggle outside the politics with which the Brotherhoods were embroiled, and their emphasis on gendered violence against women allowed for a broader vision of human kinship.

⁶⁹ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 14, 2014.

⁷⁰ Kim Pate (Executive Director of the Elizabeth Fry Society, Canada), interview with the author, February 28, 2014.

⁷¹ Betty, “To my Coppertone Sister,” *Tightwire*, Vol 20 No 8, (1984), 25.

⁷² Kim Pate (Executive Director of the Elizabeth Fry Society, Canada), interview with the author, February 28, 2014.

1975 during the Edmonton Conference women's concerns were infrequently addressed directly. When they were it did not alter the trajectory of the conference. Instead, the Sisterhood was used as a special example to illuminate the concerns of male inmates.⁷³ In other words, male inmates would refer to P4W as an especially severe case of the injustices facing all Indigenous peoples in Canadian prisons. The unique histories of violence endured by Indigenous women went unexplored in this rhetorical usage of P4W towards political ends. The closest the conference came to articulating recommendations for women specifically was in Kitty Maracle's comments at the conference when she noted that Native women were not emphasized enough in the conference proceedings.⁷⁴ The degree to which Native women were victimized in the system was unknown to even the most committed advocates outside the prison. Christie Jefferson specifically remembered the failure to draw attention to discretion built into the system. Correctional staff and administrators had multiple options when dealing with prisoners and were not duty-bound to follow any single course of action when incidents emerged in prisons. This created a situation whereby women were victimized. In other words, because correctional officers had free-reign over their actions over prisoners, officers were able to abuse women in prisons without repercussion. She said:

The amount of discretion that of course officers can exercise is huge. And they knew it. And the reality of sexual assault as sort of a daily bread for women in the circumstance, it was not recognized. It wasn't recognized it 1975 at that conference. I didn't know about it.⁷⁵

The mixture of concern for Indigenous women but failure to see their needs as distinct from the men was reflected in the 1977 Metis and Non-Status Indian Crime and Justice Commission. This study, conducted by the Native Council of Canada under Harry Daniels' guidance, had a full chapter

⁷³ Bill Badcock, Verbatim Report of the 1975 Edmonton Conference on Natives and the Criminal Justice System, Document No. NCJ-48, 85-6.

⁷⁴ Kitty Maracle Verbatim Report of the 1975 Edmonton Conference on Natives and the Criminal Justice System, Document No. NCJ-48, 20.

⁷⁵ Christie Jefferson (Parole Board Officer) interview with the author, February 10, 2014.

on the issues facing Indigenous women in prisons. While the report identified the areas of statistical concern, it did not explore the underlying life histories that marginalized Indigenous women, and it did not consider how gendered dynamics altered the concerns and goals of the women in P4W.

They did summarize one key problem facing women:

In a sense, because they are a minority, it is justified that they should get special attention, but it could also be pointed out that because they make up such a small portion of the population, it is difficult to justify any great expense on the part of the Penitentiary Services, and they are thus easily ignored.⁷⁶

So in 1977 insufficient funding and the minority status of women, and especially of Indigenous women, meant that little change was imminent from CSC itself.

The inmates at P4W also were proficient in maintaining contact with external support agencies and organizations. Part of this was ensuring that the agencies that supported Indigenous men were also working for them. Therefore, the Canadian Association in Support of Native Peoples played an active role in the life of P4W inmates, as did the Native Communication Society and the AIMS house for its short tenure in the region.⁷⁷ They had a particularly amicable relationship with the Department of Justice, which was beneficial in advocating for programming for federally sentenced Native women.⁷⁸ By the 1980s the Native Women's Association of Canada (NWAC) was funding Elders to go to P4W and work with the inmates, trying to help them heal. In 1994 NWAC hired Elders to make up a council for Native Women, assisting in the closure of P4W and design of the Healing Lodge, discussed below.⁷⁹ In 1983 the Native Women's Caucus of Elizabeth Fry formed, and this gave Native women another avenue through which they could advocate on behalf

⁷⁶ Native Council of Canada, *Metis and Non-Status Indian Crime and Justice Commission*, 159.

⁷⁷ Trent University Archives, RG 82-014 Series C (Fed govt) Canadian Pen. Service re native brotherhoods

⁷⁸ Trent University Archives, 82-014 Series C (fed govt) justice dept Speech Delivered by Mr. R. Sampat-Mehta of the Department of Justice to the General Assembly of the National Native Women's Association in Thunder Bay on August 22, 1974.

⁷⁹ LAC, Associations, Clubs, Societies – General – Native Women's Association of Canada, BAN 2000-00235-8, box 37, file 155-N42, part 1.

of incarcerated Native women. In 1981 CAEFS recommended that a CSC policy that the Sisterhood should be “actively encouraged and supported.”⁸⁰

Shortly after organizing weekly meetings, the Sisterhood began organizing public events. Women in P4W invited members of the Brotherhoods, their supporters, the prison administration, and the broader community to take part in pow-wows on the prison grounds. The Sisterhood may have been inspired by the 1973 totem pole dedication within Joyceville Penitentiary, which also includes these kinds of events, but it was in the Sisterhood that sustained links with the community emerged in earnest.⁸¹ Ed Buller at the time was the Executive Director of the Native Canadian Centre of Toronto, and he took youth from the centre to meet the women during these special events, as well as during their regular programming. He remembered:

The Sisterhood was one of the first groups to have traditional feasts and social where they brought in outsiders, drums and dancers, cooked their own feasts, raised money from the Sisterhood fund to pay for all this. As part of the Sisterhoods growth, they would also invite Aboriginal inmates from the male institutions to come. This is where I think the germination of a lot of the cultural and spiritual focus grew from the prison for women to other male institutions. They had Brotherhoods, but not the same focus on culture and spirituality.⁸²

This focus on spirituality emerged because the women were uniquely oppressed, but their motivation and drive bled out into the other regional prisons.

Public cultural events hosted by the Sisterhood were opportunities to build and maintain links to the community, Brotherhoods, and prison staff who were all invited. George Caron, the Warden of P4W from 1980 to 1987, frequently attended these gatherings along with his family.⁸³ Caron was especially supportive of Indigenous programming, which he saw as holding a special rehabilitative purpose.⁸⁴ This may have been in part because he self-identified as “a male from

⁸⁰ “Brief to Upgrade Programs in Kingston Prison for Women, by CAEFS, March 1, 1981,” LAC, Administration - Prison for Women, Acc 2000-00234-X, Box 9, File 107-1-430 part 2

⁸¹ This totem pole is discussed in detail in chapter nine of this dissertation.

⁸² Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 14, 2014.

⁸³ George Caron, *Mouse on a String at the Prison for Women* (Renfrew, Ontario: General Store Publishing House, 2009), 143.

⁸⁴ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 14, 2014.

Western Canada with a Native Background,” and became the Warden of the institution well after the Sisterhood had established itself.⁸⁵ Community members would come in and provide what they could either in singing, dancing, teachings, or community. After one 1978 pow-wow, Elaine Spotted Eagle reported on the event in the penal press. She spoke of the North American Travelling College who “sang and drummed with a sense of pride and dignity” that was palpable by looking at them. She thanked speakers like Francis Boots and Joe Sylvester, older men who offered wisdom to those present. She finally concluded thanking the Elders and Grandfathers for coming, saying to them, “What we want to be and do comes from you; you are a part of our learning and growing. We need you!!”⁸⁶

The Sisterhood were the first group to mount a sustained campaign to allow ceremonies in the prison. They were at the forefront of advocating for allowing sacred medicines into the prison grounds. Without access to these sacred items, including sage, sweet grass, sacred tobacco, and cedar, the ceremonies could not hold the same meaning as when they were present. The Sisterhoods guarded their charter right to freedom of religion in the use of sacred medicine seriously and solemnly. Ed Buller remembered a visit to the institution in the 1980s when a younger member put those achievements in jeopardy:

One Sisterhood meeting, after the meeting all of the volunteers were asked to leave except for me... The Chairwoman of the Sisterhood who was close to my size at time, went over to this young girl who looked 19, wisp of a girl. Lifted her off the chair and shook her. The young woman had been burning sweet grass in her cell to cover the smell of dope. The Chairwoman of the Sisterhood laid into her and gave her a very blunt lesson on what it took them to get sweet grass allowed into the institution and then into their cells. This woman was not going to jeopardize the work they had done, and it had been considerable.⁸⁷

⁸⁵ Caron, *Mouse on a String*, 15.

⁸⁶ Elaine Spotted Eagle, President of the Sisterhood, “Pow-Wow for All,” *Tightwire*, May-August 1978, 112

⁸⁷ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 14, 2014.

The misuse of sacred items was a desecration of the sacred. The Sisterhood had experienced times where abusing privileges granted by the institution led to the revocation of those privileges.⁸⁸

None of this is to say that the lives of incarcerated Indigenous women got measurably easier after the Sisterhood began. In a survey of Indigenous women published in 1986, Indigenous women in Canada were still defined as the least advantaged subgroup in Canada. Native women had a 20% lower average income than Native men, in lone parent families Native women represented the vast majority of the single parents, they were more likely to be unemployed, and they had inadequate housing. The costs of these systemic strains were felt by Native women and their dependents.⁸⁹ In a study published by the Native Women's Association of Canada through a contract with the Solicitor General, Bernice Dubec argued that Native women faced systemic barriers to rehabilitation and healing because they were "women, Native, poor, have several children, dependant on social assistance, and addicted to the use of alcohol or drugs."⁹⁰ The personal histories of intimate violence persisted. During this era women became increasingly vocal politically, which meant that penal administrations dealt harshly with many Indigenous women who were gaining their political voice. This was clear also in continuing rates of over incarceration.⁹¹

Systemic discrimination took a tragic toll on Indigenous women in federal penitentiaries. Indigenous women from the provincial institutions became politically active, especially in Saskatchewan, and were transferred to Prison for Women and, in the most difficult cases, to the Special Handling Unit (SHU). In the late 1980s and early 1990s, when the prison system was becoming more regimented, bureaucratized, and less adaptive to the needs of inmates, women were

⁸⁸ In this case I use the word privileges deliberately; Art Solomon often accused the institutions of treating spirituality as a privilege, not as a right. See: Art Solomon, "Freedom of Religion," in *Eating Bitterness: A Vision Beyond the Prison Walls* (Toronto: NC Press, 1994), 85.

⁸⁹ Pamela White, *Native Women: A Statistical Overview* (Ottawa: Native Citizens Directorate, 1986), ix.

⁹⁰ Bernice Dubec, "Native women and the Criminal Justice System: An Increasing Minority," for NWAC, March 1982, LAC, RG 73, 1990-91/256, box 43 file 7300-6/5-89 (Resources Cnt. Native Women)

⁹¹ Bernice Dubec, "Native women and the Criminal Justice System: An Increasing Minority," for NWAC, March 1982

transferred to P4W and committed suicide. Christie Jefferson remembered, “I don’t know how many suicides there were. They were all Aboriginal woman from Saskatchewan. All provincial women. Too hard to handle, they were sent up to the Federal Penitentiary and killed themselves.”⁹² Over the 1990s, alongside commissions of inquiry and task forces into the situation facing female inmates broadly and Indigenous women specifically, the national coverage of issues facing Indigenous women spiked.⁹³ Between December 1989 and February 1991, seven women committed suicide inside P4W, and of those suicides six were Indigenous women.⁹⁴ These suicides speak to the ongoing realities of colonialism and its effects on the lives of Indigenous women in P4W. This was picked up in a letter to the editor that directly tied Indigenous death in prison for women to the removal of Indigenous women from their communities.⁹⁵ The significant problems that were fundamental to the penal system’s organization drove Indigenous women to lead the charge by inmates demanding for the institution’s closure.

The Processes Leading to the Closure of P4W

The processes that led to the closure of P4W began with the assembly of a Task Force on Federally Sentenced Women. It was mandated to make recommendations for improving the situation facing female offenders. The final report, submitted in April of 1990 and it accepted by the federal government in September 1990, included the recommendation to close P4W.⁹⁶ From the beginning of this process, CSC worked in collaboration with the Canadian Association of Elizabeth

⁹² Christie Jefferson (Parole Board Officer) interview with the author, February 10, 2014.

⁹³ Aboriginal deaths in custody were not unique to Canada. Over the late 1980s and early 1990s the most famous and often articulated crisis regarding Aboriginal deaths in custody was in Australia.

Biles, D., and D. MacDonald. *Deaths in Custody in Australia, 1980-1989: The Research Papers of the Criminology Unit of the Royal Commission into Aboriginal Deaths in Custody*. Canberra: Australian Institute of Criminology, 1992.

⁹⁴ Hayman, *Imprisoning our Sisters*, 82.

⁹⁵ Clayton Ruby (Letter to the Editor) “Death in Prison,” *The Globe and Mail*, March 7, 1991.

⁹⁶ MacDonald, Marnie, and Lisa Watson. "Creating Choices, Changing Lives: The Transformation of Women's Corrections in Canada." *Corrections Today* 63.1 (2001): 70.

Fry Societies, and before long the Native Women's Association of Canada joined in the task force. This included the Aboriginal Women's Caucus, a group made up of incarcerated or formerly incarcerated women who had an important voice in the final report. In the end, the task force was made up of community members, academics, and inmates themselves.⁹⁷ While the task force covered the entire female inmate population, from the beginning Indigenous women were central to the study. Female incarceration had long been a problematic point within a correctional system that was widely panned by critics and scholars as unable to rehabilitate women. What was unique about the 1990 report was the lack of controversy in the acceptance of the recommendation. Acceptance of this report, the opening of the first of the new prisons in 1995, and P4W's closure on July 6, 2000 seems to capture the achievement of the task force. But Stephanie Hayman argues in *Imprisoning our Sisters*, that this narrative fails to see how the ideals of the task force fell short.⁹⁸ She argues that since the publication of *Creating Choices*, most federally sentenced women still face the same systemic problems that led to the report's creation. Only a small fraction of incarcerated women have benefitted from the report's implementation.

As part of the report, Fran Sugar and Lana Fox, two federally sentenced Indigenous women, researched and submitted a sub-report which was remarkable for its personal approach to research, how it honoured the voices of the Native women behind bars, and for the powerful writing itself. This report spoke to the carceral lives of Indigenous women, showing the reader how life histories of marginalization and colonization led to incarceration. They wrote on behalf of thirty-nine women who they interviewed, but in doing so told their own stories:

The experiences to which this report speaks are our experiences: we, the researchers, have lived them. When we retell the stories of the 39 Aboriginal women who speak through the pages of our report we are also sharing our own

⁹⁷ *Creating Choices*, 72-76.

⁹⁸ Hayman, *Imprisoning Our Sisters*, 230.

stories, for we too have known the brutality, violence, racism and oppression of which the stories tell.⁹⁹

What was clear in the report was that while the inmates had experienced injustice within the justice system, they felt that these patterns of injustice were likely to be ongoing.

Sugar and Fox were suspicious of the motives of CSC. They spoke of “grave hesitation” with which they spoke as prisoners because they experienced and felt the futility of “the numerous commissions, working groups, federal department officials, and other organizations that are said to represent women in cages had already conducted study after study.”¹⁰⁰ They feared that this report, “would be repeating what is already known and documented somewhere... in some brown file... in some room... covered with dust.”¹⁰¹ Sugar and Fox were not alone in these concerns. The Aboriginal Women’s Caucus, especially those incarcerated on the committee, were also concerned with revictimization. They noted the failure of previous task forces to act on their descriptions of “archaic conditions, arbitrary mass punishment, sexism and racial barriers imposed by administration and security classifications” that all targeting Native women specifically.¹⁰² They noted involuntary transfers that they endured, profiling, and culturally inappropriate programming. They further argued that their life histories of “sexual abuse, rape and wife battering” could not be addressed by the psychiatrist at Kingston Penitentiary, as had been standard procedure. They ended this soliloquy by asking a powerful rhetorical question that pointed a damning finger at the penal system in its entirety: “How can anyone expect to heal themselves under those conditions?”¹⁰³

In April of 1994, the problems in P4W came to a head in a series of dramatic events that captured national media attention and highlighted the reasons the prison needed to be closed. Most

⁹⁹ Intro to *Survey of Federally Sentenced Native Women in the Community*, 2.

¹⁰⁰ Intro to *Survey of Federally Sentenced Native Women in the Community*, 2.

¹⁰¹ Intro to *Survey of Federally Sentenced Native Women in the Community*, 2. (ellipsis original)

¹⁰² Intro to *Survey of Federally Sentenced Native Women in the Community*, 3.

¹⁰³ Intro to *Survey of Federally Sentenced Native Women in the Community*, 3.

of our current understanding of the events leading up to and including the incident come from the *Commission of Inquiry into certain events at the Prison for Women in Kingston*, led by justice Louise Arbour and commonly referred to as the Arbour Report.¹⁰⁴ On April 22 six inmates violently confronted the institutional staff, leading to the segregation of inmates in the Segregated Housing Unit (SHU). Inadequate internal reporting and conflicting testimonies following the incident meant that the actual events remain unclear. What is clear is that in the aftermath there were heightened tensions between the staff and inmates, as was later reported:

It is apparent from all the evidence that the single most important feature of what took place on April 22nd... was the profound breach of trust that this unpredictable violent group attack on staff would create. Fear and distrust were two dominant emotions that were introduced in an environment in which fatigue, exasperation, even resentment and anger are not unknown.¹⁰⁵

This created an atmosphere described as one of “tremendous hostility, resentment and fear among members of the staff at the Prison for Women.”¹⁰⁶ This atmosphere of hostility affected the Aboriginal women specifically for several reasons. The Native Sisterhood had by then become politically active and was at the forefront of the calls for closure of the prison, especially since the 1990 Task Force Report. Second, because of a series of suicides of Indigenous women at P4W in the 1990s, there was a tense and frustrated relationship between Indigenous women and the staff at the prison, as staff viewed Indigenous women as difficult to control.¹⁰⁷

In the Arbour Commission, this racial confrontation was played out in the alleged comments by Officer Anne Power, who was working on the floor at the time. The following was included in the Arbour report:

In their [the inmates’] evidence, they alleged that Officer Anne Power addressed one or more Native inmates with the following statement: ‘Why don't you go

¹⁰⁴ Louise Arbour, *Commission of Inquiry into certain events at the Prison for Women in Kingston*. (Ottawa: Public Works and Government Services Canada, 1996).

¹⁰⁵ Arbour Report, 25.

¹⁰⁶ Arbour Report, 28.

¹⁰⁷ All of this is laid out in the 1990 Survey of Federally Sentenced Aboriginal Women in the Community.

hang yourself like the other Native girls.’ The Correctional Investigator's records show that these allegations were first made to the Correctional Investigator by at least three inmates in May of 1994. In her testimony, Officer Power denied having made that statement and she was not cross-examined on her denial.¹⁰⁸

Justice Arbour noted that because of discrepancies in the evidence, this allegation could not be confirmed in court. She did, however, note that this comment aligned with the culture of the institution, writing: “I do not find incredible the proposition that a statement of that nature might have been made by someone during the period of time under investigation.”¹⁰⁹ This alleged remark was what provoked several of the Native inmates on the 22nd; the entire incident was played out against a backdrop of Indigenous marginalization in prisons and cultural insensitivity on the part of the staff.¹¹⁰

Four days later, on April 26-27, these six inmates plus two others not connected to incident of the 22nd were subjected to a strip-search by an all-male, all-white Institutional Emergency Response Team (IERT). This went against CSC policy and human rights legislation. This was the first time the IERT was deployed on female inmates. A team of eight men plus a coordinator, in riot gear and weaponry designed to protect anonymity of the staff and intimidate the inmates, chained the women to their beds, forcibly removed their clothing, and left them naked, in some cases entirely and, in other cases, dressed with insufficient paper gowns.¹¹¹ No significant consideration was given to the policy or procedure of the search, a foresight that CSC acknowledged in a brief to the Commission of Inquiry conducted by the Hon. Louise Arbour.¹¹² The entire strip-search was in contrary to sections 46 to 67 of the Corrections and Conditional Release Act (CCRA) which gave the necessary procedures and practices that governed this type of physical search. Significant articles

¹⁰⁸ Arbour Report, 39.

¹⁰⁹ Ibid., 39.

¹¹⁰ Tom Fennell, “Jailhouse Shock,” *Maclean's* Vol 108 no 10 (March 5, 1995), 24.

¹¹¹ Arbour Report, 46-47.

¹¹² Arbour Report, 81.

which were not followed included section 49(3)(b), which requires the person conducting the search must be of the same gender, and section 69 which forbids “any cruel, inhumane or degrading treatment or punishment of an offender.” It also contravened Commissioner’s Directive 571 B which outlined policies for searches and seizures, and included provisions for privacy and dignity, witnesses present, and that the searcher be of the same gender.¹¹³

The strip search became a *cause celebre* when significant portions of a video of the body cavity search was aired on national television through the Canadian Broadcasting Corporation’s documentary program, *The Fifth Estate*.¹¹⁴ The following public outcry was resounding, with picketers standing in front of the prison for months following. Laurel Claus-Johnson remembers of this time, “Prison for Women became a focal point. There was protests out front. I mean, I know at home I have an “I dreamed I went to visit Prison for Women and it was closed” button. Everybody wore the buttons.”¹¹⁵

The final report of the Arbour Commission of Inquiry was roundly critical of the penal system in general and the position of women within it. Arbour noted that while the events of April 1994 were specifically at issue, they represented an opportunity to question P4W in its entirety. She concluded:

When properly understood in its full context, these events raise a legal and moral question much more basic than merely whether it [the IERT raid] technically constituted a “strip search”. It raises the question of whether the treatment of the inmates was cruel, inhumane, and degrading. I think that it was.¹¹⁶

¹¹³ CCRA, Sections 46-67. Commissioner’s Directive 571 B.

¹¹⁴ The chronology of these events from April 22 when the initial incident took place to April 10, 1995 when the Commission of Inquiry was appointed is summarized more completely in the Arbour Commission Report, pages 22-23.

¹¹⁵ Laurel Claus-Johnson (Advocate for Aboriginal Prisoners), Interview with the author, August 15, 2013.

¹¹⁶ Arbour Report, 51.

This conclusion, and the public outcry that followed the release of the video on national television, hastened the closure of the institution, something for which Indigenous inmates had long advocated.

This reflects the marginalized position of the inmates themselves, as Christie Jefferson summarized:

The real trouble with any kind of prisoner-based movement is the system can come down like a ton of bricks. You are completely at their mercy, really. We had to be very careful. We were always really careful what we'd say to anybody... The incident involving Arbour... it was a politicizing experience, that's for sure. But the amount of power that they have is so incredible, which is why there couldn't be much movement until the outside community started taking notice and backing and protecting [the women].¹¹⁷

This hastened the progression of recommendations accepted from the 1990 report. Committees were put into place to ensure that the recommendations for closure were carried out, and this included selecting sites for new institutions, which were built in Truro, NS, Edmonton, AB, Kitchener, ON, Joliette, QC, and Okimaw Ohci Healing Lodge at Maple Creek, SK on the Nekaneeet First Nation's territory.¹¹⁸

By 1992, the Maple Creek site was chosen for the Healing Lodge, in close collaboration with Nekaneeet First Nation. The degree of local input into the prison/healing lodge made the institution unique.¹¹⁹ In 1993 the Healing Lodge Planning Circle submitted an Operational Plan. By December the first Kikawinaw (director) was appointed, though it was not made official until the following March. In January of 1994 the circular conceptual design was approved and construction began with the clearing of the land in May 1994.¹²⁰ Afterwards, the opening of Okimaw Ohci Healing Lodge in Maple Creek, Saskatchewan was expedited. Opening Okimaw Ohci was an important moment in decolonization of the prison. Indigenous teachings went into the vision and physical design of the prison itself; Okimaw Ohci began as a creative project led by CSC along with Indigenous

¹¹⁷ Christie Jefferson (Parole Board Officer) interview with the author, February 10, 2014.

¹¹⁸ <http://www.csc-scc.gc.ca/institutions/001002-2006-eng.shtml>

¹¹⁹ Hayman, *Imprisoning our Sisters*, 205-207.

¹²⁰ For a full description of the practical realities of building the lodge, which this is only a glimpse of, see Hyman, *Imprisoning our Sisters*, 200-215.

organizations, built on principles of Indigenous spirituality, and supported by the Neekaneet First Nation. But it was still a prison. CSC took over an apparently Indigenous building for its own ends, it engaged in a pattern of neocolonialism.

Okimaw Ohci and the Indigenous Prison

Between the advocacy from within the prison by the Native Sisterhood, the work by community groups on behalf of women in P4W, and the public outcry following the events leading up to the Arbour Report, P4W was closed over the course of the last half of the 1990s. But the healing lodge did not begin with the Arbour report; it began in August 1989 when Alma Brooks, a member of the Aboriginal Women's Caucus of the Elizabeth Fry Society, recommended the concept of a healing lodge for her home community in Tobique, NB.¹²¹ A Native Women's Association of Canada document created during the development of the Healing Lodge read:

Prison for Women's Native Sisterhood's vision of the healing lodge is that Elders, children and family would be involved with cultural teachings from all nations; Anishnawbe (Ojibway), Assiniboine, Cree, Haida, Lakota & Dakota (Sioux), MicMac, Mohawk, etc. As well, the architecture of the building had to be reflective of many cultures.¹²²

The inclusive culture developed by the Sisterhood continued in the Healing Lodge, and by extension the decolonizing project that the Sisterhood began continued at Okimaw Ohci. Ed Buller remembered the incarcerated women's role in creating the lodge as fundamental to its final form. He said, "They [the women at P4W] came up with a wide range of criteria that was excellent. It needed to be on the land, it needed to have access to water and air, and it had to be built on principles of

¹²¹ Sky Blue Morin, for Native Women's Association of Canada, "Aboriginal Women's Healing Lodge: An NWAC Report," (July 1993), 12. This paper represents the most complete description of the practical processes that led to the opening of Okimaw Ohci. The paper itself is organized based on the medicine wheel, to the point that the table of contents are circular, with each section representing four cardinal points on the medicine wheel. Another good source for the origins of the five female prisons, especially Okimaw Ohci, is Hayman, *Imprisoning our Sisters*, 76-80.

¹²² *Ibid.*, 12.

traditional Aboriginal spirituality. So Okimaw Ohci was eventually created for Aboriginal women.”¹²³
Okimaw Ohci, therefore, continued the vision established by the Sisterhood in a new context.

The construction of Okimaw Ohci began with the creation of a committee that first met in February of 1991 on an ad-hoc basis to set out a vision for the creation of a healing lodge. It included representation from the Aboriginal Women’s Caucus, the Native Women’s Association of Canada, CSC, and three Elders, two from across Canada and one from the Nekaneeet First Nation.¹²⁴ CSC did not understand the benefit to be derived from the extra cost of bringing in external Elders, but the vision circle, an advisory body formed to direct the spiritual basis of the healing lodge, insisted that it necessary as the foundation of an inclusive healing place.¹²⁵ In consultation with the Elders, incarcerated women, Nekaneeet First Nation, and members of the vision circle, the following spiritual basis for the healing lodge was articulated:

The overall concept of the Healing Lodge Vision was derived from the teachings of the Four Directions in the Circle of the Life with a holistic healing focus to develop the Spiritual (East), the Emotional (South), the Physical (West) and the Mental (North) aspects of the lives of federally sentenced Aboriginal women. We begin at the centre of the Circle, the Creator, Creation and ourselves with the original instructions given at Creation. As we grow, we move around the Medicine Wheel beginning in the East with our original instructions to work on the spiritual part of ourselves, to the south for the emotions of the heart, to the west to maintain the physical body and to the north to acquire wisdom and serenity. As we travel around the Medicine Wheel in the Circle of Life, we go around many times until we complete the teachings we were to learn through our original instructions.¹²⁶

The medicine wheel was built into the architecture itself, as the members of the committee insisted that the medicine wheel teachings directed every part of the healing lodge’s life. Building the healing lodge in a circle assured that the Medicine Wheel teachings would dictate programming.¹²⁷ Part of

¹²³ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 14, 2014.

¹²⁴ Morin, “Aboriginal Women’s Healing Lodge,” 35.

¹²⁵ Morin, “Aboriginal Women’s Healing Lodge,” 35.

¹²⁶ Morin, “Aboriginal Women’s Healing Lodge,” 37.

¹²⁷ Morin, “Aboriginal Women’s Healing Lodge,” 44.

this process was replacing the position of warden with a Kikawinaw, which is Cree for “mother.”¹²⁸

After completion of the prison, the vision circle was replaced by a committee called the Kekunwemkonawuk, which means Keepers of the Healing Lodge Vision.¹²⁹ In other words, every part of the prison was guided, at least in the planning stage, by Indigenous culture and spirituality.

The opening of Okimaw Ohci represented a high point in the hopes of advocates working for and with Indigenous inmates, and for the inmates themselves. The Morin report called Okimaw Ohci, “A new initiative based on a place of healing and growth as opposed to an archaic concept, a place of punishment.”¹³⁰ Kim Pate remembered from attending the opening of Okimaw Ohci that the inmates, community members, and staff at the prison were indistinguishable; the only reason she knew who was there as inmates was because she had already built relationships with the women while they were in P4W.¹³¹ She believed that this was thanks to the efforts of several strong women who acted on a clear vision in the operation of the lodge. For example, she said:

Trish [Monture] and Sharon [McIvor] and the Elders all insisted that all the staff had eight months training, which is unheard of. They had Aboriginal women work at the healing lodge who had themselves had criminal records, many had histories of addiction, or were victims of abuse themselves. So they hired women who had lived experience and then provided them credible training.¹³²

That this was possible was remarkable within the history of CSC, and was only possible because the Indigenous women were successful in decolonizing the prison.

It did not take long before the optimism that characterized Okimaw Ohci when it opened disappeared. In spite of the best efforts of the vision circle and the communities that supported the lodge, the reality was that Okimaw Ohci was a CSC institution, and the correctional mentality quickly took over. This case study was the clearest case of neocolonialism in Canadian penal history.

¹²⁸ Norma Green, “Okimaw Ohci Healing Lodge: A Federally Sentenced Women’s Initiative,” *Forum*

¹²⁹ Norma Green, “Okimaw Ohci Healing Lodge: A Federally Sentenced Women’s Initiative,” *Forum*

¹³⁰ Morin, “Aboriginal Women’s Healing Lodge,” 43.

¹³¹ Kim Pate (Executive Director of the Elizabeth Fry Society, Canada), interview with the author, February 28, 2014.

¹³² Kim Pate (Executive Director of the Elizabeth Fry Society, Canada), interview with the author, February 28, 2014.

Kim Pate returned to the prison six months after it opened, and she saw how “the correctional environment” took over. She attributed the change to the reality that CSC was administering the institution. She went on to say,

I think it is fair to say that all people would consider the healing lodge as a regular prison now... well one of the women recently said that it is just a prison with round faced gardens and some of them are really not as prevalent as they were in the beginning. These are their words, not mine, but I think that very quickly it went off the rails as far as what the keepers of the vision wanted.¹³³

That the prison was designed on Indigenous culture and spiritual teachings. That it was characterized by its CSC context than the teachings raises questions regarding whether there can be an Indigenous prison.

There were several practical reasons for this quick regression. First, Okimaw Ohci was built as a minimum-medium security level institution, and as a result of that designation many of the Indigenous women at P4W were not eligible for relocation there.¹³⁴ Indigenous peoples tended to be relegated to higher security designations, so the Healing Lodge could not accept many Indigenous women because of what many advocates have called the racial profiling of Indigenous women. Furthermore, this was before the other prisons had been built. The Elizabeth Fry society had been advocated against a segregated wing in the healing lodge, but because of security issues this would have meant that most of the Indigenous women at P4W could not go. Sharon McIvor of Native Women’s Association of Canada asked Kim Pate of the Canadian Association of Elizabeth Fry Societies not to openly criticize the fact that there was a segregated wing at the healing lodge. McIvor thought that it would slow the progress that was taking place at Okimaw Ohci. Still, CSC did not follow through on this secure wing. Even though there was no place to put these high-

¹³³ Kim Pate (Executive Director of the Elizabeth Fry Society, Canada), interview with the author, February 28, 2014.

¹³⁴ Margaret Malloch, “A Healing Place?: Okimaw Ohci and a Canadian Approach to Aboriginal Women,” in Margaret Malloch and Gill McIvor, eds., *Women, Punishment, and Social Justice: Human Rights and Penal Practices* (New York: Routledge, 2013), 83. ; Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 13, 2014.

security women, CSC moved them to draw attention away from the Arbour commission, but lacking completed women's institutions these women were housed in the segregated unit in Saskatchewan Penitentiary at Prince Albert, a maximum security men's prison.¹³⁵ Another problem with the prison was geographic isolation. The prison was linked to the community at Nekaneet First Nation, and was closer to the homes of most Indigenous women, who like their male counterparts were often from the Prairie Provinces. Still, as Nekaneet First Nation was in southern Saskatchewan close to the Alberta, it was considerable distance from most women's families and communities. Therefore, there were fewer communities able to work with the prisoners, even if those at Nekaneet were committed to the Healing Lodge, especially when it was initially constructed. This did not solve the geographic problem articulated at P4W.¹³⁶

In the creation of the healing lodge, the Sisterhood was also broken up, which weakened the group and muted the voice that they earned within the penal system. At P4W there was a critical mass of inmates who, because of their shared experience of oppression, developed a strong group with a clear voice. Because most of the longest serving women were high security, and therefore were dispersed to regional institutions across Canada, that critical mass was lost. Ed Buller remembered a conversation with Trish Monture, a lawyer who played a central role in the development of the healing lodge vision:

After it [Okimaw Ohni] had been developed and running for a while, I was talking to Trish. She admitted that it was probably a mistake to push forward for a separate healing lodge for women because it broke up the Sisterhood. She was having second thoughts. The power that the Sisterhood had at P4W was lost and dispersed. So if you have three Aboriginal women at Nova institution, and four or five at Credit Valley, you don't have that critical mass to share those experiences. So it is a double-edged sword that the healing lodge was created and serves a function.¹³⁷

¹³⁵ Kim Pate (Executive Director of the Elizabeth Fry Society, Canada), interview with the author, February 28, 2014.

¹³⁶ Mallock, "A Healing Place?," p 84. ; Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 13, 2014.

¹³⁷ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 13, 2014.

Many advocates said that the Native Sisterhood was the only truly rehabilitative group or activity available within the walls. Therefore, breaking up the Sisterhood was no small effect of the new context where five institutions, including the healing lodge, separated the women. Ironically, the Native Sisterhood played a key role in healing for Indigenous female prisoners where the healing lodge failed. Building the Healing Lodge destroyed the Native Sisterhood.

All of the issues that surrounded the healing lodge were rooted in the same reality. While Okimaw Ohci was unique in the carceral archipelago, it was still administered, staffed, and maintained by CSC, leaving a situation open for a new kind of colonial actions by the state. Therefore, the regular stresses and bureaucracy that existed in all prisons also existed at the healing lodge. For example, the staff in CSC institutions were often resistant to cultural sensitivity training, and this was eventually true for staff at the healing lodge.¹³⁸ Because the Correctional Officers' union was still active in the institution, their expectations of what a prison ought to look like eventually trumped the vision circle, which within a few years ultimately disbanded in disgust. CSC rules of transferability and seniority of the correctional officers applied at Okimaw Ohci as they did at any other prison, so the majority of the staff there are not Indigenous.¹³⁹ While the prison still did not have uniformed Correctional Officers, they quickly began carrying weaponry that was explicitly resisted by the planning committee. Kim Pate remembered a significant example of this trend:

The warden, or the Kikawinaw, the head of the healing lodge never had to go through that training, and neither did the deputy, so it is not a huge surprise that it didn't take long for the corrections mentality to invade the prisons. Now, it's heartbreaking, when I go to the healing lodge now what used to be the child-care center, had toys and games, is now the guard's office and has all union and Canadian Correctional Officers paraphernalia, and there is posters and weaponry.¹⁴⁰

¹³⁸ Mallock, "A Healing Place?," 83.

¹³⁹ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 13, 2014.

¹⁴⁰ Kim Pate (Executive Director of the Elizabeth Fry Society, Canada), interview with the author, February 28, 2014.

In spite of all the changes in administration and programming, the prison remained a prison. Colonialism was still present in a new way. Kim Pate put it in these terms: “It is in a lot nicer a setting than all the other prisons, but nevertheless it is still a prison.”¹⁴¹

Conclusion

Indigenous women in Canadian prisons endured multiple histories of discrimination and oppression that they grew up in and they entered a system where women were an afterthought. But, in their responses to these histories, these women developed a common culture that allowed them to relearn their cultural identity as twentieth century Indigenous women. The Sisterhood that emerged gave the women the tools necessary to understand the gap between the place of Indigenous women in traditional societies and their life histories. Reclaiming their culture allowed these women to restore their cultural foundation, which decolonized the prison. This is not to say that these women were not victims, and the saddening statistics of suicide inside P4W attest to that. Instead, these women worked to overcome this colonial history by reclaiming traditions and Indigenous spirituality. In doing so the Sisterhood became a leader of the Brotherhood/Sisterhood movement.

The Sisterhood worked towards allowing incarcerated Indigenous women to heal, and to do so they had to develop new cultural expressions that were inclusive of offenders from across Canada. Yet these were also not reductive or exclusive. This was evident in the weekly meetings and special events that took place with the Native Sisterhood. It also reflected the approach to healing rooted in a philosophy of human kinship that allowed them to include not only Indigenous women from across Canada, but non-Native women as well. This was characteristic of dynamic indigeneity in the twentieth century where First Nation affiliations remained central to identity, but common humanity also shaped how individuals expressed their identity.

¹⁴¹ Kim Pate (Executive Director of the Elizabeth Fry Society, Canada), interview with the author, February 28, 2014.

Once the Sisterhood was established it became increasingly political, advocating on behalf of Indigenous women in the justice system. This was why the Sisterhood was at the forefront of calls for closure of P4W in the 1990s. They proposed the creation of a healing lodge that was ultimately completed in 1995. Through the efforts of these groups, a vision for a healing lodge ultimately came to fruition with the Okimaw Ohci Healing Lodge. While the initial construction of the prison held great promise, it quickly became clear that the correctional context shaped the practices there as much as traditional teachings. In short, the healing lodge was a prison by another name. Coopting Indigenous culture to build a prison was a neocolonial process. This was reminiscent of the initiatives within prisons more broadly, also articulated in regard to the 1975 Edmonton Conference on Natives and the Criminal Justice System, explored in chapter four.

The creation of Okimaw Ohci and the subsequent regression back into the regimented penal state begs the deeper question that this dissertation has explored: is it possible to build an Indigenous prison? In other words, is it possible to have a prison that heals offenders in an Indigenous way, yet has the trappings of the western penal system? The tension between the Indigenous cultural bases of the lodge was and remains in contrast with the philosophical basis of the prison. This tension played out in the operation of Okimaw Ohci. For example, Okimaw Ohci was built in a circular form to honour the medicine wheel and ensure that the teachings of the four directions would direct the programming and healing that took place there. But as the correctional mentality took over, the circle remained while the teachings became less central to the operation of the prisons. Without the whole-hearted commitment of the entire community to these teachings, including the inmates, staff, Nekaneet First Nation, and notably CSC itself, the healing approach could not work. In the end, it was lack of commitment on the part of CSC to adapt itself in ways that honoured those teachings. The experiences of Indigenous women in prisons shows how colonization, decolonization, and neocolonialism all coexisted.

Chapter Eight: Talking Leaves: The Indigenous Penal Press

In November 1970, the Joyceville Native Brotherhood named their first newsletter *The Talking Leaves*, referencing the historic origin of written Cherokee by Sequoyah in the early nineteenth century.¹ Prison writings were not unique to Indigenous prisoners, nor were they new in the 1970s. In Canada, the presses began in the 1950s and had become a national phenomenon by the 1970s, when Indigenous prisoners adopted the form. These zines, small rudimentary pamphlets made from basic materials, were produced vociferously for two audiences: other prisoners and the wider community. Therefore, prison writings became fodder for the creation of a shared experience and identity within the Native Brotherhoods, between different institutional Brotherhood groups, international prisoner organizations, and between prisoners and the supportive public. Without these presses, many of the Native Brotherhoods' achievements would have been impossible. In their prison writings, Indigenous offenders refashioned their personal and collective identities, mapped the carceral space both physically and socially, recorded their lived experiences, and shared their concerns and frustrations with personal and political situations mostly through poetry and essays.² Finally, by finding ways to express Indigenous identities in prisons, Indigenous prisoners decolonized the penal space through the press.

In choosing the name, *The Talking Leaves*, the inmates in Joyceville hearkened back to Indigenous literary traditions. They were not simply using an established type of prison writings or emulating other ethnic minorities in prison. Inmate writings were a way of transcribing Indigenous prison culture into text, which is remarkable given the oral nature of both Indigenous and penal cultures. The literature they produced reflected historic Indigenous identity melded with the colonial

¹ Anonymous, "A Word about our Title," *The Talking Leaves Native Brotherhood*, Volume 1 (Kingston: Joyceville Penitentiary, 1971), 2.

² Deena Rymhs, "Here the country is uncertain?: Canadian Incarcerated Authors Trans-scribing Prison." *Biography*. 32.1 (2009), 102-113.

context of the prison to communicate identities that were innovative, yet grounded in tradition. Prison writings fit squarely within a twentieth century Indigenous tradition of “Resistance Literature.”³ These writings also maintained networks of incarcerated Indigenous peoples across Canada and the United States, creating a new kind of community. It also maintained links to their families and communities through disseminating the publications to their home communities.

I argue that the penal press became an avenue for cultural adaptation, creation, and renewal within the prison walls. By creating a distinctively Indigenous literary cultural form inside the prisons, the penal press became another avenue through which Indigenous people resisted the cultural disjuncture caused by colonialism. This chapter will examine the penal press in Canada and the networks it established to illuminate the ways that Indigenous inmates confronted their incarceration as part of a decolonization project. It will further explore the ways that these penal presses became a conduit through activism, navigating the challenges of censorship, apathy, and opposition from the wider Canadian public, penal administrators, and in some cases Indigenous communities. It demonstrates a way that Indigenous peoples expressed their Indigeneity in Canadian prisons by creatively responding both as individuals and a collective to their incarceration. It does this by analyzing the contents of the penal press, the ways that prisoners articulated their struggles.

Theoretical Orientation

As a source of insight into the past, particularly the history of traditionally marginalized peoples, the penal press has received surprisingly little scholarly attention. In 1989, criminologist

³ Michael Gauthier, “The Impact of the Residential School, Child Welfare System and Intergenerational Trauma upon the Incarceration of Aboriginals” (MA Thesis, Queens University, 2010). Emma Laroque, *When the Other is Me: Native Resistance Literature, 1850-1990*, (Winnipeg: University of Manitoba Press, 2010), 3-17. ; Rhymes, *From the Iron House*, 9. ; Michael Hames-Garcia, *Fugitive Thought: Prison Movements, Race, and the Meaning of Justice*. (Minneapolis: University of Minnesota Press, 2004).

Robert Gauchier documented the Canadian penal press, but since then few have built upon his original discussion of penal literature.⁴ Deena Rymhs, a literary scholar interested in narratives of confinement in Indigenous writing, is the only scholar who has given the penal press in Canada the attention Robert Gauthier envisioned, although there is an extensive scholarly literature on prison writings.⁵ What makes Rymhs unique is that she exclusively focuses on Indigenous writings in penal presses, which are distinct from works published by institutional or mainstream presses.⁶ In *From the Iron House*, she argues that prison magazines (her term for the penal press) functioned as venues where the writer sounds a voice on behalf of his or her fellow prisoners. In doing so, these authors “confront current colonialisms” within the prison transforming the penal geography into an Indigenous space.⁷ Rymhs’ description of the value of the penal press is part of my definition of decolonization within the prison. They did this by advocating for culturally appropriate healing, even if the colonial context remained markedly present in all of these literary productions.⁸ She wrote,

Few people might look upon the prison as a site of profound political change where developments of consequence to Indigenous peoples outside the prison’s walls are taking root. Fewer still might recognize the prison as a transnational space where prisoners enter into a shared consciousness with their “brothers” and “sisters” serving time in other countries. Yet, in their writing and activism from prison, Indigenous prisoners have helped shape the political blueprint of Indigenous peoples in Canada since the late 1960s.⁹

⁴ Robert Gaucher, “The Canadian Penal Press: A Documentation and Analysis.” *Journal of Prisoners on Prisons* 2 no. 1 (Fall, 1989), 2. Deena Rymhs discussed penal literature, though she studied the literary qualities within the publications rather than applying them to historical debates. Rymhs, *From the Iron House*, Chapter 4.

⁵ See for example: Patricia Sánchez-Flavian, “Language and Politicized Spaces in U.S. Latino Prison Poetry: 1970-1990,” *Bilingual Review/La Revista Bilingüe*, 27(2), May 2003, 114-124

⁶ Many edited collections of prison literature exist. See: Robert Gaucher, (ed.) *Writing As Resistance: The Journal of Prisoners on Prisons, 1988-2002*. (Toronto: Canadian Scholars Press, 2002). ; Judith Scheffler, (ed.) *Wall Tappings: An Anthology of Writings by Women Prisoners*. (Boston: Northeastern University Press, 1986). ; Geoffrey Bould (ed.) *Conscience Be My Guide: An Anthology of Prison Writings* (Zed Books, London and New Jersey, 1991). ; Joseph Bruchac, (ed.) *Words from the House of the Dead: An Anthology of Prison Writings from Soledad* (Greenfield Center, NY: Greenfield Review Press, 1971). ; Bell Gale Chevigny (ed.) *Doing Time: 25 Years of Prison Writing: A PEN America Center Prize Anthology* (New York: Arcade Pub., 1999). ; Howard Bruce Franklin, ed. *Prison Writing in 20th Century America* (New York: Penguin Books, 1998).

⁷ Deena Rymhs, *From the Iron House: Imprisonment in First Nations’ Writing*. (Waterloo: WLU Press, 2008), 9, 73.

⁸ Deena Rymhs, “Word Warriors: Indigenous Political Consciousness in Prison.” *Cultural Grammars of Nation, Diaspora, and Indigeneity in Canada*. Ed. Melina Baum Singer, Christine Kim, and Sophie McCall. (Waterloo: WLU Press, 2012), 240.

⁹ Deena Rymhs, “Word Warriors: Indigenous Political Consciousness in Prison,” 229.

Rymhs situates her work in a scholarly discourse of “resistance literature,” that is a literary tradition built on collective struggles against historic injustice, often but not always against colonialism.¹⁰ Beyond the work of Rhymes, Gaucher, and inmate-writers in the *Journal of Prisoners on Prisons*, the penal press has received little serious scholarly attention.

While the Indigenous penal press has received inadequate scholarly attention, international scholars of penal presses have developed useful theoretical orientations for these writings. Ioan Davies’ theoretically rigorous book *Writers in Prison* examined the published writings of inmates globally.

Everywhere, across time and societies, prisoners are not expected to write. They are expected to be written for. What happens when a prisoner writes? The answer to this question requires a historical perspective, across societies, as well as specific in-depth studies of prison writing in particular contexts.¹¹

Davies elaborated on the role of the prison writer as resisting the pressures of those in power by refusing to be defined by a set of external factors including their crime, gender, race, class, or any combination of those factors.¹² Legal scholar Michael Jackson has argued that the central benefit of the Native Brotherhood was in creating a community of prisoners who defined themselves by something other than their crime.¹³ Therefore, by presenting themselves as individuals outside of the way the state defined them through the justice system, the prison writer engages in powerful project of resistance. This chapter builds on that understanding of the significance of the prison writer by asking how Indigenous inmates defined themselves, their history, and their communities in contrast to the image presented by the penal apparatus.

These presses are valuable documents both as windows into life in Canadian prisons, theoretical critiques of the criminal justice system, and theoretical musings concerning the meaning

¹⁰ Rymhs cites Barbara Harlow’s work on resistance literature (*Barred from Prison*, 10)

¹¹ Ioan Davies, *Writers in Prison* (Toronto: Between the Lines, 1990), 7.

¹² Davies, *Writers in Prison*, 9.

¹³ Michael Jackson, *Locking Up Natives in Canada*, 128.

of justice, and colonialism. Michael Hames-Garcia has expressed surprise that scholars have neglected the theoretical merits of the work of those struggling against that system from within whose insights were earned by direct personal experience. In fact, he goes so far as to position penal literature as “corrective” to theories coming from the university.¹⁴ This chapter takes Hames-Garcia’s approach to the Indigenous Canadian context, asking what intellectual contributions offenders made. While scholars recognize the role of these presses as descriptive of life in prisons, they have had difficulty approaching inmate writings as challenging intellectual works, which is ultimately what they are.¹⁵ This may seem to contradict my argument that inmate writings are forms of Indigenous storytelling. Intellectual discussions are distinct from storytelling, but I argue that many of the stories told have the capacity to challenge assumed knowledge regarding prisons, much like John Borrows has shown that storytelling and the knowledge communicated through story can contribute to the resolution of legal disputes.¹⁶ By looking at Indigenous prison writings, this chapter examines historical insight into the nature of decolonization through the cultural creations of the penal press.

The juxtaposition of identification as inmates and as Indigenous persons is of particular interest because it problematizes identity formation as strictly culturally and ethnically driven. Indigenous prisoners had multiple sources of shared identity. While their shared heritage was certainly the most obvious source of collective identity, they also shared common colonial experiences within prisons. Therefore, Indigenous prison writings are unique within prison writings *and* within Indigenous literature. The theoretical musings by Indigenous offenders has had a direct impact on my own thinking about the prison, and has in turn shaped this dissertation. I argue that

¹⁴ Michael Hames-Garcia, *Fugitive Thought: Prison Movements, Race, and the Meaning of Justice* (Minneapolis: University of Minnesota Press, 2004), xliii-xlvi.

¹⁵ Robert Gaucher, ‘The Canadian Penal Press: A Documentation and Analysis,’ *The Journal of Prisoners on Prisons*, Vol. 2 No. 1, Fall 1989, 2. (Formatted Online Version, 2006) ; Joseph W. Rogers and Elizabeth Smith Alexander, ‘The Penal Press: Opportunities for Correctional Research,’ *Journal of Research in Crime and Delinquency* Vol. 7 No. 1, 1970, 3.

¹⁶ John Borrows, *Recovering Canada: The Resurgence of Indigenous Law*. (Toronto: University of Toronto Press, 2002).

the prison was a colonial institution largely because incarcerated writers have convinced me that this was and remains the case.

The ways that authors self-identified is significant, and for this reason I refer to authors in the same way that they self-identified. If a work was not signed, I did not identify an author. While this may have indicate nothing more than the author's failure to sign his or her work, in many cases there was a degree of shared authorship. In the tradition of prison ballads, it was the anonymity in authorship that allowed the entire prisoner population to adopt a prison ballad as their own. This shared authorship. Prisoners sometimes signed their work with their number, in which case I credited gave the number authorship. In signing personal discussions of their life histories and experiences in prisons with the impersonal number, prisoners made statements that were in some cases just as important as the text itself. Juxtaposing the dehumanizing effects of the prison system with the human qualities that prisoners shared in their poetry, the awkwardness of the entire carceral system is laid bare. Furthermore, the degree to which the dehumanizing effects of the prison were internalized was displayed by the personal adoption of a prison number.

In this chapter, I have examined as many presses as possible and conducted a qualitative analysis of them, searching for common themes and differences based on region and institution. The unpredictable publishing history of the penal presses precluded a quantitative analysis of their contents. Furthermore that would be inappropriate with my interpretation of penal presses as a form of twentieth century Indigenous storytelling. There is an extensive online repository of penal presses at www.penalpress.com, which made up the bulk of publications discussed in this chapter.¹⁷ However, there are also single issues in archives around the country, as issues were distributed to various individuals and groups. I therefore have located these publications in the archives of the

¹⁷ This project is run by Melissa Munn, who I would like to thank for maintaining this resource and granting me permission to use the images from the site in this chapter. They are all available at www.penalpress.com.

United Church of Canada, the Trent University Archives, the Ontario and Alberta archives, and Library and Archives Canada.

The History of the Penal Press

The penal press was remarkable because of its novelty in the penal system. The international penal press has antecedents in the nineteenth century, though the immediate texts that this chapter is concerned with were introduced in the United States in the 1940s and in Canada in 1950. The penal press began as part of several program innovation that characterized these times of transition. In Canada, prison administrators tapped into a tradition that was developed in US prisons and fit within the direction that the post-Archembault penal system was headed. The potential of the penal press as an education tool and as a means to pacify the inmate population appealed to wardens across Canada. By the 1970s Indigenous peoples began writing in these institutional presses and in their own newsletters, but to understand the nature of their writing we need to situate it in this longer tradition of penal literature.

The Canadian penal press began in Kingston Penitentiary in September of 1950. Canadian penal authorities frequented the American Penal Association annual meetings and conferences, so there is a likely correlation between the advent of penal presses in the United States in the 1940s and the same taking place in Canada in the 1950s. The 1951 Report of the Inspector of Penitentiaries summarized the early history of the press:

Although it is not a formal educational activity, one of the most interesting developments with broad educational implications has been the introduction of inmate newspapers. The Kingston Penitentiary Telescope was first published in September, 1950; after an experimental period approval was granted for the circulation of this magazine outside prison walls and for general subscription. The quality of the material during the first seven months of operation has been very high and considerable public interest has been created. Saskatchewan Penitentiary is now publishing regularly the 'Pathfinder.' Since printing facilities are not available, other institutions have had to depend on mimeographing facilities. The policy of

publishing inmate bulletins or newspapers, however, is generally approved. Inmates are now permitted to enclose copies of such bulletins in their letters to approved correspondents. Bulletins are written, edited and printed by inmates; the columns provide a free expression of inmate opinion, provided only that nothing appears therein which would in any way be detrimental to the administration of justice.¹⁸

The Warden of Kingston Penitentiary reiterated this in his Warden's report of the same year, calling the publication of the *K.P. Tele-Scope* "an immediate success," in terms of the quality of the publication itself, its impact on rehabilitating prisoners, and in the positive coverage it earned the prison in the local media.¹⁹ The following year, all six institutions had a penal press that was supported by the administration.²⁰

The final caveat, that "nothing appears therein which would in any way be detrimental to the administration of justice" highlights a problem faced all penal presses: censorship. The proviso allowed wardens and directors a great degree of control in their publications. The problem of censorship was noted in every study of the penal press, as well as in the writings of inmates themselves.²¹ One inmate-editor from Collin's Bay Penitentiary complained:

We feel that the censorship of common sense means that the editors must be ultra-conservative and highly conscious of their jobs. To condemn for the sake of condemnation and to please his fellow inmates is not common sense, nor is it common sense to praise falsely. To choose between constructive criticism and destructive or pointless criticism is imperative... To attack any branch of the law enforcement without cause is to give the impression of 'sour grapes'; while to praise unduly is to be false to those whom the publication represents.²²

¹⁸ Department of Penitentiaries Annual Report for 1951, 17

¹⁹ Warden's Report, Kingston Penitentiary, in Department of Penitentiaries Annual Report for 1951, 65.

²⁰ Department of Penitentiaries Annual Report for 1952, 24. These presses were: Transition – BC Penitentiary, The Pathfinder – Sask Penitentiary, Mountain Echoes – Manitoba Penitentiary, Tele-Scope – Kingston Penitentiary, The Diamond – Collins Bay Penitentiary, Pen-O-Rama – St. Vincent de Paul Penitentiary, The Beacon – Dorchester Penitentiary

²¹ Significant portions of Baird, Rymhs, Morris, and Gaucher's work all refer in detail to the problem of censorship.

²² Library and Archives Canada, Prison Newspaper, RG 73, Vol 114, File 5-11-26, vol 1 (CB Diamond Staff to the Warden, May 12, 1952)

Put another way, institutional censors monitored and, where they felt was necessary, altered the message of the penal press. This factored into the material proposed by the inmates themselves. Al Sinobert, an active Brotherhood member and editor of the Collin's Bay Native Brotherhood Newsletter had a similar experience, expressed in the following terms:

There are a number of problems when doing a paper from within the walls of a prison. One cannot be critical of the institutional policies, or criticize the penal system in general. One cannot single-out and criticize any police agency, politician, social agency, or any religious sector. So one is left with the idea of expressing the bitterness and general observations of social interaction of society [such as the] James Bay Project, or the injustice of the courts toward native people. Or expressions of feeling and thoughts before and while incarcerated, which some people term as 'crying the blues.'²³

Sinobert went on to suggest many areas where inmates would like to recommend change, from the courts, parole, political discourse, and ignorance of the issues facing Native inmates in the public. He further decried the reality that the purpose of the paper was of communicating with the outside world, but that this was difficult for "the imprisoned critic."²⁴

Because of censorship we need to read the penal press with caution. As an example, the cover to a 1974 issue of the *Inside News*, published from Drumheller Institution. On the inside cover they explained the choice of this cover as a statement against censorship (Appendix 3, Figure 1). The editors' first choice was censored for what they called "overstating the truth," and they chose this cover which was "a product of our Illustration Man's total frustration," adding that it "is hopefully and ultimately, the epitome of blasé."²⁵ In another case, this time *The Partisan* which was published from Millhaven Penitentiary, the cover was entirely blanked because of concerns with censorship, though this time there was no explanation by the inmates. Instead, CSC put its own explanation on the blank cover page (Appendix 3, Figure 2), stating that the cover "was seen as being unfit for

²³ Al Sinobert, "The Long and Bitter Trail." *Tribal Ways* (1974): no page.

²⁴ Al Sinobert, "The Long and Bitter Trail." *Tribal Ways* (1974): no page.

²⁵ Inside News, Vol. 3 No. 6, (Drumheller Penitentiary: July 1976), cover.

publication in this issue by the CSC.”²⁶ What the use of censorship in these presses meant that inmates walked a fine line between the expectations of the administrations and other inmates. Robert Gaucher discussed this tightrope editors were expected to walk as “pleasing both administration and fellow prisoners, constrained by often unintelligible censorship demands,” and the failure to maintain the good graces of all interested parties has potentially devastating personal consequences.²⁷

Issues of censorship were not always as simple as a conflict between the inmate and institution. Administrators disagreed and were occasionally at odds in the choice of what was published. For example, in one case during 1952, the *Collins Bay Diamond* published an inmate-written article titled “School for Convicts,” which was a pointed critique of the Ontario Training Schools, part of the provincial correctional apparatus.²⁸ The warden allowed this article to be published, but the resulting furor and reprimand from J. McCulley, the Deputy Commissioner of the Canadian Penitentiary Service meant that the censorship regulations were thereafter more tightly policed. This same office sent a letter to all of the wardens of Ontario’s federal institutions to warn them against prevailing trends where the presses were being seen as a “gossip column” for inmates, which would stir up trouble.²⁹ This shows varying levels of commitment to freedom of expression on behalf of the inmates, and that the levels of acceptable criticism depended on both the ground level authorities and the national and regional authorities to which institutional staff were accountable.

²⁶ The Partisan, (Millhaven Penitentiary: November/December 1988), cover.

²⁷ Robert Gaucher, “The Canadian Penal Press: A Documentation and Analysis.” *Journal of Prisoners on Prisons* 2 no. 1 (Fall, 1989): 3.

²⁸ Library and Archives Canada, RG 73, Vol 114, File 5-11-26, vol 1, “Prison Newspaper,” May 7, 1956, letter from warden of Collin’s Bay Penitentiary to the Commissioner of Penitentiaries

²⁹ Library and Archives Canada, RG 73, Vol 114, File 5-11-26, vol 1, “Prison Newspaper,” Letter to All Wardens from Commissioner of CPS, May 24, 1962

As differential use of censorship shows, the penal press was not a monolith. There were profound differences between individual presses and institutional postures vis-à-vis the penal press. The press at Collins Bay (The CB Diamond), for example, was an “open” press that often published material that pushed the border of what was acceptable, while the Millhaven press (Highwire) was more stringently censored, dramatically limiting editorial freedom for inmate-editors. All institutions had a personality, and this institutional character influenced the press.³⁰ A second difference was the intended audience, whether the press was intended to educate those outside the prison or was internally directed as a “joint magazine.”³¹ Another difference was whether the publication was a newsletter for a specific group or club or for the entire institution. The Native Brotherhoods, as well as Alcoholics Anonymous, the Jaycees, the Lifers Group, and sometimes other cultural groups like the Black Inmates’ groups would publish their own newsletters, typically as a zine of twenty to thirty pages, which were usually less polished than “joint magazines.”³² When there was a specific publication for a Brotherhood, the content was more culturally and historically based, whereas when it was a contribution to institutional presses (Saskatchewan Penitentiary’s “Off the Wall” or Joyceville Institution’s “Advance”) it was straight reporting of news and events in the life of the institution. The exception to this was the Native Sisterhood, which had an entire “Sisterhood” section within *Tightwire*, the institutional press. Thus, while trends are common within the penal press, there was no “typical” press. Each was unique to its institutional context, intended audience,

³⁰ Robert Gaucher, “The Canadian Penal Press: A Documentation and Analysis.” *Journal of Prisoners on Prisons* 2 no. 1 (Fall, 1989), 2.

³¹ Robert Gaucher, “The Canadian Penal Press: A Documentation and Analysis.” *Journal of Prisoners on Prisons* 2 no. 1 (Fall, 1989), 2.

³² Alcoholics Anonymous was the first “club” to organize in Canadian prisons in 1950, and it often published newsletters that were structured like an A.A. meeting, including personal histories of alcoholism, sharing of struggles, and support of one another. The Jaycees are a social group that promote leadership and public speaking skills, which began operations in prisons shortly after A.A., and are therefore one of the first social groups that operated within prisons. The Lifers Group was a group of prisoners sentenced to life in prison, and they supported one another through the unique strains such a long sentence entailed. Finally, often other cultural groups like the Black Inmates’ organizations modelled themselves on the Native Brotherhoods after the 1970s.

purpose for publication, whether it was an institutional or group oriented press, and the particular desires of the editors of these presses who maintained significant input into the shape of their productions.

In the early 1970s, Indigenous inmates began writing prodigiously in these penal presses. In doing so they explored their unique situations as Indigenous peoples in Canadian prisons, maintained links between individuals, families, and other inmates, and developed a way of transcribing Indigenous prison culture and storytelling into text. This is important when envisaging an archipelago of inmate organizations as a singular movement. On the one hand, Indigenous inmates created a literary community of inmates who shared their written work. These presses published literature from outside specific prisons for inmates to read, republishing newspaper articles and sharing the written work of other inmates across Canada and occasionally internationally. This means that the penal press became a way that inmates built a common literary culture and community larger than any single institution could accommodate. They interpreted their contexts within the penal state and in particular institutions, and they questioned the philosophical basis of the prison system. This was in addition to the less theoretically notable but structurally significant use of the press: publishing announcements and reporting within the “village” of the prison. What makes these publications distinct from prison memoirs or work published in mainstream contexts like the work of Leonard Peltier, James Tyman, and Yvonne Johnson is the immediacy of the publications. These works responded to direct, ongoing, and current realities. They became a mechanism to cope with their present circumstances by storytelling.

The Prison and Colonial History

In the penal press inmates linked penal policy to colonialism. Individuals self-consciously examined the roots of their incarceration by linking personal stories of private violence to shared

histories of cultural assault. They found common cultural narratives of violence, poverty, lack of education, isolation within the Canadian body politic, and cultural disjuncture. Prison writings fit within the struggle for self-governance, Indigenous and treaty rights, and the reciprocity of historical wrongs which inmates viewed as connected to issues of justice and incarceration. In other words, they played a small part in a grander story. This is because inmates did not experience the prison as an isolated institution, but within personal histories where every part of their life was touched by colonialism. They did not believe that the prison separated them from the struggle of all Indigenous peoples. Rather that it made them ideal candidates to speak to the present and historic injustices that they faced. Thus, inmate writings are not unique in their approach to colonial history, though the prison did serve as both a metaphor and reality of the colonial context. In short, through the penal press, Indigenous inmates wrote not as uniquely oppressed peoples within a colonial system, but as peoples for whom the colonial machinery was particularly obvious and tangible.

No single essay situated the challenges facing Indigenous inmates within the wider Canadian context more effectively than Donnie Yellowfly's essay, "The Irony of Prison," which was published in the *Inside News* in 1974. Yellowfly, was as a Brotherhood leader and a Residential School survivor.³³ He explored why the prison and school were so clearly linked in his personal life experience.³⁴ Yellowfly documented the two "total institutions" that dominated his life:

Somewhere in my misty past – misted by ugly clouds of coerced pain, I recall a qualified teacher of mine at one of the institutions built by the government on my reserve. An institution that was total in every sense of the word, and built as a symbol of the government's civilization, modernly termed socialization, of my people... No doubt this teacher was only doing what he thought was his job – his interpretation, nevertheless, it was something about the way he exercised his job, as did the entire staff, that makes it associative to prison...

³³ Robert Calihoo and Robert Hunter, *Occupied Canada: A Young White Man Discovers his Unsuspected Past* (Toronto: McClelland and Stewart, 1991), 66.

³⁴ Chapters 1-2 of this dissertation make this connection obvious, as in them I argue that the prison was part of a colonial network devised at the same time as the schools and even were rooted in some of the same documents.

...Almost two decades later, I went through an identical experience in another total institution, prison. The man standing over me this time was not a teacher but, certainly another qualified symbol of the government's rehabilitation process. He, too, was only a small piece in the total government machinery.³⁵

Yellowfly went on to explore why those two institutions were the same in his experience even though they took place at different periods in his life. He concluded that the common thread was that both were "total institutions" run by the government, both were under budgeted and therefore could not fulfill their mandate, neither had political influence, and both were built upon "archaic legislative machinery."

Yellowfly began his essay discussing parallels between two colonial institutions, the prison and residential school – but he continued to direct and specific critiques of the penal system. He wrote of the practice of incarceration: "We cannot say we practice any theory of penology today. We do what we do. And what we do has no relationship with what we say we do. Essentially, we use penology without saying so, to confine, as inexpensively as possible, and thus separate for a time people who have committed crimes."³⁶ The link to the history of indigenous confinement through reserve creation and various institutions that held him personally hung over this remark. Pairing the prison with other colonial histories had the rhetorical effect of illustrating how as an Indigenous person he was twice victimized. Colonial policies led him to conflict with the law, and the failures of the penal system victimized him again.

To Yellowfly, colonial history and his history of incarceration were indistinguishable. He offered a comprehensive critique of government practice for Native peoples and a specific challenge to the penal system when he writes: "If Canada cares about its character, it must revolutionize its approach to corrections. Again, not because this writer says so. Your penal history still says it more

³⁵ Donnie Yellowfly, "The Irony of Prison," *Inside News* Vol. 3 No. 1 (Drumheller, Alberta, 1974), 13.

³⁶ Yellowfly, "The Irony of Prison," 15.

convincingly...” He finished his article by stating: “On the basis of all this and certainly more can we honestly expect the two to represent anything but society’s failure!”³⁷ This was written before a number of high profile cases brought allegations of abuse within the school into the public sphere. What this means is that this was less a rhetorical indictment of the penal system than it was an exploration of how incarceration was a part of Indigenous cultural life in the twentieth century.

Many other inmates also linked stories of colonization in Canada to the prison, speaking of their experiences of colonialism in holistic terms, including but not limited to the prison. Daniel Beatty wrote in an editorial in the Drumheller Native Brotherhood newsletter that most incarcerated Natives had endured what he called a “culture shock, or a forced assimilation in its purest definition,” because they were taken from family and friends, and removed from their home cultures.³⁸ In *The Talking Leaves* newsletter, a brother from Joyceville expressed that within the prison Indigenous peoples experienced a continuation of racism, apathy, ignorance, and loss of identity that began in Indigenous communities.³⁹ In *Indian Echo*, a 1970 newsletter from the Native Brotherhood of BC Penitentiary, several inmates linked their private and cultural histories of incarceration and cultural loss. *Tightwire* took a comedic approach to the issue of colonization when they published a comic which had an Indigenous man, speaking from a Totem Pole, asking “who invited you” to the assembled military arsenal pointed at him. (Appendix 3, Figure 3) Finally, an inmate named Arnouse noted that 100 years of discrimination under the Indian Act and more recently under the White Paper (which had been released the previous year) resulted in Indigenous peoples lacking power, authority in their own affairs, and the means to improve their socioeconomic position, which he

³⁷ Donnie Yellowfly, “The Irony of Prison,” *Inside News* Vol. 3 No. 1 (Drumheller, Alberta, 1974), 17.

³⁸ Editorially Speaking, Daniel Beatty (PAWIS), Drumheller Native Brotherhood Newsletter (Drumheller: Summer 1984), 1.

³⁹ A Brother, “Discrimination,” *The Talking Leaves* Native Brotherhood, Volume 2 (Kingston: Joyceville Penitentiary, February 1972), 13-14.

argued are necessary to uphold, “feelings of dignity and self-confidence that a man must have if he is to walk with his head held high.”⁴⁰

This was something of a reversal of trends from outside the prison; while people outside prisons likened their situation to those in jail, prisoners showed how their struggle within prisons was the same as those on “the outside.” The prison, while it was a material reality for offenders, was not a literary trope limited to the penal press. Howard Adams famously used the prison as a metaphor for the history of the relationship of Indigenous peoples and the Canadian state in his work, *Prison of Grass*.⁴¹ Numerous incarcerated and once incarcerated authors have written memoirs that discuss their time in prison. Their life histories documented not only their incarceration, but how that incarceration was a continuation of injustice they experienced within Canadian society. In essence, they argued that jail was merely an extreme case of what happened to all Indigenous people in Canada. This was most famously done by Leonard Peltier in *My Life is my Sun Dance*,⁴² but it was also accomplished in less public cases including the work of Robert Calihoo, James Tyman, and Yvonne Johnson.⁴³

Inmates internalized the disjuncture that came with the loss of their Indigenous identity, making their heritage a source of private shame. An inmate named Francis outlined of the historic injustice against Indigenous peoples as a precursor to his own experience of incarceration: “We speak today of our great ancestry, of our people and the way they were mistreated.” He went on to argue that to address this injustice, Indigenous peoples needed to understand the laws they were governed by, including the Indian Act and the criminal law.⁴⁴ C.C. Smith believed that it was grief

⁴⁰ Arnouse, “Not having the same privilege from the Beginning,” *Indian Echo*, (BC Penitentiary, March 1970), 10

⁴¹ Howard Adams, *Prison of Grass: Canada from a Native Point of View* (Toronto: New Press, 1975).

⁴² Leonard Peltier, *Prison Writings: My Life is a Sun Dance*. 1st ed. (New York: St. Martin’s Press, 1999).

⁴³ Robert Calihoo/Hunter, *Occupied Canada*. Toronto: McLelland and Stewart, 1991). ; James Tyman, *Inside Out: An Autobiography by a Native Canadian*. (Saskatoon: Fifth House Publishers, 1989).; Yvonne Johnson with Rudy Henry Wiebe. *Stolen Life: The Journey of a Cree Woman*. 1st ed. (Toronto: A.A. Knopf Canada, 1998).

⁴⁴ Francis, “Indians as Individuals,” *Indian Echo*, (BC Penitentiary, March 1970), 6.

within Native communities that made it impossible to escape systems of violence and marginalization. He wrote: “Grief was the main set-back of the Indian people, it made them self-centred, they were not thinking, just feeling what was happening to them.” He argued that the reserve system, the Indian Act, the Residential School system, and the isolation of Indigenous communities led to a situation where Indigenous peoples became the first obstacle because they were “feeling sorry for themselves.”⁴⁵ Irma Scarff, told of her own personal and cultural history where pride was replaced with shame in *Tightwire*, the publication from Prison for Women. Again, this essay fits within a literary trope whereby a once proud people were marginalized, introduced to social and personal ills, and as a result the strength of Indigenous cultures were compromised. She wrote, “Many days past when we used to be a proud people. But today the women’s hearts are on the ground.”⁴⁶ By tying the defeat of a people to the defeat of women, Scarff was able to place the struggle facing women in P4W as central to the histories of colonial genocide that the Brotherhoods explored. This was a theme that was important to the Sisterhood, but men also were concerned with the marginalization of Indigenous women. For example, Art Solomon often taught about the role of women as central to the nation. Scarff recognized that when Indigenous peoples lived before contact, there were no prisons, drugs, or alcohol, which she identified as the roots of incarceration. Comparing the past to the present, she wrote, “makes my heart bleed.” She then went on to discuss how the prison system, as a tangible and ongoing part of colonial processes, engendered hate, anger, and shame.

One powerful symbol of the loss of identity that the penitentiary embodied and the Native Sisterhood emphasized was the prison number assigned to each inmate. When inmates put emphasized their prison number, in a sense they humanized the number. In an example of this, one

⁴⁵ C.C. Smith, “An Opinionated Cat’s Point of View,” *Indian Echo*, (BC Penitentiary, March 1970), 9-10.

⁴⁶ Irma Scarff, #1371, “The Hurt of Yesterday,” *Tightwire* (Kingston: Prison for Women, March-April 1983), no page.

prisoner signed her 1983 essay by #1371, her prisoner number, not by her name.⁴⁷ Both metaphorically and literally, the history of cultural loss materially obvious through incarceration identified her as #1371. Fran Sugar elaborated upon themes, when she wrote, “Those who enter this house of terror have been condemned, taken, and conveyed to a bullet-proof, steel-bolted door, iron cage, wearing nothing but an evil grim stamp on their file: Dispose of Identity 318677-B.”⁴⁸ Irene Savoyard penned a poem about the impact of the penal system as summarized by the inmate number writing:

I am just another number
That was chosen by the jury member
Just like you in there⁴⁹

Clearly, for prisoners, the prison number held great significance, but what exactly the numbers meant is not straightforward.

These uses of prison numbers makes several points about the nature of prison systems and the place of Indigenous peoples within prisons. Prisoners showed that they were dehumanized and deprived of their human and Indigenous identities in favour of a number. The poetry suggests the numbered identity was imposed, not chosen. At the same time, however, by attributing a human experience to their prison number they also showed how the prison system robbed them of what made them unique as individually and culturally, while showing that they maintained their personality within the prison. In other words, personal experiences were juxtaposed to an impersonal number, which showed inherent awkwardness of the prison system. Furthermore, while individuals used their numbers as part of their identity as prisoners, they showed the failure of the prison to defeat them. The individuality expressed within the poetry juxtaposed with signing the work with a number shows that in spite of the efforts of the prison, it was their unique life history

⁴⁷ #1371, “The Hurt of Yesterday,” *Tightwire* (Kingston: Prison for Women, March-April 1983), no page.

⁴⁸ Fran Sugar, “Condemned Body,” *Tightwire* (Kingston: Prison for Women, Fall 1988), 20-21.

⁴⁹ I. Savoyard, “Just a Number,” *Native Sisterhood* (Kingston: Prison for Women, December 1976), no page.

that defined them, not the penal apparatus that sought to homogenize the inmates' personalities. Finally, the use of prison numbers imply a shared experience and allowed prisoners to see themselves in the work of their peers. In this way, the relative anonymity of authors outside of their prison numbers gave the poetry meaning.

Offenders offered solutions to the problem of cultural loss. Donny Charlie spoke with urgency about the need to preserve culture as a way to ensure not only that inmates could heal, but to maintain their existence. He said,

Our biggest problems is ourselves; we have lost most of our culture of the past, and what little we have today will be gone tomorrow, if we do not do something about it today. I'll admit that our ways of living in the past may seem a little out of style, but as true Indians this should not matter to us, for without the ways of our grandfathers and great grandfathers we are lost. Without our culture we cannot exist.⁵⁰

R.D. Jones argued in "The Indian and the Whiteman," an essay within the *Indian Echo* out of BC Penitentiary, "Fondly do we hope, fervently do we pray, that this mighty scourge of prejudice may speedily pass away. But only by understanding one another shall our goals become reality and the discriminative attitude between whites and Reds, cease to be the barrier."⁵¹ In promoting solutions to cultural loss, they put the onus on themselves to resist these historical trends. The press became an avenue to discuss and advertise the efforts of the local Brotherhood to decolonize. For example, in the 1970 edition of the *Indian Echo*, the editor Norman Hugh Diablo wrote that the benefit of the group was that, "Before we were just plain ordinary Indian inmates, now we are slowly learning how to become active, and we want to do something to better ourselves."⁵² Roy Konuse expanded upon this by discussing the specific projects that the Brotherhood had taken part in, which included developing AIMS House in Vancouver, constructing two seven-foot totem poles, and writing a

⁵⁰ Donny Charlie, "The Problems Indians Face Today," *Indian Echo*, (BC Penitentiary, March 1970), 25-26.

⁵¹ R.D. Jones, "The Indian and the Whiteman," *Indian Echo*, (BC Penitentiary, March 1970), 2.

⁵² Norman Hugh Diablo, "Hello Readers (editorial introduction)," *Indian Echo*, (BC Penitentiary, March 1970), 3.

book titled, “Indian Past, Present, and Future,” which was intended for a wide audience across British Columbia.⁵³

Decolonization from within the prison had a spiritual character. Inmates interpreted the prison as antithetical to traditional healing, which relied on the sacred. For them, healing through Indigenous teachings was impossible because of the clinical model of rehabilitation was rooted in a worldview with which they did not identify. In a prayer simply titled “Indian Prayer,” Joe Sylvester connected the struggle of his brothers and sisters in prisons to wider colonial struggles within the Canadian state as well as environmental degradation, all of which he attributed to the imbalance that came from the loss of a spiritual centre thanks to generations of colonialism.⁵⁴ Surrounding the prayer was art that conveyed sacred imagery, including the Eagle, which holds significance as a creature that flies closer to the Creator than to the rest of creation. Fran Sugar, a regular critic of the penal system over her time in prison, argued that the prison was the product of the “white man” and “the Indian” walking different paths. The Native path remained in tune with the creator, while the white man’s walked elsewhere. This led her to a discussion of the potential of Native Spirituality as healing: “Many times people have approached me asking about Native spirituality. Native spirituality to me is seeing life through the eyes of the soul and heart. It is a way of harmony with the rhythm of this creation that we live in. It is a way of life based on respect for all living things.”⁵⁵ In an untitled poem from *Tightwire*, a prisoner named Jordie wrote that the natural world has the potential to keep the soul free even if the body is confined. She meant that through a connection to nature, even those in prisons could maintain a connection with the sacred. This allowed inmates to survive their incarceration and begin the healing process.⁵⁶

⁵³ Roy Konuse, “Editorial,” *Indian Echo*, (BC Penitentiary, March 1970), 5.

⁵⁴ Joe Sylvester, “Indian Prayer,” *Native Sisterhood* (Kingston: Prison for Women, Dec. 1977), 6.

⁵⁵ Fran Sugar, “Closing Comments,” *Tightwire*, vol 20 no. 5 (Kingston: Prison for Women, 1983), 41.

⁵⁶ Jordie, “Untitled,” *Tightwire*, (Kingston: Prison for Women, Summer 1988), 14.

Other inmates discussed the personal, private impact of the prison system on the relationships that would otherwise have kept inmates out of prison. Ronald James Point, in a poem published from the *Indian Echo* in 1970 out of British Columbia Penitentiary, satirically described the logic of deterrence by directing a poem to his romantic partner. He asked her to remind him of life in the penitentiary by making his life at home similar to life in prison. Then he would remember why he did not want to return. For example, he asks her to paint the walls gray, turn off the heat in the winter, feed him flavourless food, and show him no respect. He closes the poem writing:

So I'll recall the days, months, and all
The years I've spent in jail,
Behind me dear, all through the years,
In everything you do,
And you can bet a million pat,
I'll stay right here with you always.⁵⁷

An anonymous author from the Drumheller Native Brotherhood published a poem titled, "Prison is a Place," which similarly discussed the impact of incarceration on relationships. While this did not take Point's satirical approach, it made a powerful statement by beginning each line with the title words, "Prison is a place," finishing the statement with various descriptions of what happens in prison. For example, one line was, "Prison is a place where the flame of every man burns low," or "prison is a place where you learn that not many people need you... and worst of all... the world will go on without you."⁵⁸ Both of these poems take different approaches to make the same point about how prison disrupted private lives and personal relationships in permanent ways.

The Native Sisterhood emphasized the impact of incarceration on family structures. This reflects the position of Indigenous women in the community: in single-parent families, the women were often the caregiver, and as a result their incarceration caused significant familial disruption. The

⁵⁷ Ronald James Point, "Home at Last, My Pet," *Indian Echo*, (BC Penitentiary, March 1970), 13-15

⁵⁸ Anonymous, "Prison is a Place," Drumheller Native Brotherhood Newsletter (Drumheller: Summer 1984), 7. Ellipsis in original text.

social disruption wrought by colonialism was uniquely felt by Indigenous women as heads of families. For example, in correspondence published in the Native Sisterhood newsletter, an inmate named Irene communicated with her cousin David. When David asked when she was coming home, Irene responded by affirming what he was doing, telling him to stay in school and help his mother. What she failed to answer was exactly when she would be home, saying that she will be home someday.⁵⁹ In “Can You Remember When,” Marilyn Jackson, a member of the Native Sisterhood, used poetry to tell the story of her losing contact with her family and getting into trouble with the law.⁶⁰ Isabella Ogima composed a similar poem in 1977 titled, “I Remember, I Remember.” In this poem, she

I remember, I remember
The little house where I was born
With the little washroom down the hall
Where ten kids raced every morn.

I remember, I remember
How my brothers hated me
And my sisters felt the same
Dad was a different story
He didn't know my name.

I remember, I remember
The walls of pale blue and white
That turned the color bloody red
When my parents used to fight.

I remember, I remember
The day I left that shack
I swore to the Lord that I'd never go back
With my sorrows and tears
Crying for a family of whom
I detested all these years

But I made my vows and promised
That when I'm out and free
I'll go home and be the person
I was made to be
Turn from worse to better still.

- Isabelle Ogima, “I Remember, I Remember,”
Native Sisterhood Newsletter, 1978

wrote of family breakdown as the cause of her incarceration, which is included in the accompanying text-box. Tragically, this was the last poem that Isabella gave to one of the other Sisters, because in January 1978 she died while serving time in Prison for Women.⁶¹

⁵⁹ Irene and her Nephew David correspondence, *Native Sisterhood* (Kingston: Prison for Women, December 1976), no pages.

⁶⁰ Marilyn Jackson, “Can You Remember When?” *Native Sisterhood* (Kingston: Prison for Women, 1976) no page.

⁶¹ This detail was included as a preface to this issue of the Native Sisterhood newsletter. This issue of the newsletter was subsequently published in her honour. Ogima had been serving as the editor, so this publication included her words published posthumously.

Situating the prison as a smaller part of longer life or cultural histories showed how the prison as a metaphor occupied a larger space than the prison as a reality in the lives of offenders. Colonialism had imposed numerous policies that marginalized Indigenous peoples, and as a result of the social disruption of these policies many Indigenous peoples became incarcerated. By interpreting their context within this wider history of colonialism, inmates offer a clear and accurate picture of Indigenous history in Canada. Furthermore, they offer a useful critique of the prison within Canadian society that simultaneously critiques the prison and the society that built it. This linked inmates' struggles to wider issues at play in Indigenous Canada.

New Expressions of Indigenous Identity

In the penal press inmates expressed indigeneity through essays, art, and poetry which presented a full picture of what being Indigenous in Canada meant. These were cultural creations that borrowed from First Nation, Inuit, and Métis traditions. They were also shaped by the penal context itself. On the one hand, the content of the literature was directly shaped by personal and historical experiences of incarceration in numerous guises, from the Residential school, reserve system, child welfare system, Indian policy under the Indian Act, and eventually through the prison. Through these cultural histories, the prison became the final articulation of a history of institutionalization and incarceration. Within the penal press inmates seized the opportunity to define themselves as something other than offenders.⁶² One offender put this in explicit terms stating, "Most critics would say that the work of these artists, writers, and dramatists is influenced by their prison experience. To some extent, we argue, critics are only looking for a convenient peg to

⁶² This echoes the purpose of the Native Brotherhoods, where inmates were united in their search for truth, not their common criminality. See Michael Jackson, *Locking Up Natives in Canada: A Report of the Canadian Bar Association Committee on Imprisonment and Release*. (Vancouver: University of British Columbia, 1988).

hang a particular piece of work on.”⁶³ This was also true for Indigenous art. The art, be it poetry, essays and creative writing, or drawings that were all published through the penal press should be interpreted as “twentieth century Indigenous art,” not as “twentieth century Indigenous prison art.”

As artistic forms, the written and visual productions of Indigenous prisoners reflected both historic and contemporary identities. In other words, Indigenous prisoners framed their own identities and experience within their historical and cultural contexts, yet were not confined to the past as a source of identity. The Native Sisterhood at Prison for Women included visual signifiers in each edition of *Tightwire* that represented the beginning of the Native Section of the paper. In each, they included representations of their identities that ranged from realistic images of Indigenous peoples (1973, 1987, and 1991), elements of Indigenous material culture (1980, 1983, and 1984), and traditional artistic forms (1980, 1990). In these images, there are elements of particular First Nation cultures, including the buffalo of the Canadian plains, traditional Haudenosaunee dress, and elements of the sacred integrated into art. However, taken as a whole the physical representations of Indigenous art in these cases reflect a pan-Indianism that reflected the nature of the Sisterhood.

The penal press was also shaped by a literary, poetic, and oral culture unique to the prison. The best articulation of the long influence of the jailhouse ballad was in the essay by incarcerated artist Frank Guiney. He saw the poetry that proliferated from Canadian jails as a continuation of the jailhouse ballad, which was an internally directed, for the consumption of other inmates. The original ballads were sung by convicts as they worked in prison industries. Guiney described the ballads and the culture that supported them: “It was ragged; it was rough; it was cynical; it was ironic. It was funny and it was tragic. It was love and it was hate. It was the ‘jailhouse ballad’ – the poetry of men in prison.”⁶⁴ In other words, the poetry from prison represented the entirety of life in

⁶³ “The Prisoner as Artist,” *Transition* vol 22 (Prince Albert Penitentiary: March-April, 1974), 49.

⁶⁴ Frank Guiney, “Poetry in Prison,” in *Words from Inside* vol. 1. No. 1 (Brantford: Prison Arts Foundation, 1972), 3.

prison. Because it was an internally directed culture, and because what Guiney calls “Square Johns” could never attain the same emotional, intuitive understanding of the meaning of incarceration, it had to remain an internal artistic venture:

The joke, the tragedy, the understanding, was ours alone, written between the lines; unspoken, sub-surfaced – much in the style we lived our lives; much like the expression-less faces we showed to our keepers. What outsider could fully understand!”⁶⁵

As an example of the jailhouse ballad, Guiney quoted the following popular ballad:

SEE THAT GUY
OVER THERE?
THAT’S ME
IF YOU DON’T
BELIEVE ME,
GO AND ASK HIM.
BUT DON’T BE
SURPRISED
IF HE SAYS
HE’S YOU.⁶⁶

Guiney estimated that the poem was roughly twenty years old, and he did not know the author. That was not consequential because the poem found meaning because the anonymity of authorship and universality of the message. The poem could have been written by anyone.

Native inmates contributed to this tradition of exposing the entirety of the penal experience. In “The Prison,” by Al Sinobert, published in the Native Sisterhood newsletter, Sinobert remarked upon the lack of logic within the penal system:

There is no peace for the conscious mind
Existence hates the rational thought,
The logical man may discover the world
But he cannot find himself.⁶⁷

⁶⁵ Guiney, “Poetry in Prison,” 3.

⁶⁶ Anonymous Jailhouse poet, quoted in Frank Guiney, “Poetry in Prison,” in *Words from Inside* vol. 1. No. 1 (Brantford: Prison Arts Foundation, 1972), 7.

⁶⁷ Al Sinobert, “The Prison,” *The Native Sisterhood* (Kingston: Prison for Women, 1976), no pages.

For several verses, Sinobert explores the implications of the illogical parts of the penal system. He explores the effect on his personal, spiritual, and philosophical centre. In the end he concludes that the prison system was a hypocritical manipulation of European theology. He also understands that individuals had the strength to metaphorically break free of the prison, even if they remained within institutional walls. He finished his poem writing:

Fear is the builder of cell walls,
But faith never knew a prison.
The spirit can reach beyond the mind
For man is a prisoner only to himself.⁶⁸

Sinobert articulate how inmates internalized their status as offenders and allowed that to define themselves. In writing in penal presses, inmates reclaimed their identities, but at the same time remained uncomfortably cognizant that even though they might have personally moved beyond the state-sanctioned identity assigned to them, that still remained part of their history.

While inmates identified themselves as the victims of historic injustice, they simultaneously celebrated their cultural survival in the face of these difficult odds. D.R. Jones wrote in *The Indian Echo* that the history of Indigenous people was one of “severe suffering and many heart breaking experiences” because of relationships with settler societies, but the real legacy for Indigenous peoples was that, “the Indian has carried the burdens placed on him by the White man. Yet he stands proud among all other nations. Undefeated and surprisingly tireless as he struggles with determined efforts under difficulties to blaze the trail to a more promising future for his people.”⁶⁹ An anonymous author stated in *Tightwire* that a prison sentence in the nineteenth century was tantamount to a physical and spiritual death sentence for Native peoples. She further wrote that she experienced the same spiritual death sentence in the twentieth century prison. What this author

⁶⁸ Al Sinobert, “The Prison,” *The Native Sisterhood* (Kingston: Prison for Women, 1976), no pages.

⁶⁹ D.R. Jones, “The Long March,” *Indian Echo*, (BC Penitentiary, March 1970), 22.

noted which was most important was that, “Native prisoners are now emerging from their own dependence and passivity and undertaking their own rehabilitation.”⁷⁰ In the words of an inmate from Joyceville Penitentiary, “The native indian is neither a vanquished or a vanishing species. Today indian people are continuing their struggle of three centuries in new ways... to institute nearly forgotten languages and traditions.”⁷¹ This message fit within the goals of the group, namely rehabilitation and healing of Indigenous inmates. While they did not use the term “decolonization,” put within its historical context that is what these prisoners accomplished. They framed their own incarceration within a colonial history for which they were not responsible, but they did so in such a way that was empowering for Indigenous peoples, which was rhetorically significant within the context of the penal press. In the same breath that they identified the historic roots to injustice, they empowered themselves to move beyond this narrative.

Indigenous cultural survival was rooted in spirituality, which formed the foundation for how cultural continuity was maintained even behind bars. In developing programs to assimilate Indigenous peoples, the federal government targeted Indigenous languages and spiritual beliefs, so inmates discussed historic and current colonialization in these terms. The colonial project as practiced in Euro-Canadian institutions was predicated upon the extinguishment of Indigenous identities, which did not allow Native peoples to express their spirituality, and by extension did not allow them to be whole. The importance of identity was related to balance because a person could not have internal balance if they did not accept their identity.⁷² This also reflected that for many inmates their carceral experience was also their first exposure to traditional spirituality.⁷³ Still,

⁷⁰ Anonymous, “The Plight of Native Prisoners,” *Tightwire* vol 20 no. 11 (Kingston: Prison for Women, 1984), 24.

⁷¹ D. Carruthers, “Indians of the Modern Era,” *The Talking Leaves*. Trent University Archives, Peterborough ON, (Joyceville Ntv Brotherhood, Acc No 82-014, box 3 of 4)

⁷² Solomon, *Songs For the People*, 19, 22, 41-44, 58.

⁷³ *The Spirit Within*. Directed by Gil Cardinal and Wil Campbell (Montreal: National Film Board, 1991). VHS.

inmates did this without further victimizing themselves, but rather by showing their culture's strength rooted in their spiritual selves.

Survival also had political implications. Indigenous peoples positioned themselves as successful because they continued to survive, and newcomers as failures in their attempts to eliminate Indigenous peoples. Because many inmates viewed the prison within a colonial network, their continued pride in their shared heritage was a constant reminder of this failure of the Canadian state to achieve its stated goals.⁷⁴ While the Canadian government did not live up to its treaty obligations, as vocalized in political circles, inmates viewed the failure of the government in different terms. According to inmates, the government's goal was not to honour treaties, but rather to eliminate Indigenous peoples. Working against this goal by celebrating their cultural identities was a direct confrontation of these colonial processes. For Indigenous inmates their cultural strength accentuated this failure reflected and positioned themselves on higher ground culturally, spiritually, morally, and politically. In showing how the state had failed to eliminate Indigenous peoples, inmates made one of the most important political statements of that era.

Finally, although survival was the basis of inmates' identities, this does not mean that Indigenous peoples survived colonialism unscathed. Over-incarceration itself speaks to this reality. Instead, colonial genocide became the crucible through which social formation took place, and the social structures that emerged within prisons reflected common experiences of trauma. One such change was rise of 'neotraditional' identities in prisons during this era. Larry Carlson commented on Indigenous identities that reflects the historical context of the 1980s by explicitly stating that the goal was to 'remain one Indian Nation.'⁷⁵ This change from identities rooted in specific First Nation

⁷⁴ There are several examples in Canadian history where Federal Indian Policy aimed explicitly to culturally destroy First Nations peoples, the most famous of which was the Residential School System. The political leadership of the 1970s also considered the Canadian Government's White Paper on Indian Policy (1969) as a continuation of this trend, so the reference of survival in the face of genocidal policies was most often used in a concurrently historical and contemporary way.

⁷⁵ Larry Carlson, *The Justice Group*, Stony Mountain, 1989, 17.

affiliation to complex identities that maintained regional and cultural variation while becoming one cultural unit within the penitentiary has been an important but misunderstood legacy of colonial practices. While people did begin to self-identify as Indigenous or Indigenous rather than local affiliations, individual identities based on specific First Nation or Métis affiliation continued. In this way incarceration was transformative for those who were united through the common experience of colonial trauma.⁷⁶

Finally, the area where cultural affiliation was most obvious, and differences between cultures were maintained, was in visual art. Within the visual arts, there were inclusive regional identities, as compared to pan-Indian identities shared across the country. In short, art that echoed Indigenous traditional forms bespoke a regional affiliation that coexisted with the pan-Indian identities promoted in essays and poetry.⁷⁷ Western institutions, including those on the Prairie region of CSC and those in British Columbia, tended to be more specifically drawn to artistic expression particular to that geographic region. Inmates in institutions like Drumheller or Prince Albert tended to emphasize their Cree heritage. Those in BC institutions emphasized the unique BC First Nations and political context. Those in Ontario were typically heterogeneous in both the penal population and in turn their cultural influences. That is not to say that non-Cree members were excluded from certain groups, but rather that the cultural expressions within those groups were guided more directly by regional cultures.

Most direct links to particular cultures came in visual rather than documentary form. When inmates unpacked their experiences in essays and poetry, they discussed their situation as Indigenous in more universal terms. Conversely graphic images were grounded in particular artistic traditions.

⁷⁶ David Lloyd, "Colonial Trauma/Postcolonial Recovery?" *International Journal of Postcolonial Studies*, Vol. 2 No. 2, (2000), 212-228.

⁷⁷ This reflects the notion of "Nested Identities" introduced in the introduction of this dissertation, based on Taiaiake Alfred's work, Taiaiake Alfred, *Heeding the Voices of our Ancestors: Kahnawake Mohawk Politics and the Rise of Native Nationalism*. (Toronto: Oxford University Press, 1995).

Take for example the publication of the BC Penitentiary, *Open Doors*. (Appendix 3, Figure 4) In the institutional publication from December 1972, coastal artistic forms were used between essays. These images of a whale, thunderbird, and Bentwood Box reflected the geographic and cultural history of the land upon which the BC Penitentiary was built.⁷⁸ By contrast, the Drumheller Native Brotherhood published a newsletter in 1984 that included significant art in the Cree style, which reflects Drumheller's Indigenous cultural context.⁷⁹

Inmates also expressed their indigeneity in innovative ways unique to the twentieth century that fit within processes of decolonization. They did this most often through writing poetry and essays, but they also used visual arts. For example, in a 1976 edition of the Native Sisterhood newsletter, Rita Archibald drew all the art included in the publication. She included images of Native peoples in a traditional plains-style headdress, another with a buck-skin dress, and still other drawings of Indigenous peoples with feathers in their hair. Next to these images were a self-portrait of herself, as well as a family in fashionable modern clothing.⁸⁰ Another case was Gayle Horii's drawing (Appendix 3, Figure 5) which she explained in the following terms: "This drawing of a young Native girl is dedicated to a very beautiful young Native woman who early this morning resisted two male and three female guards in their enforced removal of her from her personal cage to a cage in segregation. I pray for her warrior spirit."⁸¹ In this image Horii humanized incarceration and reinforced the contemporary nature of that incarceration. What Archibald and Horii's understanding of Indigenous identities was not confined to either image of indigeneity. Instead, identities were dynamic and included the traditional and modern influences.

⁷⁸ Anonymous, "Selected untitled Images," *Open Doors* (BC Penitentiary: December 1972), no pages.

⁷⁹ Drumheller Native Brotherhood, "Untitled image," *Drumheller Native Brotherhood Newsletter* (Drumheller: 1984), no page.

⁸⁰ Rita Archibald, "untitled images," *Native Sisterhood* (Kingston: Prison for Women, 1976), no pages.

⁸¹ Gayle Horii, "Untitled," *Tightwire*, (Kingston: Prison for Women, Spring 1988), 39.

Spreading the Word: The Penal Press as Community

Through and sharing their work, inmates developed a literary community that allowed the Native Brotherhood movement to transcend the walls of the prison. By addressing a common history of colonization, offenders created a new community separate from distinctions based on their Indigenous identity. The penal press community reflected the Brotherhood movement. It create a unified entity of inmates and those who supported each other. It situated the plight of Native inmates within wider contexts of Indigenous political and social movements of that time. It offered teachings on how to heal together.

The community that the presses engendered was the product of a self-conscious effort to develop common approaches to healing within prisons by integrating the traditions of Indigenous groups from across Canada without reducing any of them. An example of this came from Dale Stonechild, the president of the Drumheller Native Brotherhood put it in the following terms:

With respect to all people that have a way of life, there is a way of living and maintaining our destination. We know who we are... whether we are Crees, Sioux, Ojibway, or Blackfoot, or any part of this great Nation of native Peoples... we are BROTHERS... Once we know who we are, we have our identity, what we must do gives us purpose, and how we must achieve that gives us direction. This path is called Self Determination and nobody can take that away from us – We are Survivors.⁸²

The formation of a survivor identity preceded the use of this same term in reference to former Residential School students, but the comparison is apt. In identifying as a part of “this great Nation of native Peoples,” the author maintained distinctions of First Nation cultures. Therefore, when we see teachings explicitly taken from one First Nation perspective and offered to all inmates, the root of that teaching was important. That was why when, for example, the Native Sisterhood published a thanksgiving song in their newsletter, they ensured that it was clear that the songs were Iroquois.⁸³

⁸² Dale Stonechild, “President’s Message,” Drumheller Native Brotherhood Newsletter (Drumheller: Summer 1984), 4.

⁸³ Reproduction of “Thanksgiving Address of the North American Indian,” originally published by the North American Indian Traveling College, *Tightwire*, vol. 20 no 8 (Kingston: Prison for Women, 1983), 30-32.

What made the penal presses a useful tool to build community was that it was spread between institutions, which we see in several ways. First, inmates submitted material to newsletters and publications from other institutions. For example, Al Sinobert was for a long time the editor and president for the Native Brotherhood in Collins Bay Penitentiary, in Kingston, Ontario. Obviously he published in the Collin's Bay press, *Tribal Ways*, but he also contributed to other regional presses in Kingston, including *The Talking Leaves* from Joyceville and *The Native Sisterhood* from Prison for Women.⁸⁴ This was because Brotherhood and Sisterhood members were occasionally granted day passes to attend special events in nearby penitentiaries, including pow-wows, feasts, and special events. On other occasions, when an excellent essay, poem, or drawing was included in another publication, newsletters would republish that material. For example, *The Talking Leaves* from Joyceville Penitentiary republished a passage from Norma Sluman's "Poundmaker," originally from the *Native Brotherhood Newscall* from Prince Albert Penitentiary. As a note under the passage quoted, which documented the life of the Cree leader, the editor included a note for those in Prince Albert Penitentiary, writing, "To our Brothers in PA – We read with Interest, of your efforts to establish a halfway house, "Poundmaker's Lodge" in the area of Prince Albert; We, here In Joyceville, and neighbouring Institutions wish you every success in your aspirations, and we hope you succeed in your efforts."⁸⁵ Clearly the editor expected that the Prince Albert Native Brotherhood would have access to this newsletter, and felt that this was the ideal place to pass along messages of support.

In other cases the presses included direct, personal correspondence to other institutional groups or to individuals. In the 1973 issue of *The Talking Leaves*, a letter between Albert Sinobert and Charlie, the presidents of the Collin's Bay and Joyceville Native Brotherhoods respectively, was published. Sinobert wrote to Charlie thanking him for a gift of a drum, and assured Charlie that,

⁸⁴ Al Sinobert, *The Native Sisterhood Newsletter* (December 1976)

⁸⁵ *The Talking Leaves Native Brotherhood*, Volume 2 (Kingston: Joyceville Penitentiary, February 1972), 14.

“the drum will be respected and treasured by this group [Collins Bay Native Brotherhood] and future members.”⁸⁶ The following year Sinobert published in his own newsletter to inform the Native Brotherhood in Prince Albert that he was working in Collins Bay, and sent his best wishes to the groups in Prince Albert as well as in Stony Mountain, the two western institutions where he had served the Brotherhoods as an editor.⁸⁷ Similarly, when the Native inmates in the Mission Medium Security institution in British Columbia began their group, they sent a letter to the Native Sisterhood, who in turn published the letter. Inmates at Mission noted that their over-arching goal was to help Native people across Canada, but first they would build their group.⁸⁸

How widely the publications were distributed or the mechanism whereby they were distributed is unclear, largely because of the differences between presses and institutions. Put simply, there is clear evidence *that* the prison press was widely distributed, but the mechanism whereby these presses were distributed is not obvious. Nearly all presses advertised subscription fees, most of which covered the cost of postage and little more, which shows that prisoners in most cases had the capacity to send their work to their home communities. Given the nature of prison publications and records during this time, it is difficult to trace subscription rates. However, because people included personal notes to loved ones, we can surmise that these presses found their way to prisoners’ homes. Presses were also distributed to other prisons, as presses were used as a vehicle for communication between Brotherhoods.

The distribution of the publications, however uneven and difficult to trace, made it possible for the penal press to become a tool for community building outside the prison. External support was necessary for the Brotherhood to continue functioning properly, and the distribution of the

⁸⁶ Albert Sinobert, to Charlie Hill, in *The Talking Leaves Native Brotherhood*, Volume 3 (Kingston: Joyceville Penitentiary, September 1973), p1. (Trent University Archives)

⁸⁷ Al Sinobert, *Tribal Ways Native Brotherhood*, (Kingston: Collins Bay Penitentiary, 1974), no page.

⁸⁸ Letter from Native Brotherhood of Mission Medium Security Institution to Native Sisterhood publication of August 1977, 4-5.

penal presses became a way to facilitate and maintain fruitful dialogue between these groups. Furthermore, many offenders explicitly situated themselves within the wider struggles of Indigenous peoples. Roy Konuse explained that the Indian Metis Education group at BC Penitentiary introduced organizations to each other, creating fruitful partnerships.⁸⁹ Daniel Beatty, who published through the Drumheller Native Brotherhood Newsletter, demanded that Indigenous communities work with Indigenous inmates, and it was for a simple reason: “I don’t think we’re asking too much [of outside communities], after all – a lot of our problems happen to be the same as yours... If you can imagine that.”⁹⁰ Later an inmate from Joyceville Penitentiary framed the issues facing inmates as a manifestation of the injustices within Indigenous communities across Canada and specifically within the political system, writing that the National Indian Brotherhood engaged in the same struggle as the Native Brotherhood in Joyceville.⁹¹ When the United Native Club at Matsqui organized its newsletter, they hoped that it would be mailed to “friends and interested organizations.”⁹² Letters to the editor gave an opportunity to engage with the outside world, and the presses often published responses from politicians, advocacy groups, academics, and inmates from different institutions. In short, the community that the penal press fostered was not limited to those serving time. These groups also advertised their own services, as a key issue facing the Brotherhood movement was a lack of awareness of services available during their incarceration and after release. Through the presses, prisoners connected issues facing them to wider processes of colonization, allowing inmates and external organizations to support and encourage each other.

⁸⁹ Roy Konuse, “Editorial,” *Indian Echo*, (BC Penitentiary, March 1970), 5.

⁹⁰ Editorially Speaking, Daniel Beatty (PAWIS), Drumheller Native Brotherhood Newsletter (Drumheller: Summer 1984), 1.

⁹¹ Note that the National Indian Brotherhood was the political organization for First Nations peoples, and is not now nor was it then directly affiliated with the Native Brotherhood organizations in federal prisons. Rick Rogers (program Co-Ordinator), “The Joyceville Native Brothers,” *Pendulum*, Vol 1 No 4 (Kingston: Joyceville Penitentiary, 1981), 10-11.

⁹² “UNC News,” *Tarpaper* Vol. 2 No. 7 (Abbotsford, BC: Matsqui Institution, February 1973), no pages.

In engaging with communities outside inmates demanded rights for Indigenous offenders. Inmates had a direct and urgent need to centralize justice issue on the social and political agenda outside prisons. The editor of *The Talking Leaves* articulated this in the following terms: “It is our hope that we [the Joyceville Brotherhood] can build a better relationship with individuals and with members of various organizations who read our paper. We will look forward to any articles, letters, or comments which may be sent in by you the reader.”⁹³ The publications *Bridgeviews*, from British Columbia Penitentiary spoke of this inclusive approach to activism that the penal press strove for in 1971 when an anonymous author wrote of the new goal of unity in Indigenous Canada.

Unity means different things to different people, but it has a special meaning for Indian people... It means the difference between demanding with the dignity of their heritage, their rights, or meekly accepting the appeasement of those who rob them of that heritage. It means the difference between security of their children and grandchildren, or leaving the future in the hands of a grasping society that would trade human life as cheap payment for a plot of land.⁹⁴

This individual framed the struggle of Native inmates as one that transcended the prison, and as such needed to include people from outside the prison as well.⁹⁵ One humorous comic, published from Matsqui in 1973 (Appendix 3, Figure 6) which was in British Columbia, took a satirical approach to vocalizing Native concerns in Canada, but the joke showed a cognizance of ongoing political issues, especially during the new, modern land claims era in Canada.⁹⁶ An outside supporter of the movement in Kingston, Karen Baulne dreamed that the Brotherhood was to be “an example to all others that Indians can work together as a group, and, contrary to popular belief, can

⁹³ “A Word from the Editor,” *The Talking Leaves Native Brotherhood*, Volume 3 (Kingston: Joyceville Penitentiary, September 1973), p1. (Trent University Archives)

⁹⁴ Anonymous, “Indians Change Words: Not ‘How’ but ‘Unity,’” *Bridgeviews* (British Columbia Penitentiary: July 1971), 14.

⁹⁵ This echoed the Calder Case, what was then the current land claims case at the BC Supreme Court that initiated the modern land claims era. See: A.J. Ray, *Telling it to the Judge: Taking Native History to Court* (Montreal and Kingston: MQUP, 2012) 3-16.

⁹⁶ Untitled, *Tarpaper* vol 2 no 3 (Abbotsford: Matsqui Institution, 1973), 10.

accomplish something for themselves.”⁹⁷ The use of the narrative of colonialism made it possible for prisoners to contribute to a burgeoning literature and demonstrate how their colonial context was comparable to the same situations facing people “on the outside.”

Conclusion

Indigenous inmates created a literary community that confronted colonialism as embodied within the penal system. Significantly, it was a struggle against colonialism rather than against incarceration that occupied the majority of inmates’ focus, though the prison itself was defined in colonial terms. In other words, in writing from prisons, what Indigenous inmates accomplished was not different from the resistance articulated by other Indigenous peoples in Canada at the time. Because inmates understood the prison as part of colonial history, the issues they confronted were larger than the prison itself. The prison did not cause their loss of identity; losing their identity was what many inmates attributed to their conflict with the law. That the prison continued this trend was evidence that the prison was part of the same colonial system. Instead of treating the prison as an isolated institution, the inmates discussed how it fit a network of colonial institutions. In doing so they created the theoretical means to work towards liberation not of the incarcerated individual, but of the oppressed culture. While the carceral context made the impact of colonialism more obvious, these writings fit within a burgeoning resistance literature. This could only take place within a penal system that had undergone significant change towards opening the institutions. This was most clear in the opening of minimum and medium security institutions in the 1950s along with the introduction of the penal press and other similar programs. Still, offenders and inmate-editors had to continuously keep in mind the limits imposed upon them by their penal context. Institutional

⁹⁷ Karen Baulne, “My Dream,” *The Talking Leaves Native Brotherhood, Volume 1* (Kingston: Joyceville Penitentiary, 1971), 4.

censors could and did modify the message or force the publications to withhold certain essays, images, or poems.

Inmates decolonized the penal space was by celebrating Indigenous identities, and in doing so counteracted the assimilatory impulse of the penal system. They did this through the celebration of traditional spiritual, cultural, and social values, and in expressing identities shaped by their twentieth century context. This means that in the pages of the penal presses, we see numerous complementary definitions of indigeneity that worked in concert with each other to present a nuanced, multifaceted image of Indigenous Canada. The identities in the presses required theoretical deliberation on the meaning of Indigeneity in the twentieth century. In celebrating their culture, they took what had for many inmates been a source of shame and turned it to a source of pride.

Chapter Nine: Joyceville's Totem Pole and Material Culture in Prisons

During the spring of 1973 at the Joyceville Penitentiary in Kingston, Indigenous inmates carved a red cedar log from British Columbia with Algonquin and Ojibwa clan symbols, historical commentaries on the relation of Indigenous peoples to European settlers, and spiritual iconography from various Indigenous traditions. They donated the final product to the city of Kingston in honour of the city's tercentenary and in an act of cultural pride and civic engagement. This totem pole, like all totem poles, contains multiple layers of meaning. On one level, this pole is illustrative of the neo-traditionalism that emerged in Canada during the late 1960s as inmates blended different First Nation traditions. The pole also illustrates activism from a movement of Indigenous inmates who celebrated their Indigenous identities in self-conscious ways through craftsmanship, spirituality, and cultural events. Through the carving of this pole, inmates took a new approach to rehabilitation that Indigenous organizations and offenders adapted in unique ways to suit their cultural context. The images carved into the pole also were steeped in meaning, with different groups seeing disparate meanings within it. Inmates themselves saw the pole as simultaneously documenting Indigenous history in Canada and eliciting the sacred from Indigenous worldviews. Finally, in the years after the erecting of this totem pole, it continued to evolve, gaining meaning through processes of remembering and forgetting. This totem pole was a multilayered cultural production that had a rich social life that reflected Indigenous cultural movements in Canadian prisons.

The fact that the carving of the totem pole and similar cultural programs emerged in prisons is remarkable. It was a novel historical phenomenon for these kinds of programs to exist within prisons, and that represented a shift in penology in Canada. But more importantly, the penal context shaped the Indigenous art that imprisoned Indigenous peoples created. The location of totem poles,

for example, determines in many cases the meaning of the pole itself. For example, many Salish house poles (positioned at the opening of a longhouse), would be carved with clan symbols telling the story of the people of that particular longhouse.¹ Similarly, the totem pole carved at Joyceville Penitentiary and displayed by the city of Kingston tells a story. This story is reflected by the geography of the construction and erection of the pole. Rather than telling the story of a clan, it told the story of Canada and the city.

Furthermore, the role of place, or more accurately the relationship to place, is a central feature of Indigenous art. W. Richard West, the Cheyenne director of the Smithsonian National Museum of the American Indian, wrote “Place determines who we are in that it establishes our relationship to everything around us. Our cultures, including our aesthetic productions, grow out of that relationship to place.”² But what happens when the place of cultural creation is a contrived, colonial one? The prison divorced Indigenous cultural creators from their home communities and their traditional lands. In some ways, the cultural productions of the prisons were done devoid of the genuine connection to place, and the introduction of culture within the prison walls counteracted this problem. That is why material cultural productions behind bars were so important to the movement. They were part of a process whereby Indigenous prisoners decolonized the prison. In one film documentary, Bobby Woods said, “I hear guys crying the blues saying, ‘I can’t get out to mother earth.’ I say just touch a wall, brother, and you’re touching mother earth. There ain’t nothing on top of her that didn’t come from her. We’re sitting in a circle today. We’re replicating something that is natural.”³ Similarly, carving the totem pole reclaimed the space even as it was shaped by the penal space.

¹ Richard Feldman, *Home Before the Raven Caws: The Mystery of a Totem Pole* (Indianapolis: Indiana Historical Society, 2014), 12.

² W. Richard West, “The Centrality of Place,” in *Reservation X: The Power of Place in Contemporary Indian Art* edited by Gerald McMaster (Ottawa: Canadian Museum of Civilization, 1998), 11.

³ Gil Cardinal and Wil Campbell (directors). *The Spirit Within*. (Montreal: National Film Board, 1991).

This project was part of a pattern that emerged during the 1970s where the Brotherhoods reclaimed their culture through the production of material items. By promoting Indigenous material production in prisons, prisoners were able to develop skills in carving, leatherwork, beadwork, and other potentially marketable skills that would serve them upon release. This echoed a key goal of the penal system, whereby the penitentiary staff aspired to the employment of prisoners after release. Prisoners also used craftsmanship as a way to reach out into the community, either through public projects or by engaging community members in programs. Finally, art had a spiritual value as Elders and teachers gave teachings that gave the symbols in their work meaning. In short, traditional and modern Indigenous craftsmanship within prisons contributed to the cultural, social, vocational, and spiritual work of the Native Brotherhoods.

The rise in the use of art and vocational programs as rehabilitation and healing took place in the 1970s because of developments in the penitentiary system more generally after the 1939 Archambault Report, which advocated for fundamental changes in the philosophy of the penal system from retributive to restorative justice. At the same time, the Department of Indian Affairs was also promoting art and handicraft production as an economic activity for reserves, making the introduction of Although it took several decades, the silent system was phased out by the correctional administration and more interactive programs were designed for the inmates, including sporting events, educational opportunities, the publication of penal literature, and promotion of craftsmanship within the prison.⁴ In the twenty years that followed, many of the recommendations were implemented by developing woodworking facilities in prisons, beginning in 1947 when two institutions, Collins Bay and Federal Training Centre, began five courses that served 65 inmates.⁵

⁴ Joseph Archambault (Commissioner), *Report of the Royal Commission to Investigate the Penal System of Canada* (Ottawa: King's Printer, 1938), 341.

⁵ Canadian Penitentiary Service, "Deputy Wardens' Conference, Theme: Programming by Objectives," (Correctional Staff College, Quebec: May 12-16, 1969), 73.

Beginning in the late 1960s, all five regions of the Canadian Penitentiary Service (CPS) experienced a dramatic increase in the vocational training programs like woodwork, welding, and leatherwork. The most marked increase in the number of programs nationally took place between 1972 and 1973.⁶

The creation of material items within prisons, specifically the Joyceville totem pole, reflects similar processes that took place in residential schools. In the twentieth century, a controversy surrounding the attitude of the government regarding Indigenous handicrafts emerged. During the 1920s fairs and agricultural exhibitions routinely promoted Indigenous handicrafts, showcasing Indigenous art and culture, while the Department of Indian Affairs saw this as inhibiting the goal of assimilation.⁷ Administrations of residential schools began using Indigenous crafts as an educational tool to teach the pupils valuable skills upon graduation. Indigenous handicrafts, when controlled by the administrations, were no longer threatening, and indeed represented a sort of idealized, almost nostalgic view of Indigenous culture as primitive yet beautiful.⁸ In her 2007 dissertation, Sarah de Leeuw has shown that Indigenous children used these kinds of programs as a way to maintain their culture to the best of their ability.⁹ Similarly, the Joyceville totem pole and other programs that developed skills in Indigenous handicrafts were non-threatening representations of Indigenous culture to penal administrations, especially given the community engagement the project fostered.

There is a rich literature on the cultural and spiritual basis for Indigenous art, which has taken inspiration from what Ruth Philips calls “the new art history.” According to Philips, recent trends in art history shown that western civilization does not hold a monopoly of artistic development. Philips argues that the old art history is methodologically problematic because it

⁶ Jean-Marie Robichaud, Mary Steinhauser, and Fred Luciani. *Analysis of Programs in Federal Corrections: Prepared for the Task Force on Integration of CPS-NPS by Sub-Task: Program Planning*. (Ottawa, 1976): 85-91.

⁷ Gerald McMaster, “Tenuous Lines of Descent: Indian Arts and Crafts of the Reservation Period,” *The Canadian Journal of Native Studies* vol. 9 no. 2 (1989), 210.

⁸ John Milloy, *A National Crime*, 173-4.

⁹ Sarah de Leeuw, *Artful Places: Creativity and Colonialism in British Columbia's Indian Residential Schools*. (PhD Thesis: Queens University, 2007).

critiques Indigenous representations of Indigeneity using the same tools developed to critique Western art.¹⁰ New trends in art history require the study of the social context of art, and the analysis of art as a lived reality. Taking this approach to art and art history, scholars have more recently begun to recognize the multifaceted meanings behind Indigenous art, which scholars have given short shrift until the advent of the so-called “new art history.” For example, John and Virginia Friesen have argued that the focus of art as craftsmanship has ignored the spiritual foundation of the art itself.¹¹ This new art history has also shaped a new generation of museum studies scholars who have begun to question the cultural and social impact of the “museumization” of Indigenous artistic artefacts.¹² It was only by establishing the social and sacred context that gave artistic and cultural artefacts meaning and that the ways that categorization and preservation of those items in museums changed the meanings of the items could be fully appreciated.¹³ This approach has obvious benefits in Native art history where art has a practical purpose in the life of the community.

Recent literature in museum studies has reconsidered the meaning of physical items in the cultural life of First Nations peoples. This has come from museologists who grapple with their professional responsibility to preserve culture and the aims of First Nations peoples to whom material items have been seized through colonial processes of cultural appropriation. In *Preserving What is Valued*, Miriam Clavir identifies this tension, dividing her book into two sections that

¹⁰ Ruth Phillips, “What is ‘Huron Art’?: Native American Art and the New Art History,” *The Canadian Journal of Native Studies*, (9)2 (1989): 161-186.

¹¹ John Friesen and Virginia Friesen, *Canadian Aboriginal Art and Spirituality: A Vital Link* (Calgary: Detsellig Enterprises, 2006), i.

¹² A key question for many of those collecting Aboriginal artefacts was whether they should be housed in museums or art galleries. The consensus shifted from the former to the latter around the 1950s. See Ruth Phillips, *Museum Pieces: Towards the Indigenization of Canadian Museums* (Montreal: McGill-Queens University Press, 2011).

¹³ Susan Roy, *These Mysterious People: Shaping History and Archaeology in a Northwest Coast Community* (Montreal: MQUP, 2010). ; Fortney, Sharon. *Forging New Partnerships: Coast Salish Communities and Museums*. PhD diss., University of British Columbia, 2009. ; Miriam Clavir, *Preserving What is Valued: Museums, Conservation, and First Nations* (Vancouver: UBC Press, 2002). ; Ruth Phillips, *Trading Identities: The Souvenir in Native North American Art from the Northeast, 1700–1900*. (Montreal: McGill-Queen’s University Press, 1998). ; Douglas Cole, *Captured Heritage: The Scramble for Northwest Coast Artifacts* (1985). Reprint edition with new preface. (Vancouver: UBC Press 1995).

There is a parallel literature on Anthropology and Aboriginal identities, best exemplified in: David Hurst Thomas, *Skull Wars: Kennewick Man, Archaeology, and the Battle for Native American Identity*. (New York: Basic Books, 2000).

consider the values for those who typically operate museums and First Nations peoples whose material heritage is often housed within these institutions.¹⁴ She found that classically trained museumologists try to preserve aesthetic or historical integrity, but First Nations peoples are usually motivated to preserve the meaning of an item. This often includes a social or ceremonial function. More recently, in *First Nations, Museums, Narrations*, Alison Smith has identified this same issue of colonialism inherent within the practice of museum collection, using the case study of a collection expedition in the 1929 Franklin Motor Expedition which collected cultural items from communities across the Canadian plains for European museums. Smith shows the legacy of colonialism through analysis of historic collections, and in so doing create an awareness of colonial practices by examining the cooptation of cultural artefacts.¹⁵ The use of physical objects as windows into the Indigenous past and contemporary conflicts has become increasingly common in historical scholarship.¹⁶

But through art, Indigenous peoples also expressed their twentieth century identities at a time when many settlers saw modernity and traditional Indigenous identities as mutually exclusive. During the twentieth century, thanks to the marketability of Indigenous handicrafts at agricultural fairs and festivals, the Department of Indian Affairs and other interest groups developed a catalogue of generic “Indian handicrafts” which were cheaply made and sold in a process that Gerald McMaster has argued devalued the artistic merit of Indigenous art and misrepresented Indigenous artistic traditions.¹⁷ Specifically, McMaster points to the “miniature” figures that were popular as commercial goods: miniature teepees, totem poles, snow shoes, dolls, lacrosse sticks, and so on.

¹⁴ Miriam Clavir, *Preserving What is Valued: Museums, Conservation, and First Nations* (Vancouver: UBC Press, 2002).

¹⁵ Alison Smith, *First Nations, Museums, Narrations: Stories of the 1929 Franklin Motor Expedition to the Canadian Prairies* (Vancouver: UBC Press, 2014), 2.

¹⁶ This is best demonstrated in the panel at the 2015 Canadian Historical Association titled “Made History: Material Culture and New Insights into Indigenous Historical Consciousness,” featuring Katya MacDonald, Madeline Knickerbocker, and Christoph Laugs.

¹⁷ Gerald McMaster, “Tenuous Lines of Descent: Indian Arts and Crafts of the Reservation Period,” *The Canadian Journal of Native Studies* 9 no. 2, 1989: 236.

After the 1950s and 1960s, some Indigenous artists directly confronted the false divide between modern and traditional art in two ways. Some used contemporary artistic forms in a self-consciously Indigenous way, while others adapted historical art forms that had become commercialized, like the totem pole, and modernized them, which imbued them with a new meaning that reclaimed traditional forms from colonizing commercialism.¹⁸ As put by Aldona Jonaitis and Aaron Glass,

[Totem Poles] while always existing as real Native creations, when transformed by processes of representation a, come to stand for something else, their meaning embedded in white attitudes towards Indians.¹⁹

The Joyceville totem pole was one example of this approach. Historian Paige Raibmon shows that Indigenous peoples in Canada used art as a mechanism to navigate discourses of authenticity. Because settler expectations of Indigeneity were linked to the past, that the craftsmanship cottage industry that catered to tourists defined itself as “authentic” by “receding to the past.”²⁰ Raibmon demonstrates the challenges inherent within the discourses of authenticity by arguing that notions of authenticity have led to the creation of an impossible standard that ignores the reality of Indigenous identities.²¹ Ruth Phillips has further complicated the representation of Indigenous identities in artistic traditions by arguing that even in souvenir art, Indigenous peoples were creative in their responses to economic and colonial influences.²² Similarly, Ronald Hawker argues that during the period between 1922 and 1961 Indigenous artists created objects that “functioned in a complex and multifaceted manner, at once asserting the integrity and meaningfulness of First Nations identities

¹⁸ Gerald McMaster, *Reservation X: The Power of Place in Contemporary Indian Art* edited by Gerald McMaster (Ottawa: Canadian Museum of Civilization, 1998), 13.

¹⁹ Aldona Jonaitis and Aaron Glass, “Totem Poles and Contemporary Tourism,” in Barbara Saunders and Lea Zuydermoudt (eds) *The Challenges of Native American Studies: Essays in Celebration of the Twenty-Fifth American Indian Workshop* (Leuven: Leuven University Press, 2004), 68.

²⁰ Paige Raibmon, *Authentic Indians*, 202.

²¹ Raibmon, 205-208.

²² Ruth Phillips, *Trading Identities: The Souvenir in Native North American Art from the Northeast, 1700-1900*. (Montreal and Kingston: McGill-Queen's University Press 1998).

and resisting the intent and effects of assimilation.”²³ Literature on Indigenous art and material culture has demonstrated how artistic expression allowed Indigenous peoples to express Indigenous cultures in a traditional way, but to also respond to modern influences. When looking at art in prisons, it is possible to see how Indigenous peoples used material items to define and express their identities as shaped by historic and contemporary influences. In some cases they directly confronted settler expectations and forms of authentic Indigeneity. It is worth noting that the term “totem pole” is a contested one. The term comes from the Algonquin term, and therefore is not representative of many of the First Nations who first developed the totem pole. The word “totem pole” was instead a European imposition, borrowing a word from one area and uncritically imposing it on another.²⁴ The “panindian” nature of the Joyceville totem pole makes the imposed word appropriate because of the many nations represented in the creation of the pole shaped its final meaning.

This chapter examines the case study of the Joyceville totem pole that was demonstrative of a wider pattern where Indigenous peoples used material representations of their culture as an act of decolonization and promote Indigenous identities behind bars. It shows the interconnections between the prison and the community as well as historic and contemporary identities that defined Indigenous corrections in the twentieth century. There were the many motives that went behind the creation of craftsmanship, be it spiritual, cultural, social, vocational, or recreational. There were also the interconnections between Brotherhoods, community organizations alone that supported them, the administrations, and the wider public. Alone, no organization could have accomplished this kind of a project. Finally, the crafts themselves, whether they were articles of furniture, a drum, or a

²³ Hawker cites Anthropologist Wilson Duff who called this period “the dark ages of Northwest Coast art,” making this claim. See: Wilson Duff, “Contexts of Northwest Coast Art” in *Arts of the Raven: Masterworks of the Northwest Coast Indian*, ed. Vancouver Art Gallery (Vancouver: Vancouver Art Gallery, 1965). The quote is from: Ronald W. Hawker, *Tales of Ghosts: First Nations Art in British Columbia, 1922-1961* (Vancouver: UBC Press, 2002), 5.

²⁴ Pauline Hillaire, *A Totem Pole History: The Work of Lummi Carver Joe Hillaire* (Lincoln: University of Nebraska Press, 2013), xxv

totem pole all had numerous layers of meaning that shaped their significance.

The Penal Context

Prisoners could carve the totem pole in the 1970s because of developments in the penitentiary system more generally in the wake of the 1939 Archambault Report, which advocated for fundamental changes in the philosophy of the penal system from retributive to restorative justice. In this era several key programs that now define the correctional system emerged. Although it took several decades, the silent system was phased out by the correctional administration and more interactive programs were designed for the inmates, including sporting events, educational opportunities, the publication of penal literature, and promotion of craftsmanship within the prison.²⁵ In the twenty years that followed, many of the recommendations were implemented, most importantly in the case of the totem pole project the development of woodworking facilities in prisons beginning in 1947 with only two institutions, Collins Bay and Federal Training Centre with 65 inmates and five courses.²⁶ Beginning in the late 1960s, all five regions of the Canadian Penitentiary Service (CPS) experienced a dramatic increase in the vocational training programs where offenders learned marketable skills like woodwork, welding, and leatherwork. The most marked increase in the number of programs nationally took place between 1972 and 1973.²⁷

This was also a period of innovation by Indigenous prisoners specifically in the realm of material cultural production. Native Extraordinary Line of Furniture (NELOF), a furniture-building co-op, was the first of a series of handicraft groups in Canadian prisons. NELOF was incorporated under the British Columbia Cooperatives Act in 1974, and it began producing Native furniture by

²⁵ Joseph Archambault (Commissioner), *Report of the Royal Commission to Investigate the Penal System of Canada* (Ottawa: King's Printer, 1938), 341.

²⁶ Canadian Penitentiary Service, "Deputy Wardens' Conference, Theme: Programming by Objectives," (Correctional Staff College, Quebec: May 12-16, 1969), 73.

²⁷ Jean-Marie Robichaud, Mary Steinhauser, and Fred Luciani. *Analysis of Programs in Federal Corrections: Prepared for the Task Force on Integration of CPS-NPS by Sub-Task: Program Planning*, (Ottawa, 1976): 85-91.

January 6, 1975 with nine workers employed. By October, there were fifteen workers, meaning participation rates from the Native Brotherhood was nearly eighty percent.²⁸ By 1979 an external consultant estimated the net value of the cooperative at \$20,000 and suggested that it would soon make a profit.²⁹ NELOF was established thanks to the efforts of a group of innovative men who were committed to the cause of improving Indigenous peoples' experiences of incarceration. In Ontario, Native Arts and Culture Organization (NACO) was a joint venture between Saint Lawrence Community College in Kingston and the North American Indian Travelling College. Through NACO, volunteers entered Kingston area prisons and taught the Native Brotherhoods their culture and spirituality through craftsmanship programs. Carving the totem pole similarly became part of a healing process according to Indigenous worldviews as it represented ongoing cultural training. This project also served to unite the Native Brotherhood as a group, a purpose that the inmates themselves promoted to outside community members who they considered could learn from their example as socially engaged peoples. As a post script to a description of the donation ceremony, the Joyceville Native Brotherhood explicitly positioned the project as a unifying activity that peoples outside the prison could emulate on a larger scale.³⁰

The advancement of these types of programs, including NACO, NELOF, and the totem pole carving project, demonstrates the remarkable progress in Indigenous programming and the initiative of the Native Brotherhoods during the 1970s. It also shows that while prisoners were key figures in program innovations, communities that surrounded the prisons were also necessarily involved. In NELOF, it was the Allied Indian Metis Society (AIMS) house in BC, and Andy

²⁸ Joanne Hoople, "NELOF at Mountain Prison," *The Canadian Association in Support of Native Peoples Bulletin*, Vol. 16 no 3 (October 1975), 17. ; "Native Brotherhood," Con-Versely (Mountain Institution Penal Press: June 1976), 12.

²⁹ Library and Archives Canada, Studies and Surveys – Mountain – Collins Bay Comparative Survey, RG 73, Acc 1986-87/026, box 67 file 374-4-114, pt 1, DPA Consulting Ltd, "Comparative Survey of Collins Bay and Mountain Medium Security Institutions," Submitted to the Canadian Correctional Services, (February 1979), 40.

³⁰ "Totem Pole Tercentenary Gift to Kingston," *The Talking Leaves*, September 1973, 6. In Trent University Archives Series 82-014 Box 3, "Joyceville Ntv Brotherhood."

Anderson who offered his expertise in program development and administration. In NACO it was the travelling college. For the project, numerous communities were involved, ranging from Elders who offered teachings, the Union of BC Indian Chiefs who donated the cedar log, and the civic community of Kingston who accepted the pole.

Why a Totem Pole?: Connectivity and Neotraditionalism

Joyceville's Native Brotherhood was in its infancy during the early 1970s, only beginning in November 1970 after one inmate was transferred from Western Canadian prisons that had established their Brotherhoods in the late 1960s.³¹ The Brotherhood in Joyceville was smaller than similar groups in Western Canada, but they still had more diverse populations. In September 1973, of fourteen Brotherhood Members Mohawk, Oneida, and Ojibwa were all represented while in Western Canadian prisons populations were typically more homogeneously Cree.³² That the inmates in Ontario sought out a British Columbia Cedar log to carve what was traditionally a BC coastal artistic form sheds light on the dynamic nature of Indigenous identities within prisons in the 1970s.

There were several reasons that the Native Brotherhood decided to use the totem pole as an expression of their shared Indigenous identity. Indigenous prisoners often used the image of the totem pole for rhetorical purposes, either satirizing the cooptation of Indigenous cultures or defining the relationship between Indigenous peoples and settlers. For example, in Stony Mountain Penitentiary the Indian and Metis Brotherhood Organization's press published a faux-advertisement for the sale of any kind of pole, satirizing the increase in sales of what an inmate called, "Idiot sticks," or Japanese-made plastic totem poles sold in turn to Japanese tourists.³³ This advertisement

³¹ "Formation of Native Brotherhood," *The Talking Leaves*, Vol. 1, (1971), 2.

³² Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, May 9, 2013. ; "Native Brotherhood Members," *The Talking Leaves*, (Joyceville Penitentiary, September 1973), 1.

³³ Eugene Turnbull, "Idiots for All Occasions," *Highwitness*, Millhaven Penitentiary, (March/April 1985), 24.

read: “Want a souvenir? Try “Mikes!” Totem Poles, North Poles, South Poles, Barber Poles.”

Accompanying this message was an image of a thunderbird perched atop a barber pole sporting a price tag.³⁴ This commentary used the totem pole as symbolic of the way that Indigenous culture was commodified by outsiders, which many Indigenous craftspeople had long criticized. The same issue was noted in the Massey Commission of the 1950s, which remarked on Indigenous contemporary art, “Many of the products of the so-called Indian craftsman which do survive are degraded objects mass-produced for the tourist trade, badly carved miniature totem poles... and other regrettable “Indian” souvenirs made in Japan.”³⁵ Similarly, The Justice Group out of Stony Mountain Penitentiary also published an image with western-styled soldiers pointing rockets at a Totem Pole, with one of the Totems inquiring, “Who Invited You?” (Appendix 3, Figure 3) Again, the totem pole became a symbol of Indigenous peoples across Canada. Prisoners and commissioners alike critiqued a particular manifestation of the commodification of Indigenous culture: the imitation of Indigenous craftsmanship by outsiders.³⁶ Because the penal press was spread within the prison and to Indigenous communities, the critiques against cooptation of Indigenous culture were part of an ongoing discourse within and outside the prison walls.

Prisoners chose the totem pole as an artistic form because they had become emblematic of Indigenous identity more broadly speaking. Aldona Jonaitis and Aaron Glass wrote that while totem poles had always been Indigenous cultural productions, “when transformed by processes of representation, come to stand for something else, their meaning embedded in white attitudes

³⁴ Indian Metis Brotherhood Association, “Try Mikes,” Stony Mountain Penitentiary, (1974), np.

³⁵ Canada, *Report of the Royal Commission on National Development in the Arts, Letters and Sciences, 1949-1951* (Ottawa: Printer to the King’s Most Excellent Majesty, 1951), 240.

³⁶ The commodification of Indigenous culture has not always been a culturally erosive practice, and Indigenous peoples have a long history of selling representations of their art and culture for the tourist trade. Indeed, Ruth Phillips has shown that the creation of Indigenous artefacts for sale is an important way that First Nations peoples have responded in culturally appropriate and economically prudent ways to the arrival of settlers. See Ruth Phillips, *Trading Identities: The Souvenir in Native North American Art from the Northeast, 1700-1900* (Seattle: University of Washington Press, 1998).

towards Indians.”³⁷ They argue that the totem pole had become a representation of the beauty of Indigenous cultures while simultaneously marking them as disappearing. However, totem poles also became emblems of pan-Indigenous identity for prisoners during this time period. A cadre of Northwest Coast artists reinvigorated the contemporary practice of totem pole carving during the late 1960s as the form was accepted as “high art” by Euro-Canadian critics. The totem pole as art received official government sponsorship during events like the Montreal Expo ’67, leading to what commentators then erroneously referred to as a “renaissance” in Indigenous artistic expression, including the carving of totem poles, though in ways that did not reflect the so-called “authentic” art of the nineteenth century.³⁸ Thus, the choice of a totem pole was at the same time a reflection of historic traditions and an increasingly popular representation of Indigenous identity by Indigenous peoples and settlers alike.

The Joyceville Native Brotherhood sought out a Red Cedar from British Columbia for many of the same reasons that the wood was coveted by First Nations in BC in the first place. The durability and ease of carving that lent the wood to British Columbia totem poles also made it appealing to inmates in Joyceville. In addition, the inmates were themselves aware that traditionally totem poles were carved with this wood, and out of deference to west coast traditions the inmates sought this particular wood, even though the white pine native to Ontario had symbolic importance to the Haudenosaunee, which may have rendered it more appropriate to many inmates in Joyceville.³⁹ It was because of this historic and spiritual significance of the Red Cedar to First Nations peoples that the Native Brotherhood in Joyceville Penitentiary requested that the Union of

³⁷ Aldona Jonaitis and Aaron Glass, “Totem Poles and Contemporary Tourism,” in *The Challenges of Native American Studies: Essays in Celebration of the Twenty-Fifth American Indian Workshop*, eds. Barbara Saunders and Lea Zuyderhoudt (New York: Cornell University Press, 2004), 68.

³⁸ Ronald Hawker, *Tales of Ghosts: First Nations Art in British Columbia, 1922-61*. (Vancouver: UBC Press, 2002), 8-9. Aaron Glass, “History and Critique of the “Renaissance” Discourse” in *Native Art of the Northwest Coast: A History of Changing Ideas*, edited by Charlotte Townsend-Gault, Jennifer Kramer, and Ki-ke-in, (Vancouver: UBC Press, 2014)

³⁹ Personal Correspondence, Charlie, February 7, 2014.

BC Indian Chiefs (UBCIC) arrange to send them a Red Cedar log to carve. The Canadian Forestry Association donated the 42-foot pole for the UBCIC to send to Joyceville, which Canadian National Railways in turn shipped free of charge for the inmates to carve, arriving in the late spring.⁴⁰

It is not immediately clear what kind of totem pole the carvers created. While there was a clear form to which they held true, traditional totem poles had many forms and functions. Totem poles were positioned as longhouse posts, marking the clan and history of the people of that longhouse, there were mortuary poles which contained the body of the deceased in a box at its foot, memorial poles, or shame poles. Furthermore, there was considerable variation of the form of totem poles based on the purpose or the First Nation who produced it. All of this is to say that there is not nor was there ever a “typical” totem pole.⁴¹ Within the prison, the pole was used as a marker of Indigenous identities, a way to teach prisoners their culture, and as a way to communicate with the outside world.

What the totem pole says, both as an artistic form and the specific red cedar pole itself, is that Indigenous peoples adapted traditions in unique ways in the 1970s. Ultimately, as discussed below, the totems on the pole itself were overwhelmingly Ontario-centric, which reflects the geographic region and the carvers themselves. On the other hand, an appreciation and respect for other traditions, in this case those represented by the Union of BC Indian Chiefs, was also evident. In this case, Indigenous inmates in BC reclaimed a historic Indigenous image which in some cases symbolized settler expectations of Indigeneity. They reinvested the symbol with a meaning separate from the cottage industry of souvenir totem poles. The totem pole reflected this balance, therefore, between honouring traditions of specific First Nations while recognizing a similar value system that underpinned both traditions.⁴²

⁴⁰ “Ontario Totem was Once a B.C. Cedar,” *Nesika: The Voice of B.C. Indians*, Vol. 2 No. 8, August 1973.

⁴¹ Edward Malin, *Totem Poles of the Pacific Northwest Coast* (Portland: Timber Press, 1986), 45-51.

⁴² Charlie (former prisoner), interview with the author, September 9, 2013.

Joyceville Penitentiary's Totem Pole

Carving the log began on April 16, 1973 when Kingston and the Islands Member of Parliament Flora MacDonald attended a ceremony to make the first cut.⁴³ Following this ceremony, inmates removed the bark, treated the exterior of pole to avoid cracking or unintended splintering, and began the work of carving the pole itself. The carvers took over three months to work on the pole, ultimately presenting it to the city on July 28, though the pole was not complete at that time.⁴⁴ In this three month time period, the totem pole fulfilled one of the key purposes that it was meant to instill: it taught valuable skills to Indigenous inmates. The pole contained historical commentaries on the relation of Indigenous peoples to European settlers, and spiritual iconography from various Indigenous traditions. In an act of cultural pride and civic engagement, the Joyceville Native Brotherhood donated the final product to the city of Kingston in honour of the city's tercentenary. Joyceville's Native Brotherhood was in its infancy during the early 1970s, begun in November 1970 after one inmate was transferred from Western Canadian prisons that had established their Brotherhoods in the late 1960s.⁴⁵ The Brotherhood in Joyceville tended to be smaller than similar groups in Western Canada and had generally more diverse populations within these smaller populations, even when inmates tended to be from present-day Ontario.

In September 1973, of fourteen Brotherhood Members Mohawk, Oneida, and Ojibwa were all represented while in Western Canadian prisons populations were typically more homogeneously Cree.⁴⁶ Though the totem pole as an artistic and cultural form originated from the coastal Nations of

⁴³ "MacDonald Aids Project," *The Advance*, Joyceville Penitentiary, (June, 1973), 5.

⁴⁴ "Totem Pole Dedicated," *The Advance*, Joyceville Penitentiary, (August, 1973), 43.

⁴⁵ "Formation of Native Brotherhood," *The Talking Leaves*, Vol. 1, (1971), 2.

⁴⁶ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, May 9, 2013. ; "Native Brotherhood Members," *The Talking Leaves*, (Joyceville Penitentiary, September 1973), 1. In this issue of the Talking Leaves, another member of the group self-identified as Chippewa, which is another moniker for the Ojibwa Nation. This may be because he was from a First Nation community that identified as Chippewa, such as Chippewa of the Thames, for example, or as a different personal preference. There is no way to tell for certain.

British Columbia, Joyceville's pole had diverse meanings from across Canada, with a particular emphasis on central Canada and Ontario. At the same time, these totems had multiple meanings that reflected the sacred history of the Haudenosaunee and Anishinaabe, the modern history of settler-Indigenous relationships, and societal structures of Indigenous communities. It also reflected the goals and motive of the Brotherhood itself. Though some symbols tended to emphasize one dynamic of this historical and cultural context, each held portions of all of these diverse meanings.

The imagery on the pole and the meanings that those carvings held were central to the project. For example, the carving of the pole was both a process of physical creation and a sacred act because Elders entered the prisons and gave the carvers teachings as they carved. At the top of the pole was a Thunderbird, a bird with its wings outstretched, one of the most recognizable images of totem poles. Underneath this, in turn, was a loon, a wolf, and a beaver, each of which was a clan symbol for the Haudenosaunee or Anishinaabe, and also held significance in Indigenous history. Underneath this was four men, two native and two non-native, which covered the space of one symbol on the pole, followed by another image which was a single Native man. Beneath this were two more clan symbols, the bear and the turtle. At the bottom of the pole were the five roots of peace, which represented the five Nations of the Iroquois Confederacy, and rooted the pole to the next totem, "the mother earth."⁴⁷ Of ten carvings, five were Haudenosaunee clan symbols, though inmates did not define the symbols as exclusively Haudenosaunee, as certain symbols are common across many First Nations cultures. These specific totems were the loon, wolf, beaver, bear, and turtle. Each of these had societal functions, as clan networks in traditional societies guided interactions. At the same time, sacred teachings went alongside each of these totems, meaning that the pole itself became representative of teachings from First Nations societies. Each of these

⁴⁷ "Totem Pole Tercentenary Gift to Kingston," *The Talking Leaves*, September 1973, 6. In Trent University Archives Series 82-014 Box 3, "Joyceville Ntv Brotherhood."

symbols came with particular significance that related to the Brotherhood and the history of Canada, as was appropriate for the tercentenary event.

The thunderbird that capped the totem pole represented the cultural origins of the totem pole as a form, but also contained symbolism that represented more localized coastal traditions. The thunderbird design became emblematic for coastal art, so much so that Indigenous carvers could not keep up with demand for miniaturized versions of this design that plastic and wooden representations of the thunderbird totem were produced in Japan, Mexico, Alaska, Seattle, and Switzerland.⁴⁸ Other than the form itself, the thunderbird reflected British Columbia coastal traditions. The thunderbird capped the pole because it was imposing and beautiful, but there were nuances that gave this totem regional variations.⁴⁹ Inmates understood that the totem pole did not come from their traditions, yet they had no qualms about adapting the artistic form to Haudenosaunee and Anishinaabe traditions. Still, there were Anishinaabe and Ojibwa thunderbird traditions that the pole spoke to. Among the Ojibwa, in general, animals that live in the sky, known as the thunders, are seen as friends to people because they protect humans from creatures that occupy the waters.⁵⁰ Tom Boyer, the carver of this totem, explained that the thunderbird carried the spirit to the afterlife, or to “heaven.” He went on to explain that dots on the wings represented lakes and animals in Ontario, illustrating their connection to the spirit world.⁵¹

Beneath the thunderbird were three images: a loon, a wolf, and a beaver, in that order. The loon represented the trapper, and the beaver and wolf were both important for their hides in the fur trade in Canada, around which Kingston’s earliest settlement depended.⁵² Thus, these carvings

⁴⁸ Edward L. Keithahn, *Monuments in Cedar*, (New York: Bonanza Books, 1963), 145.

⁴⁹ Charlie (former prisoner), interview with the author, September 9, 2013.

⁵⁰ Michael Pomedli, *Living with Animals: Ojibwe Spirit Powers* (Toronto: University of Toronto Press, 2013), 193-4.

⁵¹ Alvin Armstrong, “Clan Symbols Mark Totem,” Queens University Archives, William C. Baird fonds Box 2, File 163, “Presentation of Totem Pole to Kingston, July 28, 1973, item 3313-3335.

⁵² Alvin Armstrong, “Clan Symbols Mark Totem,” Queens University Archives, William C. Baird fonds Box 2, File 163, “Presentation of Totem Pole to Kingston, July 28, 1973, item 3313-3335.

explicitly reflected the economic history of Canada.⁵³ Combing these figures that directly addressed the historical relationships between First Nations peoples and settler populations with the cultural production as a whole made an important point; Indigenous societies played and continued to play an important role in the material, cultural, and spiritual life of Canada. Charlie, in introducing the project, discussed how what was settled as Fort



Figure 1: The Joyceville Totem Pole, image via Google Maps Street View

Frontenac had long been an area of congregation for Indigenous societies, and that the imprints of those societies shaped both the fort and the city that it ultimately became.⁵⁴ The totem pole project was envisioned as an example of the cultural engagement of Indigenous inmates with the outside world, both the Native and non-Native spheres. Part of this project celebrated the fact that Indigenous peoples played a historically pivotal role in the cultural and economic development of

⁵³ This history was the basis for Harold Innis's important book, *The Fur Trade in Canada*, which many credit as establishing the field of Canadian history as a legitimate subject of historical inquiry apart from British history. It is also the subject of A.J. Ray's path breaking work, *Indians in the Fur Trade*, which established the field of Aboriginal history within the mainstream of academia.

⁵⁴ "Totem Pole Tercentenary Gift to Kingston," *The Talking Leaves*, September 1973, 6. In Trent University Archives Series 82-014 Box 3, "Joyceville Ntv Brotherhood."

the region. Another part of the project was rooted in the pole itself as illustrative of the ongoing roles that Indigenous peoples played in Canadian life.

The carving of the four men, also carved by Charlie, represented the historical interactions between Nations and settlers. It shows the treaty relationships, simultaneously commenting on equitable relationships during the early colonial period and prescribing a mechanism for current healing on a nation-to-nation basis. The image of the four men was likely the furthest departure from so-called “traditional” totem pole imagery for several reasons. First, it was a single symbol that incorporated four images. Secondly, it moved away from reflecting sacred history towards material history. There were specific figures that were meant to invoke particular historical processes. The priest and the trader were paired with two Indigenous peoples to illustrate the full nature of historical and cultural exchange between Indigenous peoples and settlers. Put within the context of the other images, which reflected the kinds of furs that Indigenous peoples traded with settlers in the colonial era, the image had the capacity to show the ongoing influence that Indigenous peoples had and continued to have in the history of Canada.

That this pole was donated at the tercentenary shaped the poles meaning both as a tangible historical artifact and as an event; this event was reflected in many of the carvings itself. The one figure that most directly addressed these presentist concerns, however, is the figure of a single Native man in ceremonial regalia. The Native man, carved with an elaborate headdress that distinguished this representation as an authority figure in First Nations communities. In his hands are two sceptres, both carved and painted in jewels. These scepters represented the past and present role of the British monarchy in Indigenous and Canadian history, a specific reference to the tercentenary event taking place that year, which was the motivation to donate the totem pole in the

first place. The British monarchy was prominently featured because during the celebrations Queen Elizabeth II and Prince Phillip visited the city.⁵⁵

The bear, a clan symbol for numerous First Nations including the Haudenosaunee and Annishinaabe also had sacred dimensions that were especially appropriate within the context of prisons. The bear was symbolic for healing, which had numerous implications for the inmates. Brotherhoods pursued a culturally sensitive approach to healing within the context of a colonial setting that did not lend itself to healing in the sense that most First Nations peoples intended. Thus, the symbol of the Bear had serious implications for the activities by Indigenous peoples in Canadian prisons. Charlie, who carved that image, remembered his role in carving the Bear image:

It was part and parcel of the overall teachings. First of all, the bear was the symbol of healing among a number of the Nations across this country and on both sides of the border... But the Bear is a symbol of healing and the idea is that there has to be healing that takes place between the settlers and the First Nations and their descendants. The other thing is that individual healing has to take place. So that's the symbolism of the bear and so I was glad to do that. I was put back in Joyceville inside the pen proper and the pole was already there and carving was about to start. So I was lucky [laughs] quote and unquote, in that respect.⁵⁶

In the twentieth century, the bear's healing was also prescriptive for healing between First Nations and settlers. The spirit of the gift of the pole was part of this healing process, making this symbol incredibly pertinent to the era in which the pole was carved.⁵⁷ In this way, the goals of the Native Brotherhood, Indigenous clan symbols, and sacred teachings all coalesced in the figure of the Bear.

The turtle was placed at the bottom of the pole because it has a central feature in the origin story for many First Nations, and that is reflected in the name "Turtle Island," which is a common demarcation for what settlers termed North America. The Turtle is a clan symbol for Haudenosaunee, among many other First Nations cultures it also plays the central role in the

⁵⁵ Queens University Archives, Kingston Miscellaneous Collection, "Kingston is resigned to shortened visit of King, Queen Sunday" Location 2285, Box 4, File 1.

⁵⁶ Charlie (former prisoner), interview with the author, September 9, 2013.

⁵⁷ Charlie (former prisoner), interview with the author, September 9, 2013.

creation story.⁵⁸ In this story, after falling through a hole in the sky, a pregnant woman was saved by sitting on the back of a giant turtle. To make space on the turtle's back, an otter brought mud from the bottom of the sea, and the woman's twins turned that mud into the geographic formations of what many First Nations refer to as "Turtle Island."⁵⁹ In this way, the turtle at the foot of the totem pole represented both the social structure of Indigenous communities while it told a creation story. While Pacific Coast totem poles do not attribute special significance to any position on the pole itself, the turtle being the lowest creature on this particular totem pole told sacred history of Indigenous peoples. The notion of being "low on the totem pole" as a negative position came only later as settlers ascribed notions of hierarchy to what was a documentation of stories, lineage, or remembrance.

The pole also had meaning by virtue of the historical moment at which it was donated to the city or within the history of Indigenous movements within correctional institutions limits our perspective of what the pole was and what it meant. If the pole was an event, what was the meaning of that event? On one hand, the symbols of the pole were reflected in discourses surrounding the donation itself and the wider celebratory atmosphere of the tercentenary. At the same time, this fits within a particular point in correctional history, as this was part of a genesis of trends in Corrections wherein grassroots Indigenous movements developed into dynamic and articulate groups who formed the basis of a new approach to corrections in the decades that followed, an approach rooted in decolonizing the personalities of Indigenous inmates and directly facing the historical processes that led to Indigenous overrepresentation in Canadian prisons.⁶⁰

Donating the pole in this public way meant that the Brotherhood was able to establish

⁵⁸ William N. Fenton, *The Great Law and the Longhouse: A Political History of the Iroquois Confederacy*. (Norman: University of Oklahoma Press, 1998), 25.

⁵⁹ Tom King, *The Truth About Stories: A Native Narrative*, (Toronto: House of Anansi Press, 2003), 10-20.

⁶⁰ Seth Adema, "Our Destiny is not Negotiable": Native Brotherhoods and Decolonization in Ontario's Federal Prisons, 1970-1982," *Left History* Vol. 16 No. 2 (Fall/Winter 2012), 37-54.

connections and social links with the outside community. This included both the First Nations communities from the region, but also society at large. One of the carvers described the project as showing that Native peoples generally, and inmates in particular, could come together and construct something of civic and cultural value, and in doing so ensured their contributions to social life in the city at large.⁶¹ Doing this within the institutional goals of the prison also facilitated this project, as the development of handicrafts and the promotion of skills for employment upon release fit within the institutional mandate of Correctional Services Canada. Maintaining this connection to the outside community was a struggle that many institutional Brotherhoods shared, as events, powwows, and ceremonies held by the Brotherhood were poorly attended by outside community members who in many cases were happy to see alienated and delinquent members of their society outside of their communities.⁶² One way that this connection was maintained was through large public events that brought attention to their plight. A result of the totem pole project was the inclusion of outside individuals in the Brotherhood's work. For example, Rosamond Norman, an employee from the Alcohol and Drug Abuse Research Foundation, became a resource for the group because the project brought her into the social network that the Brotherhood was building. Through her connections in the Indigenous community, the Brotherhood attracted Fred Wheatley, a fluent Ojibwa knowledge keeper and storyteller who regularly attended Brotherhood meetings and taught inmates about their heritage, which was again a major goal of the group.⁶³ Wheatley had much in common with many of the inmates, as he was a survivor of the residential school system and had lost his language through the process of colonial education. He returned to his home community, reclaimed his Ojibwa

⁶¹ "Totem Pole Tercentenary Gift to Kingston," *The Talking Leaves*, September 1973, 6. In Trent University Archives Series 82-014 Box 3, "Joyceville Ntv Brotherhood."

⁶² Christie Jefferson (Parole Board Officer) interview with the author, February 10, 2014.

⁶³ "Big Boost from Outside Worker," *The Talking Leaves*, September 1973, 4. In Trent University Archives Series 82-014 Box 3, "Joyceville Ntv Brotherhood."

language, and became a language instructor at Trent University.⁶⁴

The notion of brotherhood, which was central to the organization of the Native Brotherhood movement and its development, was central to the carving project. The first aim of the Joyceville Native Brotherhood was unity. When interpreting the totem pole within that framework we see that as a unifying event it was successful. In the September 1973 edition of the group's newsletter the editor reported that the pole project served to maintain the group through early growing pains as they sought to establish themselves in the penal landscape.⁶⁵ Brotherhood members who worked on the totem pole and were engaged with the Native Brotherhood in that institution discussed both the group and the project as something that they used to come together through.⁶⁶

Prisoners also showed their personal contributions to the city of Kingston. In so doing the pole humanized prisoners, showing to others and to themselves that they had something meaningful to contribute. Whereas many envisioned the prisons as an economic boon, the social dynamics of the penitentiary were never contained within the prison walls. The development of the penal system, for example, paralleled the development of the Canadian state as it became increasingly directly involved with the lives of its constituents.⁶⁷ One commemorative book published concerning the tercentenary featured a historical survey of incarceration in Kingston, evolving from the military holding cells in Fort Frontenac to the construction of KP, and ultimately to the reform institution of the 1970s.⁶⁸ Thus, Kingston was tied to the institution and architecture of Kingston Penitentiary and, to a lesser extent, the other institutions that surrounded it to form Canada's penal archipelago. Rarely were the prisoners considered within this civic identity. In another tercentenary publication,

⁶⁴ "Fred Wheatley Faculty Webpage," Trent University, www.trentu.ca/teaching/wheatley_fred.php (Accessed February 12, 2014).

⁶⁵ "A Word From the Editor," *Talking Leaves*, (Joyceville Institution, September 1973), 1.

⁶⁶ Charlie (former prisoner), interview with the author, September 9, 2013.

⁶⁷ Allan Greer and Ian Radforth (eds.), *Colonial Leviathan: State Formation in Mid-Nineteenth-Century Canada* (Toronto: University of Toronto Press, 1992).

⁶⁸ Kathleen Healey and C.A.M. Edwards, "The Changing Prison in an Expanding City," in *Kingston 300: A Social Snapshot*, edited by the Kingstonsians (Kingston: Hanson and Edgar Ltd, 1973), 153-156.

From Buckskin to Broadloom, the Indigenous contribution to the city's history ended after what the author refers to as "the buckskin era" from 1673 until the establishment of British legal rule in 1784, which effectively positioned the law as eliminating Indigenous history as a new colonial geography was imposed.⁶⁹ The totem pole showed that Indigenous peoples played a pivotal role within this civic narrative.

The presentation of the totem pole to the city, and the festivities that surrounded that presentation, an important public event that drew the attention of the outside community and maintained that engagement for years to come. Once the totem pole was set up, many people from Kingston were aware of its penal origins, and in that respect the project was a success.⁷⁰ When the pole was mounted in its final position, at Catarakwi Park outside of Belle Park Fairways golf course, it showed the Indigenous contribution to Kingston's cultural life while reminding passers-by of the inmates who carved it. This only lasted as long as collective memory maintained it, but at the time of donation it was commonly understood to be a contribution by inmates to the city. It was also successful in bringing individuals to support the Brotherhoods in the Kingston area generally, and specifically for the Joyceville Native Brotherhood.

The pole was carved during a period of intense activism and growth by the Native Brotherhood and in Indigenous correctional programming. When this momentum tapered the totem pole took on a new level of meaning. The pole became a reminder of an important era in Indigenous corrections when apathy was easier to overcome. The Kingston *Whig Standard* reported that the totem pole represented the zenith of the Joyceville Native Brotherhood. According to Allied Indian and Metis Society (AIMS) spokesman Bill Badcock the inmates were free to devote almost all of

⁶⁹ Alvin Armstrong, *From Buckskin to Broadloom: Kingston Grows Up*, (Kingston: Kingston Whig-Standard, 1973), 3-36.

⁷⁰ Alvin Armstrong, "Clan Symbols Mark Totem," Queens University Archives, William C. Baird fonds Box 2, File 163, "Presentation of Totem Pole to Kingston, July 28, 1973, item 3313-3335.

their time to carving. Although at the time there were discussions of a Native workshop that would carry on the work begun through the totem pole project, these plans never came to fruition.⁷¹

Other Totem Poles

Following this project, several groups in Kingston's federal prisons carved poles. Each of these similarly contain multiple layers of meaning. We cannot reduce the practice of inmate-carved totem poles to a new genre, or assume that because others carved their own poles that they had the same motivations. While it is true that totem poles were most often carved to be donated, either within schools or prisons or elsewhere, the totems themselves varied greatly as did their purpose.

Another totem pole was carved at Collins Bay in 1979 when Bobby Woods was an inmate-leader of the Native Brotherhood and groups were closely communicating with each other.⁷² Many of the motivations behind carving the Collins Bay pole mirrored the one from Joyceville, but the event of the tercentenary having passed changed the dynamic of civic activism.⁷³ Notwithstanding, the intent of the Collins Bay pole was to be erected at the Kingston Township offices.⁷⁴ While the Joyceville pole was donated during a high point of civic engagement, the Collins Bay pole was donated when this engagement was in decline as is typical following major events in the life of a city. Ultimately this pole was mounted on Belle Island, a recreational area in the city. At roughly the same time the city of Prince Albert received an inmate-carved totem pole that now sits on the bank of the North Saskatchewan River. Unlike the pole at Joyceville, this was carved by one master carver, and the man was originally from British Columbia, speaking to the continued cultural relevance of the

⁷¹ Greg Eurijuk, "Brotherhoods: Some Provide Little More than Companionship," *Kingston Whig-Standard*, Thursday, April 1, 1976, 68.

⁷² Trent University Archives, RG 82-014 (CASNP Fonds), Box 3 of 4, "AIMS Ontario"

⁷³ Laurel Claus-Johnson (Advocate for Aboriginal Prisoners), Interview with the author, August 15, 2013.

⁷⁴ Communications Branch, Public Participation Division, Correctional Service Canada, "Analysis of Proposal by Kingston City Police Force for Funding by Federal Government," October 1979, 12.

nation of origin for First Nations inmates.⁷⁵ Having one master carver undergo the entire project was the original pattern of totem pole carving. While Northern Saskatchewan is an unusual place historically for a totem pole, the Prince Albert pole more closely aligned with traditional forms.

During the early 1980s, a totem pole-carving boom began in British Columbia prisons, where the poles were shipped to Europe in order to stand in prominent locales in the political and spiritual life of the globe. In 1983 twelve Native inmates in Mountain Institution in Aggasiz, British Columbia carved a fifty-three foot pole that was donated to the World Council of Churches on the event of its sixth assembly.⁷⁶ At a gift-giving ceremony attended by many top delegates from within the World Council of Canada, the institutional Elder called the pole a statement of brotherhood and love.⁷⁷ The totems themselves told the story “of humanity’s journey through the ages,” and received media attention from Canada and around the world.⁷⁸ Within a year of the Mountain pole’s donation, inmates at Matsqui also carved a pole, this one to be donated to the Canadian consulate in Strasbourg, France.⁷⁹ This pole was carved by Tsimshian master carver and inmate Gerry Dudoward, and was sent after a blessing ceremony by an Elder that was attended by roughly 200 inmates and their families.⁸⁰ This tradition continued in the 1990s, still another totem pole was carved, this time at William Head Institution where the pole was raised during a ceremony attended by roughly fifty people on July 9, 1997. This five meter pole was carved mostly by inmate Narcisse Baptiste who learned carving while incarcerated and, unlike the aforementioned poles, this one

⁷⁵ “Men Carving the Prince Albert Totem Pole,” Prince Albert Historical Society (PAHS) Archives collection, PA Totem Pole 1975 020

⁷⁶ Rev. David Gill, “Gathered for life : official report, VI Assembly of the World Council of Churches, Vancouver, Canada, 24 July-10 August 1983. (Grand Rapids: W.B. Eerdmans c1983).

⁷⁷ “World Council of Churches Delegates Honor 12 Native Inmate Totem Pole Carvers,” *The Mountaineer*, (Aggasiz, BC: Mountain Institution, August 1983), 11.

⁷⁸ Ann Weldon, “Totem Pole is a gift to WCC from the oppressed Nations,” *St Petersburg Independent* (Florida), Saturday, August 27, 1983, 5-A.

⁷⁹ “Matsqui Totem Pole Blessed,” *Let’s Talk*, Vol. 9 No. 19 (Ottawa: Public Affairs Division, Canadian Penitentiary and National Parole Services, October 15, 1984), 4.

⁸⁰ Totem Pole Carved by Native Convicts Sent to France,” *The Montreal Gazette*, July 10, 1984, 6.

remained in the penitentiary grounds.⁸¹ This is an important difference because in many traditions the location of the totem pole informed its meaning. While the Joyceville pole was a communication piece with the outside community, this particular pole served to stake a claim to the land for Indigenous peoples, showing that the prison was an imposition on Indigenous territory.

Conclusion

The Joyceville totem pole contains multiple layers of meaning. On one level this pole is illustrative of the neo-traditionalism that emerged in Canada during the late 1960s as inmates blended First Nation traditions. Through the carving of this pole, inmates adapted Indigenous healing in a way that correctional administrators understood as rehabilitation. The totems carved into the pole also were steeped in meaning, with different groups seeing disparate meanings within it. Inmates themselves saw the pole as simultaneously documenting Indigenous history in Canada and eliciting the sacred from Indigenous worldviews. The imagery within the pole adapted both local and Pan-Indian themes. This was not an appropriation of west coast artistic forms by central Canadian First Nations, but rather was part of dynamic processes where Indigenous peoples adapted traditional practices and imbuing them with a new significance. The totem pole was not an art form original to the Haudenosaunee or Anishinaabe carvers, which leads to several questions of the impact of representations of Indigenous cultures by settler peoples. Indigenous peoples who did not historically have roots in this form also began to adopt it as a symbol of Indigeneity, but adopted it

⁸¹ "Raising of a Totem Pole," *Let's Talk*, Vol. 22 No. 4 (Ottawa: Public Affairs Division, Canadian Penitentiary and National Parole Services, October 1997), 27. ; Most recently, totem pole carving from within prisons has diversified to include more types of poles, most interestingly a memory pole carved in 2011 in honour of Liz Elliott, a criminologist who was devoted to restorative justice. See: "Totem pole to honor restorative justice pioneer" Simon Fraser University Media Release, www.sfu.ca/pamr/media-releases/2011/totem-pole-to-honor-restorative-justice-pioneer.html, accessed February 12, 2014.

to their own cultural forms.⁸²

In donating the final product to the city, the pole also became an event in itself and representative of a historical era in the history of Indigenous corrections, as well as capturing a moment in the civic life of the city of Kingston. Within this context, the pole illuminated ways that both Indigenous peoples and inmates contributed to the cultural life of Canada. Thus, the pole became mechanism whereby the prison population engaged with the outside community. Finally, in the years after the erecting of this totem pole, the pole continued to evolve, gaining meaning through processes of remembering and forgetting. This totem poles was a multilayered cultural production that has had a rich social life that reflected and directed Indigenous cultural movements in Canadian prisons.

The 1970s was an important decade in the expansion of Indigenous programming in Canadian prisons. Part of this larger trend was the creation of physical items. In creating Indigenous crafts, prisoners expressed new Indigenous identities that reflected the diverse heritage of heterogeneous Indigenous peoples, were grounded in particular traditions that depended upon the local cultural context both within the incarcerated population and external community volunteers, and responded to the penal context within which prisoners worked. In other words, the material culture that Indigenous prisoners created were rooted in historic realities while responded to contemporary concerns and realities. After the pole was donated to the city, several inmates were escorted to the site of the pole to finish the pole, as the roots at the base were not yet finished, and to repair the pole as needed. This duty fell to the Liaison Officer who, in consultation with Joyceville warden Art Trono brought the men to the pole to work.⁸³ This again speaks to two changes that allowed the project to develop the way it did. First, the security-clearance that allowed inmates to

⁸² Aldona Jonaitis and Aaron Glass, *The Totem Pole: An Intercultural History*, (Vancouver: Douglas and McIntyre, 2010), 22.

⁸³ Library and Archives Canada, "CASNP" RG 73, Acc No 1986-87/026 Box 11 File 155-C24 Part 1.

leave the penitentiary to work on this pole was a relatively new. Joyceville, which was one of the first medium security federal institutions, only opened its doors in 1959.⁸⁴ A second point is that institutional variations were profound, which often was the result of personality differences between wardens and group dynamics among the guards. Joyceville was agreeable as an institution, as Hank Neufeld, who was the warden in 1977, referred to it as “a happy medium.”⁸⁵

Projects like the totem pole show how Indigenous prisoners were not isolated, but exist within a wider historical and social context of the 1970s. It is tempting to view the history of Indigenous incarceration as isolated from the rest of Indigenous history. However, the initiatives that took place within the walls were and remain tied to the efforts of those outside the walls. Craftsmanship programs could never exist in this imagined isolation. NELOF relied on Friendship Centres and AIMS to sell their goods and bring raw materials into Mountain Institution. NACO was entirely run by people from outside the institution. The totem pole was transported by the Union of BC Indian Chiefs, was imagined as a communication piece with the outside world, and attracted external people to work with prisons. Therefore, the history of craftsmanship programs in prisons demonstrates the degree to which prisoners were engaged with the wider Indigenous community.

Looking closely at material culture shows that Indigenous peoples understood their identities as nested. The pan-Indigenous identities that were promoted within the prison celebrated the cultural variety that had always characterized Indigenous North America. The totem pole is an example of neotraditionalism, as the imagery within the pole integrated traditions from across Canada. But even there the local meanings of the totems remained significant. At one level, the type of programming responded to local needs, and this local variation occasionally included cultural differences between Indigenous prisoners. Most importantly, Indigenous prisoners found ways to

⁸⁴ Canadian Penitentiary Service, *Annual Reports of the Commissioner of Penitentiaries of Canada* (Ottawa: Queens Printer, 1959).

⁸⁵ Hank Neufeld, *Warden*, (Burnstown Ontario: General Store Publishing House, 2000), 9.

express themselves that was true to their own cultural identities.

Material production also had a sacred component which ran through all handicrafts and creative work that prisoners took part in. NACO was always run by Elders and community members who emphasized the role of the sacred in their efforts before they spoke of vocational or financial benefits that would come from the program. It was in bringing in Elders and teaching prisoners about their cultural heritage that the program was seen as the most useful. Similarly for NELOF, after the program was begun the prisoners reported an increased interest in what Joanne Hoople called “spiritual dancing” which led to new kinds of programming for the Native Brotherhood in Mountain Institution.⁸⁶ The imagery within the totem pole at Joyceville Institution was directly linked to the sacred, and the carving process included teachings regarding this imagery. The significance of the imagery in all of these programs assumed equal significance to the vocational training that volunteers and prisoners used to sell the program to the administrations. The ways that prisoners “sold” the programs speaks to another dynamic at play in the promotion of craftsmanship. Prisoners and volunteers needed to promote the activities to the institutional staff in such a way that they would be either funded or merely allowed to continue operating, even if the dynamics of the program they used rhetorically were not central to the programs’ ultimate success. Put in other words, Indigenous craftsmanship was used to promote culture, but to secure funding, such programs had to be justified using CSC’s language. That is why the vocational side of programming was promoted externally while internally the role of the sacred and of cultural education was actively fostered. This shows another way that prisoners needed to operate within the limitations of prison.

The craftsmanship programs of the 1970s demonstrated the complexity of Indigenous

⁸⁶ Joanne Hoople, “NELOF – An Extraordinary Undertaking at Mountain Prison,” *CASNP Bulletin* vol 16 no 3 (October 1975), 18.

There are many kinds of dances that depend based on the context, but when Hoople referred to this, she was not specific in what kind of dancing took place. It seems that this was a general statement that evokes an increasing interest in the many forms of dancing, but that is conjecture.

programming in prisons. The meaning of these programs varied depending on the audience. Prison administrations envisioned the programs within a history of vocational programs that were introduced in the 1950s. Conversely, Indigenous prisoners viewed the program as the product of the then-fledgling Native Brotherhood movement. The benefits of the craftsmanship programs aligned with the constitutions of the local Brotherhood organizations. This meant that the goals of unity, reclaiming Indigenous culture and heritage, and helping their Brothers heal took precedence over vocational aims. Neither the cultural nor the vocational value of the program was absent to either group, but the distinction is important. By finding new ways to organize themselves, express their Indigenous identities, and develop innovative approaches to healing within prisons, the Native Brotherhoods and those organizations that supported them illustrates the many faces that Indigenous programming had for in Canadian penitentiaries in the 1970s. The Joyceville Penitentiary totem pole was an especially visible example of this pattern.

Conclusion: Colonialism, Decolonization, and Neocolonialism in Prisons

That the power of spiritual expression and experience should have emerged as a central issue for Native prisoners is a remarkable historical phenomenon.

- Michael Jackson, *Locking Up Natives in Canada*¹

The history of Indigenous peoples in prisons defies historical narratives of “progress” or of “hegemony.” By looking at the Canadian prison system and its history through an Indigenous historical consciousness, we begin to see instead that the prison was much more than the debates that surrounded it concerning rehabilitation or punishment: the prison was fundamentally colonial and the processes that took place within it were shaped by that colonial reality. While built within a framework of settler colonialism, the prison became an arena for decolonization, which was evident in the introduction of cultural and spiritual programs in institutions. While similar processes took place in Canadian colonial history in institutions like the Residential Schools, it was unique in the prison because of the longevity of the system, the persistent confidence in incarceration on the part of settlers, and the nature of life inside the total institution. Conducting ceremonies and building sweat lodges decolonized and indigenized the prison itself. It was also an arena for neocolonialism when the state regulated when Indigenous practices were introduced and controlled what sacred items could be used. The state also attempted to take control of implementing the practice of Indigenous cultures through formalizing the practices through policy developments. In functioning within the prison, Elders had to accept a certain degree of structure and administrative hierarchy, which represented the European imprint on the practice of spirituality. Regardless of the Indigenous influence on the practice of incarceration, the penitentiary remained a penitentiary. Thus, with the introduction of Indigenous cultural programming in prisons, simultaneous process of westernization

¹ Michael Jackson, *Locking Up Natives in Canada*, 90.

and indigenization created a new context for the expression of traditional values within penitentiaries. Therefore, the history of Indigenous peoples in Canadian prisons is defined by the ongoing processes of colonialism, decolonization, and neocolonialism.

Colonialism

That the prison system fits within a network of colonial institutions is clear in the origins and early history of the penitentiary system in Canada. That the Bagot report of 1844, which first proposed the government send Indigenous children to residential school also recommended that Indigenous adults be sent to jail, is clear evidence of this point.² The prison represented the ultimate manifestation of an ideology of civic responsibility to the liberal state. When individuals failed to live up to the social contract, they were punitively incarcerated and were expected reform to align with expectations of Canadian citizenship. These expectations were colonial. In some cases the “crime” Indigenous people committed was their being Indigenous.³ However, it was more often the case that Indigenous peoples were incarcerated for theft, horse thievery, or other crimes for which terms within the penitentiary was more important for its symbolic role in the “civilization” of the land and the people of the land.⁴ By the late twentieth century, Indigenous peoples were not incarcerated because of their identities, but the cause their over-representation in prisons was still fundamentally colonial.

Incarceration replaced Indigenous methods of social control, and in so doing attempted to force Indigenous peoples into a foreign justice system without legal or moral justification. In taking prisoners away from their families and communities and putting them in institutions where many fell

² Canada, Legislative Assembly, Report on the Affairs of the Indians in Canada 1844, Journal of the Legislative Assembly, Appendix EEE, 1844-5.

³ See Cole and Chaiken, *An Iron Hand Upon the People* (Vancouver: Douglas and McIntyre, 1990).

⁴ The most important symbolic use of the penitentiary was in the incarceration of Mistahimaskwa (Big Bear).

ill or died, and expecting them to adopt European ways of being, the prison system marginalized Indigenous nations and eliminated their capacity to confront and resolve transgression in culturally appropriate ways. The social impact of this was dramatic, and fits within patterns well established in other colonial institutions. This had an inherently sacred dynamic to it. Indigenous ways of healing were sacred, as the law such as it was in Indigenous communities was seen as a gift from the creator. That is why healing in Indigenous traditions differs from punishment in Canadian prisons. But the penitentiaries were not built on an atheistic base. Rather, the most basic element of the earliest penitentiaries was the role of the chaplain in establishing penitence.⁵ Therefore, in building prisons and confining Indigenous peoples within them, the Canadian penal apparatus enforced the use of a Judeo-Christian approach to rehabilitation. It did this at the exclusion of traditional healing, to the detriment of Indigenous prisoners and their communities.

While the prison was created as part of the expanding liberalism of the nineteenth century, the colonialism inherent within it persists. While there has always been criticism of the Canadian penitentiary system, the most enduring feature of prisons in Canada is their continuity.⁶ Therefore, when Indigenous peoples entered prisons in the twentieth century, they endured the legacy of a colonial institution that had not been meaningfully re-evaluated. The rise in Indigenous incarceration during the post-WWII era indicates that colonialism continued unabated in the twentieth century. While statistics of Indigenous incarceration are suspect because the racial identity of prisoners was either determined by physical appearances or self-identification which is similarly suspect, there does seem to be a dramatic increase in Indigenous incarceration rates between the 1930s and the 1960s.

⁵ See: Rainer Baehre, "Origins of the Penitentiary System in Upper Canada," *Ontario History* 69 (1977), 185-207. ; Ted McCoy, *Hard Time: Reforming the Penitentiary in Nineteenth-Century Canada*. (Edmonton: AU Press, 2012). ; Michael Ignatieff. *A Just Measure of Pain: The Penitentiary in the Industrial Revolution*. (New York: Pantheon Books, 1978).

⁶ Michael Jackson, *Justice Behind the Walls*, 32.

While language of assimilation was no longer used after the 1938 Archambault Commission initiated a period of prison reform, the colonial footprints of this system endured. Legal scholar Michael Jackson put this eloquently for the Canadian Bar Association,

Prison has become for young Native men, the promise of a just society which high school and college represent for the rest of us. Placed in a historical context the prison has become for many young Native people the contemporary equivalent of what the Indian residential school represented for their parents.⁷

Jackson forcefully shows the degree to which the recent and contemporary prison is a continuation of colonial practices. As the residential school system was closed, Indigenous peoples continued (and continue) to be forcibly confined in colonial institutions. Elder Art Solomon put this in even stronger terms when he wrote:

Prisons are an abomination. They are a blasphemy in the face of God. I cannot believe that God ever intended for any of her children to be locked up in iron cages behind stone walls. Prisons in Canada are simply a white racist institution.⁸

Of the colonial institutions that were formed in the nineteenth century for the purposes of assimilation, the prison is unique for its longevity.⁹ It was because of the historic *and* contemporary realities of colonialism in prisons that Jackson identified the advent of Native spirituality and culture within prisons as a “remarkable historical phenomenon.”

Decolonization

This colonial history illustrates how remarkable it was when prisoners decolonized the prison system to the degree that it was possible. When the Native Brotherhoods began in the 1960s, and by the time they became a national movement in the 1970s, they confronted this colonial system and promoted their own view of healing that was informed by traditional Indigenous culture and

⁷ Michael Jackson, *Locking Up Natives in Canada*, 3-4.

⁸ Art Solomon, *Songs for the People*, 91.

⁹ David Rothman points out that the prison is also unique among the poorhouse, asylum, and prison in the United States for its longevity, as all of those institutions were built at roughly the same time. See Rothman, *The Discovery of the Asylum*.

spirituality. That they confronted colonialism is not altogether surprising. Historians have found examples of resistance to colonial institutions in residential schools, the Department of Indian Affairs, the expansion of legislative restrictions upon Indigenous peoples, the drawing of reserve maps, and so on. In fact, finding areas of resistance to colonialism has become something of an academic expectation, whatever the area of study. What is remarkable is the degree to which this decolonization has shaped the practice of incarceration and the rhetoric of reform.

The emergence of the Native Brotherhood itself was the most important shift within the history of Indigenous corrections, tracing its origins to Western Canada during the 1960s. While the details of the Brotherhood and Sisterhood groups depended on the local context, they were united in a concern for Indigenous prisoners' welfare and healing, a shared goal of celebrating Indigenous heritage, and an explicit goal of maintaining the unity of the group at the institutional and National level.¹⁰ In the early days the members of the original Native Brotherhood were separated in an attempt to quash the movement. Once administrations recognized the correctional value of Native culture, they began to slowly encourage the practice of Native culture. By 1970, the transfer of Charlie to Joyceville and the development of Brotherhoods and the Sisterhood in Ontario made the movement a national one. It played a role in advancing innovative programming in Canadian prisons, as evidenced by the 1975 Edmonton Conference discussed in chapter five.

It was possible for this movement to emerge in the twentieth century because a number of disparate trends coalesced, allowing Indigenous prisoners to organize. The prison system was becoming more open, liberalizing itself so that innovative projects could be allowed to continue, especially after the Feteaux report (1956). At the same time, the emergence of the Native Brotherhood movement coincided with the development of Indigenous political organizations

¹⁰ This was given in the constitutions of the groups. See: Trent University Archives, Canadian Association in Support of Native Peoples Fonds. Additions. Acc. No. 77-018

nation-wide, especially after the *White Paper* and the political fallout that it created in Native politics.

The Correctional Law Review's Working Paper Number Seven summarized this shift:

Perhaps because of the increased openness of the correctional system to Native spiritual and cultural representations, which is at least in part due to representations from Native organizations, and perhaps also because of the cultural revitalization taking place within certain Native communities, there seems to be an increase in Native culture and spiritual awareness among Native inmates.¹¹

What the Correctional Law Review did not include as an explanation of the rising concern with culture and spirituality on the part of Native prisoners is that prisoners themselves had worked long and hard to promote their culture. Far from being a coincidence that came from external factors, prisoners themselves were central to the advancement of Indigenous programming and decolonization in prisons.

This decolonization was necessary as a part of healing, because Indigenous peoples needed to reclaim traditional identities in order to heal in a culturally appropriate way. They did this through reclaiming their identities and restoring balance. In decolonizing the prison and reclaiming Indigenous identities, prisoners did not hearken back to a pre-contact ethos. They rather navigated what it meant to be Indigenous in the late twentieth century. In other words, the work of decolonizing the prison was not an anti-modern effort, but rather was necessarily rooted in the present. Therefore, when Indigenous peoples expressed themselves through art, literature, or cultural programs as explored in part three of this dissertation, they thoughtfully engaged with the world within which they lived. That is why prisoners intentionally considered the ways that their identities were simultaneously pan-Indian and regionally specific, in a way that echoes Taiaike

¹¹ Solicitor General Canada. *Correctional Issues Affecting Native Peoples*, Correctional Law Review Working Paper No. 7, Feb. 1988, in *Influences on Canadian Correctional Reform: Working Papers of the Correctional Law Review, 1986-1988*, (Ottawa: Solicitor General Canada, 1988), 355.

Alfred's discussion of "nested identities."¹² Like the colonization that is ongoing in prisons, so too is decolonization, as demonstrated by this dissertation.

There are limits to decolonization within prisons. Even though changes have come about within prisons, the structure of carceral institutions has not changed. Rather, prisons have integrated components of Indigenous cultural practices into a western institution. The limits of decolonization are not unique to the prison; they are simply most obvious there. While the colonial nature of the prison is invoked by prison walls, colonialism outside the prison has fewer outright physical manifestations. Some might argue that this means that decolonization has not happened in Canadian prisons, because true colonization requires penal abolition. To a degree that argument is correct; complete decolonization could not occur in a society where prisons still exist. Many advocates promoted abolishing the prison system.¹³ I argue that decolonization has taken place, but the continued existence of the prison and overrepresentation of Indigenous peoples within them speaks to the ongoing nature of colonialism in spite of these efforts of decolonization.

Neocolonialism

The way that Indigenous programming was coopted as part of a neocolonial raises questions about whether it possible for Indigenous culture to be integrated into the penal system. Put another way, is it possible to have a prison that heals offenders in an Indigenous way, yet has the trappings of the western penal system? I argue that the answer to this question is "No." Indigenous culture contrasts with the philosophical basis of the prison. In the end, the lack of CSC's commitment to adapt itself to honour Indigenous teachings alienated Indigenous peoples, including Elders, from

¹² Taiaiake Alfred, *Heeding the Voices of our Ancestors: Kahnawake Mohawk Politics and the Rise of Native Nationalism*. (Toronto: Oxford University Press, 1995), 18.

¹³ Art Solomon, *Eating Bitterness*, 43. For an example from the United States, see: Angela Davis, *Are Prisons Obsolete?* (New York: Seven Stories, 2003).

working in prisons. Indigenous peoples had no prisons, so constructing an “Indigenous prison” necessarily is based on a Eurocentric template.

Neocolonialism is distinct from colonial practices that typified the prison system in the nineteenth century and persist into the twentieth century. While he did not use the word “neocolonialism” in the way applied here, Allan Benson summarized how colonial practices had taken a new form in the twentieth century:

When something works that they don't understand, but it also may not work according to their standard because they don't understand the worldview, so they sort of try to take it and put their control on it with their ideals of how it should be run without understanding properly the culture. Without understanding the proper protocol. Without understanding the teachings, like in Cree, wâhkôhtowin, which is the doctrine of relationships and how that plays into everything that we do with Elders and offenders and even Corrections staff.

This change from community based to institutionally based services was a shift in the way that Indigenous peoples fit within the correctional apparatus. Similar processes took place across Canada where creative peoples developed innovative programming that was meaningful to both the prisoner and the community. As the Correctional Services Canada took control, the original intent of the program did not survive the transition. When they were contracted with the prison administration, that connection was lost.¹⁴

Conclusion

These processes of colonization, decolonization, and neocolonialism were simultaneous and ongoing, as attested by those interviewed in this oral history project. While generally focussed on the practical challenges of introducing Indigenous cultures in prisons, collaborators in this research understood the difficulties of gaining and maintaining control over Indigenous programming. Laurel Claus-Johnson, the Mohawk woman who worked as a “traditional person” in prisons, spoke of her

¹⁴ Ed Buller (Policy Advisor, Department of Public Safety), interviewed by the author, August 13, 2014.

work as “warming the earth” for changes that were to come in Kingston area prisons. While her role working with prisoners ended when CSC began hiring Elders, a process which she traced to fear on the part of CSC in allowing Indigenous cultures to fully exist, she also remembers how programs which she and her Elders’ Council innovated still exist behind the walls. While these practices have been “colonized” by adapting them for the colonial context of the prison, she interpreted this shift as meaningful. Poignantly, she remembered her time at Queens University in Kingston as a law student in the 1980s where there was “not one square inch to pray” for Indigenous people on campus, and now in Kingston area federal prisons there are sacred fires.¹⁵ I have been told about this coexistence of decolonization and neocolonization by people like Charlie, Kim Pate, Christie Jefferson, Ed Buller, Allan Benson and Eva Solomon.

The way that colonialism, decolonization, and neocolonialism have all shaped the history of Indigenous peoples in Canadian prisons has much wider implications, especially concerning other places where “awakenings” have taken place.¹⁶ Narratives of colonization or decolonization are not sufficient to capture the nature of Indigenous history in Canada. For example, the post-White Paper history of political confrontation, while an important entry point for Indigenous organizations into political significance, did not decolonize the political system.¹⁷ More recently, the #IdleNoMore movement first appeared according to many commentators as an important moment of social activism, but ongoing processes of colonization and neocolonialism complicated its impact. Currently, the release of the Truth and Reconciliation Commission’s final report is another such moment that defies simplistic characterization. This dissertation can and should caution scholars, and indeed the general public, against such narratives. Without first understanding the complexity,

¹⁵ Laurel Claus-Johnson (Advocate for Aboriginal Prisoners), Interview with the author, August 15, 2013.

¹⁶ It is worth noting that “awakening” may be a misnomer – Many times Aboriginal peoples have critiqued the notion of awakening because it implies stagnancy between periods of intense activism. This was put most memorably in George Manuel’s work, *The Fourth World*.

¹⁷ See J.R. Miller, *Skyscrapers Hide the Heavens* (Toronto: University of Toronto Press, 2000).

the messiness, of these processes, the historiography of Indigenous activism and government responses in Canada will be incomplete at best and incorrect at worst.

While it this dissertation is suggestive of the complexity of colonial histories in Canada, it is also complementary to the interdisciplinary literature concerning Indigenous incarceration. While James Waldram and Michael Jackson have offered two important contributions to the literature, they have both been engaged with questions of the utility of Indigenous culture for rehabilitation. These are important projects. I hope this dissertation supports their work by framing it within a historical perspective. By taking a historical look at recent initiatives within prisons this study shows how and why Indigenous initiatives have been successful, can point to mistakes made in the past and how we might avoid them in the future, and ultimately build a better justice system that can be part of reconciliation in Canada.

All of this begs the question of how to characterize the history of Indigenous incarceration. When speaking to Laurel Claus-Johnson, I asked her whether she would look at the efforts of prisoners and their supporters as series of successes, failures, or both. Her response captured the contemporary realities facing many Indigenous prisoners, where the penal space has been decolonized, but the work of decolonization is not yet complete. I will end this dissertation with her words. She answered:

I don't think that it is a story of failure because a fair number of our people are not on their knees anymore. They are not sitting on the ground or laying on the ground. They are actually standing up. They may not be fully standing up and they may not have their faces up, you know, fully engaged, but there is no stopping the discussions anymore. We're awake.¹⁸

¹⁸ Laurel Claus-Johnson (Advocate for Aboriginal Prisoners), Interview with the author, August 15, 2013.

Appendix 1: Interview Participant Biographies

Ed Buller

Many of those who I have interviewed have referred to Ed Buller as the definitive source of much of the developments in Aboriginal corrections. His involvement in this history began as the executive director at the National Association of Friendship Centres, where he served during the 1970s. He played a leading role developing national programs in penitentiaries, and he supported the Native Brotherhood as it emerged, especially in Ontario. A Cree man from Mistawasis First Nation, he was hired by the Department of Public Safety as a senior policy analyst in the Aboriginal Policy Unit, where he worked until his retirement.

Christie Jefferson

Christie Jefferson completed her Masters in Criminology in 1975, and was employed by the Office of the Solicitor General during the 1975 Edmonton Conference on Indians in the Criminal Justice System. She was in charge of organizing the conference, which this dissertation shows had an important impact on corrections in Canada. Herself a settler, she was closely connected with those advocating on behalf of Indigenous prisoners, especially the Métis and Non-Status Indian Association led by Harry Daniels. She now works on the Parole Board of Canada.

Charlie

Charlie is a Mohawk man from Six Nations, who spent almost eleven years of his life incarcerated, first in Western Canada and then in Joyceville Penitentiary. He played an integral role in the spread of the Native Brotherhood by bringing the movement from being a regional movement limited to western Canada to a national one. He also advised the Native Sisterhood when they were beginning to develop their organization. Since his release, he has served in various advocacy roles. I am using the single name “Charlie” to protect his anonymity.

Allen Benson

Allen Benson is the CEO of the Native Counselling Services of Alberta, the organization which led correctional program innovation with Indigenous prisoners in the 1970s. A Cree man, Allen has spent most of his work with NCSA, developing a reputation in community development, correctional programming, restorative justice, addressing gang violence, and many more areas. He has won many awards for his work and has traveled the world working on justice related projects.

Kim Pate

Kim Pate is the executive director of the Canadian Association of Elizabeth Fry Societies. A settler and trained lawyer, she has advocated for Indigenous women, and was closely involved in the process that led to closure of Prison for Women (P4W) and the opening of Okimaw Ohci Healing

Lodge. She continues to advocate on behalf of incarcerated women, a significant portion of this focusing on the specific challenges facing Indigenous women.

Eva Solomon

Eva Solomon, CSJ is the daughter of Art Solomon, who was one of two Elders who worked in the Kingston area during the 1970s. As a young girl, her father took her to spend time with the Indigenous men and women in the Penitentiaries there. She now lives in Winnipeg, where she is a nun of the Order of St. Joseph.

Laurel Claus-Johnson

Laurel Claus-Johnson is a Mohawk woman who served as a member of the Regional Elders and Traditional Peoples Council in Kingston during the 1980s. She was instrumental in bringing Elders from across the country to Kingston to perform ceremonies with prisoners. She refers to herself as a traditional person because she is not comfortable with the term Elder as applied to herself. Since CSC has terminated the contract with the Council, she has focused her work with the Kingston Friendship Centre.

The Honorable Warren Allmand

Warren Allmand was the Liberal Member of Parliament for Notre-Dame-de-Grâce between 1965 and 1997. Between 1972 and 1976 he served as Solicitor General. He called the Edmonton conference on Indians and the Criminal Justice System which this dissertation documents, though he is likely better known for his role as the Solicitor General who abolished the death penalty. After he completed his term as Solicitor General, he was appointed to director of Indian Affairs and Northern Development, a posting he attributes to his work in Indigenous corrections.

Appendix 2: Corrections and Conditional Release Act Sections 80-84

80. Without limiting the generality of section 76, the Service shall provide programs designed particularly to address the needs of aboriginal offenders.
81. (1) The Minister, or a person authorized by the Minister, may enter into an agreement with an aboriginal community for the provision of correctional services to aboriginal offenders and for payment by the Minister, or by a person authorized by the Minister, in respect of the provision of those services.
- (2) Notwithstanding subsection (1), an agreement entered into under that subsection may provide for the provision of correctional services to a non-aboriginal offender.
- (3) In accordance with any agreement entered into under subsection (1), the Commissioner may transfer an offender to the care and custody of an aboriginal community, with the consent of the offender and of the aboriginal community.
82. (1) The Service shall establish a National Aboriginal Advisory Committee, and may establish regional and local aboriginal advisory committees, which shall provide advice to the Service on the provision of correctional services to aboriginal offenders.
- (2) For the purpose of carrying out their function under subsection (1), all committees shall consult regularly with aboriginal communities and other appropriate persons with knowledge of aboriginal matters.
83. (1) For greater certainty, aboriginal spirituality and aboriginal spiritual leaders and elders have the same status as other religions and other religious leaders.
- (2) The Service shall take all reasonable steps to make available to aboriginal inmates the services of an aboriginal spiritual leader or elder after consultation with
- (a) the National Aboriginal Advisory Committee mentioned in section 82; and
- (b) the appropriate regional and local aboriginal advisory committees, if such committees have been established pursuant to that section.
84. If an inmate expresses an interest in being released into an aboriginal community, the Service shall, with the inmate's consent, give the aboriginal community
- (a) adequate notice of the inmate's parole review or their statutory release date, as the case may be; and
- (b) an opportunity to propose a plan for the inmate's release and integration into that community.
- 84.1 Where an offender who is required to be supervised by a long-term supervision order has expressed an interest in being supervised in an aboriginal community, the Service shall, if the offender consents, give the aboriginal community
- (a) adequate notice of the order; and
- (b) an opportunity to propose a plan for the offender's release on supervision, and integration, into the aboriginal community.

Appendix 3: Images from the Penal Press

1

July 74 (1)

Inside News

ISSUE 6
VOLUME 3



Figure 2: Inside News, Vol. 3 No. 6, (Drumbeller Penitentiary: July 1976), cover.

NOVEMBER / DECEMBER '88

THE PARTISAN

CENSORED

ALTHOUGH THE PROPOSED COVER
WAS PUBLISHED IN AN APPROVED
PUBLICATION, IT WAS SEEN AS
BEING UNFIT FOR PUBLICATION
IN THIS ISSUE BY THE C.S.C.

Figure 2: The Partisan, (Millhaven Penitentiary: November/December 1988), cover.



Figure 3: "Who Invited You," Tightwire, Fall 1988, p18.

Figure 3: The Partisan, (Millhaven Penitentiary: November/December 1988), cover.

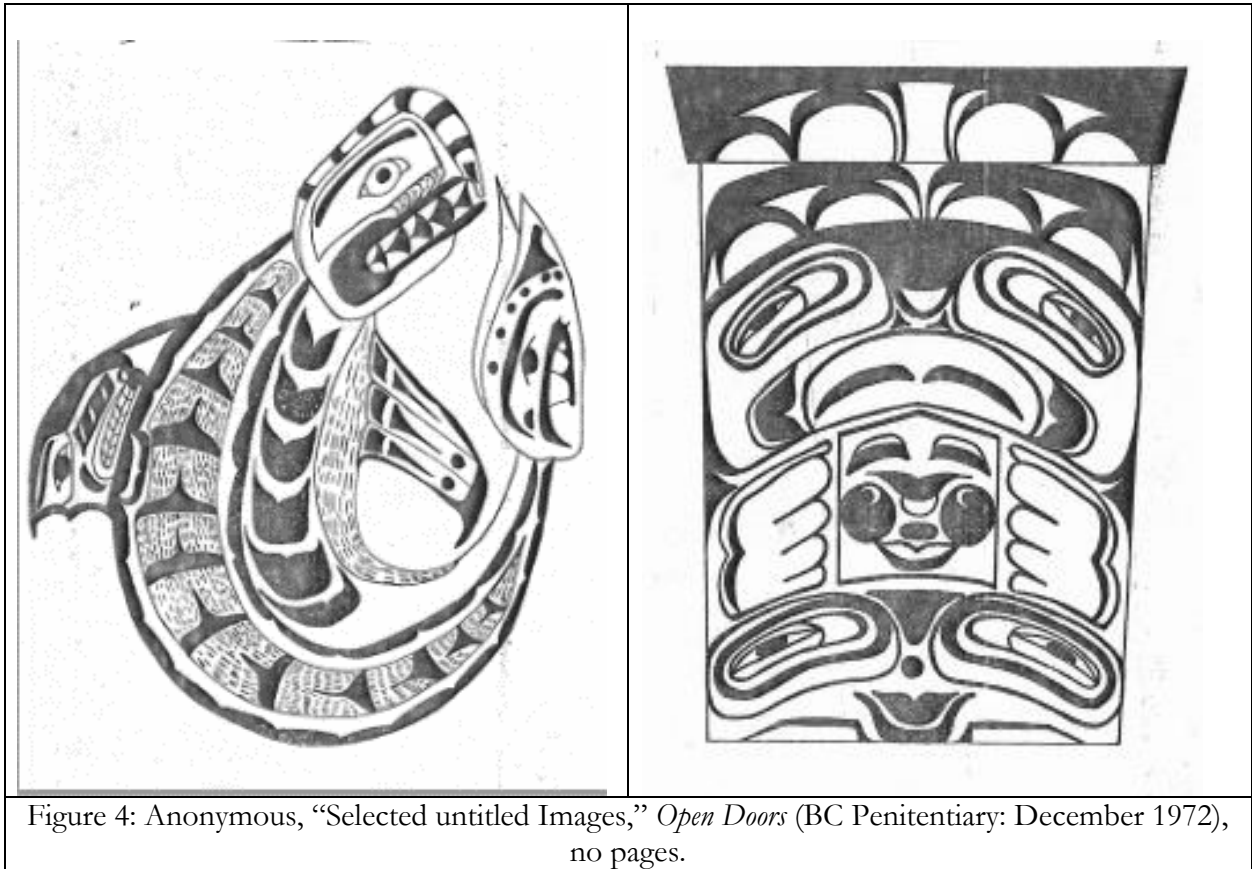


Figure 4: Anonymous, "Selected untitled Images," *Open Doors* (BC Penitentiary: December 1972), no pages.

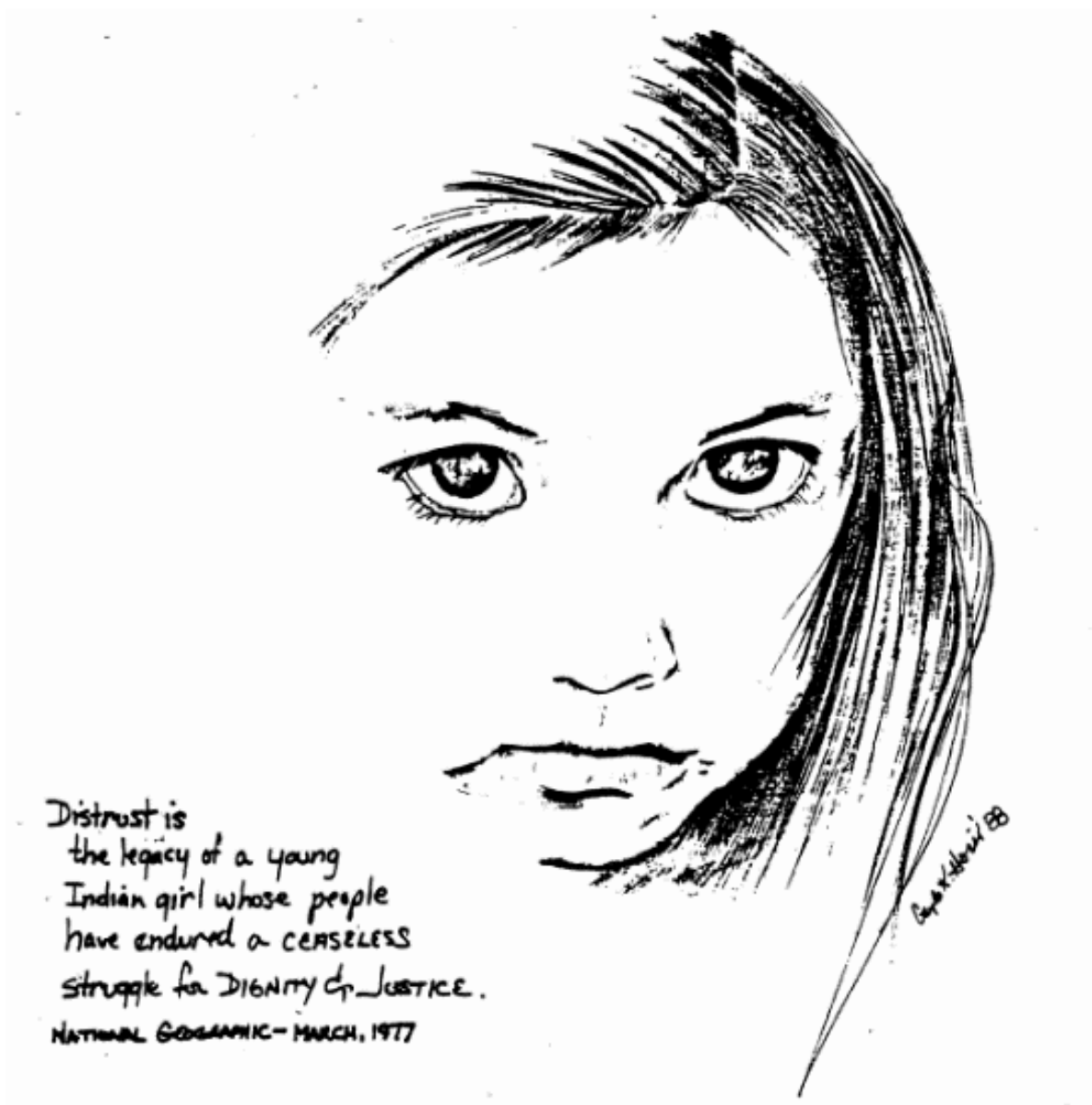


Figure 5: Gayle Horii, "Untitled," Tightwire, (*Kingston: Prison for Women, Spring 1988*), p39.



Figure 6: Untitled, *Tarpaper* vol 2 no 3 (Abbotsford: Matsqui Institution, 1973), p 10.

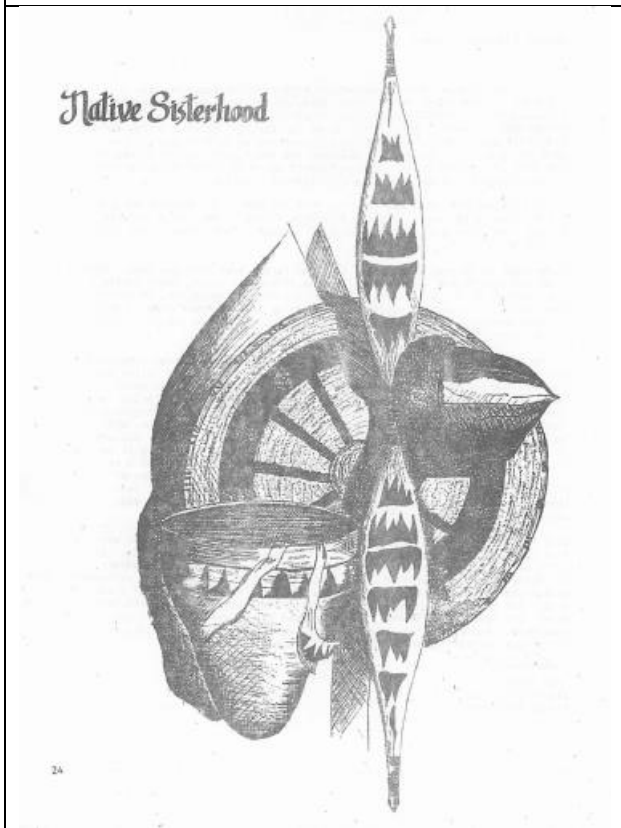
Table 1: Title Pages from Native Sisterhood Newsletter in Tightwire (Prison for Women), by year.



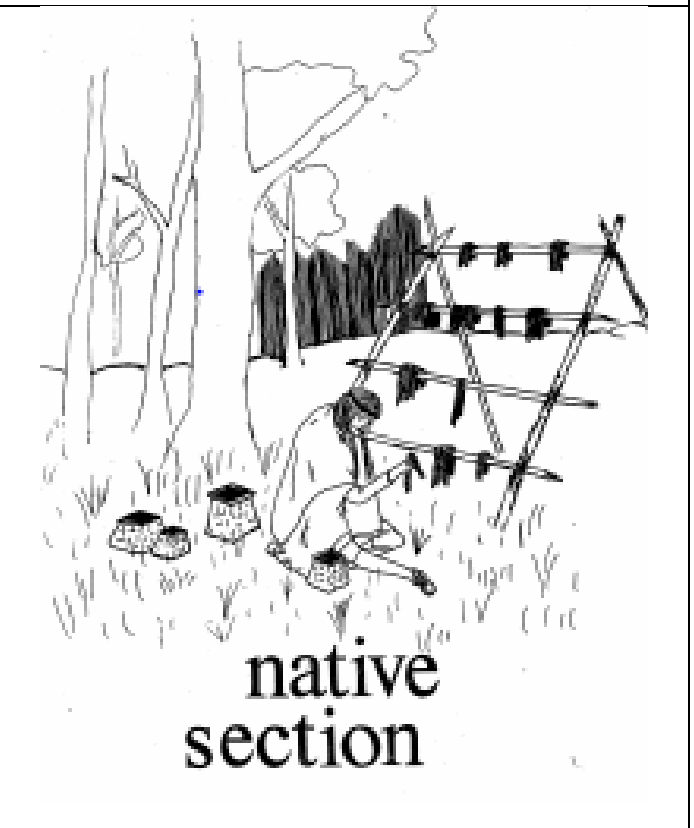
1973



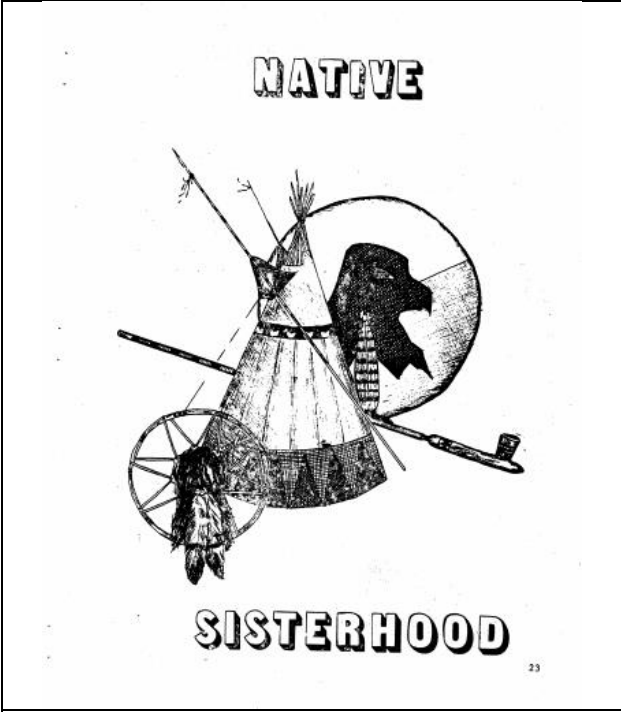
1980



1980



1983



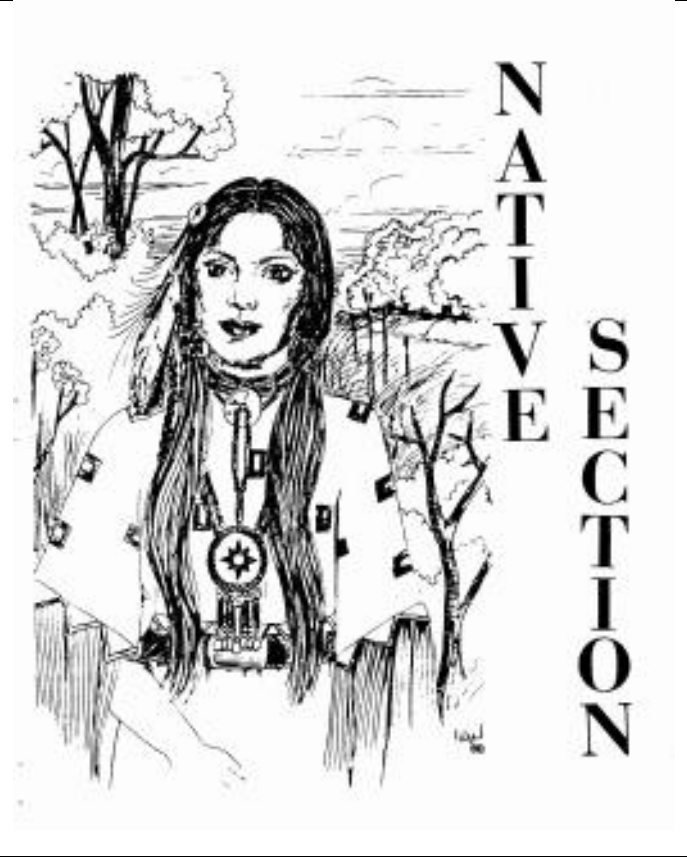
1984



1987



1990



1991

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Provincial Archives of Alberta

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