(In)-justice: An exploration of the dehumanization, victimization, criminalization, and over-incarceration of Indigenous women in Canada

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Abstract
Indigenous women are vastly overrepresented in Canada’s federal prisons and represent the fastest growing prison population in Canada. This critical commentary utilizes a decolonial framework to examine how being Indigenous and female increases one’s risk of being victimized, murdered, and subject to colonial control by exploring the connections between the construction of Indigenous women as less than human and the use of carceral space to control, destroy, and assimilate this population. Specifically, the authors apply Woolford and Gacek’s notion of genocidal carcerality to the intersectional forces of systemic racism and discrimination that result in their overincarceration. Further, the article critiques the Indigenization of Canada’s federal correctional service for failing to meet the needs of this population and for perpetuating an assimilative and stereotypical portrayal of Indigenous women that perpetuates colonial harm.

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Introduction
Colonial harm has disproportionately affected Indigenous women since first contact, perpetuating their ongoing victimization, criminalization, and over-incarceration in settler-colonial states, including Canada, New Zealand, and Australia (Monchalin, 2010; Monture-Angus, 1999a, 1999b). Arguably, imposed criminal justice systems (CJS) in these countries continue the settler state’s goals of control, assimilation, and de-humanization (Chartrand, 2019; Cunneen and Tauri, 2017) and are “a form of ongoing colonial and gendered racial state violence” (Murdocca, 2020: 32). It is beyond the scope of this article to examine Indigenous women’s experiences and involvement in the criminal justice systems in all three of these colonial states. As such, this critical commentary contributes to the existing literature by examining the multitude of colonial harms that have resulted in societal indifference and racism towards Indigenous women in Canada. These colonial harms have led to their dehumanization, victimization, and over-representation amongst federally incarcerated women in Canada.

Although the Canadian federal prisoner population—individuals sentenced to two years or more of imprisonment—has remained relatively consistent over the past decade, the Indigenous federal prisoner population increased by approximately 50% (Office of the Correctional Investigator (OCI), 2019). The overrepresentation of Indigenous persons in Correctional Service Canada (CSC; the federal correctional authority in Canada) populations is particularly troubling for Indigenous women who represent the fastest growing prison population in Canada. The population of federally sentenced Indigenous women (FSIW) increased by 74% over the past decade (OCI, 2019) with Indigenous women now representing 42% \( (n = 291) \) of all federally sentenced women in Canada (OCI, 2020).

As the Correctional Investigator of Canada, the Ombudsman for federal offenders, Dr. Ivan Zinger testified to a Standing Committee on Public Safety and National Security, these Indigenous women “are offenders, [they have been] first and foremost . . . victims” of state imposed policies, racism, sexism, intergenerational abuse (i.e. physical, sexual, and emotional abuse), and trauma (McKay, 2018: p. 24). The National Inquiry into Missing and Murdered Indigenous Women and Girls (hereafter, the National Inquiry) in Canada (2019a, 2019b) characterized this victimization, racism, discrimination, and brutal violence and oppression as genocide.

Throughout this critical commentary we apply Woolford and Gacek’s (2016) notion of genocidal carcerality to the intersectional forces of systemic racism and discrimination that result in the overincarceration of FSIW. Woolford and Gacek
define genocidal carcerality as “spaces enlisted towards the elimination of a targeted group, either for purposes of exterminating or transforming the group so that it no longer persists”. The residential school and foster care systems, and imprisonment, are all examples of genocidal carcerality and demonstrate the ways in which “space is implicated in the physical, biological, and cultural destruction of group life” (Woolford and Gacek, 2016: 401). We aim to examine the carceral space of the prison as it has been utilized to control, destroy, and assimilate Indigenous women in Canada, critiquing the Indigenization of CSC for failing to meet Indigenous incarcerated women’s needs and for promoting an assimilative stereotypical portrayal of Indigenous women that perpetuates colonial harm.

Methodological considerations: Decolonial critical commentary

Our critical commentary is grounded within a decolonial framework. Colonial harm is often reinforced by western academia wherein Indigenous women’s voices are often not represented and their lived experiences are disregarded. Key to decolonization is truth-telling and unraveling the impacts of colonialism while centering the voices and experiences of Indigenous peoples themselves (Antoine, 2017; Datta, 2018). Criminology as a discipline has embedded colonial and silencing research methods that fail to adequately unravel the impacts of colonialism and may further marginalize Indigenous peoples (Cunneen Rowe and Tauri, 2017; Deckert, 2016).

In the present paper we decolonize our writing by pushing back against the boundaries of academia to privilege the lived experiences of Indigenous peoples—including those of the lead author: a Haida, Ojibwe, Irish, and British woman. I, the lead author, recognize my relative privilege as someone who was born and raised in a working-class family in an urban setting. However, like many Indigenous women, I grew up ashamed of my identity, experiencing institutionalized and systemic racism, subject to stereotypes, microaggressions, and being treated as sub-human. These lived experiences are often lost in classic criminological analyses in which claims of objectivity perpetuate the silencing of Indigenous voices, scholars, and activists. The proliferation of western science and quantitative academic analyses as the gold standard of research further marginalize Indigenous voices and perpetuate harm in the name of knowledge acquisition.

The current critical commentary is not objective nor is it subjective: instead, we focus on telling the truth through stories, lived experiences, and critical analyses of existing scholarship. As Simonds and Christopher (2013: 2185) argue, decolonizing research challenges the notion that “western methods and ways of knowing are the only objective, true science”. Held (2019:10) further emphasizes the formation of decolonial “research paradigms” that focus on creative and collaborative approaches to push the boundaries and advance decolonization instead of reinscribing the status quo.

Decolonization also involves critically analyzing “the activities of the powerful” (Cunneen et al., 2017: 75), which is achieved via our critique of CSC’s approach to
meeting the needs of FSIW. In light of our decolonial framework, we conclude by offering solutions to the problems we analyze that “empower Indigenous peoples in their struggle for self-determination” and jurisdiction over justice (Cunneen et al., 2017: 75). The implementation of Nation-based solutions is going to take time so we also provide solutions for CSC to adopt in the interim; for example, offering correctional programs that respect cultural differences amongst the many Indigenous Nations, communities, and peoples whose own systems have been oppressed through colonial domination.

An (in)-justice system

The National Inquiry’s (2019a, 2019b) findings of genocide at the hands of the Canadian state implicate the Canadian government for historical and ongoing harm towards Indigenous peoples. The Canadian government and its institutions are responsible for the death, abuse, and theft of Indigenous peoples’ land, language, bodies, cultural items, and knowledge (De Finney, 2017; Truth and Reconciliation Commission (TRC), 2015). The Canadian state’s claiming of Indigenous peoples’ lands and resources, and disregarding of rights, involved the direct annihilation of populations through introduced disease, attempted assimilation, and incarceration in residential and day schools (Starblanket, 2018). Residential schools were a major part of the assimilatory regimes of the Canadian State—they were in existence for over 100 years. With the goal of Indigenous erasure, they were houses of torture characterized in some cases by rampant disease, abuse, underfunding, and other inhumane conditions (TRC, 2015). Day schools were similar to residential schools in terms of conditions; however, Indigenous children were allowed to go home at night.

The Indian Act and its regulation of identity and mobility and the criminalization of cultural practices, the Sixties Scoop and ongoing child apprehension, the reserve system, and countless other attempts of destruction have severely affected Indigenous peoples (TRC, 2015). The Sixties Scoop refers to the accelerated mass removal of Indigenous children into the child welfare system: a removal that has been ongoing.

The Indian Act, which still exerts control over Indigenous peoples, was the centrepiece of a multitude of policies rolled out by the Canadian government in its attempt to assimilate Indigenous peoples into Canadian society (TRC, 2015). Residing in its very name—the Indian Act—is the federal practice of asserting a singular assimilative notion of Indigenous identity (Alfred and Corntassel, 2005) and usurping what is surely the most basic right of any people—to decide who makes up their ‘we.’ Indigenous identity is a colonial construct that “describes… thousands of distinct societies with their own names, governments, territories, languages, worldviews, and political organisations” (De Finney, 2017: 11). Through the Indian Act and other state policy, Indigenous peoples were displaced from their ancestral territories to small parcels of land called reserves.
Patriarchal provisions of the *Indian Act* that regulate who can claim *Indian status* disproportionately affected Indigenous women (Wesley, 2012). To illustrate, certain provisions in the *Indian Act* amounted to federally-imposed banishment: Indigenous women lost their legal status as *Indians* when they married non-status men. Losing their status often resulted in their being in unsafe positions: alienated, dislocated, and isolated from their family, community, and cultures (De Finney, 2017; Wesley, 2012).

The *Indian Act*’s regulations and imposed identity provisions have disempowered generations of Indigenous women leading to identity issues, shame, and cultural losses that have exacerbated their already precarious position within Canadian society (Amnesty International, 2008). The bureaucratic loss of identity through the *Indian Act* undermined the important roles of Indigenous women in their communities and severely impacted Indigenous women’s power and agency (Alfred and Corntassel, 2005; Amnesty International, 2008). Indigenous women’s place in their communities varied pre-contact but it is generally held that women and men were more egalitarian, or at least had mutual deference for their respective roles (Amnesty International, 2008; Kwan, 2015).

The National Inquiry (2019a: 167) suggested that the “silencing of [Indigenous] women through various colonial measures is a contributor to the lack of safety and justice” they experience today. This “lack of safety and justice” is compounded by the intersection of being female and Indigenous and thus being subject to both “gendered and racial violence” (Adema, 2015: 565). Influences of patriarchal hierarchies and hegemonic masculinity are evident within many Indigenous communities as they struggle against physical, sexual, and familial abuse (Amnesty International, 2008). The Department of Justice Canada (2017:1) reports that the rate of “sexual assault [and spousal violence] self-reported by Indigenous women...is more than triple that of non-Indigenous women”. Further, they are more likely to be subject to extreme violence and homicide than non-Indigenous women (Conroy, 2018).

Indigenous women further “lack safety and justice” (National Inquiry, 2019a: 167) in that legal authorities have been found to dismiss their disappearances despite evidence that would create alarm in any other community. Thus, the (in)-justice system is complicit in the victimization of Indigenous women in Canada. To illustrate, Stephanie H. told the National Inquiry (2019a: 470–471) that when her mother was murdered and “found at the bottom of a set of stairs with blunt force trauma to the head,” the two investigating officers were overheard saying, “another drunken Indian just fell down the stairs”. In yet another example of racism, when two parents reported their daughter Jennifer missing in 2008, the investigating officers concluded with no evident reason, “she’s [out drinking]...she’ll be back”. It was “nearly a month” before the police followed up (National Inquiry, 2019a: 649–650). Similar excuses were given to account for why law enforcement in British Columbia failed to pursue an investigation that allowed a serial killer to murder 49 women–most Indigenous–in Vancouver for more than a decade until the investigation was finally taken seriously and the killer was arrested.
and convicted (McClearn and Baum, 2015; Oppal, 2012). Those women were mothers, sisters, and friends: they were loved, and they are missed.

When it comes to Missing and Murdered Indigenous women and Girls (MMIWG) it appears “nobody is listening… nobody seems to care… there’s no wrongdoing of the police in this country,” as they are not held to account (National Inquiry, 2019a: 622). Given the lack of action by government authorities, families of MMIWG across the country have taken matters into their own hands: family members continue to search for their daughters in creeks, ditches, and abandoned buildings (National Inquiry, 2019a). Processes of dehumanization, sexualization, and control contribute to Indigenous women continuing to ‘disappear,’ be murdered, or confined.

**Restriction to carceral spaces**

From a young age, Indigenous women learn of their supposed un-worthiness and internalize this societal racism through continual reinforcement and normalization (Sue et al., 2007). Their portrayal as the racialized, sexualized, non-human other served the settler state as they were able to regulate their identity, justify the “legal regulation of [Indigenous] women’s movement and … confinement to reserves” (Razack, 2000: 99), and criminalize their behavior in order to claim their land, bodies, and rights. This imposed structural racism constructs Indigenous women as “biopolitical populations whose very lives, while not ‘worth’ killing, are equally not worth protecting” (Montford and Moore, 2018: 643). This devaluation perpetuates the notion of Indigenous women as “sick, dysfunctional, and self-destructive… [as] debris” that can be swept away (Razack, 2015: 17). According to these constructions, Indigenous women need to be controlled within carceral spaces or assimilated in the name of public safety.

The restriction of Indigenous women and children to carceral spaces and the abuse of Indigenous peoples began early in the colonial project in Canada. Residential schools, which operated in Canada from the 1880s to 1996, have been compared to jails: many Indigenous children were eventually taken away in their youth, confined in residential schools, and not returned to their communities (if they survived) until their teens. Some attendees report having been “lock[ed] up in dormitories, broom closets, basements, and even crawl spaces,” receiving inadequate food (TRC, 2015: 104), and being confined with tuberculosis rampant. The National Inquiry (2019a, 2019b) also included harrowing testimony by women whose stories illustrate systemic abuse that is inextricably intertwined with the residential school system. For example, Elaine D described how “the priest in the school was making [them]... go into this canteen and touch his penis for candy” (National Inquiry, 2019: 265), which illustrates one form of trauma that has been inflicted on Indigenous women and girls. The demoralizing sexual abuse that she experienced at the hands of a religious authority she was supposed to trust shaped the rest of her life.
These examples illustrate how the use of carceral space, and the abuse of Indigenous peoples, began early in the colonial project. These genocidal practices (see Starblanket, 2018) persist today with the mass removal of Indigenous children from their homes and placement in “white foster and adoptive homes” (De Finney, 2017: 12). Currently, the number of children “in the foster care system outnumber[s] the residential school system . . . at its highest point” (Vecchio, 2018: 44). The eviction of Indigenous bodies from land occupied by settlers also continues through their overrepresentation within imposed Canadian prisons. Chartrand (2019: 77) posits that “the prison [has taken over] as the new expression of colonialism” with Indigenous peoples as specific targets. This historical and continual regulation of Indigenous bodies via Indian Act discrimination, reserves, day and residential schools, foster care systems, and incarceration is evidence of “genocidal carcerality” in which Indigenous peoples have been subjected to “assemblages of multiple destructive strategies” (Woolford and Gacek, 2016: 401–405). Coupled with the devastating and destructive processes of victimization, dehumanization, stigmatization, systemic racism, sexualization, and criminalization that Indigenous women experience in Canada, these women are increasingly at risk of being destroyed through genocidal forces.

Federally sentenced Indigenous women

Most Indigenous women in Canada have been victimized whether through state-sanctioned loss of identity, being apprehended from their families and/or having their children apprehended, being subject to medical testing, forced sterilization, racism, emotional, physical, and/or sexual abuse as a result of their social construction as less than human (Palmater, 2018a, 2018b; TRC, 2015). Their victimization and criminality are situated within the ongoing impacts of colonialism—for example, their construction as having non-human bodies deemed worthy of abuse and death (Razack, 1998)—and the racism, discrimination, and marginalization they experience (Balfour, 2008; De Finney, 2017).

The victimization-offending continuum is evident in the life histories of incarcerated Indigenous women, which reveal a cyclical relationship between experiencing abuse and becoming institutionalized through apprehension and placement in foster care, and later, in prisons (Malone, 2016; Zinger, 2017). To illustrate, Zinger’s (2017: 18) examination of the social histories of FSIW (N = 265) found that nearly all of the women had histories characterized by traumatic experiences (physical or sexual abuse), over half had personal or familial experiences in residential schools, and nearly half had been removed from their family homes, being subject to adoption, foster care, or group home settings. Testimonies to the National Inquiry (2019a: 635) included women’s descriptions of their “graduations” from foster care, to youth detention, to provincial institutions, to federal institutions”. Thus, incarcerated Indigenous women’s criminalization is situated within their respective experiences of trauma, precarity, and abuse resulting from the colonial project (National Inquiry, 2019a).
Isolation: The carceral space of the prison

Indigenous women’s histories may impact their ability to navigate incarceration and the pains of imprisonment, which contributes to their high rates of self-harm (FSIW accounted for nearly 46% of all self-harm incidents in 2017–2018) and attempted suicide (Indigenous federally sentenced prisoners accounted for 39% of all suicide attempts in 2017–2018) while incarcerated (OCI, 2019). CSC’s approach to assisting Indigenous women in their secure units has been criticized for being restrictive and harsh (McKay, 2018) with data revealing that they “are disproportionately...the recipients of use of force measures” (Montford and Moore, 2018: 657). The use of punitive measures that are not trauma-informed simply exacerbates pre-existing trauma within the prison (McKay, 2018). Consistent with that view, researcher Kaiser-Derrick (2019: 283) has concluded that regardless of the correctional programming offered, “imprisonment is incompatible with any kind of healing process for Indigenous women because it often aggravates pre-existing trauma and engenders additional trauma”.

The geographic isolation of federal correctional facilities for women—there are only five regional facilities for women across the country and one CSC-operated healing lodge for women in the Prairie region—further exacerbates the pains of imprisonment for FSIW. They are far from their home communities: the distance precludes families from visiting due to prohibitive transportation and lodging costs (Barrett et al., 2010). Distance from one’s family, and particularly children, may intensify the isolation that FSIW experience (Barrett et al., 2010). This forced removal of Indigenous women from their children is a by-product of the exercise of state-based authority: this separation starts another iteration of the cycle that begins with foster care for Indigenous youth.

Another consequence of incarcerating Indigenous women in regional facilities far from their home communities is that the greater the distance, the less likely they are to have access to relevant cultural programming (Auditor General of Canada, 2017). Woolford and Gacek (2016: 407) argue that “genocidal carcerality is produced when space is used to destroy”. Instead of offering resources and teachings in close proximity to their home nations that would reconnect them to their nations, CSC offers a generic Indigeneity that pushes their cultural identities to the sidelines, and introduces, and forces, a state-imposed version of Indigeneity.

FSIW: Misunderstood, overclassified and limited in their access to programming

Incarcerated Indigenous women are often pathologized as angry, unstable, and inherently violent. These characterizations not only affect their access to programming, but may also impact their opportunities for release (CSC, 2014; Helmus and Forrester, 2014a, 2014b). FSIW generally have higher treatment needs than non-FSIW that include the need to address emotional, cultural, mental health, addiction, and wellness, as well as education and vocational programming, and “stress management; impulsiveness, and poor conflict resolution skills”
(Wesley, 2012: 1–10). These treatment needs stem from the lasting impacts of colonization (i.e. racism, discrimination, intergenerational abuse, dehumanization, and sexualization) (Wesley, 2012: 1–10). Mental health issues are represented by CSC as symptomatic of being Indigenous rather than the compounding effects of trauma (Vecchio, 2018).

CSC is required to conduct an “Aboriginal Social History report” that examines the impacts of systemic harm on prisoners’ lives to “identify and consider culturally appropriate . . . options that could contribute to mitigating risk and may also inform placement in a facility like a healing lodge” (National Inquiry, 2019a: 640). However, FSIW who testified to the National Inquiry (2019a: 642) explained that when they provided CSC staff with information for this report, “they felt . . . their histories were used against them for security classification”. The Auditor General of Canada (2016: para. 3.72) actually found that “[CSC] staff did not adequately consider Aboriginal social history factors in their case management decisions”. Further, the Auditor General of Canada (2016) determined that these reports were often not obtained at all, or that staff were not trained in how to consider Indigenous offenders’ histories in their decisions. Thus, not only are Indigenous women pathologized, but they are also at great risk of being misunderstood by CSC staff who have not been trained to understand the effects of trauma on their lives. Prevost and Kilty (2020) found that Indigenous social histories were often not adequately considered in the administration of segregation—compounding the impacts of genocidal carceralty.

Murdocca (2020: 58) concludes that this “security assessment process is a form of racialized gendered violence”. The lack of understanding of Indigenous women’s situated position in Canadian society does little to adequately address their needs and the root of their mental health issues.

Montford and Moore (2018) suggest that simply being Indigenous is considered a risk factor given the racialized nature of CJS policies. Leitch (2018) concluded that CSC’s risk assessment tools, specifically the Custody Rating Scale (CRS), is not only discriminatory, but also that its use is a violation of Indigenous incarcerated persons’ rights under s. 7 of the Canadian Charter of Rights and Freedoms (1982). Leitch (2018) argued that CSC’s use of the CRS is problematic as some of the 12 items (e.g. sentence length; severity of current charge; alcohol and drug use) in its two subscales have been found to be non-predictive of incarcerated Indigenous persons’ risk to engage in institutional misconduct or be convicted for such incidents.

The use of the CRS results in the over-classification of Indigenous peoples who are more likely to exhibit risk factors correlated with higher risk classification due to the intergenerational consequences of colonialism. However, in Ewert v. Canada (2018) the Supreme Court of Canada did not share Leitch’s (2018) view, but did rule that CSC had violated s. 24(1) of the Corrections and Conditional Release Act (CCRA) by not addressing “concerns raised about the impugned tools” lack of effectiveness for incarcerated Indigenous persons (para. 7). The Court also stated, “if the CSC wishes to continue to use the impugned tools, it must conduct research
into whether and to what extent they are subject to cross-cultural variance when applied to Indigenous offenders” (para. 67). The OCI (2019: 69) recently critiqued CSC for being “disappointingly silent” in responding to the Ewert case in terms of how the agency will examine the validity of their existing tools for Indigenous offenders and modify any problems with validity that they find.

The requirement imposed by the Supreme Court on CSC is an important one. Despite the vast over-representation of FSIW amongst the population of federally sentenced women classified as maximum security (45%; Miller, 2017: 12), “CSC has never created a risk assessment tool specific to Indigenous people” (McKay, 2018: 19). This is highly problematic. Gutierrez et al. (2016: 102) found that Indigenous incarcerated persons “exhibited many more risk factors [e.g. poverty, mental illness, and being victims of abuse], largely because of historical, social and economic disadvantage” so the use of risk assessment tools created for other populations effectively re-victimizes Indigenous populations by using the information not to gain them access to more appropriate programming, but merely to increase their risk classification. While it is true that Indigenous women are 60% “more likely to be convicted of a violent offence than non-Indigenous women” (Barrett et al., 2010: 10), Pate (2016: 28) suggests that when Indigenous women opt to defend themselves, they are subsequently “criminalized and imprisoned” because of their supposed riskiness. The individualization of risk ignores the state’s role in subjugating Indigenous women to the margins of society (Monture-Angus, 1999b).

Women who are assessed as higher risk, and generally have higher treatment needs, may have limited access to programming (Wesley, 2012). Program availability can be an issue in maximum security institutions “where the majority of the prison population is Indigenous, because of operational problems (a fragmented prison population, gang related safety issues, lockdowns, etc.)” (McKay, 2018: 19). Further, the Auditor General of Canada (2017) found that CSC provided Indigenous women with limited access to culturally-specific correctional programs in institutions that had fewer Indigenous women in custody. Thus, access to programs may be limited due to factors outside incarcerated Indigenous women’s control: this disqualification may mean that they are “denied access to [necessary] support services” (Vecchio, 2018: 127). Indigenous women classified as maximum security are also unable to participate in CSC’s *Mother-Child Program*, which limits their access to their children (Miller, 2017; Wesley, 2012). This continual severing of Indigenous families through carceral means is yet another instance of “genocidal carcerality” that “is produced when space is used to destroy” (Woolford and Gacek, 2016: 407). Notwithstanding the problems with CSC’s ‘Indigenous’ stream of programming, FSIW deserve to have access to support.

Given their higher security designation and the resulting challenges of accessing programming, it is unsurprising that Indigenous individuals in custody are less likely to cascade downwards in security levels and to be released on parole, leaving them more likely to be released at their statutory release date-release at the two-thirds point of their fixed sentence with supervision for the remainder of their sentence-with little preparation for life on the outside (OCI, 2018). Assessed as
higher risk and placed in institutions away from their home communities, Indigenous women are set up to fail upon release, which is highlighted in their higher rates of returning to custody. CSC (2019a) found that Indigenous women released in 2011/12 were more likely than non-Indigenous women to reoffend and return to custody within two-years for both any new offence (19.7% versus 9.2%) and for violent offences (11.3% versus 2.1%).

The indigenization of federal corrections

CSC has involved some Indigenous stakeholders in the formation of its programming, including the National Aboriginal Advisory Committee (NAAC) (CSC, 2013; Vecchio, 2018), the National Elders Working Group (NEWG), as well as “Indigenous Elders and staff working within CSC” (CSC, 2018: 5). However, despite the fact that CSC is required by section 82 of the Corrections and Conditional Release Act (1992) to consult with the NAAC, the agency continues to hold infrequent meetings with the NAAC and to ignore their recommendations regarding correctional services for Indigenous offenders (OCI, 2019: 72). By not recognizing Nationhood, meaningfully consulting with all Indigenous Nations and peoples, or offering real opportunities for community partnerships and capacity building, CSC opts for the most streamlined solution instead of fostering connections with Indigenous communities to co-develop or support sovereign programs. Over 10 years ago, Mann (2009: 35) warned that if CSC failed to work towards improving Indigenous corrections and programming the resulting impact would “reverberate...for years to come” through the continuation of Indigenous over-representation, which has indeed come to pass.

CSC (2013: paras. 46–47) notes that the goal of its programs is to integrate “Aboriginal culture and spirituality...within CSC operations” and the agency offers a multitude of programs to FSIW that it claims are trauma-informed and culturally sensitive. The “Aboriginal Women Offender Correctional Program (AWOCP) is CSC’s first comprehensive and holistic Indigenous correctional program model and is available” across all institutions (CSC, 2018: 14). CSC (2018) states the focus of the programs within the “circle of care” is that of “healing through cultural identity”. CSC’s (2013: para. 37) ostensibly culturally-based “healing path” is no more than a generic pan-Indigenized approach that permeates its policy and programming:

a traditional Aboriginal healing process based on culture and beliefs, which encompasses a life-long spiritual, emotional and/or psychological journey whereby one strives to be in harmony with all living things on Mother Earth. The telling of stories, sharing of traditional teachings and participation in sacred ceremonies serve to assist the individual in following the Red Road to healing. When one lives and walks the Red Road, one is seen and deemed to be whole in body, mind, spirit, emotions and behaviour.

No amount of appropriated items and practices-eagle feathers, circles, or red roads- embedded in pan-Indigenized correctional programming will do anything
to heal Indigenous women. These women have sustained compounded trauma and CSC’s programs reinforce and perpetuate harm while continuing to subjugate Indigenous women in Canada to state rule. Birrell (2019: 24) argues that even if CSC does some good, it is ultimately “a means of controlling the lives of Indigenous people, providing the state with a new pass system, allowing it to regulate the movements of First Nations people by invoking a Criminal Code [and a CJS] they never consented to”.

**Indigenous identity: a fallacy**

CSC co-opts a notion of Indigeneity through appropriating use of the medicine wheel, sweat lodges, and medicine bundles that are particular to certain Nations into its programming (Martel and Brassard, 2008; Martel et al., 2011). Further, the terminology utilized by CSC perpetuates the romanticism of who Indigenous peoples were, are, and should be. Names that CSC uses or has used for its Indigenous programming include the healing path, the red road, Spirit of the Warrior, Pathways, Circles of Change, and Circle or Continuum of Care (Barrett et al., 2010; McKay, 2018; Martel and Brassard, 2008; Vecchio, 2018; Wesley, 2012). These terms suggest some sort of singular Indigenous identity. The reality is that the most unifying factors among Indigenous people are their experiences with racism, genocide, and trauma. As one Indigenous woman explained, “we don’t have value in this country…we’re survivors of genocide that nobody will even think about” and this lack of consideration leads to social precarity and over-incarceration (Van der Meulen et al., 2018: 91).

Martel and Brassard (2008: 344–346) suggest that through CSC’s imposed homogenous Indigenous “identity is constructed wholesale”—in a neat package—not unlike the stereotypical images perpetuated by Halloween costumes of Indian princesses. A stereotypical Indigenous identity is imposed by CSC instead of the service recognizing the diversity among Indigenous people, communities, and Nations (Martel and Brassard, 2008). To illustrate, a formerly incarcerated person in Martel et al.’s (2011: 245) study notes that

> the cultural programs were basically for…Mohawks…[those ceremonies] don’t come from here. We never practiced them [here]. There was always a smudge ceremony [in prison], it was long, and I didn’t like it. [Prisons] also did circles, and you didn’t have a choice [but to participate]. If you left or arrived late, it was like you broke the circle… I didn’t believe those things.

State co-opted versions of ceremony position Indigenous people as relics of the past, pushing them towards tradition with little to no appreciation of the situated position of Indigeneity in modern day. This over-generalization of varied Indigenous cultures exacerbates societal misunderstanding and racism. These assimilatory destructive programs take place within the carceral space of the prison.
FSIW and identity

Generic pan-Indigenized programming cannot account for the myriad of Nations, cultural practices, identities, shame, prejudice, and racism that permeate the lives of Indigenous women (Van der Meulen et al., 2018). Women are expected to adopt this “institutionally imposed Aboriginality” (Martel and Brassard, 2008: 344) through participation in programming. At the same time, Yuen and Pedlar (2009) mention that these programs and ceremonies are open to all female prisoners. Non-Indigenous prisoners may feel they have the right to adopt Indigeneity as a hobby, ceremony as a new form of yoga, and/or to claim a stereotypical appropriation of Indigeneity as a side project.

If Indigenous women do have access to CSC’s generic programming, they may reject it, subscribe to it completely, or adopt it temporarily as a strategy to be considered for release. The latter reflects the reality that CSC’s programs for Indigenous offenders “are increasingly mandatory to [their] release” (Martel and Brassard, 2008: 357). The Correctional Investigator (OCI, 2018: 67) exemplifies the issues with coerced Indigeneity by explaining that

CSC does not require a non-Indigenous person entering prison to follow their spirituality, healing or cultural traditions in order to engage in programming. To expect a person of Indigenous ancestry to follow...[a] healing path or cultural traditions when imprisoned is one thing, but to make that a determinate of release is quite another.

Coercing participation in Indigenous programming and forcing identity upon Indigenous individuals in custody is oppressive. Claiming one’s identity is a complicated process that requires a person to work through years of colonial control, patriarchal identity restrictions, and oppression. Claiming my own Haida and Ojibwe heritage was one of the most challenging things I have done in my life—openly claiming my identity meant putting myself at risk of a myriad of harms. Further, contrary to CSC’s programming, culture is not easily packaged and applied; instead, it is a very individual and ongoing experience. CSC is part of the settler state that has granted itself the authority to control and imprison Indigenous women from hundreds of sovereign First Nations bands (upwards of 50 Nations) across the land they now call Canada. The agency’s perpetuation of pan-Indigenous stereotypes, and promotion of a generic version of Indigeneity that could have been generated in Hollywood, is a symptom of genocidal, assimilative government tactics of control that perpetuates the cyclical abuse, dehumanization, and precarity faced by Indigenous women in Canada.

Institutional elders

As a part of the Indigenization of its programming, CSC hires institutional Elders to act as cultural advisors and mentors (CSC, 2013). The notion of an Elder varies between Indigenous communities (e.g. it is generally an earned position
demonstrating recognition of knowledge) whereas Elders hired by CSC have responded to a job posting (Vecchio, 2018: 106). Relatedly, Elders are employed by CSC, and thus, are a part of the system that many prisoners have a “long-standing mistrust” of, thereby leading to issues in establishing trusting relationships (Vecchio, 2018: 106). Elders also report facing challenges in establishing a trusting relationship with Indigenous offenders because they are required to participate in case management decisions (OCI, 2019).

CSC Elders are also asked to follow elements found within the Corrections Continuum of Care model that may not be relevant to their own teachings (CSC, 2013). Unsurprisingly, Elders working for CSC report feeling isolated, vulnerable, and uncertain about their rights and freedoms to practice spiritual and cultural identity (CSC, 2017). Martel et al. (2011) suggest that Indigenous staff are confined to CSC-approved programming whether or not they believe it is effective or helpful. Moreover, CSC staff may not be allocated the resources, time, or budget to make meaningful connections with the respective incarcerated person’s community. The latter is particularly problematic given that Elders available to women may not be from their own community and thus, their guidance may not be applicable (McGill, 2008). Institutional Elders demonstrate yet another instance in which CSC cherry-picks a version of Indigeneity that easily fits within its pre-existing structures.

Healing lodges: Aboriginal prisons?

CSC has further Indigenized its institutions through the formation of healing lodges, some of which involve partnerships with the Indigenous communities in which they are situated. A CSC-operated healing lodge for women, Okimaw Ohci Healing Lodge located near Maple Creek, Saskatchewan, was created in response to Creating Choices: The Report on the Task Force on Federally Sentenced Women (CSC, 1990) and the recognition that the needs of Indigenous women were not being met at Kingston Prison for Women. There are few section 81^{7} healing lodges operated by Indigenous communities (one in Alberta and one in Manitoba) for FSIW in Canada. Thus, the culture available to those residing in these healing lodges is unlikely to reflect their own Nations’ culture. The location of these healing lodges may also deter FSIW who do not wish to transfer to these facilities located in Alberta, Manitoba, and Saskatchewan if it means being further away from their home communities.

As discussed, Indigenous women are overrepresented amongst maximum security prisoners, so their access to healing lodges is limited, as only minimum- and medium-security women can reside in healing lodges (Vecchio, 2018). Moreover, healing lodges have not expanded to meet the numbers of incarcerated persons in custody (OCI, 2018). Lastly, while healing lodges were originally intended to operate using primarily Indigenous staff, this goal has not been achieved (OCI, 2018), creating the ironic situation where Indigenous people get taught a generic Indigeneity by non-Indigenous individuals.
Monture-Angus (1999b: 27) notes that regardless of the steps taken to Indigenize CSC, “there has been no systemic change of Canadian justice institutions”. The involvement of Indigenous stakeholders in healing lodges involves them contributing to the “perpetuation of a punitive system that historically has excluded, omitted, and denied difference” in favor of “settler mediated Indigeneity” (Martel et al., 2011: 249; Montford and Moore, 2018: 659). Monture-Angus (1999a: 86) suggests that these places have actually just become “Aboriginal prisons” operating within the confines of CSC.

Concluding thoughts

In this decolonial critical commentary we have demonstrated how the erasure and disposability of Indigenous women in Canada occurs through the state’s continued use of “genocidal carceralities” targeted at Indigenous women (Woolford and Gacek, 2016: 407). One cannot understand the present treatment of Indigenous women in Canada without understanding the past, which is illustrated in a story shared by Donald Meikle:

It often reminds me of the story of the two people pulling dead bodies from a river. They stood strong, pulling bodies day after day, until an [E]lder happened to walk by and asked them what they were doing. They explained what they were doing... The [E]lder looked at them and asked, “Has anyone gone upstream to find out why all these bodies are coming down in the first place?” When we’re looking at Indigenous women’s issues, we still continually look downstream (Vecchio, 2018: 33).

The mass imprisonment of Indigenous women takes place within a societal structure in which we have been dismissed as less than human since first contact. The downgrading of our social status serves to alleviate the state from any responsibility for our well-being. Through the media, news, government sources, and even within murder trials where Indigenous women are the victims (see: National Inquiry, 2019a: 695–697), our lives are reduced to statistics, bodies portrayed as waste, deaths as our own fault, and imprisonment deemed inevitable. Years of inaction, dismissal, and disregard for the lives of Indigenous women and girls has led to the perpetuation and erasure of women whose stories need to be told. The lack of care that our victimization receives from the Canadian state and the public is inextricably linked to our criminalization and over-incarceration (National Inquiry, 2019).

Monture-Angus (1999a: 82) argues that attempts to reform CSC and the CJS “have focused on changing Aboriginal people to better fit the system”. The reality is that “white judges and lawyers seeking neat, culturally sensitive, ungendered solutions to justice have not often stopped to question their authority to interpret [the varied] Aboriginal culture, history and contemporary reality” (Razack, 1998: 79). Instead, CSC programs have “further embedded Indigenous people in the colonial institutions they set out to challenge” in the first place (Alfred and Corntassel, 2005: 611–612). There can be no justice or healing for Indigenous
women within an imposed system—recognizing this fact is a necessary step towards meaningful change. A participant in Murdocca’s (2020: 47) study emphasized the importance of self-determination over justice—noting that “nothing good is going to come out of continuing to engage with this system”. The resilience and authority of Indigenous women needs to be celebrated and acknowledged through the formation and reclamation of sovereign justice initiatives (Monture-Angus, 1999b; National Inquiry, 2019a).

In moving towards implementing Nation-based solutions it is important to recognize that decolonization is going to take time. In the meantime, CSC can and must do better at respecting differences amongst Indigenous cultures. These differences need to be recognized through institutional programming and correctional staff situated within their own Nations, cultures, and communities (McGill, 2008; National Inquiry, 2019 b). However, participation in cultural-specific programming should not be a required component of their term of imprisonment and consideration for release. CSC employees must work on fostering connections with incarcerated persons’ respective communities to have the communities support the women throughout their incarceration and re-entry, which includes CSC entering into additional section 81 agreements. In Murdocca’s (2020) study there was a “call for Indigenous women with lived experience of prison to play a significant role” in the development and implementation of section 81 agreements. As one participant notes, “it’s us women that are gonna build our nation back up” (Murdocca, 2020: 55). No person should have a cultural identity forced upon them—their decision to participate must be entirely theirs. Lastly, if an individual Nation or community establishes its own sovereign response to justice, CSC must support them and accede jurisdiction wherever possible.

On a macro level, it is important that Canadians recognize that Indigenous peoples cannot simply get over past injustices when genocidal harms are ongoing. As ingrained as it is among Canadians to treat us as the non-human “other,” the shame we feel has been internalized. I have been taught to hold my place, to not speak up because I may be subject to arrest, abuse, and racism. As Indigenous and female I represent a cross-section of humanity that is continually ignored, dehumanized, abused, and imprisoned: a statistic that is oft-quoted in academic papers. Contesting our situated position as debris necessitates arming ourselves with knowledge, finding strength, and continuing to resist imposed colonial systems. The settler-state’s imposed domination and identity must be rejected and replaced by Nation-based identities and cultural understandings. The contradiction of us asserting our sovereignty within Canadian spaces and using Canadian law in front of judges representing the Queen must be recognized and challenged. It is within our power to move forward towards asserting our Nation-hood, reviving our own justice systems and laws, rejecting imposed systems, and re-centralizing women.8

Future research
Moving forward, additional research involving interviews with Indigenous women whose lived experiences are represented within this commentary could provide
further insight into the issues addressed herein. Moreover, we encourage future research to examine the applicability of genocidal carcerality to the over-incarceration of Indigenous peoples more broadly and to continue to examine the effects of the pervasive displacement, dispossession, discrimination, and racism directed towards Indigenous populations within Canada and its CJS. We encourage research that can help dismantle oppressive systems, recenter the voices of Indigenous women, and provide policy direction that aims to dismantle the impacts of genocidal carcerality.

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Notes
1. We use the term Indigenous when referring to Indigenous peoples more broadly and specific Nations/peoples where relevant.
2. The National Inquiry was formed to examine the epidemic of Missing and Murdered Indigenous Women and Girls in Canada (MMIWG). The report called for massive changes-focused on the lived experiences and truths of families of MMIWG-and concluded that Canada was culpable for genocide. The National Inquiry utilizes the full terminology of “Missing and Murdered Indigenous Women and Girls, including members of 2SLGBTQ communities” throughout its reports (see: https://www.mmiwg-ffada.ca/wp-content/uploads/2018/02/NIMMIWG_Lexicon_ENFR-1.pdf). MMIW/MMIWG are commonly held acronyms referenced in Canada, including in reports by the Native Women’s Association of Canada, the Assembly of First Nations, and various Indigenous and non-Indigenous scholars.
3. Testimonies and stories given in the process of the National Inquiry including MMIWG’s family members and survivors were identified by first names and last initials. The decision to identify participants in this manner was to protect them from further risk by exposing their identities (for further information see: National Inquiry, 2019a: 81).
4. Indigenous women were construed as the immoral, sexualized, unworthy other by the Canadian state and over-policed by the North West Mounted Police (NWMP; the precursor to the Royal Canadian Mounted Police (RCMP)) (National Inquiry 2019a). Inaction and dismissals of police-imposed violence and sexual assaults of Indigenous women and girls date back to the early 1900s (National Inquiry, 2019a). Police are expected to protect people from harm; however, Canadian police have been responsible for “sexualized violence against Indigenous women and girls” themselves, with little to no repercussion (Palmater, 2016: 258–261).
5. In November 2019 CSC ‘abolished’ segregation and introduced Structured Intervention Units in response to legislative changes made by the government of Canada.
6. In 2019, CSC changed some terminology from Aboriginal to Indigenous – See CSC (2019b).
7. Section 81 of the Corrections and Conditional Release Act [CCRA] (1992: c. 20.) outlines the conditions under which individuals in custody can be transferred into the care of an Indigenous community for correctional services.
8. For examples of Nation based solutions and ideas see: McGuire (2019); Victor (2001, 2007).

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