

DIALOGUE ON THE CANADIAN CARCERAL STATE CONTINUED

Indigenous Incarceration and Settler Colonial Genocides

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On January 4, 2021, over 90 women and men confined within Saskatchewan's provincial correctional centres staged a peaceful hunger strike to protest the inhumane conditions¹ inside jails and exacerbated by the COVID-19 pandemic (Cardinal, 2021a). In a media release, Cory Cardinal, one of the organizers imprisoned at the Saskatoon Correctional Centre (SCC) called for the Saskatchewan's Minister of Corrections and Policing to resign for a failure to protect staff and prisoners within Saskatchewan's jails from a series of COVID-19 outbreaks (Cardinal 2021a; also see McMillan, 2021). In his letter Cardinal links the current socioeconomic realities affecting Indigenous peoples to ongoing settler colonial oppression and settler colonial genocidal policies and practices. As Cardinal (2021a) states:

We are inmates of not only institutions of incarceration but every other institution that has dominated us for years. We are inmates of poverty, of high suicide rates, of disease, and of overrepresentation in the justice system... This cycle of systemic oppression must be broken and must be recognized for what it is: a modern-day act of genocide meant to eradicate a vulnerable people.

Cardinal's analysis echoes existing scholarship that argues that the over-incarceration of Indigenous people in settler colonial contexts is an obvious form of ongoing genocide (Ross, 1996, pp. 125-141; Marques and Monchalin, 2020, pp. 79-102; Palmater 2020). Within these works, the authors link sexual and gendered colonial violence to cultural and physical acts of genocide which directly target Indigenous peoples' ties to one another and the land. Settler colonialism targets Indigenous people for removal from the land through the logics of elimination (Wolfe, 2006, p. 387). This is apparent in the ongoing carceral violence Indigenous people are subjected to by Canada's criminal justice system (Office of the Correctional Investigator, 2020; Zinger, 2023). Indigenous people are not only subjected to settler colonial carceral violence through their interactions

with state actors such as police, judges, prosecutors, parole and probation officers, but are also more likely to be confined to prisons, held in those carceral settings for longer periods, classified at higher security ratings, and are more likely to be sent to solitary confinement than their non-Indigenous counterparts (Office of the Auditor General of Canada, 2016; Zinger, 2018, p. 61; Zinger, 2023, pp. 6-7).

Using Claudia Card's (2003, p. 63) notion of "social death" and Woolford and Gacek's (2019, p. 400) "genocidal carcerality", this paper associates the inhumane treatment of Indigenous peoples' by the criminal justice system with broader discussions on settler state-building projects that coincide with the theft of Indigenous territories (Stark, 2016). This paper provides an overview of Indigenous genocides and incarceration. It offers a critical examination of prison policies and practices to contend that imprisonment causes severe mental, emotional, and physical harm which results in Indigenous peoples' social and literal death. This paper argues that the prison system is used to contain Indigenous people within carceral institutions and is an ongoing form of settler colonial genocide that advances the Canadian state's project of Indigenous elimination.

But what is genocide? Who determines which acts are genocidal and in what contexts does genocide occur? The answer is, in part, linked to how power and knowledge intersect through discourse or what Foucault (2002, p. 132) refers to as "regimes of truth", where "different regimes of knowledge determine what is true and false" (Jorgensen & Phillips 2002, p. 13). Regimes of knowledge are created within the capitalist construction of "expert" knowledge producers that contribute, albeit in inadvertent ways, to the systems of oppression that Indigenous peoples seek to transcend.² Using Foucault's logic within the context of settler colonialism, the process of legitimized knowledge production falsely positions European legal systems – that were unilaterally imposed within Indigenous territories – as the "sole" embodiment of truth, power, and knowledge, which continues to minimize and deny the extent to which colonial states, like Canada, enact genocide against Indigenous peoples. As a result, the continued reliance on the so-called "Doctrine of Discovery" and the concept of *terra nullius* (Miller, 2014, pp. 853-854) within settler colonial contexts has provoked significant debates regarding whether Indigenous peoples' multiple experiences with colonialism and settler colonialism can be considered genocide (Woolford et al., 2014, pp. 1-2).

Some scholarly work (e.g. Starblanket 2018; McDonald 2019) explores Indigenous genocides within settler colonial Canada and prioritizes “legalist” conceptions of genocide as theorized by Polish lawyer Raphael Lemkin and defined in the *1948 Convention on the Prevention and Punishment of the Crime of Genocide*, which includes:

...any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

– United Nations Office on Genocide Prevention
and the Responsibility to Protect (2020)

From this “legalist” perspective, international law is considered a “powerful mechanism” that can hold settler colonial states and actors who work within settler colonial states responsible for crimes of genocide. This view is problematic, however, as it continues to appeal to settler states to question the legitimacy of their own state-building projects, especially in a context where the subjugation of Indigenous peoples continues to be championed as one of many “necessary” evils in the advancement of the colonial project (McDonald-Laurier Institute, 2021).

On an international level, settler colonial states like Canada strategically narrowed the scope of the definition of genocide during the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide (UNGC) by arguing against the inclusion of “cultural genocide” within the Convention and later eliminated a number of their crimes from being classified as criminal by excluding references to “cultural genocide” within the Criminal Code of Canada (McDonald, 2019, pp. 38-39). However, at the centre of genocidal policies and practices aimed at destroying Indigenous peoples are (and have always been) settler colonial laws and political and legal systems. Settler colonial state actors purposively created the legal, social, and economic conditions whereby Indigenous peoples are

targeted for removal through carceral regimes and processes associated with incarceration (Stark, 2016).

In her work on Indigenous deaths in custody, Razack (2012, p. 916) refers to “colonial imprinting”, where Indigenous peoples are continuously removed from their territories because the settler society pathologizes the Indigenous body as one incapable of conforming to capitalist conceptions of modernity. Consequently, the settler society devises mechanisms whereby Indigenous bodies are contained within prescribed spaces to maintain the myth of “Canadian benevolence”. The reserve, the inner-city trenches, the prison, and the like all operate as spaces where Indigenous presence is tolerated, but only to the extent to which settler society deems appropriate (Struthers-Montford & Moore, 2018, p. 641). Razack (2015, p. 10) is correct in reminding her readers that Indigenous peoples have long argued that there are limits to settler colonial law and that the “answer to genocide and ongoing occupation cannot be found in the law that authorized it”. As a result, settler colonial states will never hold themselves or each other accountable, even if they have directly been implicated in committing and perpetuating genocide based on their own national and international legal frameworks.

While it may be difficult to “prove” that the ongoing hyper-incarceration of Indigenous peoples constitutes an act of genocide solely based on narrow legalist definitions, there is a need to engage deeply in the nuances of settler colonial genocides and expand our definitions to include an understanding of how genocidal processes are inherent to settler colonialism’s ongoing disturbances in Indigenous people’s lives (Woolford, 2015, p. 26). Within the context of settler colonial genocides, Woolford (2015, pp. 37-38, original emphasis) contends that:

Indigenous peoples were constructed as backward, savage barriers to progress, and they needed to be forcibly transformed in order to meet the designs and appease the motives of settler colonial society. That multiple motives were behind the forcible transformation matters less than the fact that there was widespread agreement on the need to eliminate Indigenous groups, as *such*, from settler society. Indigeneity was a *problem* to be *solved*.

The social construction of Indigenous people as “savage criminals” without any social, political, legal and economic organization is outlined extensively

within the scholarly literature (Ross, 1998; Stark, 2016; Chartrand, 2019). These works succinctly expose how settler colonial states like Canada rationalized white settler criminal behaviour (including the expropriation of Indigenous lands) by unilaterally imposing colonial laws within Indigenous lands (Stark, 2016). As a result of the dehumanizing depictions of Indigenous peoples, the false discursive links between Indigenous peoples' and "criminality" remain central to discourses within Canada's injustice system and forefront of the settler psyche (Moreton-Robinson, 2015, pp. xii-xiii).

While the functions of settler colonialism are tied to a larger genocidal project, settler colonial genocide is inherent to the establishment of the current Canadian carceral regime. For example, during Treaty negotiations with First Nations people in 1871, the Dominion of Canada used the Canadian and British military to enforce settler colonial dominance within the prairies, which resulted in a "Reign of Terror" on the Métis of the Red River settlement and contributed to the slow and literal death of numerous First Nations people (Horky, 2020). At the same time, the prison was used to contain First Nation and Métis people who resisted the imposition of colonial rule and fought against their peoples' subjugation within their own homelands (Adams, 1989, pp. 67-68; Innes, 2018). In fact, the first (but not last) prisoner recorded on the registrar at the "Stone Fort" at Lower Fort Garry (Manitoba Penitentiary) was a Dakota man named John Longbones (Horky, 2020). As such, the military, the penitentiary, and the North West Mounted Police would all be used to enforce Canada's settler colonial building projects and support acts of genocide committed against Indigenous peoples — in what is now referred to as Canada.

Given this history, it is not surprising that Indigenous peoples are starkly hyper-incarcerated, over-policed, and under-protected within settler colonial Canada. Decades of research has examined Indigenous peoples' involvement and experiences with the criminal justice system, underscoring that Indigenous peoples are not only more likely to be victims of crime, but are also increasingly being confined to federal prisons and provincial jails (Hylton, 1981; LaPrairie, 1996; Jackson, 1998; Scrim, 2016; Zinger, 2023). According to the Department of Justice, Indigenous people are more likely to be imprisoned at a younger age, held in custody more often than their non-Indigenous counterparts, denied parole more frequently, and classified as higher "risk" and having higher "needs" by criminal justice officials (Department of Justice, 2018). The Office of the Correctional Investigator

(OCI) (2020), an ombuds office for federally sentenced people, issued a press release highlighting that Indigenous peoples' representation in federal penitentiaries had surpassed 30%, while non-Indigenous representation in those same prisons had declined by 13.7% over the same period. Regional statistics on Indigenous peoples' incarceration within the prairie provinces reveal an even more dire situation. According to Statistics Canada, in "2018/2019, Indigenous adults represented three-quarters of admissions to custody in Manitoba (75%) and Saskatchewan (75%)" (Malakieh, 2019). Again in 2023, the OCI stated "prisons are increasingly being filled by Indigenous Peoples who are caught up in the proverbial revolving door, experiencing worse circumstances while inside, with few viable options for getting out and staying out" (Zinger, 2023b, p. 7). Despite the OCI's ongoing urgent warnings about the growing numbers of Indigenous people confined in prisons, the gravity of the situation made visible by these statistics is not new, and is inherently tied to Canada's state building and genocidal projects.

The ongoing severity of Indigenous incarceration prompted the former Correctional Investigator Howard Sapers (2016, p. 43) to label federal penitentiaries within the prairie provinces as "Indigenous prisons", which, according to his successor Ivan Zinger, "indicates a deepening *'Indigenization'* of Canada's correctional system" (OCI, 2020). It is worth noting here that the OCI's use of the term "Indigenization" in reference to prisons is not distinct from the Indigenization of settler colonial institutions (such as universities). Such references within the current socio-political context refer to the proportion of Indigenous people who occupy space within settler colonial institutions on any given day. In some academic discussions, this "Indigenization" refers to the integration of Indigenous culture and spiritual practices into the prison system itself (Martel et al., 2011; Tetrault, 2022). However, rather than fundamentally transforming the inherently violent nature of the prison, the Indigenization of prisons directly contradicts Indigenous peoples' calls to have their diverse intellectual, spiritual, economic, political, and social systems respected and sustained in a larger goal towards liberation from settler colonial state control (Gaudry & Lorenz, 2018).

The criminal justice system is comprised of several institutions that were historically designed to uphold and enforce settler colonial laws and legal systems (Stark, 2016), with each of these apparatuses directly contributing

to the ongoing biological (Paynter, 2021; Landertinger, 2015, pp. 57-87), physical (Hannum, 2003; Razack, 2013), and spiritual (Pettipas, 1994; McGuire & Murdoch, 2021) destruction of Indigenous peoples through the processes of settler colonial carceral control. Settler colonialism, according to Arvin and colleagues (2013, p. 12), is a:

...persistent social and political formation in which newcomers/colonizers/settlers come to a place, claim it as their own, and do whatever it takes to disappear the Indigenous peoples that are there. Within settler colonialism, it is exploitation of land that yields supreme value. In order for settlers to usurp the land and extract its value, Indigenous peoples must be destroyed, removed, and made into ghosts.

When Canadian statistics on Indigenous incarceration are situated within the context of settler colonialism, the sustained caging of Indigenous people in prisons over decades is not surprising. Various commissions of inquiry have implicated the settler colonial state in perpetuating ongoing acts of genocide, calling attention to the ongoing injustices and lethal levels of violence Indigenous peoples face daily. The Inquiry into Missing and Murdered Indigenous Women and Girls (2019) supplementary report and the Truth and Reconciliation Commission's (2015) commission's report argued that historical and contemporary colonial violence targeting Indigenous peoples, such as forcibly transferring children from one group to another, through forced sterilization, destruction of Indigenous kinship systems, the ongoing targeting of Indigenous women, and aggressive assimilation tactics are acts of genocide. The academic literature engages with how the Canadian criminal justice system is implicated in perpetuating acts of genocide through policies and practices that contribute to the social and literal death of Indigenous peoples, but largely remains silent on the need for fundamental change that will end settler colonial genocides and promote Indigenous peoples' freedom from the carceral state (McGuire & Murdoch, 2021; Adema, 2015; Marques & Monchalin, 2020; Ross, 1996).

Much of the academic literature that links Indigenous incarceration to the concept of genocide focuses on how Indigenous cultures are wielded as a tactic of settler colonial carceral control to advance settler colonial state objectives and goals. Rather than assisting Indigenous peoples "to heal", the prison system furthers the cultural destruction of diverse Indigenous

Nations by imposing pan-Indigenous notions of tradition onto Indigenous people in prison, or by preventing Indigenous people from participating in their cultures and traditions altogether (McGuire & Murdoch, 2021; Marques & Monchalin, 2020; Ross, 1996). There is truth to this argument, but it oversimplifies the lived reality of Indigenous peoples who are confined to prisons. In fact, decades of prisoner resistance and activism, policy recommendations, and commissions of inquiry cast significant doubts about the extent to which colonial tools of carceral control could be applied to Indigenous peoples in prisons and called for more culturally relevant programs and opportunities for healing (Task Force on Federally Sentenced Women, 1990; Monture-Angus, 1999; Adema, 2012; Tetrault, 2022). Beginning in the 1970s, the Correctional Service of Canada (CSC) began selectively integrating Indigenous cultures and traditions into the existing prison structure (Waldram, 1997; Struthers-Montford & Moore, 2018). This resulted in several pan-Indigenous cultural reclamation initiatives that grossly overlooked the micro and macro levels of diversity that exists between Indigenous peoples and their Nations (Martel & Brassard, 2008).

This is not to suggest that Indigenous culture and ceremonies are not beneficial for Indigenous peoples' healing, but is a reminder to consider that the initial vision of what Indigenous ceremony and culture would look like within the prisons diminished overtime (Bimman, 2019). Government reports now indicate that Indigenous peoples' participation in ceremony and cultural programs are integrated into risk management schemes and in some instances are used to punish Indigenous prisoners who do not adhere to correctional (healing) plans (Zinger 2018, p. 67). Indigenous cultural reclamation projects, inside of prison, not only became methods of carceral control through risk management schemes, but also are often limited to prisoners based on where they are geographically confined and to those who obtain certain security criteria (McGuire & Murdoch, 2021, p. 8).

Settler colonialism not only thrives off the elimination of Indigenous peoples from the land, but it also "destroys to replace" (Wolfe, 2006, p. 388). Thus, it is not surprising that Indigenous cultures and traditions are wielded by carceral systems and proponents of "Indigenized" prisons as an act of benevolence. Pan-Indigenous notions of Indigeneity are considered easier to "manage" within large institutional structures and operations (Silverstein, 2005, p. 347), but the homogenous approach diminishes the numerous ways in which Indigenous peoples' diverse social, political, and

legal systems have survived and adapted overtime. Yet, academic discourse continues to focus on the need to provide Indigenous people with adequate cultural resources and Nation specific teachings inside of prisons while never asking the question of why many Indigenous peoples' first encounters with ceremony and culture occur within carceral spaces (McGuire & Murdoch, 2021). Such a positioning ignores the fact that despite decades of "Indigenous-friendly" reforms, prisons are, and will remain inherently violent settler colonial spaces – even when they offer Indigenous ceremonies and teachings because simply adding Indigenous cultures and traditions into prisons leaves the inherently racist, sexist, heteronormative, patriarchal functions of the prison firmly intact (Bird, 2021).

In 2017, McDonald and Gillis (2017) used Foucault's (1990) concept of bio-power to argue that the residential school system, child welfare system, and the contemporary prison system "are intimately linked to colonial continuities in the subjectification of Indigenous peoples as abnormal and the need to reform such individuals through the institutionalized use of biopower" (McDonald & Gillis, 2017, p. 50). From this perspective, the prison system, through its institutional policies and practices, "attempts to create a mechanized body, one which is disciplined, optimized, and docile to be re-subjectified in the normal order" (McDonald & Gillis, 2017, p. 40). The Indian Residential Schools system, the child welfare system, and the prison system are places where Indigeneity is constructed as the problem and Indigenous peoples are wrongfully perceived as ongoing threats to the supposed superiority of white settler societies. The continuities between the effects of the residential schools, the child welfare system, and the prison system on Indigenous peoples' reveals the ongoing imprinting of colonial power referred to earlier, leaving some to conclude that Canada's prisons are indeed the new residential schools (McDonald, 2016).

Such analyses are important in drawing out the linkages between historical and ongoing abuse and violence Indigenous peoples are subjected to at the hands of settler colonial states and institutions, however, Marques and Monchalin's (2020) work on the mass incarceration of Indigenous women suggests the Foucault's notion of bio-power is an insufficient theoretical framework for examining Indigenous women's experiences with the prison system. Instead, they draw upon Mbembé and Meintjes' (2003) notion of necropolitics to argue "the mass imprisonment of Indigenous women is ongoing genocide and cannot be understood outside of the context

of [necropolitical] colonial agenda” (Marques & Monchalin, 2020, p. 91). Necropolitics, according to the authors’ analysis, “is not just about the right to kill, or the politics of killing, but also the ability to expose targeted populations to either literal or social death, or the possibility of it” (Marques & Monchalin, 2020, p. 81). Indeed, social, political, and cultural destruction need not always result in physical death and mass physical killings are not required for genocide to occur (Woolford, 2015, p0. 8-9). Caught in between the right to live and the right to die, Indigenous peoples are pushed into a status which Mbembé and Meintjes (2003, p. 40) refer to as the “living dead” and Indigenous incarceration operates as a mechanism whereby Indigenous people are made socially dead in a larger settler colonial genocidal project.

It is not possible to provide an exhaustive list of how the carceral regime is implicated in the larger project of colonial genocide within the limited scope of this paper. Instead, the intention here is to highlight how the prison is a “genocidal carceral space” that contributes to the social and literal death (genocide) of Indigenous peoples to secure settler colonial access to Indigenous territories. Genocidal carcerality, as defined by Woolford and Gacek (2016, p. 404) refers to “genocidal carceral spaces enlisted toward eliminating a targeted group, either for extermination or transforming the group so that it no longer persists”. Relying on Lemkin’s conceptions of genocide and the *United Nations Convention on the Prevention and Punishment of the Crime of Genocide*, the authors engage in a case study of the Fort Alexander Indian residential school to examine how aggressive assimilative education constitutes one aspect of a larger settler colonial genocidal project.³ While this paper draws upon the notion of genocidal carcerality as defined by Woolford and Gacek, I argue that the elimination, extermination, and transformation of Indigenous peoples, as people, within the prison system is also manifest in social death as genocide as conceptualized by Claudia Card.

The prison system, by design, controls every aspect of all prisoner life, restricts personal freedoms, and punishes people who fail to conform to white neo-liberal capitalist rules for living in settler colonial states. Yet, recent reports indicate that despite decades of Indigenous “friendly” prison reform, many current and former Indigenous prisoners fare far worse on every social indicator than their non-Indigenous counterparts (Zinger, 2023, pp. 6-7). Centuries of settler colonial subjugation of Indigenous peoples’ diverse social, economic, political, and spiritual practices served

to reinforce Canadian claims to sovereignty within Indigenous territories thereby granting settler colonial states “the capacity to define who matters and who does not, who is *disposable* and who is not” (Mmembe & Meintjes, 2003, p. 27).

While one could make the argument that all people within the prison system are equally affected by the prison as carceral space, this is not the case. Indigenous people were historically targeted for elimination through genocidal practices and policies to make way for settler colonial expansion and Indigenous peoples continue to be under-protected, over-policed, hyper-incarcerated, and are more likely to be re-imprisoned after they are released from prisons (Auditor General of Canada, 2016). The prison system continues the process of settler colonial genocide by preserving the prison as a genocidal carceral space – a space which continues “the physical, biological, cultural destruction of group life” through institutional policies and practices that contribute to Indigenous social death (Woolford & Gacek, 2016, p. 401). This view aligns with the Inquiry into Missing and Murdered Indigenous Women and Girls (2019, p. 8) supplementary report, where the commissioners take into consideration that genocide can include lethal acts (mass killing) and non-lethal acts (slow death). Understood within this context, genocide is genocide, even when the “cultural” or “non-lethal” qualifier is presented to make Indigenous genocide appear as a “lesser form of genocide” (Innes, 2018).

Slow death is synonymous with social death. Sociologist Orlando Patterson (1982) first used the term social death in his study on slavery where he used the term to describe how people are made socially dead – de-socialized and de-personalized. Claudia Card (2003, p. 63) later engaged with Patterson’s notion of social death within the context of genocide arguing that:

Social death, central to the evil of genocide (whether the genocide is homicidal or primarily cultural), distinguishes genocide from other mass murders. Loss of social vitality is loss of identity and thereby of meaning for one’s existence. Seeing social death at the center of genocide takes our focus off body counts and loss of individual talents, directing us instead to mourn losses of relationships that create community and give meaning to the development of talents.

Card (2003, p. 72) argues that genocide “targets people on the basis of who they are rather than on the basis of what they have done, what they might do, even what they are capable of doing”. Indigenous peoples, as argued throughout this paper, were historically, and are currently targeted for settler colonial carceral control based on who they are and not necessarily what they have done. Within the context of settler colonialism, Audra Simpson (2014, p. 156) maintains that Indigenous women were direct targets for genocidal policies and practices because their bodies have been “rendered less valuable because of what they are taken to represent: land, reproduction, Indigenous kinship and governance”. However, Indigenous peoples’ presence, as members of sovereign Indigenous Nations, poses a significant threat to settler state occupation of Indigenous territories – because settler colonialism is tied to the land. According to Tuck and Yang (2012, p. 6) Indigeneity is a threat to settler colonialism because:

Indigenous peoples are those who have creation stories, not colonization stories... Our/their relationships to land comprise our/their epistemologies, ontologies, and cosmologies. For the settlers, Indigenous peoples are in the way and, in the destruction of Indigenous peoples, Indigenous communities, and over time and through law and policy, Indigenous peoples’ claims to land under settler regimes, land is recast as property and as a resource. Indigenous peoples must be erased, must be made into ghosts.

Indeed, Indigenous peoples’ have long been targets for biopolitical management as argued by MacDonald and Gillis (2017) and a necropolitical agenda as argued by Marques and Monchalin (2020), however, these works have generally overlooked the ways in which Indigenous social death is inherent to settler colonial genocides (literal death).

The prison system is complicit in settler colonial genocide and this complicity lies in the fact that despite decades of scathing reports condemning the penal system’s dehumanizing treatment of Indigenous people, prisons are allowed to continue to operate as a genocidal carceral space that advances the elimination of Indigenous peoples’ through carceral logics and mechanisms of spatial confinement. Within the prison system, Indigeneity is a “risk” factor all on its own (Cardoso, 2020). An investigation conducted by the *Globe and Mail* in 2020 reiterates that the prisons’ risk measurement

tools are not only racially biased, but are continuously “stacked against” Indigenous and Black prisoners at every stage of the criminal justice system (Cardoso, 2020). The investigative reporting highlighted how preliminary assessment reports inform how CSC makes decisions regarding prisoners’ visitation, security classification, institutional placement, access to programs and parole board decisions. The findings from this report revealed that Indigenous men were 30% more likely than non-Indigenous men to receive the worst possible reintegration potential score even though “Indigenous and Black men are actually less likely than white men to commit a new offence” (Cardoso, 2020). Nevertheless, Indigenous peoples’ continuously score higher on these tests – they are categorized as being higher-risk and having higher-needs – which results in Indigenous peoples being placed in higher security units and assessed as having lower reintegration potential (Auditor General of Canada, 2016). The Native Women’s Association of Canada (NWAC) (2007) and the Canadian Association of Elizabeth Fry Societies (CAEFS) (2017) have also critiqued the CSC’s use of risk management schemes, primarily on Indigenous women, and yet these practices continue even after the CSC admitted their actuarial measurements are flawed. However, CSC has yet to rescind their use of these tools, and actors within the prison continuously fail to take seriously the implications of their racist and inhumane treatment of Indigenous prisoners, which contributes to the larger settler colonial agenda by supporting the literal and social death of Indigenous peoples.

Despite many institutional reforms, the prison remains an inherently violent settler colonial institution that not only pathologizes Indigenous peoples as high risk, violent people who require maximum security status or placement in solitary confinement, but also re-criminalizes Indigenous people who physically resist and respond violently to the violence they face at the hands of prison staff and administration (Pate, 2016). The prison contributes to Indigenous genocide by subjecting Indigenous peoples, who are caged in genocidal carceral spaces, to inhumane conditions such as solitary confinement (now known within the federal penitentiary system as Structured Intervention Units), “dry cells” and maximum-security settings which results in literal or social death (see, for example, CBC News, 2014; Nation2Nation, 2019; Joy, 2022). In other words, Indigenous prisoners are made to disappear and made socially dead through continuous subjugation, which only furthers the settler colonial logic of Indigenous elimination.

It is imperative that I interject here to state that I am aware that putting Indigenous peoples' trauma on display for academic and white settler audiences has been problematized by Indigenous scholars (Simpson, 2007; Tuck, 2009; Tuck & Yang, 2014). Tuck and Yang (2014, p. 815) have called for scholars to refuse to engage in research that documents one-sided analysis of peoples' pain and suffering, and instead shift our analytical gaze towards interrogating the "relationships between people and institutions of power". However, settler colonial violence and carceral policies and practices must continuously be confronted and relentlessly exposed for what Cory Cardinal (2021a) rightly calls *modern acts of genocide*. Thus, this critique remains fixated on the prison as a genocidal carceral space. Taking these frames of reference into account, this paper does not attempt to compel the legal or criminal persecution of those responsible for settler colonial genocides by simply invoking the term *genocide* in reference to Indigenous incarceration. In his book *This Benevolent Experiment: Indigenous Boarding Schools, Genocide, and Redress in Canada and the United States*, Woolford (2015, p. 293) engages with ongoing debates regarding the widespread application of the term genocide where he states: "some fear that, if the genocide concept is not restricted in its application, it will not inspire political intervention. However, recent years have proven that the term does not have the cachet to mobilize political will through its mere utterance". Indeed, the reports stemming from the Truth and Reconciliation Commission and the Inquiry into Missing and Murdered Indigenous Women and Girls have argued that Canada has committed genocide. Yet, such statements have done little, if nothing, to disrupt ongoing genocidal project within settler colonial Canada, indicating that other frames of critique are warranted.

The reader may be left wondering why the concept of genocide is used within this work to frame the analysis of Indigenous incarceration if it will not result in the necessary social and political will to act. Woolford (2015, p. 294) maintains:

...the value of the genocide concept is often in how it captures the potentially catastrophic nature of certain interventions in the life of a group and provides a framework for setting a path for how we might live differently, together... [and] understand how genocide is a way to understand [the settler] as inheritors and perpetrators of settler colonialism

who have benefitted from its ongoing processes of dispossession and assimilation.

Such a framing of genocide is useful for scholars within the field of Indigenous studies because it provides another tool to interrogate the linkages between settler colonialism and settler complicity in ongoing genocidal processes.

Settler colonial state building projects have always targeted Indigenous peoples for elimination: the reserve system, residential schools' system, the *Indian Act*, child welfare practices, youth detention centres, psychiatric centres, and prisons all contribute to Indigenous peoples' literal and social death. While the prison system strips freedoms from all who are confined within the carceral space, Indigenous peoples' history and ongoing experiences within the context of settler colonialism prompt us to view Indigenous subjugation and confinement in prisons as a part of the ongoing settler colonial genocidal project. The fact remains that such measures will continue to disproportionately affect Indigenous peoples, not only because Indigenous peoples' pose ongoing threats to the current settler colonial order, but also because Indigenous peoples' containment inside of genocidal carceral spaces continues the Canadian state's project of Indigenous elimination, through a slow social, but certain death.

ENDNOTES

- ¹ See, for example, prisoner-led advocacy work done by Inmates 4 Humane Conditions, founded by Cory Cardinal. To learn more about this work see Cardinal (2021b).
- ² Here, I am referring to the epistemological power that is used to "extract a knowledge from individuals... to extract knowledge *about* individuals who are subjected to observation and already controlled by those different powers... which enables a strengthening of control" (see Foucault, pp. 83-84).
- ³ Here, Woolford and Gacek (2016, p. 409) use the concept of "settler colonial mesh" to describe how the Indian Residential schools were transformed into genocidal carceral spaces.

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