



Copyright © 2016 International Journal of Criminal Justice Sciences (IJCJS) – Official Journal of the South Asian Society of Criminology and Victimology (SASCV) - Publisher & Editor-in-Chief – K. Jaishankar ISSN: 0973-5089 July – December 2016. Vol. 11 (2): 75–99.

This is an Open Access article distributed under the terms of the Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.



Race and Criminal Justice in Canada

Charles Reasons¹

Central Washington University, United States of America

Shereen Hassan, Michael Ma, Lisa Monchalin²

Kwantlen Polytechnic University, Canada

Melinda Bige³

University of Victoria, Canada

Christianne Paras⁴

Fraser Region Community Justice Initiatives, Canada

Simranjit Arora⁵

Faculty of Law, Thompson River University, Canada

Abstract

The relationship between race and crime has long been a subject of study in the United States; however, such analysis is more recent in Canada. A major factor impeding such study is the fact that racial/ethnic data are not routinely collected and available in Canada, unlike the United States. The collection of such data would arguably undermine the multi-cultural mosaic of Canada as a place of acceptance and tolerance. However, the lack of such data bellies research suggesting that race plays a role in the Canadian criminal justice system. Using available, albeit, limited research studies and their data, the role of race is evident throughout the justice system. The findings of this study are placed within a theoretical context emphasizing structural sources of differential treatment in the Canadian justice system. It may be time for Canada to recognize the fact that race plays a role in the justice system and formally collect and document the nature and extent of its role.

Keywords: Race, Criminal Justice, Canada.

¹ Professor and Regular Graduate Faculty, Department of Law and Justice, Central Washington University, 400 E. University Way, Ellensburg, WA 98926-7580, United States of America. Email: reasons@cwu.edu.

² Faculty Members, Criminology Department, Kwantlen Polytechnic University, 12666 72 Avenue - Surrey, B.C. V3W 2M8, Canada. Emails: shereen.hassan@kpu.ca, michael.ma@kpu.ca, lisa.monchalin@kpu.ca.

³ MA Indigenous Governance, University of Victoria, 3800 Finnerty Road, Victoria BC V8P 5C2, Canada.

⁴ Trainer, Fraser Region Community Justice Initiatives, 101 - 20678 Eastleigh Crescent Langley, British Columbia, Canada.

⁵ Faculty of Law, Thompson River University, 900 McGill Road, Kamloops, BC V2C 0C8, Canada.

Introduction

Although the concept of race has been around for centuries, it became scientifically important in the 18th and 19th centuries. During this period, which historians call the age of science and enlightenment, humans began to create naturalistic or scientific explanations for what goes in the world. Prior to this time, the behaviour of stars, weather, and human behaviour was largely explained by god, religion, and what we would call “otherworldly” or supernatural explanations (Gossett, 1963). With the rise of science, humans started explaining the earth, moon, stars, and other natural phenomena through observation and study, that is, through the scientific method. The typology and classification of humans into subgroups based on race seemed to follow the logic of the typology and classification of plants and other animal life. Although Charles Darwin’s *Origins of Species* specifically described plants and nonhuman life forms, the notion of evolution and of inferior and superior forms of life were applied to the human social realm. This became known as social Darwinism: races were not only placed in typologies and classification schemes, but they were also ordered from inferior to superior (Gossett, 1963).

When White men “discovered” the Americas, they found Indigenous peoples in what are now Canada, the United States, Mexico, and South America. Indigenous people differed from the European explorers in terms of culture –language, laws, religion, politics, family, and other social institutions. The massacres and seizure of lands were much more politically and socially acceptable to majority groups when it could be justified on the basis of innate inferiority. That is, if Indigenous peoples were viewed as inferior races and cultures, it became “white man’s burden” to civilize them. This was particularly important for the British Empire, which moved from relative obscurity as a nation in the 16th century, to the largest world power in the 18th and 19th centuries, colonizing a large part of the world, including Asia and the Americas. The British crown was largely influenced by the Christian faith. Religious objections to oppressing non-Whites, however, could be quieted by pointing out the “scientific” evidence. This racism –the assumption of physical, moral, intellectual, and social superiority and inferiority based on characteristics presumed to be ascribed –became very important in the British Empire and its colonies, including those in the United States and Canada. The British were the first to practice large-scale enslavement of Africans for financial gain; such slavery and racism became particularly important for the North American colonies, specifically the United States, where slavery became a major basis of the economy and was protected by the Constitution (Bell, 2000). Of course notions of race became important for the Canadian state, particularly through the Indian Act (Satzewich & Liodakis, 2013). However, Campbell (2015) argues through extensive review of laws and legal cases that the meaning of “British justice” in colonial Canada was largely “color blind”, not following the United States with legal apartheid. This “changed with the Indian Act” setting up legal apartheid, which exists today (Monchalin, 2016).

The historical definition of race is quite different from that which exists today. Formerly, there was Nordic, Jewish, German, Italian, Polish, and other “races”. Today, we call them ethnic groups. If we look at the definition of race today, the census and other statistics that reveal race has come to mean largely skin pigmentation. Of course, there is still a great deal of ambiguity about the actual definition of race, in terms of an example, people of Hispanic origin have differing skin pigmentations and may have

different cultures in terms of languages, religions, and so on. As a leading Canadian text 'Race and Ethnicity in Canada: A Critical Introduction' concludes the terms ethnicity and race are historically specific, with race being an irrational way of dividing human populations into groups based on physical characteristics (Satzewich & Liodakis, 2013). This emerged as pseudoscience, justifying colonization, exploitation, and slavery. The impact of racial construction is a product of social and political developments, not pure science.

The relationship between race and crime has long been a subject of concern among criminologists, particularly in the United States (Bonger, 1943; Wolfgang & Cohen, 1970; Reasons & Kuykendall, 1972; Reasons, 1974). Since the United States was established based largely upon slavery and racial codes, race has been integral to its history in law and throughout all institutions. There are several contemporary U.S. books concerning race, crime, and the law (Kennedy, 1997; Gabbidon & Green, 2013; Walker, Spohn, & De Lune, 2012; Brown-Marshall, 2013; Alexander, 2010). Statistics concerning race and crime have been routinely collected in the United States since the 1930s (Geis, 1972). While arguably having a deleterious effect, in recent times they have been the basis for measuring the extent and nature of both disparity and discrimination throughout the United States criminal justice system. We will look at race and crime research in Canada and theoretical perspectives on it.

In Canada, it has only been in the last few decades that criminologists have begun to address issues of race and the criminal justice. There is one recent edited text that addresses this topic throughout the criminal justice system (Perry, 2011) and the recent book by Monchalin (2016) which provides a very good overview of Indigenous issues. In fact, Canada does not routinely collect and report on race and ethnicity in the criminal justice system, except for correctional data on Indigenous people (Moscher & Mahon-Haft, 2010). The subject of collecting data on race and crime has elicited a major debate in Canada. In a 1994 article titled "The Suppression of Crime Statistics on Race and Ethnicity: The Price of Political Correctness", Gabor (1994) argues that this issue must be directly confronted and the pros and cons are expressly noted and discussed, and not collecting such data may be more harmful. In the same issue of the Canadian Journal of Criminology, Hatt (1994) cautions against collecting and publishing such statistics, which merely fosters racism. Johnson (1994), in the same issue of the journal, notes that in 1990 the Canadian Centre for Justice Statistics proposed collecting such data and sent a request to all police across Canada to begin collecting such data. Some major police departments refused to collect the data and Statistics Canada backed down from its proposal. According to Roberts and Doob (1997), there was also criticism from academics and minority organizations to collecting such data. Finally, in the same issue of the Canadian Journal of Criminology, Roberts (1994) underlies the United States experience as a caution to not collect such data. He proposed "special studies" periodically on the topic, rather than routine collection of race and crime data.

Subsequently, academics in Canada have debated this issue. Wortley (1999), a prominent researcher on race and criminal justice in Canada, summarize the major arguments against crime statistics. (1) The poor quality of crime statistics, (2) difficulty of measuring race, and (3) such statistics will be used to support racist theories and discrimination. More recently, the Canadian Law and Society Association has called for collection of such data (Owusu-Bempah, 2010) and it has been noted that many academics and minority groups now support the collection of such data on a routine basis

as a means to gauge and redress social discrimination in the administration of justice (Owusu-Bempah, 2010). Although race statistics are not systematically collected, Canadian media present an image of race and crime to the Canadian public (Collins, 2014). The only regular data on race and ethnicity collected and reported by officials concern corrections.

A premier Canadian criminology text, *Criminology: A Canadian Perspective* (Linden, 2012), has a “Race and Crime” section, largely devoted to Indigenous peoples in Canada. This is the core group that the Canadian government regularly collected criminal justice data on. Given the historical and contemporary manifestations of colonialism, coupled with the Indian Act, which provides a legal framework for Indigenous subjugation, the Canadian government has a special relationship to Indigenous people of Canada. Like other Indigenous populations who have been colonized, including Native Americans in the United States, the legacy of colonization is evident in rates of both incarceration and victimization (Monchalin, 2016).

I. Offending and Victimization

Since police data are not systematically collected and reported regarding race in Canada, one has to look at incarceration data. Correctional data in Canada does include race. Nationally, certain visible minorities are overrepresented in Federal Penitentiaries (the most serious offenders in Canada receive Federal time –two years plus). For example, Blacks are two percent of the Canadian population, but six percent of those federally incarcerated. Most disproportionate are Indigenous people, who are approximately 3 percent of the population but 18 percent of federal prisoners (Linden, 2012). Indigenous adults are 4 percent of the Canadian population but 24 percent of admissions to provincial/territorial-sentenced custody. In some provinces, they are grossly over-represented. While making up 16 percent of the Manitoba population, they were 71 percent of correctional admissions in 2005/2006, while in Saskatchewan they are 15 percent of the population and 79 percent of the total prisoner population (Perry, 2011).

What little research that exists concerning Black Canadian offenders indicates they are over-represented among homicide offenders in some urban areas such as Toronto. Survey data from Toronto indicate Black Canadian youth may be somewhat more involved with violence such as assaults than other racial groups (Wortley & Owusu-Bempah, 2011). Information regarding other racial minorities is very limited. For example, South Asians are the fastest growing visible minority group in Canada, with nearly one million persons concentrated in the Toronto and Vancouver areas. However, little data exist on their involvement with the criminal justice system. What little data does exist suggests while they are under-represented in terms of incarceration rates, they have disproportionate gang involvement, homicide offending, and victimization (Perry & Alvi, 2011). In a comparison of homicide in Seattle, Washington and Vancouver, British Columbia, Reasons (2010) found some evidence for their assertion of gang involvement, homicide offending, and victimization. South Asian victims' cultural needs appear to not be met (Thawdi, 2013).

Given the history of colonization of Indigenous people by the British and subsequently, the Canadian government, there is a special legal and institutional obligation of the government to maintain data on Indigenous people in all aspects of life including the

criminal justice system. Therefore, compared to other racial groups in Canada, there is a wealth of data on Indigenous peoples.

A number of government commissions, starting in 1967, have documented the over-representation of Indigenous peoples in the Canadian criminal justice system. Violent crime, particularly homicide, is much higher for Indigenous compared to non-Indigenous, but homicide is largely intra-racial. Indigenous people, like Black Canadians, have a much higher victimization rate for homicide (Linden, 2012). As Lisa Monchalin (2010) observes, high rates of both offending and victimization are a consequence of multiple risk factors, which are the product of colonization. The fact that hundreds of Indigenous women have disappeared over the last few decades, without little attention by the government and related officials, attests to their greater victimization and lesser priority (Invisible Women, 2014). Victimization rates are high for all Indigenous groups, including First Nations, Métis, and Inuit peoples (Chartrand & McLay, 2006). Indigenous women have higher rates of sexual violence victimization (Dylan, Regehr, & Abaggia, 2008), homicide offending and victimization (Doob, Grossman, & Auger, 1994; Reasons, 2010), with a rate nearly 10 times that of non-Indigenous. Although Indigenous women have a much higher rate of violent victimization, their levels of fear of victimization are similar to non-Indigenous (Weinrath, 2000). Unfortunately, Indigenous women who are abused are more likely to end up on the street, without housing, than non-Indigenous women (Little, 2015). The response to domestic violence needs to be tailored to the reality of domestic violence for racial minority women (Tam et al., 2015). Given the history and contemporary impact of colonialism upon the law and criminal justice system, there is a need according to Piche (2016), to address the real issues facing Indigenous population.

High rates of offending, victimization, and contact with the criminal justice system impacts perception of the justice system. One research study in Toronto found that race, education, and police contact impacts perceptions of injustice. The more contact, particularly for racial minorities, the higher the perception of injustice. This was particularly the case among well-educated Blacks with recent police contact (MacMillan, Wortley, & Hagan, 1997). Court contact increased perceptions of injustice among all races, but particularly with Blacks (Wortley, 1996). More recently, Wortley (2009) sampled Toronto residents and found that while most residents positively evaluated the police and criminal courts, Blacks and Chinese respondents were less favourable than Whites. The most negative attitudes were amongst Canadian-born Blacks, not recent immigrants. Low levels of satisfaction with police were recently found in a high crime community in Winnipeg, particularly among Indigenous people. Similarly, in a multiple regression analysis based on Statistics Canada General Social Survey data, Cao (2014) found that Indigenous peoples and visible minorities have much lower confidence in the police as compared to other peoples in Canada. Chinese immigrants in Toronto have a more positive perception of police than those in New York City. This is explained by different policing practices (Chu & Song, 2015).

II. Policing and Race

“Theories of racial differences in attitudes toward the police and empirical tests of such theories are rare in Canada” (Cao, 2014, p. 499) and the Canadian research regarding police and race is overwhelmingly focused on the issue of racial profiling and the use/abuse of ethno-racialization as a tool of policing. Within this debate a tension exists between two polarities: 1) scholarship that reveal the presence and practice of bias in racial

profiling and 2) scholarship that disputes racial profiling as a racist practice or as a practice embedded within racial bias (Gabor, 2004; Gold, 2003; Stenning, 2011; Wortley & Tanner, 2003; Wortley & Tanner, 2005). The former involves research demonstrating that particular ethno-racial groups are subject to greater surveillance and policing than non-racialized groups (i.e. “white”), while the later defends practices of profiling as valid tools of police work that is not premised on racial bias.

In 2002, the Toronto Star published a series of articles examining race and police. The investigation was based on statistical research conducted by a five-member team lead by Michael Friendly, professor of psychology and director of the York University Institute for Social Research. The Toronto Star study revealed disparities in police treatment between Black people and White people. Black people were shown to be ticketed for motor vehicle violations, brought to police, charged for drug possession, and given overnight stays in jail at a rate exceeding those of White peoples (Police Target, 2002; Singled Out, 2002). The statistical data and its interpretation were mirrored against the then current Toronto Police Chief Fantino’s statement: “we don’t do profiling” (Singled Out, 2002). The ensuing debate, called into question the veracity of quantitative data collection, analysis, and interpretation, and whether statistical data could be used to establish bias or prove police racial profiling.

On the one hand, in defense of police practice, Thomas Gabor argued that if “ethnicity or race is part of a criminal profile,” then that practice is a legitimate part of criminal profiling and not a form of racist practice (Gabor, 2004, 462). Alan D. Gold called into question the police data that were used in the statistical analysis. He points out that, claims of racial bias cannot be proven because the data collected, which are the basis of the study, was never collected to enumerate the presence of racism. Gold claims the study was based on weak scientific method (Gold, 2003). On the other hand, Wortley and Tanner presented additional statistical and survey-based evidence that demonstrates the presence of racial profiling in Canadian policing. In particular, they argued that even when multivariate analysis is taken into consideration; it cannot explain why Blacks come into more contact with police services than Whites (Wortley & Tanner, 2003).

In 2003, the Ontario Human Rights Commission published, *Paying the Price: The Human Cost of Racial Profiling*. By arguing that racial profiling is different from criminal profiling, the report framed racial profiling as an issue of bias and human rights. The report opines: “It is the Commission’s view that the evidence of the existence of racial profiling is incontrovertible” (OHRC, 2003). Christopher J. Williams suggest that the report offered the explanation that racial profiling is ubiquitous, occurs as a well-intentioned effort to maintain public safety, but is ultimately dysfunctional and disrupts the multicultural pluralism of Canada (Williams, 2006). The purpose of the inquiry was not to “prove or disprove the existence of racial profiling” because it is the Commission’s view that previous inquiries have considered this and have found that it does occur” (OHRC, 2003, p. 9). Recent attention has been focused on “street checks” in Ontario, where police stop citizens and write up information on them, even though they have not committed any offense. Such “interactions” have been noted as a type of “racial profiling”, since they disproportionately occur with racial and ethnic minorities. Such official profiling can have many negative consequences, since the “interaction” can be placed in a file/database (Canadian Civil Liberties Association, 2015). Finally, a recent study found that police racial profile Black youth who live at home, while White youth

living at home have less police contact. However, both Black and White street youth are equally subject to police stop and search in Toronto (Hayle, Wortley, & Tanner, 2016).

A very recent study addresses the “minority threat” hypothesis that shows in the United States, Germany, and Spain that the larger the size of social minorities in major cities, the larger the police force and police spending. Ruddell and Thomas (2015) analyzed major Canadian cities and did not find support for the minority threat hypothesis. The factors most associated with more formal social control were more police reported violent crime and economic, social and political factors not minorities. Therefore, unlike incarceration rates, size of police departments and budgets are unaffected by minority threat (Neil & Carmichael, 2015).

Both the Toronto Star articles and the Commission’s report helped congeal the question of race and policing around the question of whether racial profiling is practiced by police services. Issues of racialization and police in Canada have a tendency to focus on Black or African-Canadians as victims of differential treatment by police services (Mosher, 1996; Henry & Tator, 2005; Satzewichk & Shaffir, 2009; Tanovich, 2002). Although studies may cite the presence of racism in the form of police practice (i.e. racial profiling) it does so without clearly demarking whether those racial acts are ones perpetrated upon specific racial minorities (e.g. African-Canadians, Chinese-Canadians, Japanese-Canadians, South Asian-Canadians, etc.). For example, neither the Toronto Star debate nor the Ontario Human Rights Commission re-port specifically identifies what constitutes a race or ethno-racial belonging.

The literature debating the practice of police racial (criminal) profiling often is not clear in how it deploys a concept of “race.” The thesis of police denial of racial profiling as a practice of deflection and neutralization embedded in a subculture of police and professionalism is an important contribution offered by Satzewic and Shaffir (2009). However, their work is also implicated in perpetuating an un-examined notion of what constitutes race, ethnicity, or colour (Satzewic & Shaffir, 2009). Similarly, in defending the Toronto Star’s investigative analysis of police data revealing a practice of racial profiling, Wortley and Tanner (2004) accuse a fellow scholar of “not properly defining racial profiling”, however, their own article equally does not establish the full meaning and practice of “racial profiling” itself –except to say that it is a practice of greater surveillance perpetrated upon minorities (Wortley & Tanner, 2004). In both these articles, the reader is not provided with a fulsome point of reference or framing of what constitutes race.

By arguing that the very term of “racial profiling” has little meaning when “the term has such varied connotations,” Thomas Gabor argues that the debate around the meaning of the referent is unproductive (Gabor, 2004). Gabor proposes the more fruitful strategy to “distinguish between law enforcement practices that are based on pure bigotry and those that may be entirely reasonable as a result of systematic analyses of crime patterns” (Gabor, 2004, 458). Although this may seem a reasonable approach, Gabor fails to define “pure bigotry” throughout his article, and in so doing, has merely substituted one key ambiguity of reference for another.

Racialized experiences also are left undifferentiated in much of the research (Symons, 1999; Fitzgerald & Carrington, 2011). In Frances Henry and Carol Tator’s (2006) work, there is an attempt to focus on the experiences of Black men and their encounters with police services; however, much of the literature does not differentiate the types of racialization events based on ethno-racial experience. Scholarly knowledge of race and

police would be greatly improved with the use of a standard measure by which to understand the type of racialization encountered. Not all oppressions, biases or insults are the same. Many scholars would agree that race, class and gender are socially and politically expressed in the form of disadvantage or oppression but that they are not equivalent (Wortley, 2003). It is also acknowledged in both critical race theory and theories pertaining to social exclusion that not all forms or types of racism are equal. And yet such notions of race and racialization as an unequal application are unacknowledged in the literature.

Areas of future research would benefit from a clarification of the terms of investigation. Henry and Tator begin this task of unpacking a discourse of race but stop short of examining specific police practices that express this practice and ideology (Henry & Tator, 2005, pp. 87-101). The understanding of such differences would allow researchers greater specificity and accuracy regarding the area under examination and thus improving research outcomes regarding the presence or practice of race. The field of research regarding police services and race and racialization in Canada would benefit greatly from a clarification of what types of racisms occur in the context of racial profiling and its various practices. Specification is needed in definitions terms, ethnicity/race and the nature of policing. For example, profiling may be evident in the enforcement of municipal bylaws upon Chinese sex workers in massage parlours in Toronto (Lam, 2016).

III. Race and Courts

Much of the literature examining race in the criminal justice system focuses on public perceptions rather than the actual prevalence of racial profiling in each branch of the system due to the lack of empirical data available for such analyses, as outlined at the outset of this paper. Research in both Canada and the United States demonstrates that the public is critical of the criminal justice system and that the perception is that racial discrimination within the system does indeed exist (Kaukinen & Colavecchia, 1999; Commission on Systemic Racism in the Ontario Criminal Justice System, 1995). Regardless of whether these perceptions are founded in empirical data, it is the interdependency between the general public and the criminal justice system which makes these perceptions quite important (Kaukinen & Colavecchia, 1999), particularly when it comes to the public's perceptions of the courts: members of the public serve as witnesses and jurors, and public attitudes do impact court reform. In fact, it has been argued that the treatment of racial minorities by judges is perhaps the most important and symbolic of all actors in the criminal justice system, with judges often being viewed as the criminal justice system (Commission on Systemic Racism in the Ontario Criminal Justice System, 1995).

a. Perceptions of Racism in the Courts

The Commission of Systemic Racism into the Ontario Criminal Justice System was created in 1992 to examine practices, procedures and policies of the Ontario system and inquire into the extent to which these reflect systemic racism, and also to make recommendations in this regard. Survey respondents included Ontarian residents as well as criminal justice professionals. This inquiry into the courts in particular revealed that there is indeed a widespread belief that the courts do not treat people equally on the basis of race, but there certainly are some notable discrepancies amongst criminal justice

professionals (Commission on Systemic Racism in the Ontario Criminal Justice System, 1995). On one hand, many judges and lawyers argued that racial discrimination does not exist –this was found to be the perception of crown attorneys, general division judges and provincial division judges appointed prior to 1989. On the other hand, however, defence counsel and more recently appointed provisional division judges do perceive there to be racial discrimination in the courts. Issues surrounding Indigenous lawyers in Canada also need to be addressed (Lawrence & Shanks, 2015).

In their examination of immigrant and racial minority perceptions of the Canadian criminal justice system, Wortley and Owusu-Bempah (2009) note that there is relatively little research done in this area, with the majority of the existing research focusing on attitudes towards police (see Chu & Song, 2008 & O'Connor, 2008). Wortley and Owusu-Bempah (2009) set out to evaluate immigrant perceptions of the courts, and more specifically the criminal courts, and to compare the results from their 2007 survey to the results of a 1994 survey conducted by York University's Institute for Social Research on behalf of the Commission on Systemic Racism in the Ontario Criminal Justice System. With respect to perceptions of court discrimination, they found that in the 13 years between surveys, the perceptions of discrimination increased. Across the board, regardless of race, it was found that the criminal court's performance is evaluated less favourably than the performance of police; having said that, though, Blacks did perceive greater discrimination in the criminal courts than both Whites and Asians. Interestingly, the length of time that an immigrant resides in Canada appears to have an impact on their perceptions of both police and courts: the longer they reside in Canada, the worse these perceptions become (Wortley & Owusu-Bempah, 2009).

b. Court Experience of Minorities

The literature examining the experiences of racial minorities in the criminal courts in Canada suggests that the disparities emerge in the pre-trial stages (Wortley, 2003). Perhaps most significantly, minority accused are less likely to have the financial means to retain legal counsel, thus impacting the outcome at the pre-trial stage. These accused have been found to be more likely to be denied bail and more likely to be held in pre-trial custody than White accused (see Hamilton & Sinclair, 1991, Kellough & Wortley, 2002, Roberts & Doob, 1997, as cited in Wortley, 2003). Furthermore, minority accused are more likely to be subject to pre-trial release conditions, and as such are more likely to breach (Wortley, 2003). The language barriers that exist for many minority accused also impact their experiences in the courts, namely in those areas where there is a lack of effective interpretation services (Wortley, 2003). Together, these factors have a domino effect on their experiences at the sentencing and correctional stages of the criminal justice system: accused who are detained pre-trial have a higher likelihood to be convicted and to receive longer custodial sentences, thus leading to an over-representation of minorities in the correctional system. In a recent study, Neil and Carmichael (2015) conducted an analysis of incarceration rates across Canadian provinces from 2001–2010 and found Canadian incarceration rates are largely driven by ethnic threat. That means the size of the visible minority and Indigenous population are the most significant factors explaining variations in punishment, controlling for other variables.

The sentencing of offenders has been of special concern in Canadian, Australia, and New Zealand. These three countries have varying legislation provisions, court decisions, and innovative sentencing procedures to stem the over-incarceration of offenders.

However, Jeffries and Stenning (2014) have recently concluded an exhaustive review of such practices and found they have been unsuccessful in reducing imprisonment rates. In Canada, section 718.2(e) of the Canadian Criminal Code expressly states judges must consider the unique circumstances of Indigenous people. Subsequently, the Supreme Court of Canada have further clarified this provision, but this and circle sentencing efforts have not led to any significant reduction in the over-incarceration of Indigenous people. In a recent study, jury eligible subjects read fictional, trial transcripts with the same offense, but race of the offender changed. This was to test stereotypes of offender/offense with assumed relationships of Blacks with auto theft, Whites with fraud, and Indigenous with dangerous operation of a motor vehicle while intoxicated. There was only modest evidence of a congruency effect with presumed stereotypes. Further research is suggested, focusing on race of the juror and crime congruency (Maeder, 2016).

IV. Race and Corrections

The Canadian research regarding race and corrections can generally be grouped into four main categories: 1) research that identifies similarities and differences between minority and White incarcerated peoples, 2) research that identifies the embedded bias and systemic discrimination in correctional institutions, 3) culture and spirituality in corrections, and 4) attempts at “Indigenizing” corrections and managing racialized prisoners through responsabilization strategies. Although the literature concerning corrections and race does include some work on differing cultural groups or races of people, this literature is largely dominated by studies examining Indigenous peoples, with a large focus on “Indigenous overrepresentation” in prisons.

There is a large body of research drawing on characteristics of Indigenous versus non-Indigenous peoples in custody. Research has pointed out that incarcerated Indigenous peoples are more likely to: have committed violent offences (Perreault, 2009; Trevethan, Moore, & Rastin, 2002), be long-term offenders (Hassan, 2010), have higher incidents of prison misconduct, are admitted at an earlier age, have higher rehabilitative needs (Ruddell & Gottschall 2014), be younger, have lower levels of education and employment (Perreault, 2009; La Prairie, 2002), be classified as higher-risk or higher-need, are more likely to have served previous sentences (Mann, 2009), present a greater need for specialized programming (Moore 2003), and have more extensive criminal histories (Trevethan, Moore, & Rastin, 2002) as compared to non-Indigenous peoples in custody. For Indigenous peoples specifically, research has also looked to identifying differences found between incarcerated First Nations, Métis, and Inuit peoples (Moore, 2003). Moore (2003) identified that First Nations peoples are more likely to be recommended for maximum security as compared to Métis, Inuit, and non-Indigenous peoples. He further identified that Métis people are incarcerated for more varied offences, and have higher proportions of those incarcerated for robbery as compared to First Nations, Inuit, and non-Indigenous peoples. For Inuit people he finds that they are more likely to be incarcerated for sexual crimes as compared to all other groups.

Although a large amount of Canadian research focuses largely on Indigenous peoples, and notably our differences as compared to non-Indigenous peoples, there is also research examining incarcerated Black peoples. Similar to incarcerated Indigenous peoples (Ruddell & Gottschall, 2014; CSC, 2011), the Office of the Correctional Investigator (2013) identified that Black prisoners are more likely to be younger, commit sex offences,

and to be gang-involved as compared to the general prison population. Research has also drawn on the similarities between minority and general prison populations. The Office of the Correctional Investigator (2013) also pointed out that Black peoples are incarcerated for first and second degree murder at proportions consistent with those of the general prison population (p. 9).

Carol La Prairie, whom is well-known for her research into Indigenous peoples and the criminal justice experience in Canada, identified in 1996 that Indigenous and non-Indigenous incarcerated peoples have characteristics that are different, and some that are the same. In 2003, she and Philip Stenning explained Indigenous people's overrepresentation in the criminal justice system as being due to characteristics which are similar for both Indigenous and non-Indigenous people. They stated that "the factors that give rise to Indigenous people's involvement in the criminal justice system are largely the same as those that give rise to non-Indigenous involvement in it" (182). They argue that Indigenous people disproportionately experience circumstances and conditions which cause people to be more likely to be involved in the criminal justice system in general (such as being younger, single, poorly educated, or being lower-class males with substance abuse problems), and are therefore not qualitatively different from almost any other ethnicity who is involved with the criminal justice system (190). Roberts and Melchers (2003) note the similarities in offending patterns of Indigenous and non-Indigenous peoples. They suggest that Indigenous and non-Indigenous admissions to custody have followed a familiar course over the 23 year period that they examined, and that common factors within both groups are responsible for increases in Indigenous admissions to custody (p.236). Likewise, research has also pointed to the similarities in risk factors for Indigenous and non-Indigenous offenders (Bonta, La Prairie and Wallace-Capretta 1997; Rugge, 2006). Finally, the "school to prison pipeline" appears to be evident in Canada in a racialized manner (Salole & Abduliej, 2015).

i. Embedded Bias and Systematic Discrimination in Corrections

There have been numerous studies highlighting the systematic bias against minority ethno-cultural and female populations embedded within Correctional Services of Canada (CSC) systems of classification (Hannah-Moffat & Shaw, 2001; Shaw and Hannah-Moffat, 2000; Webster & Doob, 2004). The CSS Custody Rating Scale was developed in 1987, and was created based on a homogenous group of White males, and is used to classify all groups of inmates who enter the correctional system at either a minimum, medium, or maximum security risk level (Webster & Doob, 2004). Webster and Doob (2004) have highlighted that it is bias against Indigenous women who are unjustly over-classified in higher security classifications. Misclassification can be detrimental to those incarcerated, notably when classified in a higher security risk level. As Webster and Doob (2004) note, "classification decisions determine many of the inmate's living conditions, including supervision levels, type of accommodation, geographical location of incarceration, use of restraints, and inmate privileges" (397).

On the contrary, there have also been several CSC-funded research studies arguing that this security classification instrument is not bias or discriminatory, and that it is suitable for all inmate populations (Barnum & Gobeil, 2012; Gobeil, 2008). As outlined in the report examining its relevance with Indigenous women: "There was no evidence that either the security classification as a whole or the CRS recommendation was over-classifying Indigenous women ... the over-representation of Indigenous women at higher security

levels is due to their higher level of risk and poorer institutional adjustment rather than a bias in initial security classification” (Barnum & Gobeil, 2012, 28). In response to related claims by CSC, Webster and Doob (2004) have stated that “CSC’s claim of the scale’s validity for women in general, and Indigenous offenders in particular, is a dramatic oversimplification of their own findings and is profoundly misleading” (411).

The aforementioned report from the Commission on Systemic Racism in the Ontario Criminal Justice System (1995), not only pointed out the discrimination within courts, but also highlighted discrimination within the correctional system. They identified that Black people were the most over-represented in segregation or “closed confinement,” while White people were the most under-represented group receiving these types of punishment. This report found that the punishing of Black people by Correctional officers is more frequent, severe, and for less reason as compared to White people. They also found that correctional officers used racist language on a routine basis with Black or other racialized prisoners and colleagues. Similarly, the Office of the Correctional Investigator (2013) identified that Black incarcerated people face stereotyping, ridicule, and covert discrimination by CSC staff.

ii. Culture and Spirituality in Corrections

The Office of the Correctional Investigator (2013) also found that Black peoples’ cultural needs are not being met in prison, and programs are not reflective of their histories or lived experiences (p. 11-12). The latter is also similar for Indigenous peoples; in another report by the Office of the Correctional Investigator (2012), it was found that CSC staff has limited knowledge of Indigenous people’s cultures, spirituality, and approaches to healing, and there is limited availability of Elders in prison. Furthermore, they found funding discrepancies for Indigenous-run healing lodges vs. CSC run lodges, and reported that people were paid lower salaries for the same work at Indigenous run lodges. Issues of cultural and religious adequacy are also being raised with the growing Muslim population (Beckford & Cairns, 2015). The managing of racial identities of Canadian Muslims is only now being addressed in terms of the law, criminal justice, and security (Nagra & Maurutto, 2016).

An Indigenous community study interviewing a collection of Indigenous community members, stakeholders, Elders, and past and current inmates, identified several needs that Indigenous peoples released from prison require. Among these needs were “Elder counselling, traditional cultural guidance and healing circles” (Saulis, Fiddler, & Howse, 2001, 4). This same study included seven interviews with Indigenous peoples who were released from prison. In the interviews with those released, Indigenous culture and traditional ways of life were identified as “a priority” (Saulis, Fiddler, & Howse, 2001, 18). Likewise, the importance of Indigenous culture and spirituality were also identified in a study of 68 Indigenous peoples who successfully left prison and returned to the community (Heckbert & Turkington, 2001). Yet this same study also found that Indigenous spirituality and cultural activities are not always respected by correctional staff, or at an institutional level inside prison walls (Heckbert & Turkington, 2001). In a review of incarcerated Indigenous peoples’ trajectories through CSC, Nuszdorfer (2012) finds that “Indigenous justice programs administered by CSC are relatively standard; the only variation is that employed by the program facilitator” (p. 52). She recommends that

“parole officers become more involved in the Indigenous community and maintain better knowledge pertaining to Indigenous beliefs” (52).

Culturally appropriate services for Métis and Inuit people have been found to be lacking (Manitoba Métis Federation 2001; Trevethan et al., 2004), or not appropriate to needs (Mileto, Trevethan, & Moore, 2004; Moore, Trevethan, & Conley, 2004; Trevethan et al., 2004). There is a lack of understanding of the differences between First Nations, Métis, and Inuit cultures inside of correctional institutions, whereby cultural practices brought into prison typically only include First Nations cultures (Mileto, Trevethan, & Moore, 2004). A similar notion was identified by Waldram (1993) whom interviewed 30 incarcerated Indigenous males in the early 1990’s. He explained that there is a “pan-Indian” approach to culture and spirituality in prisons, and while many Indigenous peoples have been okay with this, many Inuit peoples have found the practices very foreign (p. 349). Waldram (1993) also noted that for some incarcerated Indigenous peoples, their first encounter with any type of Indigenous spirituality was in prison (p. 349).

In an examination of case files and interviews with incarcerated Indigenous peoples, Johnston (1997) noted concern expressed by Indigenous peoples over not having access to Elders who were of the same culture as their own. There was also a desire expressed to have more Indigenous cultural activities in prison (Johnston, 1997). The Office of the Correctional Investigator (2013) noted a related desire expressed by incarcerated Black peoples, whom noted the importance of cultural events in prison (e.g. drumming), and whom also expressed pride in educating others about their traditions (13). While it was found that CSC does organize cross-cultural awareness activities, support for such events was found to be non-consistent at the institutional level (Office of the Correctional Investigator, 2013, 13).

Examining assignments and enrolments from CSC’s Nationally Recognized Correctional Programs (NRCP), Stewart and Wilton (2012) argue that offenders of various racial backgrounds do not face any impediments or bias to accessing CSC programming overall. At the same time however, they noted that fewer Black people are enrolled in correctional programming as compared to prisoners from other racial groups, but “further research would be required to determine the reason for this result” (Stewart & Wilton, 2012).

Usher and Stewart (2011) did a meta-analytic study of all CSC correctional programming research, investigating whether CSC correctional programs are equally effective for a broad range of ethnic groups. They grouped participants into the following four ethnic groups: “Indigenous, Black, Caucasian, and Other” arguing that “CSC’s correctional programs are equally effective across a broad range of ethnic groups.” At the same time however, Kunic and Varis (2009) conducted an evaluation of CSC’s Indigenous Offender Substance Abuse Program (AOSAP) finding that it was more effective than CSC’s mainstream programs for Indigenous peoples in the program. To evaluate the program they compared Indigenous males who completed the AOSAP program and released to the community, with those Indigenous peoples who took a mainstream CSC program, or no programming, and who were also released into the community (13). The purpose of AOSAP is to reduce substance abuse relapse and recidivism. It is said to do this by focusing on holistic healing, and through encouraging “the use of culturally-appropriate ceremonial traditions specific to First Nations, Métis and Inuit offenders” (7). This includes Elders, and the incorporation of Sweat, Pipe, and other traditional

ceremonies (12). The evaluation found that “AOSAP outperformed mainstream substance abuse programs,” and stated that “these findings add weight to the evidence in support of traditional approaches to treating substance abuse problems in Indigenous men”(59).

iii. “Indigenizing” Corrections and Managing Racialized Prisoners through Responsibilization Strategies

According to Martel, Brassard, and Jaccoud (2011), there has been a push to “Aboriginalize” or “Indigenize” correctional institutions and processes. Meaning that as a response to the endemic overrepresentation of Indigenous peoples in prisons, Canada has adjusted its carceral structure to “better reflective Indigenous philosophical orientations” (p. 237). In practice however, this typically means that there is a downloading of responsibility to Indigenous communities and peoples for managing and regulating criminogenic risks (Martel, Brassard, & Jaccoud, 2011). Responsibility has become individualized, government diffused, and governing has begun to focus on shared responsibility. Correctional strategies have shifted the focus of responsibility to individuals who are now expected to take measures to manage their own “risky” situations, many times encouraged to draw upon their cultures or traditions as a strategy (Martel, Brassard, & Jaccoud, 2011; Silverstein, 2005). These responsabilization strategies coincide with a yearning to return to the “community”, or to place responsibility on the community for their own safety, security, and the well-being of their own populations (Martel, Brassard, & Jaccoud, 2011; Silverstein, 2005; La Prairie, 1999).

As Martel, Brassard, and Jaccoud (2011) further explain, identifying as “Indigenous” in prison has now raised one’s objective risk of recidivism, yet at the same time, they can reduce this risk by engaging in “culturally sensitive” Indigenous cultural programming (p. 241). In the past, Indigenous organizations and people would come into prisons informally to deliver their own cultural activities (Martel, Brassard, & Jaccoud, 2011, 244). But now, CSC has formalized Indigenous cultural programming, as such, it has become “oversimplified” and become an “over-generalized version of Indigenous identity” (Martel, Brassard, & Jaccoud, 2011, p. 242). This also means that Indigenous peoples have lost power over their true traditions and culture, as well as over “the definition of what Indigenous culture is (or is not)” (Martel, Brassard, & Jaccoud, 2011, p. 243). In some cases, non-Indigenous peoples become the ones running Indigenous programming, attempting to teach Indigenous peoples how to be “Indigenous” (p. 243). Or in some cases, Indigenous staff are hired by CSC to deliver CSC programming, essentially co-opting community members to become an ‘agency Indian’ within the confines of the Canadian state, therefore continuing the colonial agenda of assimilation (Martel, Brassard, and Jaccoud, 2011, 250). Hannah-Moffat (2000) reveals that notions of “empowerment” are used by CSC as a responsabilization strategy, which simply reinforces state power over incarcerated Indigenous women.

Silverstein (2005) found responsabilization strategies at play at parole hearings, whereby Parole members use race and ethnicity as part of their risk management strategies for Indigenous, Hispanic, and Asian peoples. As Silverstein (2005) explains, the race of Indigenous, Hispanic, or Asian becomes a salient part of the parole hearing discourses, “and a driving force compelling ensuring responsabilization strategies” (p. 345). For Asian and Hispanic people, Parole members expect them to demonstrate a greater degree of remorse as compared to other ethnic groups. Which according to Silverstein (2005), may

be due to these ethnic groups being stereotyped as feeling more shame for causing harm as compared to people from other ethnic groups (p. 347). For Indigenous people, the Parole members expect Indigenous peoples to be involved and committed to their Indigenous culture, and to demonstrate that they have cultural community support (p. 346).

While Silverstein (2005) notes that these responsabilization strategies impact the dynamics and outcomes of racialized peoples' parole hearings, a study of cognitive biases and consistency in case management officers' parole decision making by Samra-Grewal, Pfeifer, and Ogloff (2000) found that, "the race of the offender did not influence recommendations" (p. 435). This study drew on 68 Case Management Officers and 67 matched community members. Another related finding was that the most influential consideration for Case Management Officer's decision making in regards to White people was their degree of involvement in programs (p. 439). But for Indigenous peoples, the most influential consideration was their criminal history (p. 439). Yet it was noted that in order to maintain consistency in case histories, this study did not make any mention of Indigenous peoples' engagement in Indigenous cultural programming to their research participants (p. 439). Thus, Grewal, Pfeifer, and Ogloff (2000) suggest that future research should look to whether Indigenous culture programming is a determinant in parole decision making. Yet we do know from Silverstein (2005) that Indigenous cultural programming is used as a responsabilization strategy, and thus has impact on the dynamics and outcomes of parole hearings. For example, he stated that case managers "coerce Indigenous inmates into joining native groups" because they see it as being "valued" at hearings (p. 346).

iv. Gaps in Corrections Literature

Much of the research examining similarities and differences between racialized incarcerated people with White people/the general prison population have focused largely on "overrepresentation" and sought to identify reasons for this "problem" (La Prairie, 1999, p. 139), which has been largely referred to as "the overrepresentation problem" (La Prairie, 2002, p. 182). Framing this as a "problem" directs blame onto the individual or population who is experiencing the overrepresentation. There is a lack of recognition that this overrepresentation of Indigenous peoples in a Canadian criminal justice system is a problem of the colonial project, which has unjustly forced its systems of governance in Indigenous territory. Continuing to frame this issue as a "problem" of Indigenous overrepresentation will continue to fuel research seeking to identify how and in what ways Indigenous peoples differ from the general population, and thus indirectly upholding colonial systems and structures. Instead, focus should be directed to reducing harm and victimization, and framed as a problem of continued colonialism with its state-imposed systems—such as the correctional system—which do nothing to stop cycles of harm and victimization. This alternative framing is presented in the recent book, *The Colonial Problem: An Indigenous Perspective on Crime and Injustice in Canada* (Monchalin, 2016). Canadian researchers have recently noted how framing Canadian prison measures within a critical perspective can allow an exploration of colonialism and racism (Fiander et al., 2016).

Not surprisingly, reports published by CSC investigate their own correctional programs and strategies offered inside their prison walls, and of course never challenge their whole correctional system as a construct of the colonial state. Rather, their funded studies concerning race have focused on questions such as, the effectiveness of programs for

diverse offenders (see Usher & Stewart, 2011), or how to improve programming for incarcerated peoples of various racial back-grounds (see Stewart & Wilton, 2012), or how reintegration assessment scales can be culturally adapted for Indigenous prisoners (see Sioui & Thibault, 2001).

Literature highlighting the “Indigenizing” of corrections and the management of racialized prisoners through responsabilization strategies provides a critical perspective on the corrections system. This literature is critical of the state, and highlights the state’s movement towards expecting the individual or community to become active in their own risk management. This means having Indigenous peoples becoming active in our own colonization. CSC embeds “Indigenous culture” as an aspect of programming, and uses it as a strategy of risk management to make it “appear” as though they are being more inclusive, when in reality it is another form of governing-at-a-distance. A relocation of the responsibility to the community results in a technology of power which does not “appear” to control individuals. Instead, it results in a dispersal of power with control measures being everywhere, and more significantly, amongst the communities that are expected to take responsibility for their own safety, security, and well-being. Therefore, the proclaimed “overrepresentation problem” facing Indigenous peoples comes to be regarded as a failure of the community rather than a failure of the state. No better example of this shift in liability exists as within that of Indigenous peoples, who are constantly defined in terms of where they are failing, rather than asking where the government and its colonial systems are failing. Thus, this literature highlighting the push to “Aboriginalize” or “Indigenize” correctional institutions and processes through strategies of responsabilization, exposes and is critical of the colonial project; however this literature does fail to provide solutions to reducing the harm this colonial project continues to cause every day. By directing focus almost solely on “prisons” (Hannah-Moffat, 2000, p. 510) and “Canadian Corrections” (Martel, Brassard, & Jaccoud, 2011, p. 235) they lose sight of the fact that these systems—and the colonial project in which they are embedded—cause huge populations of racialized people to experience harms, victimizations, and physical, sexual, mental, and emotional pain and hurt at astronomical levels on a routine basis.

V. Race and Criminal Justice: Theoretical Orientations

As is evident from the preceding sections, racial disparities exist throughout the Canadian Criminal Justice system, from offending/victimization through the correctional system. Such disparities are particularly pronounced for Indigenous peoples compared to non-Indigenous peoples, while also evident for Black Canadians, in the limited available data.

A prominent Canadian scholar of race and crime, Scott Wortley (2003), has suggested an intersectional analysis may be more appropriate. This perspective recognizes the multifaceted nature of social inequality and seeks to understand and explain the dynamic interaction of class, gender, and ethnic/“racial” forms of domination and subordination, as well as the different ways in which each dimension is experienced by people—separately as well as through the other dimension. The central argument of this approach is that “race”/ethnicity, along with class and gender, are affecting individual and/or group identity, life experiences, and position in society.

Wortley (2003) makes an effort to highlight the divergent policy implications associated with different models and how effective solutions must directly consider how race

interacts with other identity markers –including gender, age, social class, religion, and immigration status. He then moves on to a discussion of racial discrimination within the justice system. It is argued that the intersection of race and lower class position may contribute to the apparent disadvantage many minorities face when dealing with the police, the courts, and corrections. Professor Wortley presents four explanatory models:

- Importation Model: Focusing upon the intersection of race and immigration status.
- Culture Conflict Model: Emphasizes differences in culture/religion and behaviour.
- Strain Model: Focusing upon the classic Mertonian analysis of inequality of outcomes and opportunities.
- Bias Model: Focuses upon how differences in official statistics reflect bias in the system, not necessarily differences in criminal behaviour.

In addressing violence against women, Jiwani (2005) explores a hidden yet pervasive form of violence that marks the lives of young women from racialized immigrant communities in western Canada. She argues for an intersectional analysis that takes into consideration their heightened vulnerability to systemic and institutional forms of violence. Situated at the intersections of race, class, gender, and age, these young women walk a tightrope between the violence of racism they experience from the host and/or dominant society and the pressures to conform imposed from within their communities. Challenging previous culturalist explanations, she suggests that racism constitutes a significant form of structural violence experienced by these young women. While the models presented by Wortley aid in providing a context of theoretical understanding, a few prominent and relevant models are omitted.

Arguably the most relevant theoretical model in understanding Indigenous disproportionality is the colonial model. This is a structural model, which ties the current economic, political, and social conditions to colonial domination. A leading Canadian Criminology text (Linden, 2012, pp. 151-155) explains race and crime in terms of a structural explanation. In an insightful chapter on “Colonialism Past and Present”, Canadian Criminologist Elizabeth Comack (2012, pp. 68-88) identifies how current Indigenous conditions are tied to Canadian colonialism. Several other researchers have applied the colonial perspective to current issues of Indigenous and the law.

Monchalin (2010) observes that it is well documented that Indigenous peoples have had to endure disproportionately high rates of both victimization and incarceration for decades. This is largely owing to multiple risk factors that are a product of experiences in residential school systems, the colonization of traditional values and culture, and institutional racism. She notes that these issues have been, and continue to be, dealt with primarily through the standard colonial criminal justice system: the police, corrections and the courts. It is evident that this approach has been largely unsuccessful, considering the current high rates of Indigenous incarceration. In her recent book, Monchalin (2016) makes a cogent and compelling case for establishing justice for Indigenous peoples through the lens of Indigenous people, not the colonizer.

Adjin-Telley (2007) points out that in response to the over-representation of Indigenous people in the criminal justice system, section 718.2(e) of the Canadian Criminal Code mandates consideration of background and systemic factors affecting Indigenous offenders and culturally-appropriate, community-based sanctions grounded in Indigenous justice traditions. The problem of over-representation is partly attributable to the legacies of colonization, which include the denigration and outlawing of Indigenous

legal traditions and norms. Legitimizing Indigenous justice traditions within the criminal justice system is a culturalist and counter-hegemonic response to the effects of colonization. This article examines some of the potential tensions between determining fit sentences for Indigenous offenders as part of the decolonization of Indigenous people and sentencing principles such as denunciation, proportionality, and promotion of a safer society, including respect for victims, especially women and children's rights. In an excellent historical analysis, Sangster (1999) documents how the criminalization of Indigenous women in Ontario between 1920–1960 reflected colonial principles. It examines the roots of Indigenous women's over incarceration in Ontario in the 20th century, especially during and immediately following World War II. Material and cultural dislocations of colonialism, gender and race paternalism of the courts and prisons, and cultural gap in the notions of crime and punishment are explored.

In another recent article entitled "Criminology and Colonialism: Counter Colonial Criminology and the Canadian Context", Kitossa (2012) explains a sociology of knowledge –question regarding criminologist and colonialism. It is pointed out, that, ironically, 19th century criminological knowledge emerging from colonial administrators paralleled the metropolitan effort to identify the aetiology of working class 'crime' at home. In bridging the gap between demonizing the working class at home and the colonized in the colonies, criminology can be said to be a handmaid of colonialism from its inception. The paper provides an empirical and theoretical inquiry into race, knowledge production and criminology in Canada from an anti-colonialist perspective.

In addressing Indigenous women's violence and criminality, Jackson (1999) observes that the overrepresentation of Indigenous women in Canada's justice system is a longstanding social problem that is reflective of wider social and economic differences for Indigenous peoples. While other minority and/or marginalized groups in Canada may experience similar intersections of race, gender, and class, a special 'context of difference', grounded in the colonial legacy of assimilationist policies, exists for Canadian Indigenous. Jackson argues that a cycle of violence and criminality for Indigenous women has emerged from this context of difference. The relationship and tensions that exist between the 'cycle' and the 'context' are explored in an attempt to determine the nature of both.

Bracker et al. (2009) examines the issue of desistance by considering the relationship between societal constraints and individual choices in the process of moving away from crime. The question of the distribution of those opportunities and resources to support desistance is raised within the context of a specific population –Indigenous peoples of Canada. The impact of colonization resulting in economic and social marginalization, high rates of incarceration, and the generational transmission of trauma related to the experience of residential schools are factors which are related both to individual choice and external societal constraints. Structure, culture and biography are factors which must be addressed in the case of members of a marginalized population who wish to follow a path of desistance. The opportunity to participate in a community-based program that provides social capital in the form marketable skills, connections to the wider society and personal healing through the reacquisition of cultural traditions is seen as one way to overcome structural constraints while at the same time supporting an individual decision to desist from crime in the capitalist system. There is a wealth of research to date concerning the relationship between class and race/ethnicity in Canada (Grabb & Guppy,

2009; Satzewick & Liddakas, 2013). Gordon (2006) provides a political economy perspective on the Canadian “War on Drugs” in relation to race/ethnicity and class.

Conclusion

Theoretical understanding of race and crime in Canada varies in terms of the specific minority groups addressed. The only text that addresses this breadth is *Diversity, Crime and Justice in Canada* (Perry, 2011). This text covers Indigenous peoples, Chinese, Black Canadians, and South Asians in an attempt to provide a basis of understanding and explaining their relationship to Canadian law and the criminal justice system. A promising theoretical model emerging in regards to Indigenous people is the colonial problem model, which provides a structural understanding of both macro and micro issues (Monchalin, 2016). As is evident from this article, there remains much to be done in this area in Canada. There is a lack of data, particularly regarding non-Indigenous peoples, and a need to address both perceived and real discrimination in the system.

References

- Alexander, M. (2010). *The new Jim Crow: Mass incarceration in the age of colorblindness*. New York: The New Press.
- Anthony, T., Bartels, L., & Hopkins, A. (2015). Lessons lost in sentencing: Welding individualized justice to indigenous justice. *Melbourne University Law Review*, 39(1), 47-46.
- Barnum, G., & Gobeil, R. (2012). Revalidation of the Custody Rating Scale for Aboriginal and non- Aboriginal Women Offenders. Research Report R-273. Ottawa, ON: Correctional Service of Canada.
- Beckford, J. A., & Cairns, I. C.M. (2015), Muslim prison chaplains in Canada and Britain. *The Sociological Review*, 63(1), 36–56.
- Bell, D. (2000). *Race, racism, and American law*. New York: Aspen Publishers, Inc.
- Bonger, W. (1943). *Race and crime*. New York: Morningside Heights.
- Bonta, J., La Prairie, C., & Wallace-Capretta, S. (1997). Risk prediction and re-offending: Aboriginal and non-Aboriginal offenders. *Canadian Journal of Criminology*, 127-144.
- Bowen, R. R. (2015). Squaring Up: Experiences of Transition from Off-Street Sex Work to Square Work and Duality—Concurrent Involvement in Both—in Vancouver, BC. *Canadian Review of Sociology/Revue canadienne de sociologie*, 52, 429–449.
- Browne-Marshall, G. (2013). *Race, law and American society: 1607 to present (2nd ed.)*. New York: Routledge.
- Campbell, L. (2015). Race, upper Canadian constitutionalism and "British justice". *Law and History Review*, 33(1), 41-91.
- Canadian Civil Liberties Association (2015). “Submission re: Ontario proposed regulation for street checks consultation document”, August 31.
- Cao, L. (2014). Aboriginal peoples and confidence in the police. *Canadian Journal of Criminology and Criminal Justice*, 56(5), 499-525.
- Chu, D.C. & Song, J.H. (2015). A comparison of Chinese immigrants’ perceptions of the police in New York city and Toronto. *Crime & Delinquency*, 61(3), 401-427.
- Comack, E. (2012). *Racialized policing: Aboriginal people’s encounters with the police*. Halifax: Fernwood Publishing.

- Commission on Systemic Racism in the Ontario Criminal Justice System (1995). Report of the Commission on Systemic Racism in the Ontario Criminal Justice System. Queen's Printer for Ontario, 1995. Editor: Eric Mills. ISBN 0- 7778-4718-3.
- Correctional Service of Canada. (2011). The Changing Federal Offender Population: Aboriginal Offender Highlights, 2009. Ottawa, ON: Correctional Service of Canada.
- D'Arcy, S. (2007). The "Jamaican Criminal" in Toronto, 1994: A critical ontology. *Canadian Journal of Communication*, 32(2), 241-259.
- Doyle, A., & Moore, D. (2011). Critical criminology in Canada: New voices, new directions. Vancouver, BC: University of Vancouver Press.
- Fiander, S., Chen, A., Piche, J., & Walby, K. (2016). Critical punishment memorialization in Canada. *Critical Criminology*, 24, 1-18.
- Fitzgerald, R. T., & Carrington, P. J. (2011). Disproportionate minority contact in Canada: Police and visible minority youth. *Canadian Journal of Criminology and Criminal Justice*, 53(4), 450-485.
- Gabbidon, S., & Green, H. (2013). *Race and crime* (3rd ed). Thousand Oaks, CA: Sage Publications, Inc.
- Gabor, T. (2004). Inflammatory rhetoric on racial profiling can undermine police services. *Canadian Journal of Criminology and Criminal Justice*, 46(4), 457-466.
- Geis, G. (1972). Statistics concerning race and crime. In C. Reasons and J. Kuykendall (Ed.). *Race, crime, and justice* (pp. 61-69). Pacific Palisades, CA: Goodyear Publishing.
- Gobeil, R. (2008). Assessing Security Reclassification with Male Aboriginal and Non-Aboriginal Offenders. Research Report R-203. Ottawa, ON: Correctional Service of Canada.
- Goff, C. (2014). *Criminal justice in Canada* (6th ed.). Toronto: Nelson.
- Gold, A. D. (2003). Media hype, racial profiling, and good science. *Canadian Journal of Criminology and Criminal Justice*, 45(3), 391-399.
- Gordon, T. (2006). Neoliberalism, racism and the war on drugs in Canada. *Social Justice*, 33(1), 59-78.
- Gossett, T. (1963). *Race: The history of an idea*. Dallas: Southern Methodist University Press.
- Grabb, E., & Guppy, N. (Eds). (2009). *Social inequality in Canada: Patterns, problems, and policies* (5th ed.). Toronto: Pearson Prentice Hall.
- Hagan, J. (1985). Toward a structural theory of crime, race and gender: The Canadian case. *Crime and Delinquency*, 31(129), 129-146.
- Hannah-Moffat, K. (2000). Prisons that Empower: Neo-liberal Governance in Canadian Women's Prisons. *British Journal of Criminology*, 40, 510-531.
- Hannah-Moffat, K., & Shaw, M. (2001). Taking Risks: Incorporating Gender and Culture into the Classification and Assessment of Federally Sentenced Women in Canada. Ottawa, ON: Status of Women Canada.
- Hassan, S. (2010). The Long-Term Offender Provisions of the Criminal Code: An Evaluation. PhD Diss. Simon Fraser University. School of Criminology. Burnaby, BC.
- Hayle, S., Wortley, S., & Tanner, J. (2016). Race, street life, and policing: Implications for racial profiling. *Canadian Journal of Criminology and Criminal Justice*, 58(3), 291-321.
- Heckbert, D., & Turkington, D. (2001). *Turning Points: A Study of the Factors Related to the Successful Reintegration of Aboriginal Offenders*. Ottawa, ON: Research Branch: Correctional Services of Canada.

- Henry, F., & Tator, C. (2005, September). *Racial Profiling in Toronto: Discourses of Domination, Mediation, and Opposition*. Toronto, ON: Canadian Race Relations Foundation.
- Henry, F., & Tator, C. (2006). *Racial Profiling in Canada: Challenging the “Myth of a Few Bad Apples.”* Toronto, ON: University of Toronto Press.
- Invisible woman: A call to action: A report on missing and murdered Indigenous women in Canada. (2014). Report of the Special Committee on Violence Against Indigenous Women, Ottawa: Parliament.
- Jackson, A. M. (1999). Canadian Aboriginal women and their ‘criminality’: The cycle of violence in the context of difference. *Australian & New Zealand Journal of Criminology*, 32(2), 197-208.
- Jeffries, S., & Stenning, P. (2014). Sentencing Aboriginal offenders: Law, policy, and practice in three countries. *Canadian Journal of Criminology and Criminal Justice*, 56(4), 447-494.
- Jiwani, Y. (2002). The criminalization of ‘race’, the racialization of crime. In W. Chan and K. Merchandari (Eds.), *Crimes of colour: Racialization and the criminal justice system in Canada* (pp. 67-86). Peterborough, Ontario: Broodview Press, Ltd.
- Jiwani, Y. (2005). The great white north encounters September 11: Race, gender, and nation in Canada’s National Daily, *The Globe and Mail. Social Justice*, 32(4), 50-68.
- Jiwani, Y. (2005). Walking a tightrope. *Violence Against Women*, 11(7), 846-875.
- Jiwani, Y., & Young, M. (2006). Missing and murdered women: Reproducing marginality in news discourse. *Canadian Journal of Communication*, 31(4), 895- 917.
- Johnston, J.C. (1997). *Aboriginal Offender Survey: Case Files and Interview Sample*. Ottawa, ON: Research Branch: Correctional Service Canada.
- Kaukinen, C., & Colavecchia, S. (1999). Public perceptions of the courts: An examination of attitudes toward the treatment of victims and accused. *Canadian Journal of Criminology*, 41, 365-384.
- Kennedy, R. (1997). *Race, crime, and the law*. New York: Vintage Books.
- Kitossa, T. (2012). Criminology and colonialism: Counter colonial criminology and the Canadian con-text. *Journal of Pan African Studies*, 4(10), 204-226.
- Kunic, D., & Varis, D.D. (2009). *The Aboriginal Offender Substance Abuse Program (AOSAP): Examining the Effects of Successful Completion on Post-Release Outcomes*. Ottawa, ON: Correctional Services Canada.
- La Prairie, C. (1996). *Examining Aboriginal Corrections in Canada*. Ottawa, ON: Indigenous Corrections. Ministry of the Solicitor General.
- La Prairie, C. (1999). Some Reflections on New Criminal Justice Policies in Canada: Restorative Justice, Alternative Measures and Conditional Sentences. *The Australian and New Zealand Journal of Criminology*, 32(2), 139-152.
- La Prairie, C. (2002). Aboriginal over-representation in the criminal justice system: A tale of nine cities. *Canadian Journal of Criminology*, 44(2), 181-208.
- La Prairie, C., & Stenning, P. (2003). Exile on Main Street: Some Thoughts on Aboriginal Over-Representation in the Criminal Justice System. In D. Newhouse & E. Peters (Eds.), *Not Strangers in These Parts: Urban Aboriginal Peoples* (pp. 179-193). Ottawa: Policy Research Initiative.

- Lam, E. (2016). Inspection, policing, and racism: How municipal by-laws endanger the lives of Chinese sex workers in Toronto. *Canadian Review of Social Policy/Revue Canadienne De Politique Sociale*, (75), 87.
- Lawrence, S., & Shanks, S. D. (2015). Indigenous lawyers in Canada: Identity, professionalization, law. *Dalhousie Law Journal*, 38(2), 503-524.
- Linden, R. (2012). *Criminology: A Canadian perspective* (7th ed.). Toronto: Nelson.
- Little, M. (2015). Between the abuser and the street: An intersectional analysis of housing challenges for abused women. *Canadian Review of Social Policy*, 72, 35-64.
- Maeder, E. M., Yamamoto, S., McManus, L. A., & Capaldi, C. A. (2016). Race-crime congruency in the Canadian context. *Canadian Journal of Behavioural Science*, 48(2), 162-170.
- Manitoba Métis Federation –Winnipeg Region (2001). *Community Needs Assessment for Métis Off-fenders in Manitoba*. Ottawa, ON: Research Branch: Correctional Services Canada.
- Mann, M. M. (2009). *Good Intentions, Disappointing Results: A Progress Report on Federal Indigenous Corrections*. Ottawa, ON: Office of the Correctional Investigator.
- Martel, J., Brassard, R. & Jaccoud, M. (2011). When two worlds collide Aboriginal risk management in Canadian corrections. *British Journal of Criminology*, 51(2), 235-255.
- Mileto, J., Trevethan, S., & Moore, J.P. (2004). *Manitoba: An Examination of the Program Needs of Métis Offenders in Federal Correctional Facilities*. Ottawa, ON: Research Branch: Correctional Services Canada.
- Monchalin, L. (2010). Canadian Aboriginal peoples victimization, offending, and its prevention: Gathering the evidence. *Crime Prevention and Community Safety: An International Journal*, 12(2), 119-132.
- Monchalin, L. (2016). *The colonial problem: An Indigenous perspective on crime and injustice in Canada*. Toronto: University of Toronto Press.
- Moore, J. P. (2003). *First Nations, Métis, Inuit and Non-Indigenous Federal Offenders: A Comparative Profile*. Ottawa, ON: Research Branch Correctional Service of Canada.
- Moore, J. P., Trevethan, S., & Jennifer C. (2004). Program and Service Needs of Federally Incarcerated Métis Offenders in Saskatchewan. Prepared for Correctional Service of Canada and Métis Family and Community Justice Services. Ottawa, ON: Research Branch: Correctional Service of Canada
- Mosher, C. (1996). Minorities and misdemeanours: The treatment of Black public order offenders in Ontario's criminal justice system, 1892-1930. *Canadian Journal of Criminology*, 38, 413-438.
- Mosher, C., & Akins, S. (2015). Drugs and drug control in Canada. In A Kalunta-Crumpton (Ed.), *Pan African issues in drugs and drug control-An international perspective* (pp. 283-347). Surrey: Ashgate Publishing.
- Mosher, C., & Mahon-Haft, T. (2010). Race, crime, and criminal justice in Canada in A. Kalunta-Crumpton (Ed.). *Race, crime and criminal justice: International perspectives* (pp. 242-269). Hampshire, England: Palgrave Macmillan.
- Nagra, B., & Maurutto, P. (2016). Crossing borders and managing racialized identities: Experiences of security and surveillance among young Canadian Muslims. *Canadian Journal of Sociology (Online)*, 41(2), 165-194.

- Neil, R. & Carmichael, J. T. (2015). The use of incarceration in Canada: A test of political and social threat explanations on the variation in prison admissions across Canadian provinces, 2001–2010. *Sociological Inquiry*, 85(2), 309–332.
- Nuszdorfer, J. V. (2012). Vancouver Area Community Corrections and Indigenous Justice: A Review of Aboriginal Federal Offenders and Sentencing Alternatives. Master Thesis, Simon Fraser University. School of Criminology. Burnaby, BC.
- Office of the Correctional Investigator (2012). Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act. Ottawa, ON: Office of the Correctional Investigator.
- Office of the Correctional Investigator (2013). A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries: Final Report. Ottawa, ON: Office of the Correctional Investigator.
- Ontario Human Rights Commission. (2003). Paying the price: The human cost of racial profiling. Toronto, ON: Ontario Human Rights Commission.
- Perreault, S. (2009). The Incarceration of Aboriginal People in Adult Correctional Services. Juristat. Ottawa, ON: Statistics Canada.
- Perry, B. (Ed.). (2011). *Diversity, crime, and justice in Canada*. Don Mills, Ontario: Oxford University Press.
- Perry, B., & Alvi, S. (2011). South Asians and justice in Canada. In B. Perry (Ed.), *Diversity, crime, and justice in Canada* (pp. 149–163). Don Mills, ON: Oxford University Press.
- Piché, J. (2016). Assessing the boundaries of public criminology: On what does (not) count. *Social Justice*, 42(2), 70–90.
- Police target Black drivers. (2002, October 20). The Toronto Star. Pp. A01 and A08–A09.
- Reasons, C. (1974). Race, crime and the criminologist. In C. Reasons (Ed.), *The criminologist: Crime and the criminal* (pp. 89–97). Pacific Palisades, CA: Goodyear Publishing Company, Inc.
- Reasons, C. (2010). A tale of two cities: Homicide in Seattle, Washington and Vancouver, British Columbia. *Criminal Law Quarterly*, 54, 104–129.
- Reasons, C., & Kuykendall, J. (Eds.). (1972). *Race, crime and justice*. Pacific Palisades, CA: Good-year Publishing Company, Inc.
- Reasons, C., Conley, D., Debro, J. (2002). *Race, class, gender and justice in the United States: A text reader*. Boston: Allyn and Bocan.
- Roberts, D. J., & Mahtani, M. (2010). Neoliberalizing race, racing neoliberalism: Placing “race” in neo-liberal discourses. *Antipode*, 42(2), 248–257.
- Roberts, J., & Melchers, R. (2003). The Incarceration of Aboriginal Offenders: Trends from 1978 to 2001. *Canadian Journal of Criminology*, 45(2), 211–43.
- Ruddell, R., & Gottschall, S. (2014). The Prison Adjustment of Aboriginal Offenders. *Australian & New Zealand Journal of Criminology*, 47(3) 336–354.
- Ruddell, R., & Thomas, M. (2015). Determinants of police strength in Canadian cities: Assessing the impact of minority threat. *Canadian Journal of Criminology and Criminal Justice*, 57(2), 215–252.
- Rugge, T. (2006). *Risk Assessment of Male Aboriginal Offenders: A 2006 Perspective*. Ottawa, ON: Public Safety and Emergency Preparedness Canada.
- Salole, A. T., & Abdulle, Z. (2015). Quick to punish: An examination of the school to prison pipeline for marginalized youth. *Canadian Review of Social Policy*, 72, 124–168.

- Samra-Grewal, J., Pfeifer, J. E., & Ogloff, J. R. P. (2000). Recommendations for conditional release suitability: Cognitive biases and consistency in case management officers' decision-making. *Canadian Journal of Criminology*, 42(4), 421-448.
- Sangster, J. (1999). Criminalizing the colonized: Ontario Native women confront the criminal justice system, 1920-60. *Canadian Historical Review*, 80(1), 32.
- Satzewic, V., & Shaffir, W. (2009). Racism versus professionalism: Claims and counter-claims about racial profiling. *Canadian Journal of Criminology and Criminal Justice*, 51(2), 199-226.
- Satzewich, V., & Liodakis, N. (2013). "Race" and ethnicity in Canada: A critical introduction (3rd ed.). Don Mills, Ontario: Oxford University Press.
- Saulis, M., Fiddler, S., & Howse, Y. (2001). Release Potential of Federally-Sentenced Aboriginal Inmates to Communities: A Community-based Research Project. Ottawa, ON: Research Branch: Correctional Service of Canada.
- Shaw, M., & Hannah-Moffat, K. (2000). Gender, diversity and risk assessment in Canadian corrections. *Probation Journal*, 47(3), 163-172.
- Silverstein, M. (2005). What's race got to do with justice? Responsibilization strategies at parole hearings. *British Journal of Criminology*, 45, 340-354.
- Singled Out. (2002, October 19). The Toronto Star, Pp. A1.
- Sioui, R., & Thibault, J. (2001). The relevance of a cultural adaptation for Aboriginals of the Reintegration Potential Reassessment Scale (RPRS), Research Report R-109, Ottawa, ON: Correctional Service of Canada.
- Stenning, P. (2011). Isms and 1sts: A slightly personal but not intentionally trivial comment on 'racial profiling'. *Canadian Journal of Criminology & Criminal Justice*, 53(1), 113-118.
- Stewart, L., & Wilton, G. (2012). Correctional Program Participation: Are there differences Among Offenders of Various Racial Backgrounds? Research Report R 12-06. Ottawa, ON: Correctional Service of Canada.
- Symons, G. L. (1999). Racialization of the street gang issue in Montreal: A police perspective. *Canadian Ethnic Studies*, 31(1), 124-138.
- Tam, D., Tutty, L.M., & Zhuang, Z.H., Paz, E. (2015). Racial minority women and criminal justice responses to domestic violence. *Journal of Family Violence*, 31(4), 527-538.
- Tanovich, D. M. (2002). Using the Charter to stop racial profiling: The development of an equality-based conception of arbitrary detention. *Osgoode Hall LJ*, 40, 145.
- Thandi, G. (2013). A tale of two cities: Criminal justice system failings in addressing the needs of South Asian communities of Surrey, British Columbia, Canada. *South Asian Diaspora*, 5(2), 211-221.
- Thornhill, E. A. (2008). So seldom for us, so often against us: Blacks and law in Canada. *Journal of Black Studies*, 38(3), 321-337.
- Trevethan, S., Moore, J. P., & Rastin, C. J. (2002). A profile of Aboriginal offenders in federal facilities and serving time in the community. *Forum on Corrections Research*, 14(3), 1-7.
- Trevethan, S., Moore, J. P., Naqitarvik, L., Watson, A., & Saunders, D. (2004). *The Needs of Inuit Offenders in Federal Correctional Facilities*. Ottawa, ON: Research Branch: Correctional Service of Canada.

- Usher, A., & Stewart, L. (2011). The Effectiveness of Correctional Programs with Diverse Offenders: A Meta-Analytic Study. Research Report R 246. Ottawa, ON: Correctional Service of Canada.
- Waldram, J. B. (1993). Aboriginal spirituality and symbolic healing in Canadian prisons. *Culture, Medicine and Psychiatry*, 17, 345-362.
- Walker, S., Spohn, C., Delone, M. (2012). *The color of justice: Race, ethnicity, and crime in America* (5th ed). Belmont, CA: Thomson/Wadsworth.
- Webster, C. M., & Doob, A. N. (2004). Classification without validity or equity: An empirical examination of the Custody Rating Scale for federally sentenced women offenders in Canada. *Canadian Journal of Criminology and Criminal Justice*, 46(4), 395-421.
- Williams, C. J. (2006). Obscurantism in action: How the Ontario human rights commission frames racial profiling. *Canadian Ethnic Studies*, 38(2), 1-18.
- Wolfgang, M., & Cohen, B. (1970). *Crime and race: Conceptions and misconceptions*. New York: Institute of Human Relations Press.
- Wortley, S. (2003). Hidden intersections: Research on race, crime, and criminal justice in Canada. *Canadian Ethnic Studies*, 35(3), 99-117.
- Wortley, S., & Owusu-Bempah, A. (2009). Unequal before the law: Immigrant and minority perceptions of the Canadian criminal justice system. *Journal of International Migration and Integration*, 10(4), 447-473.
- Wortley, S., & Owusu-Bempah, A. (2011). The usual suspects: Police stop and search practices in Canada. *Policing & Society*, 21(4), 395-407.
- Wortley, S., & Tanner, J. (2005). Inflammatory rhetoric? Baseless accusations? A response to Gabor's critique of racial profiling research in Canada. *Canadian Journal of Criminology and Criminal Justice*, 47(3), 581-610.
- Wortley, S., & Tanner, J. (2003). Data, denials, and confusion: The racial profiling debate in Toronto. *Canadian Journal of Criminology and Criminal Justice*, 45(3), 367-389.
- Wortley, S., & Tanner, J. (2004). Discrimination or good policing? The racial profiling debate in Canada. *Our Diverse Cities*, 1, 197-201.