

**THE MATTER OF PENAL STANDARDS:
THE MATERIAL POLITICS OF PENAL GOVERNMENT IN HAITI AND NUNAVUT**

by

Kara Brisson-Boivin

MA, Criminology, University of Windsor, 2011

BA (Hon), Sociology and Criminology, University of Windsor, 2009

A thesis submitted to the Faculty of Graduate and Postdoctoral
Affairs in partial fulfillment of the requirements for the degree of

Doctor of Philosophy (Sociology)

Carleton University
Ottawa, Ontario

© 2016, Kara Brisson-Boivin

ABSTRACT

This dissertation examines the role of the prison within projects of state formation by way of the instrumentalization of punishment in accordance with penal standards: these aim to measure, manage, and steer the conduct of penal governments, practitioners, and prisoners. My research contributes to the fields of governmentality studies, critical criminology, and post-colonial studies through an analysis of penal standardization as the primary means through which states enact moral sovereignty, or the manufacturing of democratic penal institutions. By using penal standards as an analytic of government, and an amalgam of critical document analysis, semi-structured interviews, and participant observation, this study examines the application of penal standards within two cases of penal government intervention: Canada's role within the penal aid and justice reconstruction effort in Haiti; and the investigation into sub-standard penalty in Nunavut, Canada. The unique contribution of my dissertation, emerging from my empirical focus on the material politics of penal standards, is that penal standards *matter* as evidenced by the matter (or materiality) of penal standards. In studying the matter of penal standards my research makes three core arguments: first, that penal standards promote technicization in penalty (or penal technē), rather than the actualization of ethical punishment or prisoner human rights; second, that penal standardization aims to disembed a penal government's relationship from a specific locality or culture, recasting this relationship as a universal, normalized, and primarily carceral response to punishment; third, in both of the cases of penal standardization that I study (in Haiti and in Nunavut) penal agents must contend with the paradox of punishing inequality—how to maintain the monopoly over the authority to punish, or penal legitimacy, without subjecting prisoners to patently inhumane conditions and practices within contexts of significant

marginalization and inequality. I argue that penal standards, as they are currently imagined, are part of the problem rather than a solution to abnormal forms of punishment, and that the only failures within penal standardization are those ideas and practices which are systematically discounted by the normative assumptions ingrained within penal standards—the failure to imagine punishment as anything other than carceral.

ACKNOWLEDGEMENTS

I would like to thank my supervisor William Walters for his guidance and intellectual stimulation. He always made time to assist me, wrote endless references supporting my work on this project, and never complained of reading countless drafts of this dissertation. I owe much of my growth as a scholar to his encouragement. I am grateful to Xiaobei Chen for her kindness, her patience in teaching me new ways of understanding the world, and the way in which she cared about this project. I am also grateful to Bruce Curtis for his hard-friendly questions—he pushed me to be a better academic in his light-hearted way with full confidence in my ability. I wish to thank my examiners, Kelly Hannah-Moffat and Dale Spencer, for their valuable input and affirmation at the completion of this project.

I am whole-heartedly appreciative of the support of the administrative staff in the Department of Sociology and Anthropology at Carleton University, including Paula Whissell, Marlene Brancato, Kim Mitchell, Karen Tucker, Katrin Liivoja, and Cristina Becerra. This project was supported financially by funding from Carleton's Department of Sociology and Anthropology and the Faculty of Graduate and Postdoctoral Affairs, as well as the Social Science and Humanities Research Council Doctoral Fellowship and Ontario Graduate Scholarship programs.

I am deeply grateful to the many people who helped me during my fieldwork: taking the time to give interviews, bridging connections with other important contacts, and providing me access to penal institutions for field observation. However, the claims in this dissertation and any errors or omissions are my own.

To my friends, whom I am also lucky enough to call my colleagues (the best doctoral cohort around) thanks for challenging me but also never missing an opportunity to make me laugh. To Shannon, Wesley, and Adam, I am honoured to walk this PhD journey with you—even from afar. To Christine and J.Z. thank-you for your companionship—I treasure our coffee 'meetings'.

To my family, my unshakeable and steadfast cheering squad. When things got tough or I was discouraged you never once faltered in your faith in my ability to complete this project. To my partner Ryan, for your unconditional love and support when my attention was divided, my patience meagre, and especially when I thought this project had prematurely ended. He somehow managed to provide me with endless encouragement during his own post-graduate studies. He is in many ways the reason why I was able to finish this dissertation.

This dissertation is for those I cherish who have gone before me inspiring me to do and be better. And for those I cherish who are about to enter this world: that you too may experience the frustrations and joys of doing something you really love.

LIST OF ABBREVIATIONS

BCC-Baffin Correctional Centre
CCRA-Corrections and Conditional Release Act
CDs-Commissioner's Directives
CIDA-Canadian International Development Agency*
CNCC-Central North Correctional Centre
CO-Correctional Officer
CSC-Correctional Service of Canada
DAP-*Department Penitentiare Nationale Haiti* / Department of Penal Administration
DDR-Disarmament, Demobilization, Reintegration
HNP-Haitian National Police
ICRC-International Committee of the Red Cross
ISO-International Organization for Standardization
MICAH-International Civilian Support Mission in Haiti (1999-2000)
MICIVIH-*Mission Civile Internationale en Haiti* /International Civilian Mission in Haiti
MINUSTAH-*Mission des Nations Unies pour la stabilisation en Haiti* /United Nations Stabilization Mission in Haiti (2004-current)
MOU-Memorandum of Understanding
MIPONUH-United Nations Civilian Police Mission in Haiti
NGO-Non-Governmental Organization
NILO-Native Inuit Liaison Officer
NTI-*Nunavut Tunngavik* / Nunavut Land Claims Organization/
NU.C-Nunavut Corrections
OAS-Organization of American States
OCDC-Ottawa Carleton Detention Centre
OCI-Office of the Correctional Investigator of Canada
OPC-*Office de la Protection Citoyen Haiti*/Office of Citizen Protection
PRI-Penal Reform International
QIPs-Quick Impact Projects
RCMP-Royal Canadian Mounted Police
SMRs-Standard Minimum Rules for the Treatment of Prisoners
START-Stabilization and Reconstruction Task Force Canada
UNMIH-United Nations Mission in Haiti (1993-1996)
UN-United Nations
UNDP-United Nations Development Program
UNODC-United Nations Office on Drugs and Crime
UNSMIH-United Nations Support Mission in Haiti
US-United States
UNTMIH-United Nations Transition Mission in Haiti

*CIDA is now Foreign Affairs, Trade and Development Canada

TABLE OF CONTENTS

Abstract.....	i
Acknowledgements.....	iii
List of Abbreviations.....	iv
Table of Contents.....	v
List of Images and Appendices.....	vii
Chapter I. Introduction.....	1
1.1 Why Penal Standards Matter.....	7
1.2 Research Questions and Objectives	16
1.3 Chapter Outline.....	28
Chapter II. Punishmentalities And Critical Government Studies.....	37
2.1 Introduction.....	37
2.2 Punishmentalities.....	38
2.3 Moral Sovereignty.....	43
2.4 The Cultural Turn in Penology	53
2.5 Governmentality Studies.....	56
2.6 The Cases.....	63
2.7 The Research Process.....	67
2.8 Reflections on the Research Process.....	77
2.9 Conclusion.....	84
Chapter III. Penal Standards And The Global Circulation of Punishmentalities.....	85
3.1 Introduction.....	85
3.2 The Historical Development of Penal Standards.....	87
3.3 Changing Punishmentalities in Canada.....	97
3.4 The Global Circulation of Punishmentalities.....	111
3.5 The Standard Web of Technical Penal Administration	118
3.5.1 Cognitive/ Affective Standards.....	119
3.5.2 Disciplinary Standards.....	121
3.5.3 Corporeal Standards.....	124
3.5.4 Construction Standards.....	128
3.6 Standard Versus Customized Punishment.....	130
3.7 Conclusion.....	135
Chapter IV. Penal Aid Via Penal Standardization: Punishing Inequality In Haiti.....	137
4.1 Introduction.....	137
4.2 Haiti's Ephemeral Independence.....	140
4.3 Haiti's Legal Traditions and Penal Practice	144
4.4 Problematizing Haitian Penal Justice.....	147
4.5 How Penal Aid Became Mission Critical For Haiti	154
4.6 Standardizing Penal Administration in Haiti.....	159
4.7 The Matter of Penal Standardization in Haiti.....	170

LIST OF IMAGES AND APPENDICES

Figure A.	175
Figure B.	177
Figure C.	255
Figure D.	257
Figure E.	261
Appendix A.	364
Appendix B.	366
Appendix C.	371

CHAPTER I INTRODUCTION

In late 2015, Canadian architect Kerry Feeney (known for her work on public projects with a focus on high security environments in police and corrections) published an article, “The Throne is King: The Impact of the Prison Toilet” based on her experience as the project architect for the new women’s correctional centre in Headingley Manitoba. Feeney (2015) explains:

in a correctional environment, the throne is king. The decisions we make as designers and operators about where the toilets are located, how they are controlled, how many there will be, and even what they are made of, will have bearing on those living and working in these [prisons] in ways that are more complicated and profound than just providing a device to accept waste.

When I began working on this dissertation on penal standardization I had no idea how applicable Feeney’s observations would be to my own work. In fact, it’s still surprising to me that I have entered into an academic alliance with researchers, activists, and critics¹ (typically outside of my sociology/criminology/legal studies wheelhouse) who study the crude, sullied, and sometimes undignified domain of toilets. However, over the course of my research I have learned that while prison toilets are crude, sullied, and undignified they are also political objects. The prison toilet is the very fixture upon which the conditions of confinement and the treatment of prisoners are enacted. In my research, respondents spoke to me of the controversies in penal government that erupted over prison toilets: Should cells be ‘wet’—meaning with a toilet—or ‘dry’—meaning without a toilet? How many toilets will the prison have? Will the toilets be public (monitored) or private (unmonitored)? How are women’s toilet needs different from men’s? How do toilets affect the spread of disease? How might toilets be used to conceal

¹ Such as Jami Anderson 2009; Soraya Chamlay 2015; and Malika Saada Saar et al. 2015.

contraband? Will toilets be stainless or porcelain? How will the materiality of the toilet impact or create opportunities for violence or the use of the toilet as a weapon?

These are significant questions, the answers to which illuminate distinctions between standard penalty which recognizes relevant penal standards, sub-standard penalty which fails to meet relevant standards, and non-standard penalty which suggests the existence of a different penal model entirely. The prison toilet highlights such distinctions within each of the nine types² of penal standards I uncovered within the archive of penal standardization and the practices of penal reconstruction that I have studied in Haiti and in Nunavut: whether that be prisoners in Haiti who have to ‘slop out’—meaning emptying receptacles (often plastic bags) of human waste each morning, or prisoners in Nunavut living in ‘dry’ cells who have to bang on cell doors in the middle of the night in order for correctional staff to grant them access to shared toilets. As my research indicates decisions regarding prison toilets impact levels of security within the prison, the penal design and infrastructure, the budgets of penal administration, the training and disciplinary conduct of staff, and perhaps most importantly a sense of normalcy, privacy, dignity, and protection amongst prisoners (for a full discussion see Feeney 2015). Above all, the prison toilet indicates a level of Westernized humanity whereby, regular access to functioning, clean toilets is understood as an element of moral, ethical, or humane punishment. In other words, as my research will reveal, (barely) separating the treatment of prisoners in cells from animals in pens, the prison toilet is an important device in the civilizing mission of penal standardization.

While prison toilets are just one of the many illustrations of contestations over standard penalty within my dissertation, I begin with the example of the prison toilet as it most clearly

² See Appendix A for the full typology

explains the principal contribution of my dissertation: that penal standards *matter* as evidenced by the matter (or materiality) of penal standards. Following the work of Andrew Barry (2013) on *Material Politics* and Bruno Latour and Peter Weibel (2005) on *Making Things Public* my dissertation provides a critique of radical democratic theory, libertarian politics, and Kantian ethics, and/or mainstream political, social, and legal scholars who take human beings or human conduct as the basis upon which politics (particularly democratic politics) rests. Admittedly, human conduct and (in)action is a necessary component of penal government, but just as important are materials and objects—the *things* which come to animate political controversies over penal standardization. As Latour (2005: 5-6) explains, political philosophers from Hobbes to Rawls and Rousseau to Habermas have conceptualized the ‘body politik’ as made up exclusively of people. I disagree with this purely anthropocentric understanding of politics, and mobilize productive critiques in my analysis of penal standardization missions, by taking seriously the objects and materials fundamental to making distinctions between standard, sub-standard, and non-standard penalty. I employ what Latour (2005: 6) calls an ‘object-oriented-democracy’ which examines the ‘matters that matter’ or the spatio-material, technical components of penal government. As such, (following Barry 2013: 12) I draw attention to the importance of how organic and inorganic materials—whether they be diseases, segregation, prison food, or technologies such as assessment records—participate in the controversies over penal standardization. In doing so, I reveal the first (I) of the three core arguments I trace throughout the chapters of my dissertation (on technical punishment): that there exists a fixation within penal standardization with penal administration, spatial design, and the materiality of punishment such that penal standards promote technicization in penalty (or penal technē) rather

than the actualization of ethical punishment or prisoner human rights (such as regular access to medical care and the prohibition of solitary confinement). I will argue that while penal standards tend to trivialize punishment into little things, producing a pixelated picture of penal government, the little *things* of punishment *matter*. Further, my analytical focus on the materiality of punishment allows me to uncover the various dimensions of human rights at play in penal standardization, as well as interrogate what can be known and what can be measured in efforts to standardize punishment. More importantly, the various examples of penal standards I provide in the following chapters elucidate that not all penal matter *matters* in the same way.

In addition, my dissertation provides criticisms of what Daniela Nascimento (2015) calls ‘classic humanitarianism’—a series of normative legal principles, human rights doctrine, and ethical values which takes the protection of the lives and dignity of all individuals as a categorical imperative. As my research will illuminate, penal administrators, penal aid and reconstruction agents, as well as penal investigators tend to understand and subsequently enforce penal standards as a tool of classic humanitarianism and a measure of a country’s civility and morality. Such an interpretation of penal standards is similar to the view of morality Émile Durkheim (2011/1925) espouses in *Moral Education* in which morality concerns norms of conduct or social rules that serve a common social good. The problem with giving such primacy to human conduct, morality, and civility is that, once again, objects and materials are overlooked as entities worthy of analysis. In fact, many scholars of humanitarianism and human rights (see Fukuyama 2004; Ghani and Lockhart 2008; and Miller 2013 among others) take human conduct as the basis for aid and assistance. Such scholarship does not study toilets, or cubic meters of air within cells, or the number of beds per prisoner, as these projects see such phenomena as merely

technical rather than moral or ethical. However, my dissertation makes an important contribution to the budding discipline of international governmentality studies and critical humanitarian scholarship (see Calhoun 2008; Ilcan and Philips 2008; and Zanotti 2010) through an approach which sees material objects as steeped in ethics and morality. As I will demonstrate, the toilet, or a sweat lodge for example, is not simply an apolitical, technical device but the very plane on which the moralizing or civilizing missions of penal standardization are enacted.

In other words, my dissertation uncovers that it is precisely within the material realm of punishment that judgements are made regarding the ethical conduct and standard practices of penal administrations. Likewise, my study engages in an analysis of penal standards that does not separate the cultural from the material or technical aspects of punishment. Toilets, beds, medicine bags, food, and so on: these are not distractions from ‘higher-level’ ethical questions or moral dilemmas involving human conduct: these *are* the moral, ethical, and cultural trenches in which penal standards operate and are fought out. Central to my research are the ways in which penal standardization efforts, particularly attempts to measure the treatment of prisoners, have become a yard stick for judging the progress of civilization in particular geo-political contexts (Bennett 2016: 324). My dissertation provides a much-needed critique of the post-colonial politics behind penal standardization projects in Haiti and in Nunavut: these empirical case studies uncover how contemporary agents of penal standardization engage in what can be termed as penal missionary work, whereby they mobilize what Peter Bennett (2016: 326) calls ‘human rights imperialism’. Yet, my case studies will also demonstrate that the treatment of prisoners, as a test of a country’s civilization, is a highly subjective judgement and those countries (such as Canada) that regard themselves as more civilized than others (such as Haiti) also fall short of the

standards to which they aspire and can hardly be better than the countries they condemn (see Bennett 2016: 326-327 on standards as civilizing practice). Which brings me to the second (II) core argument that I trace in my dissertation (on civilizing punishment): that penal standardization traverses traditional understandings of sovereign boundaries, dis-embedding penal government from local, culturally relevant penal politics, then re-embedding penal government in state-centric, standard penal practice in the name of moral or ethical punishment and the protection of prisoners' human rights.

The third core argument (III) (on paradoxical punishment), while related to the first two, has come about as a result of my empirical move to examine the interactions of penal standards, governance, prison building and reform in places where relationships of power and inequality are extremely asymmetrical and occur amongst deeply marginalized communities. As a result of this empirical focus, my dissertation makes an important contribution to governmentality studies which tend to focus on liberal contexts rather than non-liberal contexts, since they have what Jonathan Joseph (2011: 64) explains are the “social relations necessary for sustaining such technologies of governance.” Rather, through my case studies of penal aid efforts in Haiti and penal investigation in Nunavut, I aim to uncover how penal standards apply to either ‘less developed’ or non-neoliberal contexts. My research highlights how penal standards take for granted, or assume, a level playing field amongst penal administrations of different geo-political contexts and that penal standardization fails to account for the ways in which punishment and penal government are inextricably tied to conditions of social inequality in specific geo-political contexts. The result is captured in the third (III) and final core argument that I trace in my dissertation. In both of the cases of penal standardization that I study (Haiti and Nunavut) penal

agents must contend with the paradox of punishing inequality: how to maintain the monopoly over the authority to punish, or penal legitimacy (premised on punishment as state sanctioned rather than socially derived), without subjecting prisoners to patently inhumane conditions and practices within contexts of significant marginalization and inequality. The remainder of the introduction will explain why penal standards matter, my research questions and objectives (including a brief explanation of the case studies³), as well as an outline of the chapters that follow and their relation to the core arguments I have introduced here.

1.1 Why Penal Standards Matter

A significant and original contribution of my work is my argument that penal standards matter and are an important frame of reference for research in criminal justice, legal studies, and the sociology of punishment. Within these disciplines, analyses of penal standards are largely absent; what little scholarship does exist (e.g., Rod 2000; Leibling 2011; and Van Zyl Smit et al. 2015) focuses on European prison systems. Moreover, while there are many scholars (see Garland 2000; Piché 2012; Simon 1995; and Wacquant 2008 among others) who study the problems of hyper-incarceration and punitive penal politics, none do so through the analytical lens of penal standards. As such, my research, which critically examines the historical development of penal standards, the global circulation of penal standards, and the utilization of penal standards as a tool of penal government and moral sovereignty—the desire and tendency to impose penal standards as a measure of a country’s morality and civility—in contexts of inequality and

³ A detailed explanation of the cases follows in chapter II

marginalization, provides a much needed and unique scholarly contribution to the study of penalty.

Penal standards comprise a vast archive of standard documents and policies. However, my research focuses primarily on the United Nations Standard Minimum Rules for the Treatment of Prisoners (1957), or the SMRs, and the national penal standards pertinent to Canadian penal government (such as the Commissioner's Directives, CDs, of the Correctional Service of Canada).⁴ The UN SMRs engage a myriad of different organizations—development and humanitarian organizations, global financial aid organizations, non-governmental and human rights organizations, military operations, individual states and state-authorized penal organizations (such as the Correctional Service of Canada or CSC)—which contribute to the development of penal standards. Penal standards as norms of penal conduct and practice are self-prescribed by penal organizations rather than legally binding. Penal standardization is a technology of government that aims to measure, manage, and steer the conduct of institutions, organizations, and practitioners of punishment as well as of prisoners.

In 1889 Lord Kelvin, a prominent mathematical physicist, wrote: “when you can measure what you are speaking about you know something about it; when you cannot measure it...your knowledge is of a meagre and unsatisfactory kind,” (in Hacking 1991: 186). While Kelvin would go on to contribute to the budding discipline of physics, the association of measurement and knowledge became a fundamental conviction and ambition of both the natural and human sciences. The ability to measure a particular phenomenon allowed the observer to

⁴ Chapters II and III will provide a more detailed discussion of the archive of penal standards that I analyzed.

speak from a position of expertise. As Hacking (1991: 181) uncovers in his work on the history of statistics, the measurement of social phenomena is more fundamental than methodology:

Statistics has helped determine the forms of laws about society and the character of social facts. It has engendered concepts and classifications within the human sciences. Moreover, the collections of statistics has created, at least, a great bureaucratic machinery. It may think of itself as providing only information, but it is itself part of the technology of power in a modern world.

The measurement and regulation provided by penal standards is meant to act as a ‘ritual of verification’ (see Vannier 2010: 283) whereby the penal organization (such as CSC) can account for its actions or inactions providing a ‘stamp of accountability’ (see Satterthwaithe 2011: 38). Penal standardization is supposed to address the problem of balanced punishment—too much versus not enough punishment—by rendering punishment calculable and measurable. However, the questions for my analysis remain: what sorts of relations, habits, and practices are brought into being through penal standardization? For what purposes and to whom is accountability useful in penal standardization?

Utilizing an analytics of government, my dissertation examines how penal standardization projects are a central means by which states enact what I call *moral sovereignty* (evidence of moral, ethical, and civil conduct), such that penal standardization is itself a form of government. My research uncovers the ways in which penal standardization involves contestations over what I will explain (in Chapter III) are ruling *punishmentalities*—the explanations and justifications of punishment. Specifically, penal standardization entails contestations over who gets to define the objectives of punishment such that punishment is constantly being pushed and pulled between local, culturally relevant punishmentalities and state-centric punishmentalities. More importantly, my dissertation highlights how local,

culturally relevant and state-centric punishmentalities are themselves contested—they are not homogenous logics. Similar to Garland's (1997: 176-177) conceptualization of criminal justice as a system that can be known and governed, I situate penal standardization within efforts to know and govern a system of punishment. As I will demonstrate in the following chapters, penal standardization is a strategic game of power that produces particular power effects which I call *pixelating power effects*. Penal standardization is a technology which aims to encapsulate all aspects of punishment: in doing so it pixelates the art of punishment into the smallest possible arrangement of elements much like as an image becomes pixelated when over-enlarged. The pixelating power effects of penal standardization will be illustrated in my case studies which highlight the materiality of punishment practice; evident in standards which aim to measure, for example, the cubic meters of air quality within cells, the square feet per prisoner, and the ratio of toilets to prisoners. Pixelating power effects is a useful concept for conceiving of the effects of penal standardization missions since it allows me to ask questions about scale and power. My analysis involves zooming in and out within the field of penal standardization so what seems like a smooth picture (of penal government) is in fact revealed as the effect of thousands of pixels and anything but smooth.

Government aims to shape, guide, affect, monitor, regulate and control the conduct of a person or persons. This conceptualization of government as the conduct of conduct is Foucault's (1978/2004) wide interpretation of the concept (see Gordon 1991: 2-3). However, Foucault also understood government more narrowly as the exercise of political sovereignty or the 'art of

government’—how political sovereignty is carried out.⁵ Penal standardization involves government in both the wide (as an exercise of political sovereignty) and narrow (as the conduct of conduct) senses of the term, drawing on a myriad of complex relations in which those governing can also find themselves being governed. For example, penal agents (such as Correctional Officers or COs) are charged with the supervision of prisoner conduct (governors); but they themselves filter their conduct through a multitude of standard penal legislation and practice such as the staff codes of conduct found within the Commissioners Directives (CDs) of CSC. Similarly, states operate as governing bodies over authorized penal authorities such as the government of Canada’s relationship with CSC and Canadian international development organization’s relationship with corrections in Haiti. Yet, these organizations are simultaneously subject to international human rights laws and legislation. My research highlights a *third* scale or category of governmental relation: that of the appointed official or organization responsible for investigating issues of penal maladministration. In the Canadian penal context this task falls under the authority of the Office of the Correctional Investigator (OCI)⁶ and in the Haitian context the *Office de la Protection Citoyen Haiti*/Office of Citizen Protection (OPC) is responsible for monitoring penal administration. Investigations into the conduct of penal administrations rely on penal standards as a tool through which to compare and measure a particular institution or organization under investigation. As such, the pixelating power effects of

⁵ In some places (such as Foucault’s 1978 lectures on Security, Territory, and Population and his 1978-79 lectures on the Birth of Biopolitics) Foucault sometimes uses the term government even more narrowly to refer to *liberal* arts of government predicated on political economy.

⁶ The OCI has jurisdiction at the federal level (over all federal correctional facilities) but it does not have jurisdiction at the provincial or territorial level. At the time of writing, in Ontario the minister of community safety and correctional services (the Hon. Yasir Naqvi, MPP) and in Nunavut the minister of justice (the Hon. Paul Okalik) are responsible for penal oversight.

penal standardization involve scales of government which oscillate between government in the narrow sense, as an act of political will, and government in the wide sense, as the conduct of human conduct. As my dissertation uncovers, the concentration on governing the seemingly mundane, minutiae of penalty (e.g. the materiality of toilets, the location and number of guard towers, the use of x-ray machinery for conducting full body searches) are evidence of systematic and regularized punishment but are not directly evidence of prisoner's human rights.

Akin to Power's (2004: 771) observations about governmental uses of performance measurement systems, I expose penal standards as a tool which measures the performance of penal administrations in their delivery of what standard documents articulate as punishment as a social good—meaning punishment that protects citizens from the 'evils' of crime, all the while protecting prisoners' human rights. Moreover, my research espouses the ways in which punishment as a social good involves the constitution of organizational realities in such a way as to make the prison the primary domain of punishment and the state or state authorized penal administrations the custodians of punishment practice. The accountability afforded to penal organizations which demonstrate that they are standard enforcing, including the act of conscripting other countries to these standards, (such as the work of Canadian penal development organizations in Haiti) is useful insofar as it perpetuates the need for penal administrations to protect the objects as well as the subjects of punishment. Similar to Majone's (2014: 1223) analysis of the regulatory state, diversity in penal governance strategies has raised the stakes for, and costs of, uniformity in the provision of social goods such as punishment. Within the dissertation (particularly in Chapters IV and V—the case studies) I provide multiple critiques of the fallacious claims that an ethos of protection (imbued in penal standards) assists standard

enforcing states (like Canada) to usher in missions of moral sovereignty in which the state, or state authorized penal organization (like CSC), is the protector of society from the ‘evils’ of crime as well as the protector of prisoners from dangerous and harmful conducts.

As I have already begun to suggest, there are two primary processes within penal standardization missions that I criticize and to which I attribute a series of negative outcomes: (I) penal standardization which rides roughshod over local differences and cultures of penality; and (II) carceralism and hyper-incarceration which locks prisoners up with little regard for their rehabilitation and well being. The first process is particularly problematic (as the Haiti and Nunavut case studies depict) because it assumes we can fully understand other penal systems because they share similar functions and remedies (punitive incapacitation) for crime control and social order (see Bennett 2016: 326) while attempting to maintain a division between so-called ‘first world’ and ‘third world’ penal systems. I argue that we need to avoid overly simplistic and exaggerated notions of a global divide between ‘first world’ and ‘third world’ countries when it comes to penal government—to which ‘third world’ countries are often the subject of penal standardization missions and condemnations of human rights abuses. Rather, following the work of Peter Bennett (2016: 326) I demonstrate that “human rights violations are commonplace, widespread, and disturbingly closer to home than some of us would like to acknowledge.” In fact, the Nunavut case study (presented in Chapter V) demonstrates that human rights abuses and contestations over standard punishment do not only occur in faraway countries but ‘at home’ in Canada.

The second process is problematic as it establishes standard penality firmly on the conviction that incarceration in a prison is a globally accepted norm. My dissertation will

demonstrate that from the work of penal reform organizations such as the John Howard Society, state (Canadian) commissioned task forces on the development of penality, international humanitarian organizations, international military operations, as well as state ombudsmen or prison inspection offices—each of these organizations confirms the immutability of the prison in its contribution to penal standardization missions. While making inclusions for socially oriented punishments, which embrace a rehabilitative and reintegrative punishmentality, penal standards are primarily concerned with managing and regulating conduct *within* prisons. This is evidenced by a high concentration of penal standards on the administration of prison operations, prison staff, and the conduct of prisoners (e.g. how many hours a day a prisoner should spend outdoors), regulations for the spatial design of the prison (e.g. how many square feet per cell), as well as the government of the material elements of punishment (e.g. whether to install porcelain or steel toilets). In establishing the prison as the normative model for conducting punishment globally, penal standards bolster the state-centric character of punishment since prisons are more often than not the responsibility of the state⁷.

While the primary strategy of penal standardization is to bolster the state's monopoly over the authority to punish, this technology of power borrows from a multiplicity of governmental rationales and practices beyond those typically associated with the state—such as the preparation and consumption of food, hygiene practices, and the mental and physical wellbeing of both prison staff and prisoners. In other words, the enactment of the state's political

⁷ In some instances, prisons can be privately operated, as was the case with Central North Correctional Centre (CNCC) in Penetanguishene. From 2001 to 2006, CNCC was run by a United States (Utah) based company: Management & Training Corporation. However, in 2006, the prison was returned to the authority of the Province of Ontario in an effort to regain control over the penal landscape in northern Ontario (Field Notes: August 2014).

sovereignty (narrow government) as exercised in the monopoly over the power to punish, utilizes the prison as the domain in which to engage a multiplicity of governmental logics and practices (wide government). Penal standards are successful in this regard since they couch the power-relations of punishment in an ethos of protection through which administrators of penal justice are granted the status of protectors and prisoners are rendered vulnerable and in need of protection, sometimes from themselves. In this way, the pixelating power effects of penal standardization blur distinctions between protection and punishment, such that practices which are contrary to the needs and rights of prisoners (e.g. the use of segregation for mentally ill prisoners) are re-imagined as protective measures against danger and harm. Following the work of Justin Piché (2012: 1-35), penal standards promote the ‘prison idea’—the carceral institution as the centre of penal government—which not only fails to account for the social inequalities which plague certain geo-political locales, but, more often than not exacerbates these inequalities through the use of punitive, hyper-incarceration. While the two processes of penal standardization that I have outlined are distinct, my dissertation highlights the ways in which they are often used in tandem: the primary means by which penal standardization missions erase penal difference (process I) is through the maintenance of the carceral norm (process II). Said another way, penal standards in maintaining the carceral norm (the prison model) as *the* model of penal government severely limit what Valverde (2012) calls ‘penal imagination’—a failure to think outside the carceral box.

I want to note that I am not opposed to standards outright: safety standards for products, food safety standards, emissions standards governing air pollutants—these are all examples of cases in which establishing levels of achievement, criteria, or acceptable behaviours can work to

improve the quality of life for those affected by such products or behaviours. Even in the case of penal standards, should standards be revised so as to achieve the moralistic ideals that they assert they could work to ensure the actualization of prisoner human rights. However, in this dissertation I demonstrate how the pixelating power effects of standardization result in a gap between an ethical commitment to prisoner human rights and an actualization of these rights. The Haiti and Nunavut case studies are particularly interesting instantiations of penal standards, whereby this gap in prisoner human rights is further exacerbated, since the quality of life for law-abiding citizens is so poor that realizing prisoner human rights calls into disrepute the very nature and purpose of punishment. In these cases, penal standardization results in forms of paradoxical punishment, which I call *punishing inequality* whereby recognizing prisoner human rights calls into question the validity of the penal administration since punishment cannot be seen to raise the quality of life for prisoners beyond that of law-abiding citizens. As such, my case studies will explicate that, rather than being systematically enforced, penal standards are manipulated and strategically implemented in such a way as to demonstrate, even nominal alignment with standard penalty while maintaining the legitimacy of the penal institution and administration. In the following section on the questions and objectives behind the research, I will briefly speak to my selection of cases and the importance of case study as method; however, a more detailed discussion of the research method and process follows in Chapter II.

1.2 Research Questions and Objectives

Mobilizing a governmentality analytic, my dissertation examines how standard penalty aligns the apparatus of penal practice and punishmentalities with the use of the prison as punishment,

producing particular knowledge, subjects, and objects of government. I aim to uncover the ways in which penal standardization is a tool or technology of governmental power, the logics and techniques behind such power relations, and to what degree such logics and practices are mobilized by penal agents working in the field of penal administration. The aim of governmentality studies, such as my own, is to present an account of power from a technical perspective in which society is an ‘archipelago of different powers,’ (Foucault 2007a: 156).

Power does not exist as an omnipotent force: instead power is analyzed nominally, as multiple and heterogeneous, producing specific dispositions, maneuvers, tactics, and strategies. In order to investigate the questions of the logics and motivations behind penal standardization and how they are enacted in the field, I employ (following Flyvbjerg 2001: 71-78) the critical case study method whereby the closeness of the case study to “real-life situations and its multiple wealth of details are important...for the development of a nuanced view of reality.”

My research examines penal standardization via the implementations of international, national, and local or socially derived penal norms in two cases: Canadian efforts to reconstruct the Haitian penal system, in the form of penal aid to address non-standard and sub-standard penalty, within the context of a ‘fragile’ state; and Canadian investigations of non-standard and sub-standard penalty in Nunavut. My analysis employs multiple qualitative methods—critical document analysis, semi-structured interviews, and participant observation—in order to examine who gets to decide what is and is not standard penalty; how such distinctions are made; who does the measuring and who is the subject of measurement; and, most importantly, how is contestation around standard punishment a barometer of social inequality in Haiti and in Nunavut? Case study as method requires that researchers explore phenomena first hand instead

of relying solely on maps or diagrams of them. Actual practices (such as penal standardization) are studied alongside their rules, and the research process does not grind to a halt upon learning only about those parts of practices that are publicly available (Flyvbjerg 2001: 85). I chose to engage in critical case studies of penal standardization because the complexities and contradictions of efforts to standardize penalty could only be captured within such rich narrative and empirical reflection. Further, case studies allow for the falsification and verification of taken for granted, or naturalized explanations of punishment as a social good that is provided under the authority of the state.

Austrian-British philosopher Karl Popper (in Flyvbjerg 2001: 77) explains the importance of falsification in his famous example of “all swans are white,” proposing that just a single observation of a black swan would falsify this proposition and stimulate further investigations and theory-building. Moreover, the case study is “well-suited to identifying ‘black swans’ because of its in-depth approach: what appears to be ‘white’ often turns out on closer examination to be ‘black’,” (Flyvbjerg 2001: 77). The case study method I employ in my research has allowed me to make several discoveries of ‘black swans’ or, following the work of Latour and Weibel (2005) in *Making Things Public*, to open the ‘black box’ of penal standardization. In doing so, my dissertation provides convincing evidence: that all prisons do not look or operate alike; that all punishment is not standard; and more importantly, that all conceptualizations of standard punishment are not considered equal. The rich and impossible-to-summarize narratives that I have uncovered in my case studies are not a problem; rather, such narratives are evidence of rich problematics in the field of penal government. The Haiti and Nunavut case studies allow me to capture narratives about penal standardization from diverse,

complex, and contradictory stories that people, documents, and my observations uncovered. My objective in utilizing the case study method, in accordance with sociolinguist William Labov (in Flyvbjerg 2001: 85), is that having read the case studies that I have presented here it should be unthinkable for the reader to say, ‘So what?’

I chose both an international (Haiti) and national (Nunavut) case of penal standardization in order to illustrate the ways in which penal standardization traverses traditional understandings of sovereign boundaries. Of course such understandings of national, sovereign boundaries are a matter of perspective—for example, Haiti is national for those living, working, and in many cases imprisoned there. However, my dissertation focuses on a Canadian perspective in which Haiti represents an international case given the influx of Canadian penal aid to the country over the past 21 years, and Nunavut represents a national case of penal investigation within Canada. It was important for me to have an international and a national case since penal standardization texts claim that penal standards are international, applicable in a multitude of geo-political contexts, and capable of withstanding the test of time: I wanted to test the validity of these claims. In accordance with Fassin’s (2012: 12) study on *Humanitarian Reason*, “this combination of the two scales [international and national] thus avoids both monographic narrowness that delivers only circumscribed interpretations and teleological claims that seek to identify a direction in history.” My analysis of specific objects—United Nations (UN) transcripts of meetings of the Expert Group on the Standard Minimum Treatment of Prisoners, the Commissioner’s Directives of the Correctional Service of Canada (CDs), the Pathways programming for Aboriginal prisoners in Canada, penal aid delivery to Haiti and the construction of the Croix-Des-Bouquets prison, and the controversies over the non-standard Baffin

Correctional Centre (BCC) in Nunavut—are more illuminating than an exhaustive analysis of a single case or a general overview of the phenomenon of penal standardization.

Moreover, the Haiti and Nunavut case studies offer examples of specific controversies over designations of standard, sub-standard, and non-standard punishment and how these contestations are related. As the Haitian case (Chapter IV) will illustrate in detail, the Haitian state has long been the target of imperial rule which utilizes the justice system as a means through which to exercise or advance sovereign power. More recently (beginning in the early 1990s), the international development community has doubled-down on attempts to reconstruct Haiti's justice—particularly penal justice systems in the name of standardization. Canadian development officials and correctional staff (with CSC) have played a key role in the penal standardization mission in Haiti. In fact, one of the primary motivations for Canada's leadership in the penal standardization mission in Haiti is the opportunity it provides for Canadian penal agents and administrations (like CSC) to flex their standard enforcing muscles, establishing the 'global excellence' of Canadian penal administrations (CSC) (Ontario Ministry of Community Safety 2015: 1). As the Haiti case study will demonstrate, CSC and Canadian development organizations will use their missionary work in the field of penal standardization in Haiti as evidence of *Canadian* penal excellence.

Given what I was quickly discovering in my research regarding Canadian efforts to establish Canadian penal administrators (CSC) as leaders in what Jefferson (2007a) calls 'penal norm export,' I knew that I needed to include a closer examination of the conditions of punishment in Canada. Throughout the research portion of my study, and the majority of the time in which I was writing this dissertation, the Conservative Party of Canada was in governmental

power. However, following the election of October 2015, in November 2015 the Liberal Party of Canada began a majority government. Along with this change in government came a significant change to the political cabinet, chaired by Prime Minister Justin Trudeau. Important for my study is the appointment of Justice Minister, and Attorney General of Canada, Jody Wilson-Raybould, of the Kwakwaka'wakw Pacific Northwest coast First Nation, and the first ever Aboriginal person to hold this position. Wilson-Raybould has already committed to a thorough review of the Canadian justice and corrections systems and has acknowledged publicly (in an interview with CTV News "Justice Minister" 2015) that the Canadian justice system severely disadvantages Aboriginal peoples. I am encouraged by this appointment and excited to see the changes that Minister Wilson-Raybould and her colleagues can bring to the Canadian penal justice system.

Nevertheless, the Nunavut case study offers a juxtaposition to the Haitian case and falsifies the generalized claims about Canadian penal excellence established on the basis of problematic impositions of penal standards in Haiti. This is especially necessary given that the current penal landscape in Canada is so far removed from the language of human rights protection, ethical punishment, and the ideals of rehabilitative and reintegrative punishment emphasized in international penal standards. For example, since March 2005, the federal inmate population in Canada has increased by 17.5% with the Aboriginal inmate population growing by 47% during this period (OCI Annual report 2013-2014: 1). As for protecting prisoners from harmful and dangerous conduct, in 2013-2014 there were more than 1,000 reports of prisoner self-injury in Canadian federal prisons—this rate has more than tripled in the last five years (OCI Annual report 2013-2014: 32). In the Haitian context, Canadian funded prisons in Haiti were among the most over-crowded in the world (Canada Haiti Action

Network 2015) and in 2012, Haitian prisons were running at an occupancy rate of 172% (International Centre for Prison Studies 2015).

My case studies will demonstrate that contemporary Canadian penalty re-conceives rehabilitative and reintegrative punishmentalities as practices that occur *within* the penal institution rather than *outside* of it meaning less community sentences, parole, probation, or bail and more incarceration (with less programming). This emphasis on carceral punishment contributes to the growing (global) problem of what Wacquant (2008: 21) calls hyper-incarceration: the comparatively and historically extreme rates of incarceration, particularly of young, black men in areas of concentrated disadvantage. In the Canadian context, hyper-incarceration includes the disproportionate rate of incarceration of Aboriginal people living in areas of concentrated disadvantage. For example, Aboriginal adults accounted for nearly one-quarter (24%) of admissions in provincial/territorial prisons and 20% of federal admissions in 2013-2014, while representing only 3% of the Canadian adult population (Statistics Canada 2015a). The situation in Nunavut is even more bleak: given that the vast majority (84%) of the population is Inuit (Nunavut Tourism 2016), 99% of incarcerated persons in BCC are also Inuit (OCI Interview 2, June 2014).

Both cases illuminate how penal standardization, far from being a neutral tool of government, is selectively and pragmatically implemented in specific conditions. While both cases demonstrate a cultivation of punishmentalities and penal practices that fortify state-centric penal institutions, the cases are not meant to be what Stoler (2006) warns is a form of trait-based comparison evoking the worst of early anthropology. Similar to Stoler's (2006: 43) analysis of empire, my case studies illustrate how penal standardization is not only a tool to be utilized on

overseas others, but also impacts the protocols and competencies of ‘internal frontiers’. In accordance with Cooper and Stoler (1997: 3-13), the production of colonial knowledge and practice does not only occur transnationally across states, but also within the bounds of nation-states. As such, I argue that my analysis of penal standardization demonstrates a need for scholars to avoid drawing such stark divisions amongst the locations and actors of colonization projects. Like with the governmental machinery behind empire (see Cooper and Stoler 1997: 7), my analysis of penal standardization in Haiti and in Nunavut illustrates the debate, as well as the political energy that goes into defining dichotomies and distinctions of penal knowledge and practice, which do not necessarily result in their intended effects. As such, the Haiti and Nunavut case studies allow me to make an important contribution to post-colonial studies in that they uncover the taken-for-granted distinctions of ‘first world’ and ‘third world’ penalty. Similar to Barbara Heron’s (2007) study on the *Desire for Development*, my case studies demonstrate how the ‘third world’ is present in Canada (evident in non-standard penalty in Nunavut) and the ‘first world’ is present in Haiti (evident in efforts to implement standard penalty).

Put another way, the Haiti and Nunavut cases allow me to challenge conceptualizations of the other—the ‘third world’ as not performing up to the standard and so morally flawed, and the ‘first world’ as standard enforcing and so exercising a form of penal government that is ethically and morally superior, indicating an advanced level of civility. In my dissertation, I demonstrate how penal standardization missions in Haiti and in Nunavut are, to play on Clausewitz’s aphorism, the continuation of colonization by penal means. The case studies demonstrate the ways in which social inequalities obstruct states from achieving the enlightened punishment promoted by penal standardization and that the ability of a penal administration to demonstrate

that its practices are standard—that punishment is balanced—are directly related to its administrative capacities, resources, and budget. Furthermore, my research establishes that the capacity, resources, and budgets of various penal administrations are anything but equal. In geo-political contexts in which the penal administration struggles with a significant lack of capacity and resources, derogations from standard penalty are often, and problematically, justified as cultural—what the 2011 UN Rule of Law Indicators call ‘domestic customizations’—rather than as instantiations of deep rooted social inequalities. The Haiti and Nunavut cases studies will illustrate the ways in which agents of penal standardization grapple with the paradox of promoting punishment as a social good in contexts in which the vast majority of social goods (education, health care, employment and so on) are significantly constrained or non-existent.

As I elucidated at the outset, with the example of the prison toilet, my dissertation project has taught me that many of the most compelling research findings are also what would typically be considered banal or everyday occurrences. Perhaps most significantly, the success and failure of penal standardization missions is pragmatically and selectively determined by penal agents who differentially implement, and often circumvent penal standards in their everyday work practices in a variety of geo-political contexts. The archive of penal standardization documents, and specifically the UN SMRs, are not a prescriptive set of rules and relations that are carved in stone. In fact, the power manifested by penal standards is their ability to be flexible, adaptable, and as the UN expert group (UN DOC 2012a and 2012b) problematically asserts ‘withstand the test of time’. Throughout the chapters that follow I challenge these power relations in conjunction with the three core arguments I’ve introduced here on the technical (I), civilizing (II), and paradoxical (III) forms of punishment that result from penal standardization.

The selective and malleable descriptions of standard, sub-standard, and non-standard punishment I have uncovered in Haiti and in Nunavut makes an important contribution to governmentality studies. Too often, projects of governmentality are presented within social science research as uniform, homogenous enterprises which can be accounted for by a singular logic or rationale—neo-liberalism, neo-conservatism, risk, securitization, biopolitics, exceptionalism, and so on. My dissertation demonstrates the ways in which technologies of government are *not* uniformly rolled out but are pragmatically and selectively enacted by agents and administrations working in a field who are themselves differentially impacted by a variety of contested governmental rationalities. In fact, in the case of penal standardization failure, just as much as success, is an indispensable strategy for penal government. In their work on *Governing the Present*, Rose and Miller (2008: 183) point out that governance is a congenitally failing operation. This means that, new strategies for governing emerge through the problematization of past governance failures (see Osborne 2003: 11), where governance failures are re-imaged as problems to be solved through new mechanisms and techniques.⁸ As I will explain in the chapters that follow (specifically Chapter III), the very ‘birth’ of penal standards was the result of international penal reformers problematizing the failure to implement universal penal codes. “It is on the basis of failures/problems that new governing [techniques] are formed, since governing efforts are understood as ways of thinking and acting on problems,” (Brisson-Boivin and O’Connor 2013: 517). In the case of penal governance, the prevalence of a multitude of conflicting punishmentalities adds to the difficulty of acting on a problem, such as mental illness in prisons, in a coherent manner. For example, if viewed through the lens of rehabilitation and

⁸ See O’Connor et al. (2014) for a discussion of governing failure in Haiti.

reintegration, the problem of mental illness could be dealt with outside the carceral institution utilizing the proper community, medical, and psychiatric supports; however, if viewed through the lens of punitive incapacitation, the confinement and containment of mentally ill prisoners is a legitimate, normative form of penalty. I would argue, in agreement with the Correctional Investigator of Canada (OCI report 2013-2014), “addressing the rising number of incidents involving mentally ill offenders by means of physical restraints, pepper spray or placements in isolation or observation cells are increasingly counter-productive and harmful practices.” However, it remains to be seen how the failure to protect mentally ill prisoners will be problematized and in what way(s) the machine of penal governance will act on this problem.

While penal standards afford penal administrations and agents an advantageous element of flexibility, the penal agents I spoke with, whether they worked in Haiti or in Nunavut, had a difficult time distinguishing between standard, sub-standard, and non-standard penalty. Oftentimes respondents’ characterizations of penal government and practice blurred the categories in such a way as to make distinctions unworkable. In some cases, respondents gave examples of what they called ‘closer-to-the-standard’ punishment (START interview February 2014), such as the construction of Haitian prison cells with six beds, despite the SMRs clear single bed standard. Nevertheless, my research indicates that in most cases in Canada and in Haiti what exists is sub-standard penalty—penalty that makes use of the carceral model, albeit not directly mirroring the standards assembled within penal standard documents. Most importantly, the Haiti and Nunavut case studies elucidate how non-standard punishment is more often than not conflated with local, culturally specific penal practice, since these practices are aligned with an entirely different model of penalty than the carceral norm behind standard

penalty. For example, the Indigenous legal orders of the Inuit people emphasize counselling and community sanctions rather than carceral incapacitation, and certain popular Haitian penal traditions such as *Clameur Publique* employ local, social controls such as public outcry and what Yi (2008) calls ‘arrest as punishment’.

More often than not, respondents attributed non-standard penalty to those practices and rationales that represented culturally specific, social punishments rather than state-centric, carceral punishments. However, my case studies demonstrate the ways in which both local and international, as well as socially derived and state-centric punishments are highly contested and politicized. Nevertheless, the pragmatic application of penal standards in Haiti and in Nunavut illuminates that punishment is not necessarily or naturally the authority of the state; rather, penal standards work to maintain the power to punish within the state’s authority. As such, standard customization or reformation is acceptable so long as it remains tied to the domain of state-centric penal government. My analysis illustrates how penal standards provide detailed measures for engaging in penal government which maintains the primacy of the ‘prison idea’ (see Piché 2012), unfairly targets Aboriginal populations in Canada and the significantly impoverished in Haiti, promotes corporeal (bodily) punishment, and provides penal administrations with an abundance of strategies for the use of excessive confinement even for vulnerable groups such as the mentally ill. Yet, penal standards are particularly effective in preserving the state’s monopoly over the power to punish, since the sovereignty afforded states that exercise penal standards is understood as moral, in that it promotes the virtue or civility of democratic institutions particularly in the protection of both society at large and prisoner human rights.

1.3 Chapter Outline

This dissertation is organized around the three core arguments that I have introduced here on the technical (I), civilizing (II), and paradoxical (III) modes of punishment that result from penal standardization. While all of the chapters shed light on each of the core arguments, individual chapters focus on specific core arguments over others. Chapter II, on ‘Punishmentalities and Critical Governmentality Studies,’ provides an overview of the theoretical and methodological considerations supporting my research and analysis. In the chapter, I outline what I am calling punishmentalities—the rationales, logics, explanations, and justifications for punishment—found within critical criminology literature and then I situate my own research within a more critical comprehension of these discourses on punishment. I then provide a discussion of the concepts I have developed to capture the processes and effects of penal standardization including a detailed description of my nuanced understanding of the post-colonial politics of penal standardization missions within my conceptualization of moral sovereignty. The concluding sections of this chapter provide a reflexive account of the research process including a description of the empirical methodologies I employed, the two cases, the typology of penal standards I have developed, and the utility of an abductive governmentality analytic in which theory is read through the data and the data read through theory.

Chapter III, on ‘Penal Standards and the Global Circulation of Punishmentalities,’ presents a brief history of the development of penal standards from the time of the establishment of the UN SMRs (1956) to the present: the aim being to trace the establishment of punishment as social good or service, provided primarily by the state, through the monolithic machinery of technical standards for penal conduct. I demonstrate that the global circulation of

punishmentalities is supposed to support an economy of penal standards which can be implemented in a multitude of geo-political contexts in order to promote an ethos of protection—consisting of ethical, balanced, and civilized punishment. However, I will argue, in conjunction with core argument (I), that contemporary penal practice in Canada is characterized by an increased focus on penal administration, spatial design, and the materiality of punishment such that penal standards have become about technicization in punishment rather than the actualization of prisoner human rights. In this way, I argue that the canon of penal standardization promotes the prison as *the* primary means through which punishment is achieved globally. In the concluding sections of the chapter, I elucidate a tension between universalization and customization within penal standardization in which local, socially oriented punishments are either ‘co-opted’ (as O’Malley 1996 argues), within standard penal operations, or utilized as justifications for non-standard penalty and the need for intervention in penal government. I argue that penal standards operate as a technology of post-colonial government, in their attempt to civilize penal government in specific geo-political contexts, which tends to erase penal difference rendering designations of ‘culture’ at stake in penal standardization projects.

In Chapter IV I turn the focus to the Haitian case in which the ongoing penal standardization mission takes place within the contexts of state formation and ‘penal aid’ (Brisson-Boivin and O’Connor 2013)—a new kind of international aid effort that aims to correct flawed or non-standard penalty. The chapter begins with an overview of the historical development of penal justice in Haiti paying particular attention to the punishmentalities and practices unique to the Haitian context. Following core argument II, I argue that penalty in Haiti has been problematized by a myriad of international actors, on account of punishment in Haiti

being deeply embedded in communal understandings of punishment rather than solely in the jurisdiction of the Haitian state. My empirical research, particularly interviews with penal agents working in Haiti, uncovers how Haitian penalty is being (re)formed through an international penal standardization mission which aims to civilize Haitian penalty while strengthening the democratic, state-centric nature of punishment. I argue that penal standardization missions, particularly those led by Canadian penal experts, are changing the penal landscape in Haiti and reify the need for further penal aid in the form of penal standards. My research demonstrates that penal standardization in Haiti is imposed from the *outside* by penal organizations from countries (such as Canada) working with the UN such that the standardization mission does more to benefit the enforcers of penal standardization or the providers of penal aid (Canada), than it does the subject of penal standardization, or the recipient of penal aid (Haiti).

I provide an account of the Croix-Des-Bouquets prison, which is an important site of controversy over the seemingly mundane and trivial material politics of penal standardization, as well as a crucial example of the selective and pragmatic application of penal standards by penal aid agents in Haiti. The infatuation with what penal aid agents call Quick Impact Projects (or QIPs) will be juxtaposed with that of local, Haitian penal administration which struggles daily to combat penal crises such as food shortages, power outages, and disease control. The chapter concludes with a brief discussion of the paradoxical forms of punishment that result from penal standardization efforts which fail to account for deeply entrenched social inequalities in Haiti. To use the terminology of one of my respondents (UN Peace Officer Interview August 2014), in Haiti, social inequality acts as a ‘force multiplier’ in opposition to the aim of balanced/ethical

punishment inherent in efforts to standardize penalty which permits the dreadful conditions of punishment to persist.

In Chapter V I turn the focus of my analysis to the Nunavut case in which the penal standardization mission takes place within the context of a penal investigation. In Canada, the assumption amongst CSC, and for many law-abiding Canadians, is that penalty *is standard*, meaning aligned with the international human rights treatise and penal norms found within the canon of penal standards (such as the UN SMRS, UN Rule of law Indicators, ICRC standards ETC). My empirical analysis of Nunavut Corrections (NU.C) and the treatment of Inuit prisoners in Canada will demonstrate how this assumption—the taken-for-granted, standard nature of Canadian penalty—is fallacious. I begin with a discussion of an Inuit ethos of justice which, similar to the Haitian case, promotes socially derived practices of crime control and order maintenance; however, I will argue the value of local, social punishments in Nunavut has been eroded by a post-colonial project of government that aims to extend the Canadian state’s moral sovereignty in the North. I provide an overview of the historical development of state-centric penalty in Nunavut, with a particular focus on the creation of Nunavut as a territory (in 1999), and the enduring post-colonial organization of governmental relations resulting in what I call Nunavut’s phantom sovereignty: without any significant resources of its own, the government of Nunavut relies almost completely on the federal government of Canada to fund the most basic government operations (e.g., education and healthcare) in Nunavut. I examine the pernicious forms of penalty that exist in Nunavut, the local calls for investigation into NU.C, and eventual enlisting of the Office of Correctional Investigation in NU.C. My empirical research

demonstrates that the objective of the investigation was to utilize penal standards in order to establish a case of sub-standard penalty such that NU.C could make a case for penal reform.

I provide a specific account of Baffin Correctional Centre (BCC), the primary carceral institution in Nunavut and the central focus of the penal investigation which, similar to the Haitian case, mobilized a flexible and pragmatic implementation of penal standards. I argue, in accordance with core argument (II), that the penal investigation in NU.C, while uncovering the deplorable conditions of imprisonment in Nunavut, also illustrates the ways in which the Inuit continue to be subject to a state-centric, post-colonial apparatus of punishment which erodes an Inuit ethos of penalty in the name of Canadian moral sovereignty. I argue that culture is not a stable object but is in fact at stake in the post-colonial politics of penalty governing NU.C such that cultural appropriation and resistance are intertwined. My research demonstrates the ways in which the investigation of NU.C fails to account for the connections between culture, location, and environment in penal government. Similar to the Haitian case, the deeply entrenched social inequalities in Nunavut challenge standard conceptualizations of punishment as a social good and results in paradoxical forms of punishment. Despite the evidence of sub-standard, cruel, and inhumane punishment in Nunavut, penal reform is not a high priority for the Canadian federal or territorial government of Nunavut since, as my respondents explain, money would be best spent elsewhere (such as on housing, healthcare, or education). I argue that a continued reliance on institutional-centric forms of punishment in NU.C inculcates the horrors of carceral punishment (including the hyper-incarceration of Inuit prisoners), leaves intact a sub-standard mode of penalty, and reifies the impacts of social inequality and the effects of post-colonial relations of government.

Chapter VI, ‘When Punishment Is Not A Social Good: Standardizing Punitive Imagination,’ examines the consequences of core argument (III), on paradoxical forms of punishment, and the ways in which punishment operates as a barometer of social inequality. I begin by outlining Mariana Valverde’s (2012) work on the lack of penal imagination in criminology and penology highlighting how a failure to think outside the carceral box is a theme that emerges and re-emerges in my examination of penal standards as a tool of post-colonial government. In this chapter I examine the consequences of a failure of penal imagination within penal standardization missions: specifically, the erasure of penal difference and the perpetuation of sub-standard carceral punishments. Furthermore, I highlight the hypocrisy behind Canada’s efforts to standardized punishment in Haiti given the proliferation of sub-standard penalty in Canada’s territory of Nunavut. In doing so, my research challenges dichotomies of ‘first world’ and ‘third world’ penal government, allowing me to critique exaltations of Canadian penal excellence abroad (by CSC and Canadian penal institutions) as a mechanism to divert attention away from sub-standard penalty at home in Canada. I analyze the challenges of establishing standard penalty in Haiti and in Nunavut given the differentially understood (in either case) but deeply entrenched inequalities which call into disrepute the very function and purpose of punishment as articulated within penal standard documents—as ethical, moral, and civil punishment.

I argue that, left unchecked by standardization efforts, paradoxical punishment relieves the state of the responsibility over inequality (see Wacquant 2008 and 2011, Coulthard 2014, and Angela Davis 2003). My research demonstrates that the power to punish is not the innate authority of the state nor does it have to be, since penal administrations manipulate and select

penal standards on the basis of maintaining their authority to punish. Similarly, punishment does not have to be imagined primarily as incapacitative—as evidenced by the seldom used punishmentalities of rehabilitation and reintegration—and adaptations or domestic customizations of penal standards would be better employed should they reflect more imaginative, socially relevant forms of punishment. I argue that in order for penal standards to accurately reflect the geo-political contexts in which they are implemented there needs to be a recognition of the effects of post-colonial government relations (which penal standards currently reinforce) on penal administration and a twin process of social inequality amelioration such that punishment might indeed become a social good worthy of investment in both Haiti and Nunavut.

Chapter VII concludes the thesis by recounting the theoretical and empirical contributions of my research, with a particular focus on resistance-as-multiplicity rather than romanticization. I provide an agenda for future research which suggests areas of focus for future scholarship including a more nuanced and critical reflection on restorative justice practices which owe much of their contributions to the traditionally discounted and repressed practices of Indigenous legal orders. I suggest that penal standardization research would benefit greatly from longitudinal studies that capture the effects of changes in political power on penal standardization. I then provide concrete steps for action within the field of penal standardization. I argue one of most important concrete steps for action involves more engaged discussions about the necessity for changes to penal standards. Again, I am not suggesting that penal standards should be abolished outright, but that they have the potential to be (re)imagined as a more liberal tool of penal government in which to actualize the ideals of standard punishment. I give the example of penal reform in the Dominican Republic as a case in which standard penalty is (re)imagined in the

socio-economic and cultural conditions in which punishment exists. In this way, although not without its challenges, punishment in the Dominican Republic better reflects the rehabilitative and reintegrative goals of standard penalty and is understood by the vast majority of citizens as a social good worthy of public investment. I also argue that expanding the penal imagination within penal standardization provides an opportunity to consider the otherwise subjugated or sometimes co-opted local, socially embedded penal practices of a specific geo-political context as valuable and productive crime controls.

Overall, while I will not offer prescriptions regarding what I think are socially or culturally relevant punishments in either Haiti or Nunavut, I argue that penal standards ought to be revised such that they embrace imaginative punishment. Moreover, experimentation in penal standardization need not resort to dichotomies of judicial and extra-judicial, or more punitive and less punitive, and need not romanticize Indigenous legal orders as idealized solutions to carceral punishment. Contrary to the claims of penal standard documents, penal standardization has become implicated in civilizing missions that are not directly related to the ideals of ethical, moral, human rights actualizing punishment. Rather, penal standards work to entrench the state's monopoly over the power to punish through the promotion of the carceral norm and its accompanying problems of hyper-incarceration and sub-standard penal conditions. I argue that penal standards, as they are currently conceived, are part of the problem rather than a natural solution for balanced, ethical, dignified, or just punishment. Moreover, I argue that what we need is a politics of accountability within penal standards such that penal standardization projects would "take as [their] point of departure that systems of domination interlock and sustain one another," (Razack 1998: 159). Concrete steps towards change in penal standardization

necessarily involve concurrent efforts to revoke the post-colonial politics of penal government, and redress conditions of social inequality, such that punishment is understood as a social good worthy of investment. Be that as it may, no such changes are possible unless we first and foremost establish that penal standards matter.

CHAPTER II

PUNISHMENTALITIES AND CRITICAL PENAL GOVERNMENT STUDIES

There is not one [society] in which criminality does not exist, although it changes form and the actions which are termed criminal are not everywhere the same. Yet, everywhere and always there have been [people] who have conducted themselves in such a way as to bring down punishment upon their heads.

~Emile Durkheim (1895/1982: 98).

2.1 Introduction

This chapter provides an overview of the theoretical and methodological considerations I utilized in the research process and analysis. I begin by outlining what I am calling *punishmentalities*—the rationales, logics, explanations, and justifications for punishment, found within the critical criminology literature. I then situate my own study, which aims to provide a more nuanced depiction of the contestations of penal government, within these discourses of punishmentality. Drawing on governmentality studies literature I explain how penal standardization is a central means by which the state enacts what I call *moral sovereignty*—referring to large scale efforts to shape and measure the moral value of penal government on the basis of norms of punishment which are understood to be aligned with human rights—such that penal standardization is itself a form of government. Penal government involves contestations over ruling punishmentalities and, more specifically, contestations over who gets to define the objectives of punishment. In other words, punishment is constantly being pushed and pulled between local, culturally relevant punishmentalities and state-centric punishmentalities as reflected in penal standardization: such contestations illustrate the ways in which culture is a disputed object of penal government. The following sections provide detailed descriptions of the methodologies I employed while

conducting the research for this study, highlighting the logic behind the research method: a governmentality analytic. I then provide a reflexive account of the research process including: a discussion of the two case studies (Haiti and Nunavut); the process of collecting and analyzing data; and my decision to include visual images in my dissertation. Finally, the chapter explains the co-habitation of theory and method in my research whereby, through a process of abductive reasoning, the data and theoretical considerations are informed by each other: such an abductive approach is perspectival, relational, and ideal for illuminating contestations over penal standardization and the resultant consequences for the field of penality in the specific cases I have examined.

2.2 Punishmentalities

That there exists a diverse range of logics, rationales, techniques, and practices of punishment is not a new finding. In his study on the *Birth of the Prison*, Michel Foucault (1977) highlights a pivotal shift in punishment from that which is inscribed on the body through torture, to that which is inscribed on the subjectivity of the prisoner through the emergence of the disciplinary penal institution in the 18th and 19th centuries. Foucault (1977/1995: 104-114) explains that since its inception, the modern prison was an object of contestation, whereby it has been continually (re)imagined by reformers in order to perpetuate its existence. This (re)imagining involves the (re)articulation of the logics and rationales for the use of incarceration as a response to crime—as punishment. Early sociologists of punishment sought to explain the prevalence of prisons through normative explanations of crime. Émile Durkheim (1895/1982: 97), for instance, defined crime as a social fact: “if there is a fact whose pathological nature appears indisputable,

it is crime. All criminologists agree on this score.” For Durkheim, crime is not an anomaly or derivation from normative social conditions; instead, criminality exists in every conceivable society as actions which offend collective sentiments such as murder or theft of personal property. Over time, many of these acts which offended the collective sentiment became incorporated in a penal code (what Foucault 1977 would analyze as the economy of illegalities). For example, acts of personal violence became less frequent as respect for personal dignity increased (what Elias 1987 would later capture in the *Civilizing Process*). As such, not only can crime be conceived as normal, but Durkheim (1895/1982: 101-103) argues it is necessary as it is bound up with the evolution of morality and law. While I agree with Durkheim in principle, that crime is a persistent social phenomenon, I aim to problematize the ways in which normative understandings of crime have resulted in normative ideas of the prison as the primary response to crime and a regularizing, rather than transformative, conception of punishment. As such, (re)-articulations of the logics, rationales, and practices of punishment are imbued with the idea of incarceration. Since the birth of the modern prison, criminologists and reformers alike have sought to characterize and explain the rationales, logics, and objectives of punishment. I call these characterizations—the strategies, programs, and techniques, as well as the explanations and justifications of punishment—**punishmentalities**.

One century after Durkheim argued crime was a social fact, criminologists such as David Garland (1996: 446) argue that the politicization of crime control has become a common feature of our social experience. Drawing on Durkheim, Garland (1996: 447-450) contends that not only is crime a social fact, but how states respond to this social fact and the resultant problems these responses create are a part of our everyday experiences. I want to avoid distillations of this

affinity—of crime as a social fact and punishment as a response—which promotes a universal, omnipotent punishmentality; rather, like O’Malley (1999), I want to draw our attention to the volatile and contradictory nature of punishmentalities. Many criminologists (such as Garland 1996; Feeley and Simon 1992; Lynch 1998; Maurutto and Hannah-Moffat 2006 amongst others) recognize that contemporary penal logics and practices are characterized by a variety of competing and overlapping punishmentalities. For the purposes of my theoretical discussion, in this chapter I will map out six predominant punishmentalities found within the critical criminology literature.⁹

First, the **disciplinary punishmentality** echoes the penal regimes recognizable in Foucault’s (1977/1995) study *Discipline and Punish*, in which the formation of an obedient and docile subject is the aim of penal intervention. Examples of practices associated with such a punishmentality are bootcamps, work camps, prisoner counts, and relentlessly scheduled daily routines such as eating and sleeping. Second, the **punitive punishmentality** employs what I refer to as confinement and containment strategies in the name of deterrence (the prevention of further offences), retribution, or payback. Penalties associated with a punitive punishmentality have little to no regard for rehabilitative or reintegrative strategies. Important for my study (and evident in the case studies), as O’Malley (1999: 177) highlights in his work, the punitive punishmentality reflects a concern that rehabilitative and reintegrative strategies provide skills and benefits (such as education) not available to law abiding citizens rather than dealing out

⁹ The following chapter (Chapter III) will analyze where these punishmentalities are present in the development of penal standards and how these punishmentalities steer penal standardization as a technology of penal government. The case studies (Chapter IV and V) will uncover which punishmentalities are invoked as part of the justifications for penal standardization in either case.

punishment. Third, the **enterprising punishmentality** enlists prisoners in their rehabilitation as entrepreneurs of their personal development (see Garland 1997: 177). Enterprising strategies include allowances for prisoner business projects, prison grocery stores, and prison libraries. Enterprising punishmentalities seek to form innovative and self-motivating subjects rather than the obedient and self-denying subjects of disciplinary punishmentalities (see O'Malley's 1999: 177). Fourth, the **incapacitation punishmentality** aims to warehouse prisoners and/or subject prisoners to surveillance with neither rehabilitative nor punitive logics. Incapacitation is partly justified on the basis that 'nothing works', that rehabilitation is an expensive failure, that citizens deserve protection, and links risk profiling with preventative concerns (see Feeley and Simon 1992). Fifth, the **restitution punishmentality** replaces collective, morally driven retribution with the state as the symbolic victim (see O'Malley 1999: 178). Restitution penalties often involve negotiations of financial compensation for loss in small claims court and aim to redress offences. Lastly, the **reintegrative and rehabilitative punishmentality** primarily works through informal procedures to restore the prisoner to society, such as temporary absence passes, visitations, and on-the-land programs (seldom) used in Nunavut. The reintegrative and rehabilitative punishmentality draws on social and cultural values to (re)connect prisoners with their communities. This punishmentality condemns the 'counterproductive stigmatization' of retribution and the nihilism of incapacitation and rejects the arguments that welfare-orientated sanctions fail (see O'Malley 1999: 178).

The emergence and re-emergence of these punishmentalities have been explained in a number of different ways by criminologists.¹⁰ Often, changes in punishmentalities are characterized by a shift from a 1960s penal welfare strategy to more punitive strategies, referred to as the punitive turn in punishment (see Garland 1996; Feeley and Simon 1992; and Lynch 1998 for examples). Several accounts prioritize the ascendance of neo-liberal politics as evidence for virtually all of the punishmentalities. O'Malley (1999: 184-188) takes issue with the universal explanations of neo-liberal penalty highlighting that neo-liberalism does not adequately capture the contradictions within contemporary penalty and explains that much of what is presented as neo-liberal is in fact neo-conservative (or social authoritarian), promoting the state as preserver of order and rule. For O'Malley (1999: 192) the volatile and contradictory nature of punishment has more to do with changing paradigms of government, and our inability to predict policy directions, than with post-modernity (Simon 1995) or the limits of the sovereign state (Garland 1996).

While I agree with O'Malley's (1999) argument, that developments and contestations over ruling punishmentalities are bound up in changing paradigms of government, what is undeveloped in these arguments is a discussion of the role, or lack thereof, of local interpretations of crime and punishment. Some scholars, particularly Garland (1996, 2000, and 2006), emphasize that the legitimacy and credibility of punishmentalities is deeply embedded in the social—in our everyday lives, whereas other scholars, such as Rose (1996), argue that the

¹⁰ O'Malley (1999: 178-179) provides an outline of these explanations in his article 'Volatile and Contradictory Punishment'; Simon's (1995) postmodern nostalgia; Pratt's (1996) neo-liberal politics; Garland's (1990) socially structured moral outrage; Wacquant's (2008) racialized de-industrialization; Zedlewski's (1985) cost effectiveness; Cohen's (1985) triumph of behaviourism; and Feeley and Simon's (1992) emergence of effective actuarial techniques.

social is no longer a key zone, target, or objective of governmental logics. However, rather than viewing punishment as distinctly social or not social—a dichotomy that I believe is unsustainable in the penal realm—my research provides evidence of the ways in which penal standardization employs a multitude of punishmentalities that oscillate between state-centric, institutional punishment and local, socially and culturally relevant punishment. The Haiti and Nunavut cases illustrate how penal standardization prioritizes state-centric penal practice while co-opting local (Haitian or Inuit) penal knowledge within the machinery of standardization. In doing so, not only are the punishmentalities evident within penal standardization contested, but so too are definitions of what is and is not cultural practice and knowledge. Similar to Garland's (1996, 2000) argument that crime control itself is an object of government, I am interested in the ways in which penal standardization renders punishment an object of government (and the punishmentalities it invokes in the process). While criminologists such as Garland nod to Durkheim's (1895) claims regarding crime as a social or collective sentiment, I demonstrate through my analysis of penal standardization and the paradoxical forms of punishment evident in each case study, the ways in which social or collective responses to crime come up against a technology of penal government that aims to re-embed these collective sentiments in punishmentalities that lend to state-centric penal practices (such as punitive incarceration) in the name of moral sovereignty.

2.3 Moral Sovereignty

I developed the concept of moral sovereignty in order to describe a particular type of sovereign authority—a tool or tactic of penal government—utilized both at home in national (Canadian)

contexts, and abroad in international penal development projects (in Haiti). Moral sovereignty is exercised primarily through penal aid and development projects which are closely connected to state formation efforts which aim to bolster democratic institutions. Penal aid connects flawed penalty—penalty that is not (or loosely) connected to a recognizable, normative punishmentality and is not (or loosely) connected to state-centric institutions such as the prison—with global security, and attempts to solve these problems through the deployment of a particular kind of security-development penology (Brisson-Boivin and O’Connor 2013: 516). For example, the Haiti and Nunavut case studies will demonstrate how penal standardization is deployed as a technology of penal government that aims to cultivate punishmentalities and penal practices connected to credible, state-centric justice institutions in each case. As Garland (2006: 431) explains, “the international exchange of penological ideas and technologies has been a fact of life since the late 19th century, a fact that has led to a growing convergence of professional cultures and the rapid transfer of policy prescriptions and institutional ideologies.” For now, I want to draw attention to the ways in which penal standardization is part of a larger state formation project, particularly in ‘fragile’ states (or in the Nunavut cases territories within states), with the aim to validate and measure the virtue and civility of democratic institutions.

For Weber (1968: 1393), in a modern state the sovereign is the bureaucracy since power is exercised through routines of administration and the central task of the state is to maintain the claim to the monopoly of the legitimate use of force and violence in the maintenance of its order. For Weber, the state maintains an environment of domination by way of administrative government that is supported by the legitimate means of violence (Curtis 1992: 10-11). As will soon become clear, my utilization of a governmentality analytic in this study means I disagree

with Weber's conceptualization of the state as dominating; however, the conviction that the state maintains and enforces a monopoly over the means of violence is a critical element in contemporary understandings of democratic states. Moreover, I understand the state's power to punish—the authority over the punishmentalities and practices of punishment—to be an illustration of state-centric force and a major tactic in the state's maintenance of social order via so-called moral, ethical, humane, and civilized punishments. The Haiti and Nunavut case studies will highlight the ongoing struggle to keep this authority within the umbrella of the state. Echoes of Weber are evident in conceptualizations of 'fragile' states which are said to lack the administrative capacity to maintain a monopoly over violence. American political economist Francis Fukuyama (2004) defines the essence of the state as enforcement: the ability to send someone with a uniform and gun to force people to comply with state law and order. Similar to Fukuyama's views, Jean-Germaine Gross (1996: 455-456) explains that 'fragile' states are, "those in which public authorities are unable or unwilling to carry out their end of the social contract," specifically the monopoly over the means of violence. As my case studies will illustrate, states, or territorial regions within states that demonstrate a lack of administrative capacity in penal government and an inability to maintain the monopoly over the authority to punish, become subject to projects of penal standardization.

These law and order interventions deploy a form of humanitarian reason (see Fassin 2012) which inverts classic liberal conceptions of state authority and sovereignty: in the classic liberal conceptualization state sovereignty is upheld exclusively by nation states with no room for external experts or interventions. As such, state autonomy is to be respected and the imposition of supranational authority is seen as a form of bad government. For example, the

Westphalian agreement of 1648 had the intended goal of producing a patchwork of autonomous sovereign nation states. However, increased supranationalism and international efforts to intervene in ‘fragile’ states unthrust this patchwork in favour of a uniform, international order modelled after international standards, with the intention of bolstering democratic institutions indicative of moral and civilized modes of government. As Chandler (2010) points out, “autonomy is seen to impose external duties and responsibilities on states rather than express their freedom or agency.” Autonomy then, is not the end goal of state formation but rather its precondition. A central problematization of ‘fragile’ states, as my case studies illustrate, is that these states are too autonomous—they lack the framework of standardization. Often what is immediately flagged as problematic in ‘fragile’ states is an excess of punishment exercised outside or beyond the capacity of state institutions. For example, in the Haitian case, respondents spoke to me about their concerns of vigilante justice, particularly excessive physical punishments (such as beatings) occurring outside the jurisdiction of the state. In the Nunavut case, one respondent explained that as a result of a significant lack of territorial capacities, he felt he was ‘*playing* criminal justice,’ (Canadian Police Officer Interview November 2014). Too much autonomy in ‘fragile’ states is criticized for preventing sustainable solutions to conflict often leading to increased state disorder. In this way, sovereignty is redefined from an attribute of autonomy denoting the control of a territory, to the recognition of the limits and dangers of autonomy (Chandler 2010: 45). Law and order interventions into ‘fragile’ states aim to curtail sovereignty, organizing domestic government functions on a larger scale in line with international standards which operate as international checks and balances for autonomy. Contemporary conceptualizations of the ‘fragile’ state invert sovereignty’s classic liberal sign of

‘no admittance’ to ‘you must come in’ (Chandler 2010: 65). More importantly for my work, these concerns of too much punishment or punishment exercised outside the state’s jurisdiction often invoke Euro-centric explanations that these forms of punishment are barbaric or savage.

Here I want to nuance what I mean by Euro-centric explanations for the use of standard penalty as a means to civilize barbaric forms of (non state-centric) punishment. The moral sovereignty invoked by penal standards utilizes a similar logic and set of practices to missionary colonialism: “missionary activity was central to the work of European colonialism, providing British missionaries and their supporters with a sense of justice and moral authority transforming imperial projects into moralizing allegories,” (Johnston 2003: 13). Missionary work sought to transform, primarily Indigenous communities into colonial archetypes of civility and modernity by remodelling practices of government (in both the narrow and wide sense) according to Western, Christian philosophies—understood as morally and ethically superior. Missionary work shares much in common with projects of moral reform (e.g., Hunt 1999; Valverde 2008; and Fassin 2012) which see problems of social (dis)order as issues of morality and deploy large scale efforts to “mould the moral values of the population,” (Valverde 2008: 26). Similarly, my research demonstrates how penal standards and agents of penal standardization work to enact a form of moral sovereignty, or a civilizing mission, that aims to re-codify moral versus immoral and humane versus inhumane penal conditions and practice. Both the Haiti and Nunavut cases have a history steeped in missionary activity. For example, Haiti has been a popular destination for missionaries since at least 1804, and before the 2010 earthquake estimates of long-term missionaries in Haiti were 170,000 which did not include the thousands of North Americans who go to Haiti on short (week long) missions (see Huss 2010). In Nunavut, European missionary

encounters began in the late 1500s drastically changing the geographical and cultural landscape of the Inuit people (see Inuit Tapirit Kanatami 2004: 10).

Early colonial missionaries worked primarily for the Christian church mobilizing what Valverde (2008: 145) calls a “belief that only European Christianity could provide the basis for [moral] development.” There have been many scholarly debates regarding the role of theology and secularism in missionary colonialism.¹¹ Although missionary work is complicated, it can problematically be dismissed as bad, ‘evil’, or colonial when in fact some missionaries have stood for Indigenous rights (Johnston 2003: 29). Likewise, missionary work is far too complex for dichotomous classifications of secular or religious—the lines of which are especially blurred within the realm of penal standardization. As Barnett and Gross Stein (2012: 4) explain: over the course of the 19th century many religious organizations were beginning to work with secular agencies “becoming less reliant on the Good Book and more reliant on secularized international legal principles and international institutions to further their goals.” Mariana Valverde (2008) traces a similar trajectory in her work on moral reform in Canada and Mitchell Dean’s (2013) juxtaposition of social theorists Carl Schmitt and Michel Foucault teases out their differing views on the role of theology in sovereignty. Where Foucault (in Dean 2013: 152) sees a break with ‘ecclesiastical institutionalization’ and a dispersion of the pastorate onto welfare, health, and caring professions, Schmitt (in Dean 2013: 152) maintains that there remains a theologically eminent focus within the most secular forms of sovereign power. In the case of penal standardization, I agree with Schmitt; rather than a break with the theological there is a

¹¹ See Dean’s (2013) work on *The Signature of Power* for a discussion of the theological and secular influences within sovereign power.

(re)distribution of theologically-informed penal morality and logics established within the canon of penal standards. For example, like many projects of moral reform in Canada (see Valverde 2008) religious organizations and church groups were the pioneers of penal reform organizations such as the John Howard Society¹² (which I trace in more detail in Chapter III). These religious organizations were among the first to offer solace to prisoners once they found themselves outside the carceral institution in Canada.

Within penal standardization projects the logic of missionary colonialism provides penal aid and standardization agents with a sense of moral authority to transform local, specifically Indigenous, legal orders and penal justice traditions into archetypes of civility and modernity by (re)forming such practices of penal government according to Western common law traditions—understood by standardization agents as morally and ethically superior practices. In other words, penal standardization projects are instantiations of missionary colonialism captured in my conceptualization of moral sovereignty, which uses penal standards as a vehicle for (primarily) Western, Euro-centric, liberal democratic, Christian, common law penalty. Penal standard enforcers, typically from Western common law countries (such as Canada), are able to claim a moral high ground whereas, other (non democratic, non-standard) geo-political contexts and penal administrations are established as operating on a lower stratum of immoral or inhumane penal government. Within my own research, Canadian penal agents, particularly those with the Office of the Correctional Investigator (OCI), were quick to point out that their training “by the association on the prevention of torture and the association of the UN Commission of Human

¹² The John Howard Society began in 1867 with a group of church workers seeking to bring spiritual help to prisoners in the Toronto jail (John Howard Society ‘About’ 2015).

Rights in conjunction with social justice training packages delivered by the University of Oxford established [their] expertise in ethical, humane, human rights recognizing penal treatment,” (OCI Interview 2 June 2015). In fact on several occasions over the course of my interviews with Canadian penal officers working in both Haiti and Nunavut, respondents would refer back to their training and expertise in diagnosing moral and/or ‘scientific’ (standard) versus immoral and/or backward (sub or non-standard) forms of penalty, as well as their ability to teach and transmit the moral and ethical ideals they saw as necessary for standard punishment within a variety of geo-political contexts. In other words, penal agents often mobilized their elaborate international training in human rights law, and the ‘ethical’ treatment of prisoners, as a means of claiming a (humanitarian) monopoly over penal administration within penal standardization missions. I agree with Jonathan Joseph (2011: 58) noting critics, such as Chandler 2006, Commack 2004, and Keily 2007, “that what really happens here is that Western dominated institutions dictate what counts as [moral] governance while non-Western states are forced to take responsibility for implementing these policies.” As my case studies will illuminate (following David Chandler in Joseph 2011: 58), targeted penal administrations are fashioned into networks of external penal regulation in such a way as to deny the post-colonial power relations of penal standardization missions by making the operation appear as empowering rather than dominating or civilizing.

According to Thobani (2007: 24), “colonialism...was about managing heterogeneity, dealing with difference through imposition and restriction, regulation and repression...state practices remain crucial to the project of constructing homogeneity out of heterogeneity.” Many post-colonial scholars (see Quijano 2007: 169-170; Chatterjee 2001 and 2011; and Stoler 2006

among others) have noted the ways in which post-colonialism works to repress the beliefs, ideas, images, symbols, and knowledges of the colonized that exist outside the post-colonial project; all the while exploiting and appropriating these knowledges, beliefs, and ideas within the post-colonial project. In his 1976 lecture series '*Society Must be Defended*,' Michel Foucault (1976/2003) highlights how the techniques and weapons Europe transported to its colonies had a boomerang effect on the institutions, techniques, and apparatuses used in the colonizing state(s). My project picks up on the reciprocal relationship between technologies of post-colonial government and the effects on the knowledges, beliefs, and ideas of both the colonized and colonizing in the field of penal standards. My analysis of penal standardization illustrates how efforts to regulate punishmentalities and penal practice preserve the distinction that Haitian or Inuit penalty (concepts which are themselves contested) are alien, immoral, and non-standard, while simultaneously co-opting a Haitian or Inuit ethos of justice within the machinery of penal government as evidence of the successful implementation of penal standards in these specific geo-political contexts. As Thobani (2007: 29) explains, "the colonial encounter is institutionalized and sustained by the relations of force...sedimented in state practices," such as the ability to punish. Post-colonial scholarship has sought, "to understand how the macro-dynamics of colonial rule worked through interventions in the micro-environments of both subjugated and colonizing populations," (Stoler 2006: 2). My case studies examine the ways in which penal standardization in Haiti and in Nunavut utilizes a technology of penal government that measures, regulates, sorts, and distributes punishment according to normative punishmentalities. These practices and technologies of post-colonial rule are present as part of a constitutional system of representative democracy and democratic institutions (such as the

prison), making “the modernizing project an expression of the will of the people and thus gloriously consistent with the legitimizing norms of modernity itself,” (Chatterjee 2001: 13). Similarly, the state’s monopoly over punishment, exercised through the technology of penal standardization, is indicative of its moral sovereignty and therefore is extremely difficult to challenge: doing so often insinuates that one is opposed to the humane or moral forms of penalty understood as integral to penal standards.

My conceptualization of moral sovereignty (although maintaining the eminence of the theological within sovereign forms of power) borrows from Foucault’s definitions of pastoral power and biopower, however, without the redeeming effects of either—moral sovereignty is neither salvific nor concerned with the reproduction of life. Moral sovereignty invokes a form of governmental power that emphasizes the welfare and protection of populations or the pastoral functions of government as Foucault (1976/2003) explains it. The sovereign has been entrusted with the protection of the population which is executed through an administrative biopolitics, whereby the ability of the population to prosper rests on the capability of the state to protect and cultivate the population (Foucault 1978/2004). The maintenance and management of an effective, standard system of punishment is understood as a central element of the state’s responsibility to protect. As such, the sovereignty afforded states that exercise penal standardization is understood as moral in that it promotes the virtue of democratic institutions particularly in the protection of prisoner human rights and moral or ethical forms of penal conduct. My case studies uncover the particularly insidious nature of moral sovereignty as it advocates the prominence of the carceral institution as *the* institution through which the moral and ethical treatment of prisoners is actualized—which I will demonstrate is a paradox given the

current (deplorable) state of punishment in Canada (especially in Nunavut) and in Haiti. As such, moral sovereignty is a particularly useful concept since it illustrates that governmental strategies and tactics are not only utilized by agents in the penal field, but also by states and state authorized penal administrations.

2.4 The Cultural Turn in Penology

Despite common assumptions the authority to punish is not necessarily an exclusive authority of the state; while punishment consists of state-centric and institutional forces it also assimilates local, social, and cultural forces. Following Clifford Geertz and Pierre Bourdieu (in Garland 2006: 424), “most contemporary [scholars] use culture to describe a group’s distinctive values, meanings, and dispositions—a collective consciousness or habitus that may correspond to, but is not identical with the economic position or political orientation of the group.” Many studies have demonstrated that penal institutions have important cultural dimensions and consequences (Sarat 1999; Garland 2000; Sarat and Boulanger 2005), and that cultural factors are prominent in the causal determinants that shape penal policies and practices (Melossi 2001; Simon 2001; Vaughan 2002; Whitman 2003; and Zimring 2003 in Garland 2006: 420). In the 1970s and ‘80s, culture within penological studies, influenced by Marx and Foucault, was located within analyses of systems of ideology or power/knowledge discourses. Garland (2006: 421) explains that the late ‘90s saw a cultural turn in the sociology of punishment in which: “penal institutions were grounded in cultural values...they drew upon specific sensibilities and expressed particular emotions; they were sites of ritual performance and cultural production; and they produced diffuse cultural effects as well as crime control.”

Since this cultural turn, most cultural analyses of punishment have either sought to expose cultural factors as a force in shaping penal institutions—what Garland (2006) calls ‘cultural’ as opposed to ‘not-cultural’—or expose how different cultures produce different patterns of penalty—what Garland (2006) calls ‘this culture’ and not ‘that culture.’ According to Garland (2006: 423-425), the problematic usage of both forms of cultural analysis is the difficulty of distinguishing what is or is not cultural from the social, economic, and so on without necessarily presenting culture as a bounded set of habits, customs, values, and beliefs. As I mentioned in the introduction, my study engages in an analysis that does not separate the cultural from the material or technical aspects of punishment. Rather, my analysis of penal standardization illustrates the ways in which culture, in both the Haiti and Nunavut cases, is present in penal texts as well as in technologies, spatial arrangements, specific penal programs, and habitual performances; from the textual documentation of penal standardization, to the spatial designs of sub-standard prisons, to standard routines and penal practices. While I will be making some necessary distinctions regarding the cultural in penal standardization my analysis is grounded in empirical data from both the Haiti and Nunavut cases. More importantly, rather than argue for a form of pure, distinguishable culture, my research demonstrates the ways in which what is and is not understood as cultural in each case is contested through the implementation of penal standardization. My study does not seek to separate culture from punishment as homogenous entities; rather, my study allows for the fact that ‘culture’ is not just a dimension an analyst has to define, but is a domain of existence that is being mapped out, named, and acted on in certain ways and at certain times by governmental authorities. Similar to the ways in which international development actors determine that the problem of the poor is their ‘culture of

poverty' (see Ilcan and Lacey 2011), my research demonstrates the ways in which the problem of non-standard penalty is often attributed to a particular 'culture of punishment' in a particular geo-political context.

Further, my study connects the discussion of cultural contestations over punishment with post-colonial studies, illustrating the ways in which collective experiences of punishment (for prisoners, penal agents, and informed members of the Canadian public) are shaped by the multiple dimensions of post-coloniality in Haiti and in Nunavut. Similar to Valverde's (2008) study on the ways in which the purity movement was used to govern nation-building and racial formation in Canada, I address the ways in which penal standardization, through the co-option of Indigenous governance as a means to foster standard penalty in Haiti and in Nunavut, is indicative of external and internal colonialism (see Hecter 1975) respectively. Following the work of Thobani (2007), the Haiti and Nunavut case studies illustrate the post-colonial tension between temptations to copy or import particular penal knowledges and practice and the equally strong temptation to distinguish institutional penal practice from extra-judicial practices. Edward Said (in Legg 2007: 267) was struck by the similarities in governmental logic and practice between Foucault's carceral system and the Orientalism he studied. While Said felt Foucault pessimistically tried to explain everything through the structures of power, I agree with Chatterjee (1995) that a capillary and embodied analysis of power relations (in penal standardization) is a much needed contribution to post-colonial studies. My analysis of penal standardization and the moral sovereignty it affords states, uncovers a power/knowledge relationship indicative of post-colonial attempts to establish truth claims about race and difference and the micro-sites of government on which they are enacted (Stoler 2006: 24).

2.5 Governmentality Studies

Governmentality, first coined by Roland Barthes in the 1950s, is often associated with state theory and the constitution of the state (Curtis 2002 and Lemke 2007: 43-44). Michel Foucault (1978/2004) takes up what he calls the ‘ugly word’ of governmentality, detaching it from a static conceptualization of the state as possessing an absolute sovereignty. Instead, Foucault’s various studies (see Foucault 1976 and 1977 as examples) present a conceptualization of government as the conduct of conduct whereby efforts to govern conduct are visible in the clinic, classroom, military barracks, and the family, among other examples. While Foucault often rejected claims that he was a structuralist, I see his work as providing an interesting middle ground whereby governmentality studies interrogate the existence of social structures and the ways in which people actively engage with these structures to shape their social world. Following Gordon (1991: 3), governmental rationalities refer to a way of thinking about the nature of governmental practice (who or what is governed) which makes the activity of government (punishment) thinkable and practicable both to its practitioners (COs) and to those upon whom it is practiced (prisoners). As Hindess (1996: 106) explains, rationalities of government are intimately connected to technologies, “particularly to the use and invention of technologies for the regulation of conduct...through the application of technical means.”

While government seeks to regulate conduct it also acts indirectly on the means by which individuals regulate their own behaviours. My study examines penal standardization as one such technology of government involving an element of calculation and measured behaviour. Foucault (1991: 91) explains that the state represents only one form of government amongst others and it is not the state alone that determines what is and is not within the jurisdiction of the state, the

public, the private and so on, but that these distinctions are determined by rationalities of government. As Hindess (1996: 135) points out, Foucault extends Weber's (1968) argument that the specific knowledge and relations of power found within administrative government are not limited to the bureau, and adopt forms of power such as accountancy, economics, and psychiatry beyond the state. Governmentality scholars need to continue to seek out new rationalities of government, or new iterations of these rationalities, and utilize innovative concepts and ideas to explain efforts to conduct conduct. Walters (2012: 111) warns of the perils of applicationism in which governmentality studies detect discipline, liberalism, pastoral power, or biopower as explanations for social phenomena, as if these rationalities can be used as comprehensive explanations. Rather than simply looking for evidence of Foucault's rationalities, in this study I have developed new concepts and frames of reference (such as moral sovereignty and pixelating power effects) to explain the phenomena I encountered in the case studies. Foucault insisted that a governmentality analytics should remain flexible, adapting to a variety of empirical contexts, and that the concepts utilized to illustrate particular instances of government should reflect those contexts. Rather than presenting governmental rationalities as universal explanations for government, my study examines penal government across several axes accounting for a multiplicity of rationales. In the case of penal standardization, rather than present an over-arching or ruling punishmentality, I examine the ways in which several punishmentalities are present in efforts to standardize punishment. As Walters (2012: 108) explains: "if studies of governmentality are not in some way modified each and every time that they are extended to some other case at the same time that the meaning of the case is transformed then something is seriously wrong."

Rather than employ a static conceptualization of power as something to be possessed by some and lost by others, or exercised by states over populations, or in a strictly juridical sense as rules that dictate what must not be done, Foucault aims to analyze power in its positive mechanisms. According to Foucault (1991: 75), “to analyze regimes of practices means to analyze programs of conduct which have both prescriptive and codifying effects regarding what is to be done.” Following Foucault’s conceptualization of power as productive, my study deploys an analytics of power that uncovers the reciprocal relationship amongst governmental rationalities and technologies for conducting penal conduct and the webs of knowledge, practice and subjectivity that they produce. According to Foucault (1980a: 69-77), knowledge functions as a form of power and disseminates the effects of power in a power/knowledge regime. Governmentality studies examine power relations not as static and repressive but exercised from innumerable points in complex webs of strategy and ‘matrices of transformation,’ constitutive of a variety of subjectivities (Foucault 1980a; Foucault 1990: 92-102). It follows that power is often unstable and reversible: there is always an element of resistance in power. For Foucault, conditions of absolute repression and subordination are indicative of domination rather than relations of power. I agree with Hindess (1996: 97) that government lies somewhere between domination and reversible relations of power.

Resistance is an important element of power as it provokes modifications to techniques of power and is inscribed within governmental rationalities. The Haiti and Nunavut case studies will provide evidence of the ways in which penal standards adapt to and (re)inscribe resistance and the ways in which penal agents make pragmatic adjustments to penal standards as form of resistance. These adaptations may in turn provide the conditions for new forms of resistance to

take root (Hindess 1996: 101). While penal standardization privileges state-centric punishment it is not a technology of domination but a strategic game of power utilizing a variety of volatile and contradictory knowledges and practices. In a 1976 interview with *Hérodote* magazine, Foucault (2007b: 19) explains, “strategy is essential if one wants to make an analysis of knowledge and its relation to power.” Governance involves a complex process of interpretation and activity which produces ever-changing patterns of rule. As Chen (2005) highlights, governmentality studies examine the ways in which these activities use and generate knowledge, and more importantly, the contingent and conflicting ways in which this knowledge informs political action or inaction. My study examines penal standardization as a technology of power uncovering the organizations and agents (such as CSC, NU.C, the *Department Penitenciarie Nationale Haiti-DAP*, the OCI and so on) involved in the deployment of specific standards, technical practices, and the punishmentalities informing these particular power relations. I contend with Ilcan and Philips (2008: 712-714), “from a governmentality perspective, technologies of government are not simply mechanical devices; they are assemblages of practical knowledge [which are not]...simply informational but can be assembled to produce...normative categories, remedies for proper conduct and relations of power.”

My study makes connections amongst instruments of knowledge and technologies of power that entrench governmental practices in apparently “anodyne and extremely technical administrative provisions,” (Zanotti 2013: 288). Governing the penal field involves contestations over the aims and objectives of punishment, particularly as narrow definitions of government come up against wide definitions of government. As I have explained, governmentality studies aim to unsettle power/knowledge relations focusing on the microphysics of power, relations of

force, strategic developments, and tactics. As Dreyfus and Rabinow (1983: 186-187) explain, “power involves a matrix of force relations at any given time in any given society...power relations are imbued with calculation, there is a push towards strategic objectives but no one is pushing, there is strategy without a strategist.” In the case of penal standardization, both penal agents and prisoners are located within the same matrix of force relations and within the concrete restrictions of the penal architecture, although differentially equipped to engage with those structures and relations. Penal agents are often credited with the implementation of penal standards since they are on the front lines of penalty implementing penal policy. However, as my study demonstrates penal standardization involves a multitude of actors—with varied access to resources, training, and capacities for managing penalty—who must work within the confines of multiple and contingent punishmentalities. As such, penal standardization involves a multitude of causal factors that cannot be universally explained and are differentially realized across unique geo-political contexts, as the Haiti and Nunavut cases reveal. Recalling that power is not simply repressive but productive, requires analysis from many points in “complex webs of strategy and matrices of transformation constitutive of a variety of subjects and subjectivities,” (Foucault 1980a; 1990: 92-102).

In conjunction with Foucault (1990: 92), “[my] analysis, made in terms of power, [does] not assume that the sovereignty of the state, the form of law, or the over-all unity of a domination are given at the outset; rather, these are only the terminal forms power takes.” The intermingling and inscription of various forms of conduct connected to local means of maintaining social order within the machinery of penal government is one of the strengths of penal standardization; however, I want to emphasize my objective is not to be a ‘good Foucauldian’ (which Walters

2012 warns against), nor is it to simply ‘glue on’ Foucault, as Kendall and Wickham (1994) warn. One of the primary benefits of a governmentality analytic is the flexibility that it afforded me in changing and adapting my angle of analytical approach as I collected and analyzed empirical data. The relationship of theory and methods within governmentality studies allowed me to engage in an oscillating analysis of my data in which the theory was read through the data, and the data read through the theory. Further, the reciprocal relationship between my theoretical and empirical analysis provides an account of penal standardization that is grounded in the material, geographical, political, and social instantiations of punishment in Haiti and in Nunavut.

As I mentioned in the introduction, I was particularly influenced by Bruno Latour and Peter Weibel’s (2005) work *Making Things Public* as well as Andrew Barry’s (2013) study *Material Politics—Disputes Along the Pipeline*. In his study, Barry (2013: 4-5) explores the critical part that materials play in political life; rather than thinking of material artifacts and geographical locations as the passive and stable foundation on which politics takes place, Barry (2013) argues the unpredictable and lively behaviour of such environments is integral to the conduct of politics. Similarly, my study highlights the important and intertwined effects of geopolitics, penal design, and the materiality of punishment for penal standardization. The following empirical chapters illustrate the ways in which access to resources, capacity, and the material elements of penalty are central to the state’s ability to recognize penal standards as they are currently imagined. Penal standardization is as much a tool for addressing controversies in specific technical, material elements of punishment as it is about addressing human conduct and punishmentalities. Barry (2013) employs the politics of abductive inference (borrowing from C.S. Pierce 1934; Gell 1998; and Eco 1978 in Barry 2013: 78-84), to illustrate how through

particular forms of inference, one can be rightly or wrongly drawn towards the existence of causal agency. For example: the existence of smoke brings the observer to conclude that there is a fire; or an observation of a smile in a photo brings the observer to conclude that the smiling person is happy; or the existence of penal standards brings the observer to conclude that prisoner human rights are recognized. Barry uses the concept of abduction to highlight the various ways in which controversies are multiple, contingent, and often based on abductive inferences regarding social, political, and environmental consequences. Similarly, my study illuminates transformations in political situations and contestations over the uses and misuses of penal standardization as a technology of power. As the Haiti and Nunavut case studies will demonstrate, penal standardization abductively espouses the principles and morality of human rights but enacts technical, material standards as evidence of standard penalty.

As Walters (2012: 1-8) explains, an analytics of governmentality allows us to do something novel: to understand government not as an institutional set of practices, nor in terms of certain ideologies, but as eminently practical, studied, and specified at the level of rationalities, programmes, techniques, and subjectivities giving governance form and effect. My examination of the technology of penal standardization and the pixelating power effects it produces does not aim to attack “such and such an institution of power, or group, or elite class but rather a technique—a form of power,” as Dreyfus and Rabinow (1983: 212) explain. My case studies will uncover the ways in which these controversies invoke not only the conduct of human actors but also the materiality and cultural knowledge of punishment in a specific geo-political context. The flexibility provided by a governmentality analytic allows me to illustrate the microphysics of penal standardization, not to be overlooked as the minutiae of penal practice, but

as the very substance of controversy in the development of standard penal justice. More importantly, the Haiti and Nunavut case studies demonstrate how these controversies are further complicated by situations of abject social inequality resulting in a penological paradox: how can one justify the recognition of human rights within the penal institution when they are not met outside the institution?

2.6 The Cases

The real political task in a society such as ours is to criticize the workings of institutions that appear to be both neutral and independent, to criticize and attack them in such a manner that the political violence that has always exercised itself obscurely through them will be unmasked, so that one can fight against it (Foucault 2006: 40-41).

My study of penal standardization couples a governmentality analytic with critical ethnographic research, focused on the materiality of penality, in an effort to address processes and practices of injustice within the lived domain of punishment. Critical ethnography works below the surface, disrupts the status quo and unsettles both neutral and taken-for-granted assumptions by bringing to light underlying and obscure operations of power and control (Sonyini 2012: 5). As Blatter and Haverland (2012: 6) explain, case study research is ideal for studies, such as my own, which examine specific governmental technologies and the intersection of politics. Moreover, my study addresses critiques (see Jonathan Joseph 2011) that a Foucault effect has not fully resonated in international relations since the international appears to be beyond the analytical reaches of governmentality studies. Further, scholars (see Bevir 2010; Walters 2012; Collier 2009; and Larner and Walters 2004 among others) note a neglect of non-Western and non-democratic studies of government. My study provides an account of a technology of government (penal

standards), extending beyond traditional studies of international relations, presenting a much more nominalist account of strategies, technologies, and relations of penal government. As Tubex and Green (2015: 267) explain, “the forces at work in narratives about penal logics manifest differently at national and local levels.” The patterns and trajectories of penal standardization are distinct and culturally embedded (see Melossi 2001) resulting in different penal policies, practices, and standard outcomes worthy of examination, hence my dual case focus at the international and national levels.

My dual case study was inspired by the cohort of governmentality scholars embarking on international governmentality studies (see Larner and Walters 2004; Fassin 2012; and Barry 2013 amongst others). Dider Fassin’s (2012) analysis of *Humanitarian Government* in the French (national) context and in three international cases of humanitarianism (in South Africa, Venezuela, and Palestine) was particularly influential. Similar to Fassin’s (2012) study, my analysis of penal standardization in Haiti and in Nunavut demonstrates how configurations of this technology of government may be different but processes are similar. The Haiti and Nunavut case studies allow me to address macro-political configurations (government in the narrow sense) through micro-social situations (government in the wide sense). Rather than the clash of civilizations, the scale of analysis is the relations of power (Fassin 2012: 10) between states, international institutions, extra-governmental organizations (such as the ombudsman's office), penal organizations, penal agents, and prisoners. It is not necessary, although I will argue it absolutely should be, that penal administrations (such as CSC) demonstrate their standard integrity at ‘home’ in the penal institutions for which they are primarily responsible. Rather CSC utilizes its work abroad (in Haiti) as an enforcer of penal standards, to illustrate the standard

character of Canadian penal administration while neglecting to meet the majority of those same penal standards within Canadian penal institutions—a critical empirical discovery I made during the research process.

Along with the theoretical and analytical rationales for employing a dual case study in my research I discovered a strong empirical rationale for selecting specifically Haiti and Nunavut as my two cases. Early in the research process (in 2013), while I was gathering data on Canadian penal aid projects in Haiti, my news and social media feeds were inundated with stories about the deplorable conditions at BCC—especially given the findings of the 2013 OCI report. While it was immediately clear to me that the penal aid project in Haiti and the denigration of penal administration in Nunavut were of significance to the Canadian penal landscape, these early comparisons were at best surface-level, lending problematically to what Stoler (2006) warns are ‘trait-based’ comparisons. However, the irony of the abhorrent conditions at BCC in Nunavut and the political uses of Canadian claims to international penal expertise in Haiti led me to pursue these cases further. The missing empirical link that would bring these cases together in complex and significant ways came to me (in October 2013) while I was touring Kingston penitentiary. On this tour, I met a retired CO who worked in various prisons across Ontario including Beaver Creek where she knew the programs officer who worked with Indigenous prisoners as well as the prison’s senior administrative staff. The retired CO put me in contact with her colleagues at Beaver Creek and I scheduled participant observation sessions at the prison as well as interviews with administrative staff who had worked on penal aid projects in Haiti and now administered a Canadian prison (Beaver Creek) with a significant population of Inuit prisoners. Having made the connection between COs who engaged in penal aid projects in

Haiti and upward career mobility in Canadian penal administration, I sought out similar interviewees establishing empirical confirmation that these cases shared much more in common than disreputable sub-standard penalty.

As I mentioned in the introduction, the Haitian case provides a detailed account of the Croix-Des-Bouquets prison in Port-au-Prince (commonly referred to as the ‘Canadian prison’), and the Nunavut case provides a detailed account of BCC in Iqaluit. Focusing my analysis on these sites allowed me to get at the material elements of penal standardization as they factor into the pragmatic application of penal standards on the ground by penal agents. As my case studies illuminate, important and transformational political contestations take place at both sites over seemingly trivial matters, such as the material substances used to construct toilets in prison cells (porcelain or steel). These debates, which appear minuscule in the grand scheme of penal standardization, point to larger issues of the economy of penal standards, the technicization of penal standards, pixelating power effects, and a failure to actualize prisoner human rights—all of which are examined in the case studies (Chapter IV and Chapter V). Each case, through context specific empirical analysis provides distinct examples of the role of culture in the texts, technologies, and materiality of penal standardization. Moreover, the Haiti and Nunavut case studies provide concrete evidence of the productive uses of failure within penal government. Rather than presenting penal standardization as a uniformly applied system of government, the cases illustrate how penal standards are imbued with flexibility, in turn providing penal agents with the flexibility to think and act on penal problems on the ground. Similar to Fassin’s (2012: 13) study, “in each case ethnography provides insight into the convictions and doubts of the

actors, their blind spots, and their lucidity, their prejudices and their reflexivity...monolithic explanations recognize neither the complexity of the issues nor the intelligence of the actors.”

2.7 The Research Process

I began the process of gathering primary data for this study in the fall of 2013. My initial data collection focused on the textual archive of penal standardization, such as manuals, treatises, pamphlets, policy and legal documents, prisoner assessment tools, and directives for penal staff. My aim, following Foucault (1977/1995, 1991, 1998), was to collect texts that would provide me with a detailed account of the power effects, subjectivities, and knowledges endorsed and/or produced within the archive of penal standardization. Textual analysis was a key element of the research process since texts are a part of social events which are shaped by the casual powers of social structures or arrangements, and social practices (Fairclough 2003: 38). In other words, texts have causal effects—they bring about, or as will become clear in the following chapter (III) on the penal standardization archive they forestall change. At the international level, the most widely utilized text on penal standardization is the Standard Minimum Rules for the Treatment of Prisoners (or the SMRs, 1957). However, as I discovered through my research, the archive of penal standardization also includes: the UN Rule of Law Indicators (2011); the ongoing international expert group revisions to the SMRs; multiple UN transcripts of peacekeeping operations; justice research initiatives of the international criminal court; scientific and professional council recommendations; mandates of non-governmental organizations such as the International Committee of the Red Cross and Red Crescent and Prison Reform International (PRI); the work of government sanctioned organizations such as the department of Foreign

Affairs, Trade and Development Canada; the Stabilization and Reconstruction Task Force of Canada (START); Nunavut Corrections (NU.C); federal and provincial penal reform committees in Canada; the *Office de la Protection Citoyen Haiti*/Office of Citizen Protection Haiti (OPC); and the internationally (UN) sanctioned civilian missions to reform justice in Haiti.

As these documents piled up and my textual archive expanded crossing local, national, and international boundaries I became aware that I would need to develop an analytical tool for understanding the heterogeneous archive behind the technology of penal standardization. As a result I developed a typology of penal standards comprised of nine types, or categories of standards such that I could analyze: why the implementation of standards is understood as important or necessary; the actors and agencies involved in the creation and implementation of penal standards; the punishmentalities that standards invoke; the asymmetrical nature of power relations within penal standardization; changes in penal standardization over time and across organizations; the types of conduct penal standardization aims to measure, control, and/or produce; as well as resistances to penal standardization. This textual analysis will uncover, following Fairclough (2003: 206), the process of meaning making (or standard penal practice) which are dominant or mainstream and those which are marginal, oppositional, or alternative. My typology, following the logic of governmentality studies, is not premised upon a singular horizontal axis of analysis but several axes providing empirical depth and sophistication. While I generated my typology¹³ based on a process of cross-referencing penal standardization texts, the characterizations or types I developed are my own. Below is a list which includes examples for each standard:

¹³ See appendix A for a further illustration of my typology of penal standards.

- **Administrative standards:** rules of behaviour for prison staff and prisoners
- **Construction standards:** the number of toilets per prisoner
- **Corporeal standards:** prisoner hygiene, exercise, and access to medical services
- **Cognitive/Affective standards:** prisoner education and addictions programming
- **Labour standards:** the types of, and wages for prisoner work
- **Social/Collective standards:** access to social and familial supports
- **Disciplinary standards:** the use of force or instruments of restraint on prisoners
- **Legal standards:** legislation governing penal administrations (e.g. CDs of CSC)
- **Spiritual/Cultural standards:** access to spiritual leaders, objects, and ceremony

As Garland (2006: 427) points out, every major tradition of sociology has to make decisions or distinctions in conducting analysis. While my typology engages in categorization, my intention is to elicit the meanings, values, and sensibilities afforded to penal standards by various agents and organizations. My analysis pays particular attention to the ‘unsaid’ (what is left out) just as much as to what is recorded in the archive of penal standards. I treat the archive of penal standardization texts with the same level of curiosity and skepticism I applied to interview transcripts and observation field notes. I did not take these documents at face value; rather, as the following chapters illustrate, I sought to uncover the contested punishmentalities within explanations of standard penalty and whether or not these changed over time and across my case studies. The typology I developed further elucidates: the gaps within discourses of human rights as organic to penal standardization and the actualization of these rights in penal practice; the promotion of state-centric penalty and the pervasiveness of moral sovereignty; the pixelating power effects of penal standards and the economy of penal standardization; as well as

paradoxical forms of punishment in Haiti and in Nunavut. As the following empirical chapters demonstrate, my critical document analysis illuminates the pragmatic nature of penal standardization avoiding a universal, all-encompassing explanation of penal government while demonstrating the strategy and logic behind such pragmatism, and avoiding an explanation of penal government as entirely accidental.

Prior to my PhD studies (in 2010-2011) I had the opportunity to tour two prisons: Eastern State Penitentiary in Philadelphia, Pennsylvania and Alcatraz in San Francisco, California. As I mentioned in my discussion of the cases, in October 2013, just one month following its closing, I also toured Kingston Penitentiary in Kingston, Ontario. From my experiences on these prison tours I knew this project had to include an insider's perspective on penal standardization in the form of participant observation. While Kevin Walby and Justin Piché (2009, 2010, 2011, 2012) have written extensively on the limitations of carceral tours as knowledge-producing practices (such as the highly scripted nature of the tour, the need for greater reflexivity, and focus on organizational power-relations), I felt I could learn from their studies and utilize the connections I made while in Kingston to address some of these shortcomings. Further, since my project aims to uncover the ways in which penal standardization is wielded as a technology of governmental power by penal agents working for Canadian penal organizations I was interested in examining this phenomenon from the perspective of those working within or alongside the institution.¹⁴

According to Adler and Adler (in Angrosino 2008: 161, 177), observation is fundamental to

¹⁴ I concentrated my focus on penal institutions in Ontario that were connected to NU.C (in that they held transferred Inuit prisoners) since there are no federally operating institutions in Nunavut, so federally sentenced prisoners (sentenced to two years plus a day) must be transferred—typically to Ontario.

social research, allows the researcher to see events through the eyes of those living them, and is committed to an ‘ethnography of the particular’ in accordance with governmentality’s focus on the microphysics of power.

I conducted participant observation at Beaver Creek medium and minimum security facilities in Gravenhurst, Ontario, known for its Aboriginal specific-programming (the Pathways program), as well as at Central North Correctional Centre (CNCC) super-maximum security facility in Penetanguishene, Ontario, in August 2014. During my observations I met with programs officers (specifically those working within the Pathways Aboriginal program), a Native Inuit Liaison Officer (or NILO), Native Elders, social workers, administrative staff, and Correctional Officers (or COs). I engaged in reactive participant observation (Angrosino 2008: 65) associated with controlled settings in which the participants were aware of my observation and were amenable to my presence. I was pleasantly surprised by the openness I received at both Beaver Creek and CNCC: so long as I was accompanied by the NILO or a program officer (in either location) I had open access within the institutions—with the exception of the chapel in Beaver Creek (because it was locked and we could not find a person with a key) and three living units in CNCC which were on lock-down at the time of my visit. The most challenging aspect of conducting these observations was that I was not allowed to bring anything with me inside the prisons besides my identification—no phone, no audio-recorder, no camera, no books, no pens. I had to conduct my observations without any tools for recording data and then upon returning to my hotel recorded my field notes capturing my experiences, observations, and conversations. Conducting this reactive participant observation allowed me to focus on particular individuals and ever-changing relationships rather than on supposedly homogenous, coherent, patterned, or

timeless ‘groups’ (Angrosino 2008: 177). Such a research and analytical focus—on contingent, contradictory, and heterogeneous penal logics and practices, as well as characterizations of particular cultural ‘groups’—paved the way for my consideration of resistance-as-multiplicity which I discuss at length in the concluding chapter (VII).

Along with these observations I organized interviews with Canadian correctional staff who work with Inuit prisoners and/or work closely with Nunavut corrections: I conducted a follow-up interview with the NILO I met at Beaver Creek Institution who also spent several years working at BCC in Nunavut; I interviewed a police officer who served on mission in Nunavut; and I conducted multiple interviews at the OCI (particularly with staff who were instrumental in the 2012 investigation of NU.C and the subsequent 2013 report on BCC).

Holstein and Gubrium (1995: 45) argue that ethnographic observation should be combined with interviewing not only to heighten the rapport with and understanding of informants but to reveal local experiences and ways of knowing. Similarly, I spent several months in contact with the OPC (Haiti’s ombudsman’s office) as well as with START Canada engaged in interviews on penal standardization in Haiti. The OPC directed me to websites with pictures of the Croix-Des-Bouquets (Canadian built) prison which I was encouraged to use in my analysis (these pictures appear in Chapter IV as well as in Appendix B). I conducted multiple interviews with an Ottawa police officer on ‘mission’ in Haiti who generously gave me a wall-sized map of the police training missions conducted in Haiti; a UN shelter development expert who has worked in Haiti

for several years; as well as CSC agents deployed on mission in Haiti (in the areas of policy development, training and capacity building, and infrastructure renewal).¹⁵

In total I had 16 interviews between both cases, including follow-up interviews, averaging one-hour in length each. The interviews took place over a year and a half, with the first interviews conducted in February 2014, and the final interviews conducted in June 2015. Participants were aware that the interviews were (following Holstein and Gubrium 1995) active interviews in which participants were encouraged to take part in formulating topics of interest given the purpose and intent of the study. According to Holstein and Gubrium (1995: 37), “treating the interview as active allows the interviewer to encourage the respondent to shift positions in this interview so as to explore alternate perspectives and stocks of knowledge.” Further, the semi-structured nature of the interview allowed me to follow a particular path of inquiry while maintaining flexibility and allowing the participants to steer the conversation in ways that they saw appropriate given the research questions. The aim of the interview was not to find the ‘best’ or most ‘authentic’ answer but to reveal the diverse and contradictory ways of knowing within missions of penal standardization. I used the chain-referral method for gathering interview respondents as well as participant observation contacts which utilizes existing networks of penal agents within the penal field. This method proved successful in keeping me connected within a field that can be quite challenging to gain access to.¹⁶

¹⁵ I had access to a French/*Creole* translator to assist with my interviews on the Haitian case but I did not end up needing their services since all interviews were conducted in English: an observation that I reflect on in the Haitian case, in which the prevalence of English, and French, in the development of Haitian penal justice and legal texts is criticized for being exclusionary.

¹⁶ I did face challenges in gaining access to the Ottawa Carleton Detention Centre (OCDC): I was unable to gain approval for participant observation or formal interviews.

Interviewees were primarily middle-aged professionals, including six women and seven men, all of whom worked in either Canada or Haiti. The majority of participants in both the interviews and observations were white Canadians, with the exception of two black Haitians and three Aboriginal Canadians (the NILO at Beaver Creek and two Ojibwe Elders at CNCC). While this participant pool appears to be biased in a problematically racialized way, it is sadly representative of the penal development field in Haiti and N.U.C as my case studies problematize. Nevertheless, the composition of my interview participant pool is limiting in that the majority of interviews were conducted with members of the dominant group in this study: CSC. However, the voice of Aboriginal Elders and Haitians, while representing the minority, offers critical and conflicting perspectives regarding designations of ‘first’ and ‘third’ world penalty, as well as what penalty should look like in either case.¹⁷

Interviews were audio-recorded, transcribed verbatim, and then circulated to participants for their review and correction. Through a process of induction and deduction, I read each transcript looking for recurring themes, emerging issues, relations of the findings to theoretical concepts, as well as the relationship of findings to the penal standardization archive. As I continued to analyze transcripts I would keep in mind the findings I had highlighted in previous transcripts such that I could distinguish areas of convergence and divergence amongst the transcripts. I treated my field notes in the same way—demarcating themes, issues, theoretical concepts, and instances of convergence and divergence within my observations. In my analysis

¹⁷ Discussions of Elder and Haitian perspectives on punishment proceed in the following case studies (Chapter IV on Haitian perspectives and Chapter V on Inuit perspectives). Elder and Haitian rejections of Euro-centric designations of ‘first world’ and ‘third world’ penalty can be found in the discussion (VI) and conclusion (VII) Chapters.

of both the interview transcripts and my field notes I aimed to uncover what Dorothy Smith (1987 in Holstein and Gubrium 1995: 77) calls 'the everyday terms' that derive from the circumstances of lived experience. This first phase of data analysis allowed me to gain a sense of the instances and topics in which my work was saturated, and the instances in which the project was lacking sufficient data requiring further field research. When I felt I had gathered sufficient data to validate the emerging issues, themes, and arguments I was developing I moved onto the second phase of data analysis. At this stage, I created a detailed map of the themes, issues, and concepts uncovered in the first phase and began the process of cross-referencing all of the transcripts with one another, with my field notes, and with the textual archive of penal standardization: I also highlighted all references to the types of standards I developed in my typology of penal standardization. I then began the work of collating the findings in relation to the central aims and objectives of my project so that I could map the central arguments developing from my findings (on the technical (I), Civilizing (II), and Paradoxical (III) punishment within penal standardization) which would become the central threads running through these chapters.

For me, research, writing, and analysis go hand-in-hand. It would be near impossible for me to distinguish what was purely research (data collection), analysis, and writing in my dissertation, nor do I think this is a valuable exercise: research is messy. I had to remain flexible and perseverant in following the findings I was uncovering especially, when these findings were contradictory and contingent. While in interviews I often found myself silently analyzing responses and adjusting the course of the interview to search for new explanations or confirm what I had heard from the respondent in alignment (or not) with data gathered elsewhere in my

study—analysis and data collection co-exist. Furthermore, much of my analysis of data involved writing notes and free-writing to explore the potential of developing arguments—analysis and writing coexist. Perhaps most importantly, the research and analytical processes were marked by a symbiotic method of reading theory through the data and the data through the theory. In doing so I was able to avoid the trap of simply applying Foucault’s concepts to my own work which would have resulted in a platitudinous analysis. Instead I engaged in concept development, following the tenets of governmentality studies, developing my own concepts and tools for understanding my findings.

The result is a study that is both empirically rich and unique in its contribution to governmentality studies and the sociology of punishment. My evolving system of analysis allowed for a more dynamic and mindful articulation of the arguments that developed out of my findings. Moreover, taken together the textual analysis, observations, and interviews provided empirical data that are not often identified with governmentality studies since such projects typically concentrate on textual archives without the forms of ethnographic data I have included in my study. Together these methods illuminate the contingent, contradictory, and contested nature of penal standardization texts (Foucault 1991, 1998) alongside the operational, practical, and material components of penal standardization. This multi-method approach illuminated: the various means by which penal standardization is translated in the field; the over technicization of penal standards and resulting gaps in the actualization of prisoner human rights; how penal standardization is used as a tool of penal government; how penal agents articulate the value of penal standardization; where and how penal standardization fits within larger state-formation projects and initiatives of moral sovereignty; and most importantly, how penal standardization

confronts and co-opts local forms of penalty including contestations over definitions of culture and the power to punish.

2.8 Reflections on the Research Process

“Data does not speak for itself nor does it emerge in a vacuum. Who we are (and appear to be in a specific context) influences the questions we ask, the responses we get and the scholarship we produce,” (Gallager 2000: 84). My location, position, and background as a researcher impacted the connections I made, the rapport I built with participants, the data I collected, and the knowledge I am able to co-produce in this study. Since the outset of this research project it has been important for me to strike a balance amongst, “flat un-reflexive analysis and excessive hyper-reflexive analysis,” (Finlay 2003: 21). Rather than as an occasional tool for reflecting on the research process, I embraced reflexivity as part of the interpretive practice and analytics intrinsic to governmentality studies. As Mauther and Doucet (2003: 413) explain, “data analysis and methods are not neutral techniques.”

Although I did interact with prisoners in my observations, my aim was to uncover the uses and effects of penal standardization as a tool of penal government by and for those enforcing punishment: consequently, I did not interview prisoners for this particular study. Nevertheless, not long into the research process I became aware that both penal standardization texts, as well as penal agents in both the Haiti and the Nunavut cases, were making particular references to, and inferences about, prisoners. It would be unreasonable and irresponsible for me not to include these in my analysis; however, in doing so, I too would necessarily be making inferences about the conditions and penal conduct experienced by prisoners. It struck me, as Lori

Sexton (2015: 115) explains, that, “punishment is not just something that is done—it is something that is done to people and experienced *by* people. The subjectivity of people who are punished matters.” One way in which I acknowledge that punishment is done to people is by paying close attention to the language used to describe the persons being punished (inmates, offenders, and so on) as this language has particular knowledge and power effects on the treatment of imprisoned persons. I utilize the term prisoner when referring to imprisoned persons in an effort to be more politically conscious regarding the act of confining a person in a carceral institution. As Rose (in Corbin and Buckle 2009: 55) explains, “...if you do not appreciate the force of what you’re leaving out, you are not fully in command of what you’re doing.” Building reflexivity into my analytical framework ensured I paid attention to the unsaid, just as much as the said, within penal standardization texts and practices as well as within my own interpretations of the phenomena of penal standardization.

Respondents were eager to talk about what they explained to be ‘foreign penalty’ and I was all too aware of the exoticization of punishment occurring in these conversations. More times than not respondents from Canada who had worked in Haiti, and respondents from southern Canada who had worked in Nunavut, discussed the distinctions amongst what they ‘normally’ experienced as standard penalty in their home workplace and what they experienced while working in Haiti or in Nunavut respectively. While these observations and responses led me to discover the need for reflection on Euro-centricities in my analysis, I also began to grasp the problem of dichotomizing standard (Westernized, Eurocentric, common law) penalty with sub or non-standard (locally and culturally specific) penalty. While eager to recount unfamiliar experiences of penalty in Haiti or in Nunavut, these same respondents spoke at length about

their desires to make a difference or to improve conditions of penalty in these places. Similarly, the Haitian penal agents I spoke with expressed deep gratitude for the resources and time specifically Canadians gave to Haiti; while Inuit penal agents were not shy to point out the abject conditions within NU.C. I did not address any of these instances of othering during the interviews since I was at a loss for finding a way in which to acknowledge the good intentions of the agents while pointing out the problematic dichotomies they were setting up between ‘our’ (Canadian) penal standardization and ‘their’ (Haitian or Inuit) penal standardization. However, these distinctions became a central thread running through my analysis. While consciously respecting the integrity of respondents, I work to expose the continuation of post-colonialism by penal means in Haiti and in Nunavut as well as the entanglements of state-centric, juridical penalty and locally-derived, context-specific penalty in penal standardization missions.

As I mentioned earlier, the majority of respondents were white professionals, which is problematically an accurate reflection of the penal development field in Haiti and in NU.C. In Nunavut the majority of prisoners are Inuit and the majority of correctional staff are white southern Canadians (OCI Interview I June 2015): in Haiti the penal agents working within Haitian prisons are black Haitians, but international penal agents working on policy development and offering penal training are, on the majority, white people from outside Haiti—for example, at Croix-Des-Bouquets prison they were white Canadians (CSC Interview August 2014). Respondents were often direct in their observations regarding race but struggled to understand their role in what they perceived to be structural and complex social problems. One particular respondent’s reflection on race and othering was so striking that it has stayed with me throughout the entire research process and I am certain it will remain with me for years to come. While

noting the “racially tensed situation” amongst the Inuit and white southern Canadians in Nunavut this respondent explained that “racial tension exists...but it’s not as simple as that. White people...a lot of them [in Nunavut] are honestly trying to help,” (OCI Interview I June 2015). This reflection struck a chord with me causing me to question what it means to be a white woman from the north or south (depending on the case) ‘trying to help’ in either Haiti or Nunavut. While I did not want to over-simplify penal standardization as a technology of government predicated on racism, it was evident from my findings that discourses about race and racialized power imbalances were very much a part of the penal reality in Haiti and in Nunavut and would factor into my analysis.

Even so some of my first attempts in documenting my analysis seemed to be heading down the path of romanticizing Haitian and Inuit penalty as coterminous with a ‘pure’ homogenous form of Haitian culture or Inuit culture. These early writings, providing cause for concern, lead me to think much more critically and reflexively about my writing applying the same level of interrogation to my *own* analyses and perceptions as I did with texts, transcripts, and field notes in order to make sense of these analyses. I needed to avoid the risks of uncritically celebrating and romanticizing culture as resistance to the repressive intentions of the state (Huxley 2007: 191). I needed to return to the principles of governmentality studies and post-colonial studies in order to equip myself with the means to question the relevance of Western, Eurocentric, common law penalty while avoiding the reification of dichotomies which could fortify the pervasiveness of penal standardization as it is currently imagined in either case. As such, I embarked on an interrogation of culture: what is or is not cultural? Who gets to participate in the work of designating something as cultural? What does it mean to label penal

objects, practices, and punishmentalities as cultural? I agree with Melossi (2001) that culture is not a fixed framework but a flexible ‘vocabulary of motives’ that provides a distinctive repertoire of values and meanings within which penal standardization is forged. My study demonstrates (following Garland 2006: 438-439) how culture relates to the conduct of conduct in particular modes of action and inscriptions within the texts of penal standardization.

While my subject position (particularly my Western, common law understandings of punishment) shaped how I perceived penal standardization in Haiti and in Nunavut and cannot be easily shed (Fish 2006), the different positions I occupied in either case revealed an important contribution my study makes. In the Haitian case I occupy a position of white Canadian from the global north; whereas in the Nunavut case I occupy a position of white Canadian from the south of Canada. Both positions are undoubtedly advantageous, associated with greater access to healthcare, education, social services, occupations, and economic resources. However, my study contributes to a growing discussion within global governmentality studies (see Chandler 2010; Heron 2007; and Zanotti 2011 as examples) regarding the taken-for-granted dichotomy amongst the global north and the global south, or the ‘first world’ and the ‘third world.’ These discursive distinctions present ‘our’ knowledge and ‘our’ ways of doing punishment as preferable, or the right way, since the North, especially Canada appears orderly and well managed in comparison to the global south (Heron 2007: 2). However, the Haiti and Nunavut case studies challenge these dichotomies in the field of penal standardization since the two cases demonstrate some of the same struggles in defining and implementing standard penalty. The Nunavut case study provides evidence of sub-standard penalty in Canada (a country typically considered to be ‘first world’) and the Haiti case provides evidence of ‘closer-to-the-standard’ penalty in Haiti (a country

typically considered to be ‘third world’). Both cases illuminate the struggle to preserve international (Western, Eurocentric, common law) standards: penal standardization missions aimed at promoting the morality and civility of state institutions, and therefore a monopoly over the power to punish come up against deeply rooted social inequalities, such that, these efforts to promote moral sovereignty via penal standardization in Haiti and in Nunavut call into question the very purpose of punishment in either place. Rather than reifying the various dichotomies within penal standardization, the Haiti and Nunavut cases illustrate a series of contradictions—both sides of the same penal standardization coin. Similar to Cooper and Stoler’s (1997: 20) analysis of empire and O’Malley’s (1999) analysis of the diversity in penal sanctions, I believe discourses about racial difference, the virtue of maintaining ‘normative’ and distinguishing ‘uncivilized’ penal practices, or centralizing the state and decentralizing cultural penalty reveal the conflicting criteria for measurement behind penal standardization: that standard penalty meet the so-called globally accepted norms of punitive incapacitation while remaining flexible and customizable in specific geo-political contexts.

Alongside my reflexively informed findings I made the conscious choice to include some of the images I gathered (from various organizations) within the dissertation. I remain particularly aware of the critiques of visibility as a mechanism of objectification and an exercise in voyeurism (see Brighenti 2007), since these are images of largely hidden objects and practices of punishment. While none of the images I have included identifies either prisoners or penal agents, I was concerned with replicating the fixation on material penalty I uncovered within the economy of penal standardization. My decision to include these images rests with Brighenti’s (2007) account of visibility as a category for the social sciences and the association of visibility

and recognition (see also DeGenova and Peutz 2010; Walters 2010; Demos 2009; and Culhane 2003 among others). As Deleuze (in Brighenti 2007: 328) explains, the invisible is intrinsic to the visible and the visible can never be fully reduced to the articulable. This is one reason why I decided to include images—my articulations of my observations or a particular element of penal standardization could not on their own do justice to the particular knowledge controversy or power relation I was trying to draw attention to. With that said I do not include images in the dissertation without the accompaniment of a stated purpose or explanation. While I want to avoid the trope ‘seeing is believing,’ I do believe that these images help to draw attention to the invisibility of punishment and the resultant deprivation of recognition for prisoners. The invisibility of punishment, within the rarely seen penal institution, is a strategy for maintaining the relations of power within the institution as well as for maintaining public apathy for penalty. In other words, invisibility is part of the power to punish. Nevertheless, I remain mindful of the effects of supra-visibility or the sensationalization of punishment through visibility and the potential denial of recognition since images of penalty (even the faceless images) can evoke strong emotions in viewers (such as hatred or scorn for prisoners). I tried to counter the double-edged sword of empowerment and disempowerment in visibility by selecting images that made the political work of (in)visibility evident. My decision to include images in my dissertation is my attempt to make the technology of penal standardization, and its accompanying relations and pixelating power effects visible, such that contestations of penal standardization might be recognized as social problems worthy of our attention.

2.9 Conclusion

In this chapter I have provided a discussion of the theoretical and methodological considerations informing my study. I began by discussing what I have called punishmentalities and where my project is situated within the field of critical criminology. Following a governmentality analytic I introduced my conceptualization of moral sovereignty and the role of penal standardization within projects of state formation. I highlighted the contested nature of penal government which is pushed and pulled between local, context-specific punishmentalities and penal practice and state-centric penal practice, highlighting the ways in which these categories of punishment are themselves contested. In an effort to avoid the fault of applicationism in governmentality studies, I elucidated the concepts and terminology I have developed from my findings informed by the tenets of governmentality studies, critical criminology, and post-colonial studies. This chapter also provided a further explanation of the cases and the value of each for the overall aims of the dissertation, as well as a detailed discussion of the logic of the research process (including the methods utilized for data collection), challenges addressed in the field, and my reflections on the research process.

In the following chapter, I will explicate the evolution of penal standards from penal codes and their connection to international human rights legislation, how penal standardization is utilized as a technology of penal government, the various punishmentalities, strategies, and organizations involved in establishing penal standards, as well as a trajectory of punishmentalities in Canadian penal practice. My analysis reveals the ethos of protection behind penal standards which positions the state as protector and purveyor of ethical punishment or punishment as a social good.

CHAPTER III

PENAL STANDARDS AND THE GLOBAL CIRCULATION OF PUNISHMENT

There should be standards. I don't think it can be a standard blueprint but we are aiming for this many square feet or this many toilets...so standards in terms of broad strokes, yes. Standards in terms of we want the prison to look like...[a Canadian] prison...not going to happen.

~START Interview (February 2014).

3.1 Introduction

In this chapter I analyze penal standards as a technology of penal government that promotes punishment as a social good or service. I begin the chapter with a brief history of penal standardization starting with the development of penal codes in the late 18th century, which were a response to the absolute authority of the sovereign. Penal codes paved the way for the contemporary canon of international penal standardization which persuaded states to subject themselves to penal regulation through the humanitarian and social ambitions to reconcile penal government and prisoner human rights. The following sections examine more closely what I call the global circulation of punishment, whereby a group of diverse organizations (such as humanitarian and global financial aid organizations, human rights groups, military operations, inter-governmental expert groups, and individual states) contribute to the formulation of penal standards that are, in turn, supported by a variety of punishment. The result is an economy of penal standards, which should be implementable in a multitude of geo-political contexts, in countless combinations, in order to find a balance between too much and not enough punishment. I pay particular attention to the Canadian context, tracing the changing punishment in Canada, since my case studies illustrate Canada's role as an international

enforcer of penal standards in Haiti juxtaposed to a lack of standard penalty in the Canadian Territory of Nunavut.

The archive of penal standardization is characterized by an ethos of protection—the protection of society from the ‘evils’ of crime as well as the protection of prisoner human rights. I will argue that this ethos of protection is particularly effective in that it allows for the cohabitation of a variety of punishment, such that protection is established through a multitude of seemingly contradictory penal practices, such as the medical treatment and rehabilitation of prisoners, the indefinite confinement of prisoners, and the conscription of prisoners in their reintegration. Utilizing examples from penal standardization literature, I will argue that contemporary penal standardization is characterized by an increased focus on penal administration, spatial design, and the materiality of punishment such that penal standards have become about technicization in penalty rather than the actualization of prisoner human rights. The protection offered by penal standardization is a self-interested enterprise on the part of prison administrations since the carceral institution is promoted as *the* primary mechanism through which punishment is administered globally.

In the final section of this chapter I elucidate what I have uncovered as the tension between universal and customized punishment within penal standardization. The universal and specific nature of penal standards is a major tension in the governmental technology since standards aim to be applicable across a multitude of geo-political contexts while leaving room for ‘domestic customization’ (UN Rule of Law Indicators 2011: 1). However, I argue that the domestic customization of penal standards is exercised within state-centric, institutional penalty, strengthening the moral sovereignty of the state. Local penal customs are sometimes embedded

in standard operations and at other times utilized as explanations for sub-standard or non-standard penalty and the need for intervention in penal government. The tension of universality and specificity evident in such determinations of domestic customization demonstrates the post-colonial temptation to copy or import domestic penal knowledges and practice, and the equally strong temptation to distinguish civilized, or morally superior penal practice, from uncivilized, or immoral penal practice.

3.2 The Historical Development of Penal Standards

Prior to the establishment of penal codes, in the latter half of the 18th century, the authority to determine what constituted a crime and the subsequent punishment for that crime was the exclusive authority of the sovereign. However, after fierce criticism for being arbitrarily and inconsistently applied by a number of contested authorities in a number of different ways, penal reformers made a case for a semiotic system of crime and punishment—in which crimes and their accompanying punishments would be recorded and publicly circulated—to address problems associated with sovereign rule and the contagion of crime (see O'Connor 2002: 37-38). Opposed to the subjective will of the sovereign to determine crime and handout punishments, penal codes constituted a new, modern system of fixed illegalities and their subsequent punitive responses:¹⁸ the aim was to locate justice outside the political sphere such that penalty was not the will of the sovereign. Imagining a post-sovereign world, which places limitations on political authority in relation to justice, Rousseau (1762/2004: 40-41,44) writes:

¹⁸ For a more rigorous discussion of the development of penal codes as they relate to the genealogy of the rule of law, or the rule of law dispositif, see Brisson-Boivin and O'Connor (2013).

...there is undoubtedly a universal justice which springs from reason alone...we can no longer ask who is to make laws because laws are acts of the general will, no longer ask if the prince is above the law, because he is part of the state...the lawgiver is the engineer who invents the machine; the prince is merely the mechanic who sets it up and operates it.

This passage from Rousseau marks an important moment in the historical development of penal justice, in which penalty is understood as a machine that applies equally to its inventor (the lawmaker), to the sovereign authority (the prince), and to the general population at large. In 1790, Jean-Paul Marat published his *Plan de Législation Criminelle*, further supporting the development of the new penal codes in France. Marat (1790: 33) writes:

To derive the offence from the punishment is the best means of proportioning punishment to crime. If this is the triumph of justice, it is also the triumph of liberty, for the penalties no longer proceed from the will of the legislator, but from the very nature of things; one no longer sees man committing violence on man.

Marat, like Rousseau, makes an important distinction in that the source of penal law should be understood as emanating from nature, as an inevitable force that is beyond human creation, and necessary for a free society. Penal reformers like Rousseau and Marat understood crime as another instance of the rationality that characterised most human conduct throughout the 18th and 19th centuries. As a result, in order to manage (mis)conduct, the popular consciousness needed to be trained to recognize penal codes as the basis for a punitive response which would be ideational, rather than bodily, providing deterrence in order to prevent the contagious spread of crime. In order to accomplish this the links between crime and punishment needed to be made in advance of the criminal act through penal codes, then public trials, followed by swift and certain punishment. Penal codes were “enacted by several states near the close of the 18th century including; Russia 1769, Prussia 1780, Pennsylvania and Tuscany 1786, Austria 1788,

and in France in 1791,” (Brisson-Boivin and O’Connor 2013: 520). The result of the development of penal codes was to make punishment a natural result of code violations, where the punitive response represented the seamlessness of the relationship amongst codes and sanctions rather than as an act of political, sovereign, or legislative will (see O’Connor 2002: 46-55). Important for the development of penal standards was the fact that penal codes also aimed to correct, as Foucault (1977/1995: 78-79) explains, “badly regulated distributions of power,” and the “privileges that made the implementation of law inconsistent,” in order to overrule the “innumerable authorities that cancelled each other out.”

Important to note are the ways in which these penal codes were made state-specific by the geo-political context of each locale, following, as Rousseau (1762/2004: 59) argued, the objective that “institutions must be modified in each country to meet local conditions and suit the character of the people concerned.” As we will soon see, this objective of local specificity would carry over into the contemporary canon of penal standardization literature. As I have explained elsewhere (in Brisson-Boivin and O’Connor 2013: 520): “[w]hile these laws ushered in a new age of penal justice and a distinctly ‘modern’ approach to coding conduct, the idea of homogenous [penalty] remained limited by the Westphalian division of penal authority, where each limited state had its own coding scheme and margin of tolerated illegalities.” Spurred by an increasing concern over the amount of differentially conceived penal codes that provided drastically disparate conceptualizations of crime and punishment, international organizations like the League of Nations (now the UN) began, in the early 1930s, to push for standardized definitions of offences and penal legislation; however, these efforts to universalize penal codes did not come without resistance from many states. For example, “the UK government argued that

the objective to reduce criminal law in all countries to a uniform system was misconceived and impracticable and that penal codes must remain a matter for the determination by the domestic law of each state,” (Brisson-Boivin and O’Connor 2013: 521). There was a strong desire among many of the participating countries within the League of Nations to maintain some semblance of political sovereignty in determining the definitions of criminal conduct and the accompanying punitive responses for this conduct. Recalling that penal codes were first developed as a technology limiting the king’s arbitrary power, it should come as no surprise that international efforts to universalize penal codes on a global scale had failed. This is an important moment in the history of penal standardization since it is the first instance in which advocates for standardization were faced with the tension between universalization and specificity (what would much later be dubbed ‘domestic customization’). In this particular moment in history—at the birth of penal codes—a distinction had to be made between universalization, which rides roughshod over national specificities in penalty, and what would soon become standardization, which allows for a certain amount of variation in penal practice—the standard would operate as a norm, not an imperative.

The League of Nations utilized the momentum generated from this failure to universalize classifications of criminal conduct, shifting its attention from efforts to universalize penal codes to the development of technologies to measure and institutionalize minimum standards for penal practice with a particular focus on the treatment of prisoners. “Here, the focus of League efforts shifted to the state’s ability to care for its (incarcerated) subjects, whatever penal law held sway, through accountability measures and procedural norms based on the Rules for the Treatment of Prisoners which took a ‘humanitarian and social point of view’,” (International Penal and

Penitentiary Commission 1933 in Brisson-Boivin and O'Connor 2013: 521). These Rules problematized punishment practice that was bodily, badly distributed, and non-uniform in application with a specific focus on limiting the use of excessive confinement practices, as well as practices that failed to implement some form of a socially redeeming punishment—or rehabilitative and reintegrative punishment. As the international network of penal government expanded, and more diverse sets of penal codes were developed, the costs of uniformity in the provision of safety and security afforded by swift and certain punishment escalated dramatically ushering in the need for regulation. The Rules for the Treatment of Prisoners (1933) would be developed into the United Nation's Standard Minimum Rules for the Treatment of Prisoners (SMRs) in 1957, which to this day comprise the foundation of penal standardization focused on the human rights of prisoners. While previous attempts to govern crime internationally through standardized penal codes failed, a concentration on standardized procedural norms and assessments of penal administration and architecture—the substantive elements of penalty—avoided some of the concerns about governing too much and encroaching on the sovereign authority of states (Brisson-Boivin and O'Connor 2013: 521). Penal standards aimed to address a new set of problems and questions, primarily: how to actualize the objectives of penal government in such a way that protects the human rights of prisoners? This new focus on the regulation and administration of penal government kept intact the political sovereignty of states in determining punitive responses, while developing morally superior forms of penal practice, since the SMRs are predicated on prisoner human rights.

The SMRs were adopted by the first United Nations congress on crime and the treatment of offenders, held in Geneva in 1955, and approved by the UN Economic and Social Council in

July 1957. While not legally binding, the rules provide guidelines for international and domestic forms of legal imprisonment. According to the SMRs the intention is not to provide a model prison system; instead, through a consensus of member states, the rules determine “what is generally accepted as being good principles and practices in the treatment of prisoners and the management of institutions,” (SMR 1957: 2). The SMRs (1957) provide 95 rules for the treatment of prisoners, covering various elements of penal administration and staffing needs, the construction or spatial design of the prison, the cognitive and affective wellbeing of prisoners, prisoner labour and wages for work, the social and collective needs of prisoners, disciplinary practices, the legal rights of prisoners and obligations of penal administration, as well as the spiritual and cultural needs of prisoners. In the following sections (and in the following case studies in Chapter IV and V) I will demonstrate how the acute technical focus of penal standards does, in fact, problematically promote the prison as a model penal system with a particular spatial design, administrative structure, and set of best practices. Nevertheless, contemporary penal reformers such as Prison Reform International (PRI 2001: 13) promote the SMRs as:

not prescribing some perfect model prison system...since it would...take no account of the economic, social, historical and political variation between different countries and, since no prison system can achieve and maintain permanent perfection, would deny the necessity of striving to achieve continuous positive change.

The SMRs are said to cover a field which is constantly developing and so the rules are not intended to preclude experimentation, provided such experimentation is in harmony with the SMR principles (SMR 1957: 2). According to the SMRs (1957: 2), “it will always be justifiable for the central prison administration to authorize departures from the rules in this spirit;” that is, the spirit of experimentation. Since their inception, the SMRs inherited the tension of

universalization and specification inherent in historical attempts to codify punishments. Penal standardization had to manage the desire for a recognizably normative, albeit contradictory, set of penal practices and policies (such as the educational re-training of prisoners and the containment and confinement of prisoners in cells) as well as the desire for self-determination amongst a variety of penal administrations globally. Further, penal standardization which promotes the prison, imperfect as it is, as the model system of punishment, does *not* take into account the economic, social, historical, or political variation between countries. Rather, standards attempt to engineer punishment within prisons in such a way as to demonstrate regular and accountable punishment, all the while recognizing a need for flexibility in penal administration, such that accountability is demonstrated in a customized mechanics of technical punishment that is said to ensure prisoner human rights.

Similar to the goals of penal reform in the late 18th century, penal standardization problematically attempts to extract penal policy and practice from the power to punish by promoting a set of technical standards for ‘good’ penal government. Consistent with Mitchell’s (2002: 100) conceptualization of a post-colonial relationship of power, which sees its object at a distance, the contemporary project of penal standardization sees punishment as a comprehensive, self-contained object. As such, the problem(s) of coordination, administration, and what Prison Reform International—PRI (2001: 7) calls a ‘duty to care’ for prisoners can be measured, analyzed, and addressed by a form of power (standardization) that appears to stand outside the object of punishment and grasp it in its entirety. I agree, with Valverde (2015: 58), that “seeing the world and its population from above, whether in order to stake a claim or to generate descriptions that dominate, edify and/or entertain, is not only implicated in governance but is

itself governance.” Standardization is a particularly shrewd mechanics of government in that it attempts to provide a God’s eye view (see Putnam 1981: 49-51; and Harraway 1988) of penalty without universalized prescriptions for penal practice.

According to PRI (2001: 7); “When the state deprives a person of liberty, it assumes a duty of care for that person, primarily....to maintain the safety and wellbeing of the individual.” The problem for penal standardization, as I mentioned earlier, was how to actualize this ‘duty to care.’ As a solution, penal standardization would align itself with the principles of universal human rights¹⁹ enshrined in international laws and norms. This alignment with international human rights law served a further purpose of attracting a wide assortment of international organizations, nation states, state-authorized penal administrations, non-governmental organizations, and local penal justice advocates to accede to penal standardization as a means for managing penal administration and the conditions of confinement for prisoners. As of January 2015, 122 states around the globe have acceded to the statute of Rome, including Canada (Haiti has signed but not ratified the statute). The statute, which provides signatory countries with provisions on penalties and penal enforcement, clearly states that “punishment is widely understood across the globe as encompassing practices of confinement and containment over specific periods of time,” (Rome Statute 2002: 54). Important for my research, are the ways in which these international declarations validate the use of ‘confinement and containment,’ or

¹⁹ The SMRs (1957) were said to (re)produce the central tenets of: The International Covenant on Civil and Political Rights (1966); The Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (1984); The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988); The Basic Principles for the Treatment of Prisoners (1988); and The Statute of Rome (2002) which is the treaty that established the International Criminal Court.

incarceration, as a globally accepted punitive response. Further, aligning the carceral response with international human rights meant that while people held in lawful incarceration forfeit, for a specified period of time, their right to liberty: “all human beings have fundamental human rights. They cannot be taken away without legal justification,” (PRI 2001: 6). In other words, while punishment via imprisonment involves the legally justified annulment of an individual’s right to liberty, for a specified period of time, punishment should not subject prisoners to treatment that further violates their rights, safety, and security. This is the primary dilemma with which penal standardization must contend: finding a balance between too much (rights violating) punishment and not enough (rights affirming) punishment. As a solution, penal standards provide a technical means for regulating penal conduct in which standards seek to elicit self-government on the part of states (and state-authorized penal administrations) as well as more directly on human subjects (specifically the regulation of conduct for prisoners and COs).

Measurement acts as a method of verification within penal standardization, replacing what Garland (1997: 348; and 1997:175-178) deemed were the informal, socially derived relations of trust producing punishment such as the family, school, and community. I agree with Michael Power (in Shore 2008: 283; also see Power 1994) that there is far too much complicity with the ‘fashion for quality assurance mechanisms,’ like penal standards, that appear as natural solutions to the problems of imbalanced, inhumane, or immoral punishment. Standards are neither neutral nor politically innocent practices designed to promote transparency of efficiency; rather, they are disciplinary technologies aimed at establishing new norms of conduct (see Shore 2008: 283). Standards provide the conditions that make a laboratory of penal governance possible, whereby, far from neutralizing conflict, the introduction of penal standards should be

seen as “an emergent zone of politics in its own right,” (Walters 2011: 157). Penal standardization and its accompanying technologies of calculation and regulation are both contingent and fixed, “of varying precision and are simultaneously democratic and tyrannical as forms of normalized transparency,” (Power 2004: 780).

Further, “waning confidence in steering and self-regulating capacities of civil society institutions and practices coupled with diminishing faith in its intellectual, economic, and political leadership has led to demands for the mobilization of mechanisms to identify and fortify civic institutions that are deemed problematic,” (O’Connor et al 2014: 314). Just as the power to determine crime and punishment needed to be extracted from the authority of a singular sovereign (in the 18th century), the power to punish, fortifying the democratic institution of the prison, involves a group of states, organizations, and individuals mobilizing a mechanics of regularization in order to extract punishment from purely *social* networks, thereby fortifying the prison as a democratic and civil institution. In this way we have come full circle, or perhaps we have never actually solved the problems facing 18th century penal reformers: extracting the power to punish from a singular authority without dispersing this power so much so that it loses its political force.

As will become clear (in the case studies), the use of penal standards as a measure of a state’s civility and democratic capabilities invokes many of the ironies originating in Peter Sloterdijk’s installation on inflatable democracy or parliament. According to Latour (2005: 6) Sloterdijk’s art installation²⁰ suggests, “that the US Air Force should add to its military

²⁰ Originally presented in 2006 for the *Konferenz für Demokratie und Wertegemeinschaft*—Conference for Democracy and Shared Values in Karlsruhe Germany.

paraphernalia an [inflatable] parliament that could be parachuted at the rear of the front, just after the liberating forces of the Good had defeated the forces of Evil.” Sloterdijk’s installation offers a brilliant commentary on the contemporary political hubris that understands democracy as a product for export: “the mobile plastic, inflatable dome can be used all over the world to hold parliamentary meetings...within 90 minutes the structure can hold 160 members of parliament,” (Finoki 2006: 1). The same political and ideological hubris that sparked Sloterdijk’s inflatable democracy lies at the heart of penal standardization missions which promote standard penalty as a means to positively boost the democratic character of a state’s penal institutions. Penal standards, like Sloterdijk’s imagined inflatable parliament, are parachuted into various geo-political contexts as a humanitarian and civil mechanism which promotes the state’s monopoly over the means of punishment, replacing informal relations of trust with a formalized system of punishment that can be subject to repeated validation. As if penal standardization missions do not first have to come to know and appreciate these informal relations of trust, the local, socially derived logics and practices of punishment, and the deeply entrenched systemic inequalities which interlock and sustain sub-standard or non-standard punishment, before deploying the machinery of penal standardization in a specific geo-political location.

3.3 Changing Punishment in Canada

Canada is a legally pluralist state, meaning it recognizes both common and civil law; however civil law is only applicable to private matters within the province of Quebec. Civil law is based on written codes which stipulate the legal rules governing relationships among citizens and property in Quebec (Law Commission of Canada 2006: 4). Common law is the legal tradition

applied throughout the rest of the Canadian Provinces and Territories as well as federally. The legal principles of common law are developed through precedents based on the decisions of judges in previous cases that act as guides, influencing a judge's decision in a similar case (Law Commission of Canada 2006: 4). But while Canada is a legally pluralistic state, Indigenous laws have been, and continued to be devalued, and lack the legal authority within Canada to be considered valid. Chapter V, on the Nunavut case, will provide a more in-depth discussion of the history of penalty in Nunavut engaging the work of Indigenous legal scholars (such as John Borrows, David Milward, Val Napoleon and others) who have outlined the ways in which Indigenous justice continues to be ignored, repressed, or concealed since Indigenous legality is not recognizable within contemporary justice mechanisms such as penal standards.

In Canada the power to punish is commonly referred to as corrections, which connotes a variety of punishmentalities from rehabilitation to incapacitation, whereby prisoners correct their criminal behaviour through practices such as self-discipline and examination, obedience to authorities, and the establishment of positive social connections. At the time of the establishment of the SMRs (1956), the minister of justice and attorney general (Stuart S. Garson) appointed a committee to inquire into the principles and procedures of Canadian penal justice supported by

the leading penal reform organization in Canada—the John Howard Society.²¹ Fauteux (1956: 5) and colleagues explain ‘corrections’ is a term that has come into use in Canada to describe “the total process by which society attempts to correct the anti-social attitudes or behaviour of the individual.” Interestingly, Fauteux et al. (1956: 5) note that it is society doing the correcting of these undesirable (criminal) conducts, illustrating what Garland (1996 and 2000) termed the everyday social significance of punishment. However, the advancement of a standard penal science in Canada would relegate socially oriented punishment to a secondary role as the Correctional Service of Canada—CSC (established in 1979) began to take-up matters of corrections (punishment, treatment, reformation and rehabilitation) and the various means by which these objectives are obtained.

CSC is responsible for all prisoners serving sentences of two years plus a day (two years or longer), including life sentences in Federal prisons, as well as under community supervision (or parole) (Public Safety Canada 2014a: 1). The Provincial and Territorial governments of Canada are responsible for managing prisoners serving sentences of less than two years in a Provincial prison or under community supervision (or parole) (Public Safety Canada 2014a: 1). The primary body of legislation governing Canadian corrections is the Corrections and

²¹ The committee is comprised of Fauteux and three colleagues: Gerald Fauteux; William Common with judicial experience in the enforcement of criminal law; Jos McCulley who had first-hand experience in the operation of the penitentiary system; and J. Alex Edmison who had long been prominent in prison after care work (Fauteux 1956: 4). Fauteux and colleagues utilized the work of several earlier reports (at the federal and provincial levels) which document attempts to reform correctional practice in Canada including: the Report of the Royal Commission Concerning Jails (Nova Scotia 1933); the Report of the Royal Commission to Investigate the Penal System of Canada (Archambault Report 1938); the Report of the Saskatchewan Penal Commission (1946); Report of the Commission Appointed by the Attorney General to Inquire into the State and Management of the Goals of B.C (1950); and the Report on Reform Institutions in Ontario (1954) (in Fauteux 1956: 2).

Conditional Release Act (or CCRA)²² which sets out the principles of corrections that “contribute to the maintenance of a just, peaceful and safe society by; carrying out sentences through the safe and humane custody and supervision of offenders and by assisting in the rehabilitation and reintegration of offenders through the provision of programs in prisons and in the community,” (CCRA 1992: 4). Public safety in corrections is achieved through the coupling of rehabilitative and reintegrative punishmentalities with punitive and incapacitation punishmentalities—a practice which stems back to the inception of the SMRs.

The ‘Fauteux et al. report’ (1956: 2), claimed that all previous inquiries into a ‘Canadian penal science’ were concerned primarily with the management of penal institutions rather than with the conditions of imprisonment for prisoners—which is “the subject matter that constitutes the specific terms of reference,” for Fauteux and colleagues. Along with visiting a “representative sampling of Canadian prisons,” Fauteux et al. visited England, France, Belgium, and the US “to see in operation the many types of institutions that have been established in those countries for the treatment and training of different types of offenders,” (Fauteux et al. 1956: 3). While Fauteux et al. (1956: 89) note that certain observations were germane to “the local custom and national character of the places they visited—and not suitable for Canada,” there were other features which “impressed [the group] as being based on sound principles that are applicable to

²² The CCRA is an act respecting the policy and practices of corrections as well as the conditional release and detention of offenders (CCRA 1992: 1). The act was assented to on 18 June 1992 by Her Majesty the Queen and by the senate and house of commons of Canada (CCRA 1992: 1). The act specifies the responsibilities of CSC, the Commissioner of Corrections, and the Correctional Investigator of Canada (CCRA 1992: 6-127). The Commissioner’s Directives—CDs of CSC—are issued under the authority granted by the CCRA of the commissioner of CSC: currently Mr. Don Head (Mr. Head has been commissioner of CSC since 2008).

any country including Canada.”²³ These include: the integration of an orderly system of corrections; a system of adult probation; an emphasis on treatment and training rather than strictly incarceration; specialization of treatment; and full scale experimentation of penal practice. The ‘Fauteux et al. report’ (1956) hits on the crux of penal standardization: determining what constitutes normative penalty such that it can be applied as standard practice across a variety of geo-political contexts; and what constitutes “local custom and/or national character,” such that they are exclusive to a particular geopolitical context.

Around the same time that the ‘Fauteux report’ was being circulated (1962), the John Howard and Elizabeth Fry Societies of Canada were established to carry out the mission of ‘consistent rehabilitation and reintegration of prisoners in Canada.’²⁴ The early work of the Canadian John Howard Society focused on the role of public education; to review, evaluate and advocate for changes in the criminal justice process and to speak out on matters involving prison conditions as well as criminal law and its application (John Howard Society, ‘About’ 2015). Similarly, the Elizabeth Fry society worked to encourage the decarceration of women and to increase availability of community sanctions for women (Canadian Association of Elizabeth Fry Societies 2015). Not surprising then, at the same time that the SMRs were being ratified at the international (UN) level, in Canada, amongst prison reformers, there was an increased concern

²³ Unfortunately, the ‘Fauteux et al. report’ does not indicate how the group determined which international features were sound principles applicable to Canada.

²⁴ Prominent penal reformist John Howard studied the conditions of English and European prisons and reformist Elizabeth Fry was concerned with the treatment of women and children in English prisons. Both Howard and Fry played a significant role in the establishment of the ‘modern’ prison reform movement (beginning in the 18th century) (John Howard Society, ‘About’ 2015; and Canadian Association of Elizabeth Fry Societies 2015).

with the conditions of punishment for prisoners evident in the mandate of the Fauteux report and the missions of the John Howard and Elizabeth Fry societies of Canada.²⁵

Fauteux and colleagues (1956: 89) explain that the “true purpose of punishment is the correction of the offender and not merely retribution by society.” Fauteux et al (1956: 89-91) emphasize the use of community corrections (associated with a reintegrative punishmentality), more varied and specialized treatment centres especially for addictions and “mental afflictions” (associated with the rehabilitative punishmentality), an individualized program of discipline for ‘offenders’ (such that the punishment acts as both a specific and general deterrent), and that judges visit the prisons they are sentencing convicted persons to in order to gain a sense of the seriousness of implementing a carceral sentence. For Fauteux et al (1956: 90):

Diligent enforcement of criminal law is of the essence in the defense of the community and its members against criminals. Penal sentences are preventative if the offender becomes a better, and not worse, citizen than he was when first brought to court. Otherwise, [penal sanctions] are illusory and even detrimental to the purpose they were meant to achieve...the failure of a few to rehabilitate cannot be the failure of society to attempt to reform the majority.

The ‘Fauteux report’ (1956) marks a moment in Canadian penal history in which the diligent enforcement of criminal law is directly related to the rehabilitation of prisoners, whereby rehabilitation was an indication of the success of the penal institution in Canada. Successful rehabilitation was determined by low rates of recidivism (or a relapse into criminal behaviour—often following a sanction or punishment for a previous crime) in which prisoners returned to society as corrected, contributing, non-criminal members. Fauteux et al.’s (1956: 5-6) report, was

²⁵ By February 1962, the John Howard Society was formed in all provinces except Quebec (Quebec joined in 1980 and the Northwest Territories joined in 1994) (John Howard Society, ‘About’ 2015) and there are currently 24 Elizabeth Fry societies across Canada (Canadian Association of Elizabeth Fry Societies 2015).

deeply committed to the rehabilitative and reintegrative punishment coupled with a logical and orderly system of corrections, since an emphasis on rehabilitation and reintegration was most compatible with the national character of Canada (as a peaceful and non-violent nation).

Nevertheless, Fauteux et al. (1956: 5,10) note a primary concern regarding the lack of public interest in the subject of corrections which, “at times, since confederation, has amounted to an apathy amongst the Canadian public...and ultimately, the kind of correctional system that Canada gets will depend upon what kind of system the people of Canada want.” As we will soon see (in the case studies) the Canadian character of penalty has changed significantly from the reintegrative and rehabilitative emphasis of the ‘Fauteux et al. report’ (1956). The legacy of contemporary penalty in Canada, ushered in by an almost decade long conservative ideology of ‘tough on crime,’ is the incarceration of people at a historical high of 492 per 100,000, or an average of 140,000 adult prisoners incarcerated in either provincial, territorial, or federal corrections on any given day in 2013-2014, costing more than four billion dollars in Canadian penal operations (Statistics Canada 2015a). Despite the stark contrast in punishment, public apathy regarding punishment is a key element of moral sovereignty produced through the state’s monopoly over the power to punish, which aims to engineer fear regarding the need to protect and ‘defend the community against criminals,’ (Fauteux 1956: 90). As the reports that follow Fauteux et al. indicate, this discourse of protection became a central element of the political work of the prison in Canada, whereby prisons are indicative of the state’s ability to protect citizens against the often exaggerated dangers of crime, reinforcing the state’s primacy as protector/punisher.

Following 'Fauteux et al.'s report' (1956), in 1965 the Canadian Committee on Corrections was appointed to study the "broad field of corrections in its widest sense and to recommend...what changes, if any, should be made in the law and practice relating to these matters in order to better assure the protection of the individual and, where possible his rehabilitation, having in mind always adequate protection for society," (Ouimet et al.1969: iii, 1).²⁶ The 'Ouimet et al. report' (1969) emphasizes a balanced punishment in which the protection of society is counterbalanced with the protection of incarcerated individuals. This balance, like the 'Fauteux et al. report' (1956), requires the mutual efforts of both rehabilitative and reintegrative, as well as punitive and incapacitation punishmentalities. Similar to the 'Fauteux et al. report' (1956), there remained a desire to cultivate a Canadian penal science. As such, along with visits to multiple Canadian prisons, interviews with correctional staff, and justice ministers, Ouimet et al. (1969: 5) conducted interviews with Canadian university faculty and attended several conferences on the state of corrections in Canada. The 'Ouimet et al. report' (1969: 9-11) made some important connections regarding the "interrelation of law enforcement, judicial, and correctional processes," and that together these three sectors of the justice system "formed an inter-related sequence and should not operate in isolation from one another." This inter-related

²⁶The committee is comprised of four members: Roger Ouimet- Chairman, G. Arthur Martin-lawyer and vice chairman, J.R. Lemieux- Deputy Commissioner R.C.M.P Quebec and member, Dorothy McArton- Executive Director family bureau of Winnipeg and member, W.T. McGrath- Executive secretary Canadian corrections association and secretary. The committee also had the assistance of a panel of consultants including; judges, professors, deputy attorney general for Ontario, director of probation services in Ontario, director of correctional services in Quebec, director of the Elizabeth Fry society in Toronto, director of the John Howard society in Toronto, director reception homes and training schools in Quebec, director of child welfare in P.E.I, the police chief of Toronto, the director of the Salvation Army in Toronto, the director of mental health services in Newfoundland, and the chairman of the Ontario parole board (Ouimet 1969: 2-4).

character of police, courts, and corrections reinforces the importance of the penal institution as part of a triad of justice, as part of a series of democratic institutions which work together to protect Canadians in a just manner—by not punishing too harshly, or too softly. These interconnections amongst police, courts, and corrections are particularly clear in the cases of Haiti and Nunavut in which distinctions between the three sectors are often difficult to make. For example, in Haiti COs operate as a branch of administrative police under the auspices of the Haitian National Police force (HNP), and in Nunavut, due to a lack of human and financial resources, police officers sometimes have to fulfill the role of CO particularly for individuals in remand detention (persons incarcerated prior to their trial or formal charges).

At its core, the report of the Canadian Committee on Corrections (Ouimet et al. 1969: 11) found, “the basic purpose of criminal justice is to protect all members of society, including the offender himself, from seriously harmful and dangerous conduct as well as the inclusion of the offender as a member of society entitled to full protection.” The ‘Ouimet et al. report’ (1969) infuses corrections in Canada with an ethos of protection moving beyond the ‘Fauteux et al. report’ (1956) in the suggestion that both Canadian society and Canadian prisoners are in need of protection from “harmful and dangerous conduct.” While punitive incapacitation is an important element of societal protection, the ‘Ouimet et al. report’ (1969) remains principally committed to reintegration as the means by which prisoners are protected as “full members” of society. It is important to note the character of Canadian corrections at the time of the ‘Ouimet et al. report’ (1969) since the contemporary penal landscape in Canada—characterized by punitive incapacitation—is so far removed from the focus on rehabilitation and reintegration cited in the early formation of Canadian penalty.

In the trajectory of efforts to standardize Canadian penalty, following the ‘Ouimet et al. report’ (1969), a task force on correctional program review was formulated in 1986 to provide recommendations to the Canadian government in order to improve the standard character of the Canadian justice system (‘Study Team Report’ 1986: 4).²⁷ The ‘Study Team Report’ (1986: 11) highlights a turning point in corrections “having to do with stresses inherent in operating overburdened, costly institutions in times of restraint.” As a result of this report, the costs associated with maintaining penal institutions in Canada became a perennial issue for Canadian penalty. It should come as no surprise that the financial burden of penalty should surface during the term (1984-1993) of Canadian prime minister Brian Mulroney, known for his efforts to scale-back government funding and whose second term as prime minister was marked by an economic recession (in 1989, just three years after the justice Study Team Report). The reported financial burdens incurred by the Canadian state in the operation of penal institutions are important since such developments highlight a tension in penalty (in Canada and abroad): how do states justify the exorbitant expenses required to operate prisons? (recall Canadian penal operations cost four billion dollars in 2013-2014). More specifically, how does the state justify these expenses in the face of budgetary cutbacks to other social goods like employment, education, childcare, healthcare, and so on? The Haiti and Nunavut case studies will confront this tension in specific, contextual detail illustrating how the ethos of protection which permeates the penal

²⁷ The team members included: team leader Nicholas D’Ombra assistant secretary to the Cabinet Privy Council Office; deputy team leader Mary Dawson warden at Kingston Penitentiary; director of research, development and grants Stephen Goban from the Social Science and Humanities Research Council of Canada; members of the Department of Justice; those involved in the preparation of legislations; and members of corrections, parole, police and emergency planning (‘Study Team Report’ 1986: 7-9).

standardization literature (both in Canada and internationally) promotes punishment as a paramount social good—a solution to the Hobbesian problem of social order—to be unconditionally administered through the democratic institutions of the state, as a manifestation of the state’s moral sovereignty.

Another important finding of the ‘Study Team Report’ (1986: 12-14) is a significant shift towards the use of information technology in penalty, and the strains an ‘information society’ is placing on the already strained capacity of the justice system. According to the ‘Study Team Report’ (1986: 12), if the law is to remain the basis of social conduct the justice sector must develop a response to the increased social significance of technology. In other words, Canadian penalty had to catch up with, and adapt to technological social changes by developing new ways for recognizing and penalizing new forms of crime (e.g. cyber crimes such as identity theft, harassment in chat rooms, and computer hacking). If punishment was to remain socially relevant it had to incorporate the arts of technology, such as security cameras, computerized prisoner files, and electronically controlled cell doors and locks into the daily operations of the penal institution (‘Study Team Report’ 1986: 12-14). Important for my research are the ways in which this technological boom in penalty lead to yet another tension in punishment: that of too much versus not enough technology. A modern penal system is characterized by the use of technology (as the Haiti case study illustrates); however, an over-reliance on technology to fulfill the functions of punishment (such as monitoring or managing prisoner conduct) is indicative of a failure in penal administration (as the Nunavut case study demonstrates). As such, penal agents need to adjust penal standards in order to reflect the use of technology (such as the use of security cameras to monitor movement within the institution) while maintaining the historical

integrity of standard penalty such that technology does not become the scapegoat for failures to meet the standards.

The ‘Study Team Report’ (1986: 290-291) pays particular attention to the creation (in 1973) of the Office of the Correctional Investigator of Canada (OCI) as an independent branch of government to review inmate complaints within Federal prisons in Canada. Federal inmate complaints numbered approximately 782 in 1973-1974 and reached upwards of 1,700 at the time of the ‘Study Team Report’ (1986: 291). In 2013-2014 there were over 5,000 registered prisoner complaints in federal prisons across Canada (OCI report 2013-2014). From the outset the OCI was established to deal specifically with the conditions for, and treatment of, prisoners in Canada, and the SMRs (1957) operated as the primary means through which the OCI would determine if Canadian penalty was meeting its human rights obligations (OCI Interview II June 2015). In 1996, members of the OCI were asked by the chief commissioner of the Canadian Rights Commission to create a strategic model to ensure human rights compliance in Canadian corrections (OCI Interview II June 2015). This working group on human rights returned to the model employed by Fauteux and colleagues in 1956, comparing Canadian penalty with several international jurisdictions that “might offer instructive suggestions,” for enhancing CSC’s compliance with prisoner human rights (CSC 1997: 9).²⁸ The report (CSC 1997: 9) found that “across common social contexts, those responsible for administering prisons are faced with an ever more difficult task of ensuring legal standards of humane detention are met while simultaneously maintaining staff rights and the security of society at large.”

²⁸ Advice was sought and received from; France, Germany, the Netherlands, the United Kingdom, Denmark, Norway, Sweden, Australia and the United States (CSC 1997: 9).

During the 1990s corrections in Canada (the period in which Liberal Prime Minister Jean Chrétien was in power) focused primarily on the needs of youth and women, as well as the demands placed on penal administrations as a result of rising rates of disease within Canadian prisons (Justice Laws website 2016). In the 1990s, as the number of HIV/AIDS cases increased in Canadian prisons, health issues became a major focus of penal administrations (CSC 2014). In 1998 one in every five prisoners in Canada had tuberculosis (considerably higher than the general population), and by December 2000 the rates of HIV/AIDS reached a staggering 217 cases crippling many of the health programs within Canadian penal administrations (CSC 2014). In the 2000s, including the time in which I conducted research for this project, Canadian penalty was characterized by the Conservative regime's (led by Prime Minister Stephen Harper from 2006-2015) 'tough on crime' policies. During its tenure as a minority government (2006-2011), the Conservative government passed 61 crime bills—although only 20 of them were made into law (Doob in Comack et al. 2015: 5). A significant shift in Canadian penalty from rehabilitation to warehousing, or the punitive incapacitation of prisoners, took place under the Harper government's 'tough on crime' approach to corrections. The Harper government shifted Canadian punishmentalities and practice in the opposite direction of those introduced by the early committees on Canadian corrections established at the time of the UN SMRs (1957) by "framing its policies on ideology...rather than on evidence of what actually works to tackle crime," (Comack et al. 2015: 1).

Under the Harper regime, Canadian prisons have become ill-advisedly overcrowded and dangerous places for prisoners and COs alike. According to Public Safety Canada (2015: 36), "33,188 people were incarcerated in Federal and Provincial/Territorial facilities in 2004-05...that

number rose each year...in 2011 39,958 people were incarcerated indicating a 20% increase over the eight year period with increases particularly evident for women, Aboriginal people, and black people.” As Comack et al. (2015: 8) observe in their report on the *Impact of the Harper Government’s ‘Tough on Crime’ Strategy*, the international principle is that people go to prison as punishment but “the Harper government has taken the view that people should go to prison *for* punishment.” Under the Harper regime’s ‘tough on crime’ approach, the majority of correctional funding in Canada has shifted to infrastructure—the consequences of which are vividly apparent in my case studies—rather than prevention or intervention. Despite closing Kingston penitentiary in 2013, and claims that no new prisons would be built in Canada, the Conservative government built 227 units within existing medium security units across Canada (one of which I studied in my observations at Beaver Creek Institution)—the consequences of which are that these living units tend to operate as maximum security units within medium security facilities (see Comack et al. 2015: 14). One of the Correctional Officers interviewed by Comack and colleagues (Comack et al. 2015: 16) had this to say about the impacts of the Harper government on Canadian penalty: “It’s sad because we’ve gone from a leader in the world...[in terms] of our contribution in [corrections]. And now, I mean, it’s an embarrassment is what it is. I mean, we’re archaic in how we do our Federal level work in Canada.” Interestingly, as my case studies will demonstrate, the perception that penal government is archaic is often used by penal agents to describe sub-standard and non-standard penalty typically associated with ‘third world’ countries such as Haiti or significantly impoverished Territories such as Nunavut.

Nevertheless, the endurance of state-centric penalty in Canada is understood as offering insurance for public safety and, more importantly for my research, holds high the principle that

corrections in Canada fulfills punitive sentences through ‘safe and humane custody’ (CSC 2012a: 1). In his examination of the ‘birth’ of the prison, Foucault (1977/1995: 57-58, 74-76, 91-92) makes the case that the shift from punishment focused on the body (through torture) to punishment focused on the inner-self of a prisoner (through disciplinary punishment in a prison) is *not* more humane. In fact, Foucault (1977/1995: 92) argues that this ‘humane way’ in punishment “cannot be attributed to some recognition of a profound humanity” within the prisoner, but is a “necessary regulation of the effects of power” produced in the utilization of the prison as the means through which punishment is exercised. Yet, centuries after the establishment of the prison we can still see the prevalence of fallacious claims that carceral sanctions are ‘safe and humane.’ This is because promoting the belief in state-centric penalty as the ‘humane way’ (Foucault 1977/1995: 92) to punish works to strengthen the moral character of the state—as the protector of society through the protection and custody of ‘criminals’ in prisons. The maintenance and management of an effective, standard system of punishment is a central component of the state’s responsibility to protect. As such, internationally recognized standards for normative penalty (which at their core remain the SMRs of 1957) are the vehicles through which prisoner human rights are protected, as well as the vehicle for a modern, orderly penal administration which protects the safety and security of society at large.

3.4 The Global Circulation of Punishment

The UN SMRs engage a myriad of different organizations: from development and humanitarian, to global financial aid, non-governmental and human rights organizations, military operations, and individual states and state-authorized penal organizations (such as CSC) contributing to the

development of penal standards. I want to draw attention to the ways in which this multiplicity of organizations and actors, motivated by a desire to appear morally upstanding through the recognition of prisoner human rights, engages in a circulation of punishmentalities found in penal standard documents replete with instruments for measuring penal performance. For example, “since 1915 the International Committee of the Red Cross (ICRC), acting on the basis of international humanitarian law, has been devising and conducting activities for the protection of prisoners...by means of prison visits...in an effort to maintain the physical and mental integrity and dignity of prisoners,” (ICRC 2005: 9). In 2005, the ICRC (2005: 9-11) developed a humanitarian handbook on “Water, Sanitation, Hygiene, and Habitat in Prisons” as part of a “global approach” to the management and regulation of prisons deploying a specifically humanitarian translation of penal standards. Couching the mission of penal standardization in humanitarian language is a powerful political tactic, as Kenton Storey (2016: 6) writes in his work on *Empire—Colonial Relations, Humanitarian Discourse, and the Imperial Press*: “Humanitarianism [is] a flexible political language that [can] be harnessed for various ends.” More often than not, penal standardization missions mobilize discourses that appear to align penal government with humanitarian law, social reform, and human rights, while in practice penal standardization missions are fixated on the spatio-material matters of punishment.

As another example, in 2011 the UN Department of Peacekeeping Operations and the Office of the High Commissioner for Human Rights rolled out the UN Rule of Law Indicators. The 135 indicators are grouped under the three interrelated sectors of the justice system: police (41 indicators), courts (51 indicators), and prisons (43 indicators) (UN Rule of Law Indicators

2011: 4).²⁹ The UN Rule of Law Indicators are designed to measure: performance; integrity, transparency and accountability; treatment of vulnerable groups; and organizational capacity (UN Rule of Law Indicators 2011: 4). Regarding standards for penal practice, the UN Rule of Law Indicators are understood as “part of an emerging body of empirically based approaches to measuring the strengths and effectiveness of...correctional institutions,” (UN Rule of Law Indicators 2011: V). While the Rule of Law Indicators (2011: 2) aim to avoid prescriptions of effectiveness, preferring to remain “applicable in diverse settings,” the concentration on rules for penal administration, security and order, prisoner welfare and rehabilitation, and material and human resources suggests the endorsement of a multiplicity of normative punishment along the spectrum of punitive confinement to rehabilitation. Further, where earlier examinations of penal performance required teams of inspectors to make costly visits to the sites of governance (prisons), these contemporary international efforts to measure penalty require that organizations engage more readily in self-governance by subjecting themselves to questionnaires, surveys, and indicators—what Shore (2008: 281) calls ‘lighter touch’ practices of measurement. The payoff being that penal administrations that engage tools of self governance, like the UN Rule of Law Indicators for prisons, can demonstrate their compliance with international norms, bolstering the standard character of their penal organization, confirming the organization’s role as protective punisher.

²⁹ Several UN oversight bodies endorsed the Rule of Law Indicators including: the UN Department of Political Affairs, the UN Children’s Fund, the UN Development Programme, and the UN office on Drugs and Crime. For a full list of organizations behind the UN Rule of Law Indicators see UN Rule of Law Indicators (2011: 1). The implementation guide was assisted by academic consultants from: the Vera Institute of Justice, members of Altus Global Alliance, the University of Fraser Valley, and Harvard University. Specific government contributions came from Australia, Canada, Finland, Haiti, Liberia, Luxembourg, Norway, Sweden, and the UK.

While the Rule of Law Indicators are informed by international human rights and penal justice standards (such as the SMRs), they do not directly assess compliance with such standards (UN Rule of Law Indicators 2011: V). Instead, the UN Rule of Law Indicators provide a means for assessing and improving penal administration at the institutional (prison) level rather than a direct evaluation of a penal administration's ability to recognize the human rights of prisoners. The UN Rule of Law Indicators are indicative of a troubling disconnect within penal standardization documents, whereby the majority of penal standards fixate on penal administration, the materiality of punishment, and penal design while the conditions of imprisonment for prisoners (access to healthcare, dietary needs, mental health needs, spiritual needs, and so on) take a secondary role. The UN Rule of Law Indicators also do not measure how informal, traditional or extra-judicial mechanisms contribute to understandings of punishment and penal governance in specific locales (UN Rule of Law Indicators 2011: VI); yet, they are supposed to be flexible allowing for "domestic customizations," (UN Rule of Law Indicators 2011: 1). In other words, while the indicators presume that domestic customization is both knowable and beneficial for penal governance, they do not measure for, or provide any criteria that could be classified as components of this domestic customization. Instead, domestic customization is problematically relegated to adaptations that remain within the domain of state-centric punishment, via the carceral institution, explicitly eliminating any consideration of informal, traditional, or extra-judicial punishments in particular geo-political contexts. As the Haiti case study will demonstrate, many domestic customizations, such as *Clameur Publique*, or defacto detention based on public outcry, are rejected on account of their being too punitive as

well as operating outside the juridical authority of the state and are therefore non-standard (unbalanced) punishments.

Finally, I want to note recent efforts to modernize or revise the SMRs. In December 2010, the UN Commission on Crime Prevention and Criminal Justice established an open-ended inter-governmental Expert Group³⁰ for the purposes of exchanging information on best practices, national legislation, and existing international law for the revision of the SMRs so that they reflect recent advances in correctional science (UN Commission on Crime Prevention and Criminal Justice 2014: 6). The Commission noted the Expert Group's concern that "any changes should not lower existing standards but should reflect recent advances in correctional science and best practice," (UN Commission on Crime Prevention and Criminal Justice 2014: 6). Similar to other instruments of contemporary penal standardization, there remains an emphasis on maintaining the integrity of the SMRs, while "recognizing the need for expert legal and cultural specificities as well as the human rights obligations of member states," (UN Commission on Crime Prevention and Criminal Justice 2014: 7). My case studies will provide empirical evidence that the task of making such distinctions regarding culturally specific and standard penalty often falls under the responsibility of administrations and agents working to measure and improve

³⁰The meetings of the expert group on the revision of the SMRs would generally attract representatives from upwards of fifty UN member states, the Department of Peacekeeping Operations, the UN High Commissioners Office on Human Rights, UN Office for Project Services, UN Interregional Crime and Justice Research Institute, UN International Scientific and Professional Advisory Council, research organizations such as the Wallenberg Institute of Human Rights and Humanitarian Law, the Council of Europe, the International Red Cross, and upwards of 12 NGOs in consultation with the UN Economic and Social Council (UN Report on Meeting of Expert Group 2012a: 2). For a full list of member states, UN designates, research institutes and NGOs participating in the expert group, see UNODC Report on Meeting of Expert Group (2011: 3).

punishment practice from *outside* of a particular geo-political context (for example, the OCI in Nunavut, and CSC staff as well as START members in Haiti).

Nevertheless, the revision of the SMRs focus on: improving technical assistance; challenges in implementing the rules; and experiences in dealing with these challenges. The drafted recommendation document was to be considered at the 13th UN Congress on Crime Prevention and Criminal Justice held in Doha in April 2015; however, at the time of writing³¹, the Expert Group had not yet confirmed any changes or additions to the SMRs. I believe this has something to do with the group coming to an impasse regarding the insistence (since the group's inception in 2010) that the SMRs have "withstood the test of time and need not be completely re-drafted or substantially restructured since they remain relevant and applicable today," (UN Expert Group Background Note 2012a: 1; UNODC Expert Group Meeting 2012b: 2, 7). I find the sentiment that the SMRs have withstood the test of time, and are therefore an enduring fixture of normative, morally upstanding, and democratic penalty, immensely problematic. In his work on *Civilization, Power, and Knowledge* Norbert Elias (1998: 49-66), referencing the brutal violence of Nazi fascism, argues against the notion that society progresses in a linear manner in which it becomes markedly more liberal, democratic, or civil as time goes on. Similar

³¹ The UN Expert Group finalized revisions to the SMRs, called the 'Nelson Mandela Rules, which were unanimously accepted by the UN General Assembly in late 2015/early 2016. However, the revised changes were publicised too late in the writing process for me to analyze and incorporate the material into the thesis. Further, the Expert Group's revisions were highly targeted (focusing on eight specific themes of penal reform: prisoner's inherent dignity, vulnerable groups, medical and health services, restrictions and disciplinary sanctions, investigations of deaths and torture in custody, access to legal representation, complaints and inspection, and terminology) such that only 35% of the SMRs have been revised leaving the majority of the original (1957) Rules in tact (UN Office on Drugs and Crime 'Nelson Mandela Rules' 2016; UN News Centre 2015).

to Elias' (1998) work, which challenges the false self-evidence of civilizing claims, I challenge the claims of the SMR Expert Group, that standards have withstood the test of time and need not be completely restructured. Not only is such an argument non-productive, seeing as it has resulted in a standstill regarding revisions to the SMRs, but it also assumes that the state's monopoly over the power to punish—by virtue of operating for centuries—need not be questioned as the primary means through which punishment is enacted and governed. Further, such an assertion (that the SMRs and accordingly the state's monopoly over the power to punish have withstood the test of time) assumes that we need not entertain the idea of alternative models of punishment, at least not with much seriousness or the same depth of consideration one would give to state-centric, carceral punishments.

The notion that standards have withstood the test of time inscribes them with a static and fixed nature; however, the penal standardization documents I have cited here continually reference a need to address local customizations. The problem remains, as my cases will demonstrate, that customizations or amendments to penal standards that are culturally distinct are often interpreted by penal administrations, or agents working to measure standard penalty, as *non-standard*. This is because such customizations often embrace or encourage forms of penalty (such as *clameur publique* in Haiti or the use of outpost camps in Nunavut) that are beyond the confines of the state and/or project imbalanced punishment —punishment that is too harsh or too soft. Therefore, penal customization or reform within penal standardization missions is only acceptable so long as it preserves the dominance of state-centric penal government.

3.5 The Standard Web of Technical Penal Administration

The following section provides more explicit evidence of the first core argument that I outlined in the introduction of the dissertation: that penal standards advocate the principles and morality of human rights but primarily authorize technical, spatial, and material practices as evidence of measurable and, therefore, knowable standard penalty. As such, punishment as a social good or service, which aims to protect both prisoners and society from harmful or dangerous conduct, does so through the technicization of punishment rather than the actualization of prisoner human rights. The following sub-sections provide an analysis of the types of standards found within penal standard documents, tracing what Dean (2010: 83) calls governmental *technē*—the mechanisms, procedures, instruments, tactics, techniques, technologies, and vocabularies behind particular strategies of penal government. In doing so I begin to uncover the dimensions of human rights that exist within penal standards; that not all penal matters *matter* in the same way. Take for example our standing example of the prison toilet: while the toilet is a distinctly physical, tactile, and spatio-material instantiation of a prisoner’s dignity, so too is access to legal services, the recognition of multiple prisoner languages, and the availability of spiritual or cultural practices evidence of dignified punishment, albeit not in the distinctly material way of the toilet. While these matters cannot be heard like the flush of a toilet, felt like the cold steel of the toilet bowl, or measured to precise square feet like the space needed to install a toilet in a prison cell, these matters are critical elements of dignified punishment. However, I do not think we can go as far to say that these matters are immaterial, since they too are tied to an assemblage of technical/material punishment such as prisoner files, prison handbooks or assessments circulated in English, and cultural objects. While toilets and mattresses are important elements of

dignified punishment, to install a toilet or add a mattress to a cell and claim, full stop, that punishment is made ethical or humane as a result of these material objects is ridiculous. Nevertheless, the following examples of penal standards certainly indicate that in the field of penal standardization some matters *matter* more than others. While I could provide multiple examples for each of the nine types of penal standards I have developed, I will focus here on four: cognitive/affective, disciplinary, corporeal, and construction standards as illustrations.

3.5.1 Cognitive/Affective Standards

Cognitive/affective standards, primarily concerned with the mental and emotional development of prisoners, are an example of the ways in which rehabilitative and reintegrative punishmentalities intersect with enterprising punishmentalities manifested in training strategies. For example, the SMRs (1957: 6) state: “the ongoing education of prisoners is to be facilitated and schooling of illiterate youth is to be considered compulsory.” Many of the standard documents (SMRs 1957; Ouimet 1969; the UN Rule of Law Indicators 2011; CDs of CSC 2015; and the CCRA 1992) all make mention of the connection between educated prisoners and their ability to effectively reintegrate as employable, law-abiding citizens upon their release. Contemporarily, most Canadian federal prisons offer high school equivalency diplomas. For example, at Beaver Creek Institution it is required that inmates who do not have at least a grade 10 level of education be enrolled in the high school equivalency program on offer (Field Notes August 2015). According to the SMRs (1957: 6), “education is to be integrated with the educational system of the country so as to allow for continued education following release.” Of course, such a standard begs the question: what if there is no formal system of education in the

country? Or, what if the existing system of education is well below the internationally accepted norms for education?

Similarly, early standard documents such as the SMRs (1957: 7) provided several provisions for the mental health of prisoners; “a medical officer with some knowledge of psychiatry is to be available at every institution and prisoners suffering from mental abnormalities shall be regularly observed and treated in specialized institutions under medical management.” Such standards suggest a model of penal management which embraces medicalization and treatment rather than punitive incapacitation. Social theorists such as Goffman (1961: 3-60) and Foucault (1977/1995) have engaged in detailed analyses of the ways in which the prison and asylums share the same sorts of disciplinary tactics for managing their respective populations such as strictly routinized forms of interactions (eating, sleeping, bathing) resulting in the production of docile and obedient subjects. Contemporarily, the Expert Group revisions to the SMRs (UNODC 2012b: 5) as well as the UN Rule of Law Indicators (2011: indicator 118) construct the mentally ill as a vulnerable group whose needs should be protected.

However, as my case studies will demonstrate, despite the significance of standards highlighting the specific needs of mentally ill prisoners, more often than not penal administrations lack the human, financial, and material resources to effectively meet these standards. For example, in 2012-2013, 49% of federal prisoner populations in Canada received institutional mental health services, almost half of the federal prisoner population in Canada, indicating the immense need for mental health services within Canadian prisons (OCI report 2013-2014). Also, in August 2013, a snapshot of Canadian federal prisons indicated that 63% of incarcerated women were prescribed some form of a psychotropic medication (OCI report

2013-2014). Yet, rather than meeting the standard medicalized, psychiatric treatment model of punishment for mentally ill prisoners, Canadian penal administrations are increasingly utilizing a punitive, confinement model. For example, in 2013-2014 there was a 6.5% increase in the use of segregation across federal institutions in Canada. According to Solitary Watch (2015) prisoners in segregation are 31% more likely to have a mental illness and there is currently no upper limit on how long a prisoner can spend in segregation in Canada. According to the OCI report (2013-2014: 5) the suicide rate in federal prisons is seven times that of the population at large, with nearly half of prison suicides taking place in segregation. The mental health crisis in Canadian penal institutions is indicative of a failure to meet the needs of mentally ill inmates and certainly a failure to protect these prisoners from dangerous and harmful conduct.

3.5.2 Disciplinary Standards

Disciplinary standards, while engaging disciplinary, restitution, punitive and incapacitation punishment, also require materials, resources, and particular spatial designs to properly execute. Disciplinary standards are also acutely evident of the need for the penal organization to maintain a balance between too much (too harsh, cruel, or inhumane) punishment and not enough (too lenient, soft, or lax) punishment. According to the SMRs (1957: 3): “discipline shall be no more restrictive than what is necessary to ensure custody and order and no prisoner shall be employed in a disciplinary capacity.” Disciplinary standards involve the management of punitiveness; how the penal institution should respond when a prisoner does not follow the institution’s rules of conduct (e.g. refusals to submit to a body search), or misbehaves (e.g. being rowdy after lights out), or commits a further offence while under the supervision of the penal

organization (e.g. assaults another prisoner). These types of conduct are understood as requiring sanctioned responses on the part of the penal organization, and penal standards are supposed to act as safeguards to ensure such sanctions are balanced. The SMRs (1957: 3) indicate that the types of conduct considered inadmissible in the prison should be set by law, or organizational regulations, and prisoners need to be aware of these regulations upon admission as well as allowed to legally defend themselves against any charges they incur.

According to the SMRs (1957: 3), “cruel, inhumane and/or degrading punishment including corporal punishment and restriction to a dark cell shall be prohibited and punishment by close confinement or reduction of diet shall never be inflicted unless the medical examiner certifies the prisoner can sustain it.” Disciplinary standards, are materially and spatially based, for example; dark cells indicate cells designed without the use of artificial or natural lighting and reductions in diet are explicitly tied to the materiality of food and the body. Contemporary penal practice in Canada (CSC 2015: 567) involves an array of material objects of discipline including restraints, firearms, and chemical or inflammatory weapons (such as pepper spray or tear gas). According to the SMRs (1957: 4) disciplinary practices that involve the use of these specific material objects should only be used as a means of restraint but not applied as punishment. Once again, it is unclear how penal administrators are to determine what constitutes a situation of punishment or restraint and, more importantly, how a prisoner can possibly tell the difference. While penal administrators might utilize handcuffs in what they deem to be a situation of restraint, for the prisoner, being handcuffed could signify an act of further punishment. The Expert Group revisions on the SMRs (2012b: 4) suggests the complete banishment of reductions in diet and water, the suspension of visits as punishment, and the Group has taken to task the use

of prolonged or indefinite solitary confinement/segregation. According to the Expert Group (UNODC 2012b: 4), solitary confinement should be banned for prisoners sentenced for life or death (including by virtue of their sentence) and for pretrial detainees as an extortion technique. In all of these cases the use of solitary confinement is being re-assessed as too harsh, unbalanced, and therefore non-standard punishment. The Expert Group (UNODC 2012b: 4) states that solitary confinement should be used in exceptional circumstances only, for a short time, and properly recorded; however, all of these Expert Group revisions have yet to be verified by the UN and ratified by member states.

In Canada, the OCI (2013-2014) reported that restraints are increasingly being used against mentally ill prisoners—a practice widely recognized as harmful. The SMRs (1957: 5) state, “officers shall not use force except in cases of self-defence, attempted escapes or resistance to an order based on law or regulation and these cases must be immediately reported.” Similarly, the UN Rule of Law Indicators (2011: indicators 94, 95, and 108) measure the use of force in prisons and instances of violence. Use of force training was a widely cited practice amongst the penal agents I interviewed as a remedy for excessive use of force, in which correctional staff are trained to recognize the level of force required in various situations (CSC Interview August 2014). However, the OCI (2013-2014) report indicates that use of force interventions in Canada are trending upwards with a total of 1,740 use of force reviews occurring in 2013-2014, the most the Correctional Investigator has ever recorded in a single reporting period since his tenure began (in 2004). Again, force is problematically being used in situations in which the prisoner is engaging in conduct often associated with mental illness (OCI report 2013-2014). For example, the use of pepper spray in nearly 60.4% of all use of force incidents suggests an increased

reliance on security-driven responses to behaviours which indicate mental illness (OCI report 2013-2014).

Furthermore, segregation is a regular penal practice: section 31 of the CCRA (1992) legislates the use of administrative segregation “for the inmate’s own safety, the safety of the institution, and to keep inmates from associating with the general prison population.” Solitary Watch (2015) found that in 2014 across Canada black prisoners experienced a 100% increase in the use of segregation, Aboriginal prisoners experienced a 31% increase in the use of segregation, and there was a 12% decrease in the use of segregation for white prisoners.

Recalling that the SMRs are aligned with a body of international human rights legislation (such as the UN Declaration Against Torture and Other Cruel, Inhumane and Degrading Punishment) it would seem questionable at best as to why segregation continues to exist as a regular practice of punishment in Canada. However, interpretations of cruel, inhumane and degrading punishments are highly subjective and differentially understood depending on the position of the subject evaluating the penal practice. Segregation as punishment is a case and point: considered cruel and unusual by prisoners (as documented in the prisoner complaints reviewed by the OCI in 2013-2014) but a regular and repeated practice of CSC staff.

3.5.3 Corporeal Standards

Corporeal standards encompass penal standards which designate the management, control, care, and accommodation of the physical bodies of prisoners. A primary concern addressed by corporeal standards is the separation of certain bodies from other bodies, especially men from women and children from adults (SMRs 1957: 2; UN Rule of Law Indicators 2011: indicators

100, 116). Penal standardization documents (see Ouimet et al. 1969: 311; UN SMRS 1957: 2; and UN Rule of Law Indicators 2011: indicator 100) emphasize the primacy of security and protection, and maintain that the separation of categories is necessary for the effective provision of treatment and programming geared to these specific categories of prisoners. Corporeal standards also provide provisions for the adequate care of prisoners bodies including standards for prisoner hygiene, clothing, sleep, diet, exercise, and medical care.

According to the SMRs (1957: 2; as well as the UN Rule of Law Indicators 2011: indicator 99), “the sanitary facilities within the institution shall be adequate enough to enable prisoners to comply with the needs of nature when necessary in a clean and decent manner.” While seemingly obvious and mundane, proper sanitation is an obstacle for penal organizations globally. For example, the Haiti and Nunavut case studies illustrate controversies regarding the materiality of sanitation in prisons (specifically the decision to equip a prison with porcelain or steel toilets), as well as the ways in which penal organizations’ access to resources has a major impact on their ability to provide adequate, clean, and accessible sanitation facilities. Along with sanitation are standards (SMRs 1957: 2) regarding access to proper shower and bathing facilities, and the necessary articles for keeping oneself clean. Penal standards (see SMRs 1957: 2; CDs of CSC 2015: 352; and UN Rule of Law Indicators 2011) designate that all clothing for prisoners should be kept in proper condition, changed and washed frequently, and clothing should be appropriate for the climate in which the prison is located. Clothing is an important element of embodied penal governance, contributing to the disciplinary goal of constructing prisoner bodies as docile, since it works to establish distinctions between those being governed (prisoners) and those doing the governing (penal staff). While not often considered as an element of penal

security, clothing can in fact be a part of the security apparatus of the prison. For example, prisoners at CNCC (a super-maximum institution) wore bright orange jumpsuits, making prisoner movements acutely visible (Field Notes August 2014). Whereas, at Beaver Creek (a medium security institution) prisoners wore blue t-shirts and jeans—clothing that represented ‘street wear,’ since the aim of the institution was to prepare prisoners for life outside of the prison (Field Notes August 2014).

The SMRs (1957: 3) also prescribe rules for the provision of adequate, clean, separate and sufficient bedding. The SMRs (1957) as well as the UN Rule of Law Indicators (2011) specify that the standard is single-bunking in which one prisoner occupies one bed in one cell; however, due to over-crowding issues the prevalence of double-bunking (placing two prisoners in a cell designed for one) in Canadian prisons is on the rise, increasing by 93% in the last five years (OCI report 2013-2014). Further, the Haiti and Nunavut case studies illustrate significant derogations from the single-cell standard. For example, in Haiti prisoners are ‘housed’ in large military barracks converted into cells (holding anywhere from 20-50 prisoners) and so they often do not have enough space in the cell to sit down, let alone lie down to sleep (START interview February 2014). In the Nunavut case, prisoners in BCC live in large dormitory cells holding 6-8 men, and the prison gymnasium is used as sleeping barracks for over 15 prisoners at a time. Importantly, the cases highlight the problematic ways in which interpretations of cultural norms regarding communal living and the sharing of resources in both cases are mobilized by penal administrators as justifications for derogations from the single-cell norm, such that situations of severe over-crowding are described as the ‘Haitian way’ or the ‘Inuit way’ of punishment.

The SMRs (1957: 3), the UN Rule of Law Indicators (2011: indicator 92), as well as the CDs (CSC 2015: 880) designate standards for the proper nutrition of prisoners. According to the standards, prisoners are to receive wholesome, well-prepared food, at usual hours and drinking water should be provided at all times. While physical nourishment is a basic human right, the provision of adequate and sufficient food is also tied to the resource availability of the penal administration. In the Haitian case, most prisons do not have sufficient budgets to provide for prisoners, and prisoners in Haiti often only receive one meal a day (OPC Interview June 2014). Further, food is intimately connected to culture and respondents in both the Haiti and Nunavut case studies spoke of controversies that developed regarding the proper preparations of food according to cultural practice. For example, in the Nunavut case, prison rules regarding proper preparations of food are in direct contradiction with cultural practices regarding the preparation of Inuit country food (specifically seal). As such, rules regarding what is and is not appropriate food for prisoners, as well as what are and are not appropriate means by which to prepare food, are also designations of accepted cultural practice in either case.

Penal standards conceptualize prisoner's bodies as vehicles for contraband, meaning the prisoner's body can be utilized as a vessel to conceal unauthorized items such as weapons and drugs. As a result, penal standards provide penal administrations with technical legislation for conducting searches of prisoner bodies. The CCRA (1992: section 46) details the procedures for frisk, strip, and body cavity searches; however, technological and architectural innovations have made it possible for penal administrations to see *inside* a prisoners body. Section 51 of the CCRA (1992) provides legislation regarding the use of X-ray technology to search a prisoner's body as long as the prisoner consents and a medical officer is present for the X-ray. Penal administrations

may also use the spatial design of the prison in conducting searches of a prisoner's body. For example, a 'dry cell' (which has no operating plumbing fixtures) may be used to monitor the bodily expulsions of prisoners suspected of ingesting contraband. According to the CCRA (1992: section 51), "an inmate may be held in a cell without plumbing fixtures with notice of the prison's medical staff so that contraband might be expelled." During my tour of Kingston penitentiary, while observing the dry cells, I learned that these cells were mutually despised by both prisoners and COs, and dry cell duty was reserved for new COs as an administrative right of passage. Foucault (1977/1995: 152-156) analyzed what he called 'discipline's dream' to act upon the body in such a way as to control its activities. The dry cell is an illustration of the ways in which advances in technology have made it possible for penal administrations to regulate prisoner's bodies down to their very biological functions. An illustration of what Foucault (1977/1955: 153) calls the 'body-machine complex,' the dry cell subjects prisoner's bodies to new mechanisms of power, via penal design, which come to know the body as a vessel in need of manipulation—the expulsion of contraband.

3.5.4 Construction Standards

Construction standards, like the technology of the dry cell, outline standard penal procedure for the spatial and material elements, or the physical design, of the prison. Overlapping with corporeal standards for single-cell occupancy, construction standards indicate that cells should be designed for one individual and should not be used to accommodate two or more persons overnight (SMRs 1957: 2). As mentioned above, both the Haiti and Nunavut case studies offer illustrations of how this standard is unattainable in either case. Regarding the specific elements

of the cell, penal standards (see SMRs 1957: 2; UN Rule of Law Indicators 2011; and CDs of CSC 2015: 550) specify that cells for prisoners should meet the requirements of proper climate conditions, cubic contents of air, minimum space, proper lighting, and ventilation. The ICRC report has done a significant amount of work regarding standards for penal design: for example, according to the ICRC (2005: 26) the minimum air space per person is 3.5m³, the ventilation per bed level and person is 0.025m², and the intensity of artificial light is 0.5 watts per person. Such detailed technical standards for the design and function of the prison cell are characteristic of the over-technicization of penalty—the technē—that results from penal standardization which, in its attempt to govern all aspects of the penal field, pixelates penalty down to cubic meters of air.

The ICRC (2005: 17) also provides penal administrations with a formula for calculating occupancy rates or prison density determined by the ratio of the number of prisoners at present date “t” to the number of places specified by the prison’s official capacity.

$$\text{Occupancy rate} = \frac{\text{number of prisoners present at date “t”}}{\text{number of prisoners specified by the official capacity}} \times 100$$

The formula for prison density is illustrative of Hacking’s (1991) observations that statistics are indications of social facts. The practice of calculating prison density is a ritual of verification (see Vannier 2010: 283) for the single cell norm, where a ratio in excess of 100 (100 prisoners per 100 places) indicates a situation of over occupancy and a ratio lower than 100 indicates a situation of under occupancy (ICRC 2005: 17). Interestingly, given that a primary aim of penal standardization is to ensure balanced penal practice, the formula for prison density suggests that a balanced state of prison occupancy is full capacity (100 persons per 100 spaces)—not over nor under occupied. Problematically, this formula validates the maximum operation of the penal

institution (in conjunction with the majority of penal standards) reinforcing the state's monopoly over the power to punish through punitive, incapacitative punishment.

However, this is not to suggest that constructive penal standards do not also mobilize rehabilitative and reintegrative punishment. In fact, many penal standard documents (see Fauteux et al. 1956: 86; Ouimet et al. 1969: 287; and the CDs of CSC 2015: 002) indicate that, wherever possible, prisons should be constructed in an open-design such that programming and treatment can take place in a communal setting. According to the SMRs (1957: 6), “open institutions provide the conditions most favourable to rehabilitation and the population should be kept as small as possible, yet not so small that proper facilities cannot be provided.” Open institutions more closely mirror the social world outside the prison in which people interact with one another on a regular basis and are deemed better suited for the social interactions required for a prisoner's rehabilitation. Further, the issue of balance requires that prisons operate at a rate of density that justifies the funding and resources required to run such open facilities.

However, the Haiti and Nunavut cases will illustrate the ways in which the rehabilitative logics of open facilities come up against the logics of security and risk, which see these open configurations as dangerous (since they could create many opportunities for violent interactions): consequently, they are re-imagined in practice through the logic of punitive incapacitation—as closed institutions (as was the case at the Rankin Inlet healing facility in Nunavut).

3.6 Standard Versus Customized Punishment

My analysis of the canon of penal standardization highlights a fixation with administrative, operational, and spatio-material components of punishment such that penal standards focus on

the matter of punishment producing what I (following Dean 2010) call the *technē* of penal government. The resultant web of technical punishment aims to govern the field of penalty in its entirety producing pixelating power effects, whereby, penal structures and penal government are encoded with measured and regulated punishments. The ethos of protection within penal standards then, is a self-interested enterprise promoting the necessity of the prison as the house of punishment (Foucault 1977/1955: 121), and the state or state sponsored penal administration as the custodians of punishment. As such, rather than viewing punishment as the natural authority of the state, standards uncover the work that goes into maintaining this contingent relationship. Recalling that power is productive, the productive work of penal standardization is the making of credible and accountable administrations of penal government, whereby, accountable penal government is indicative of the moral sovereignty of the state—exhibited in the democratic character of penal institutions.

However, efforts to produce accountable penal government must reconcile a major tension in the governmental technology of penal standardization: the push and pull of the desire to universalize penal practice and the desire to recognize domestic specificities in punishment. The standardization of penal government developed as a result of the failure of international organizations to overcome this desire for domestic specificity in the determination of penal codes. While penal codes were a mechanism of limited government, penal standards are a tool of regulated, but extensive, all-encompassing penal government, and the tension between universalization and domestic customization remains a central problem in efforts to standardize penal government. Penal standardization confronts this tension in two ways: in the conscription of domestic penal practices within a state-centric machinery of penal

government; and in citing domestic customizations as explanations for sub-standard or non-standard penalty. Recall that the SMRs (1957: 2) explain, “it will always be justifiable for the central prison administration to authorize departures from the rules in the spirit of experimentation.” Such a claim is meant to address the problem of adaptation within punishment: that punishment must adapt to innovations in technological and social developments if it is to remain socially and legally relevant. Further, while the SMRs (1957: 1) are intended to inform penal governance across the globe, it is recognized that “in view of the great variety of legal, social, economic and geographical conditions of the world, it is evident that not all of the rules are capable of application in all places at all times.”

Yet this flexibility within the SMRs (1957) is contradicted by the UN Expert Group revisions (UNODC 2012a and 2012b) which claim that the SMRs have withstood the test of time and should therefore maintain their essential structure. Prison Reform International (2001: 176) echoes the Expert Group: “for all their flexibility, the SMRs as a whole...have some normative force. Governments and penal organizations...cannot deny that these minimum standards are applicable to them.” And yet, as I have begun to illustrate in this chapter, states and state authorized penal organizations do very much claim that the rules do not apply to them. The Haiti and Nunavut case studies will demonstrate the significant differences between those states, Territories, or penal organizations in the position of standard enforcer (as is the case with CSC in Haiti) and those states subject to standardization (as is the case with the DAP in Haiti or Nunavut Corrections). Standard enforcing states, such as Canada, are in a position to craft their performances of penal excellence such that CSC appears to be the model penal administration despite its shameful failures in meeting the penal standards it enforces abroad at home. As the

opening quote for this chapter illustrates, the profoundly technical character of penal standardization makes it especially difficult for penal agents to recognize domestic customization while upholding standards as “broad strokes.”

There should be standards. I don't think it can be a standard blueprint but we are aiming for this many square feet or this many toilets...so standards in terms of broad strokes, yes. Standards in terms of we want the prison to look like [a Canadian] prison, not going to happen (START Interview: February 2014).

While this participant, speaking to penal design in Haiti, clearly states that they do not think a standard blueprint works, they go on to list specific technical measurements, such as square feet and the number of toilets per cell, which are very much a part of a standard penal blueprint. Further, while the respondent states that using standards to design a prison in Haiti that looks like a Canadian prison simply will not work, that is precisely what standards for the number of square feet and the number of toilets attempts to do—build prisons that look alike. However, as the next chapter (IV) on the Haitian case illustrates the ‘Canadian’ prison in Haiti—the Croix-des-Bouquets prison, does not look like a Canadian prison: it looks and operates like a non-standard prison.

Further, discourses about penal difference, or what the UN Rule of Law Indicators (2011: 1) call ‘domestic customization,’ reveal the ways in which this tension of universality and specificity within penal standardization is in fact indicative of the post-colonial character of penal standards. The domestic customization of penal standards mirrors the post-colonial desire (see O'Malley 1996; Thobani 2007; Valverde 2008; and Coulthard 2014 among others) to import and copy domestic penal practices—that will help make punishment more socially relevant while maintaining the state-centric model—and reject domestic penal practices—that are *sui generis* or

indicative of immoral, unethical, and unbalanced punishment. Both the Haiti and Nunavut case studies will provide examples of domestic customizations that are either conscripted into the state-centric machinery of penal justice, as evidence of standard punishment, or rejected since they challenge the state's monopoly over the power to punish. Of particular concern are the ways in which penal administrators, or enforcers of penal standardization are tasked with determining what constitutes domestic customization conscripted within state-centric punishment versus domestic customization rejected as evidence of non-standard penalty. More importantly, determinations of domestic customization are entangled within the cultural and legal traditions of a specific locale and are themselves statements regarding what counts as culture in that particular geo-political context.

These cultural explanations for non-standard punishment conceal issues of social inequality germane to particular geo-political contexts which greatly effect the ability and capacity of penal administrations in their recognition of standard penal government. Penal standardization is a form of penal government that sees punishment from a distance, failing to recognize what the SMRs (1957: 1) call “political, social, economic, and historical variations amongst states”—which I think is a terribly apolitical way of saying social inequality. However, in geo-political contexts (such as Haiti or Nunavut), in which penal administrations struggle with a significant lack of administrative capacity and resources, derogations from, or customizations of standard penalty are problematically justified as ‘cultural’—as the ‘Haitian way’ or the ‘Inuit way’ of punishment—rather than as instantiations of deep rooted social inequalities.

3.7 Conclusion

This chapter provides a historical and contextual basis for the Haiti and Nunavut case studies which follow. Beginning with an overview of the historical development of penal standardization, I have demonstrated how punishment is established as a social good (primarily the protection and security of society as well as prisoners) which aims to measure the civility and democratic capabilities of penal administrations. I argued that penal practices, which are in opposition to the human rights of prisoners (such as segregation), are re-imagined as measures of protection. Further, I argued that the cohabitation of seemingly contradictory punishment (such as rehabilitation and incapacitation) is a strength of the governmental technology since it allows for standards to be arranged in countless combinations in order for penal administrations to find the balance between too much and not enough punishment. I then uncovered the ways in which penal standardization, as a technology of government in the narrow sense (as an exercise of moral sovereignty) utilizes government in the wide sense (as the conduct of conduct) with a particular focus on spatio-material and administrative elements of punishment.

Specific examples of types of penal standards were juxtaposed with contemporary penal practice in Canada, which, more often than not, derogates from rather than verifies the penal norm. I then argued that this web of penal technicization is illustrative of the self-interested enterprise of protection since penal standardization is about demonstrating accountable penal government as a means of validating the state's moral sovereignty and its monopoly over the power to punish. In the final section of this chapter, I connected the tension of universalization and specification within penal standardization to post-colonial mechanisms of government. I explained that determinations of domestic customization are left to the discretion of penal

administrators, from *outside* of the geo-political context under inspection, who often cite domestic customizations (understood as illustrations of culture) as explanations for sub-standard or non-standard penalty. I argued that cultural explanations for penalty fail to recognize deeply entrenched systemic inequalities which interlock and sustain sub-standard and non-standard punishment in various locations. The next two chapters provide empirical examples from my field research on the case of penal standardization in Haiti and in Nunavut. The Haiti and Nunavut case studies pay particular attention to the ways in which agents of penal standardization justify the exorbitant expenses required to bolster the standard character of penal administrations, in an attempt to establish punishment as a social good, in geo-political contexts in which there is a significant lack of social goods such as education, healthcare, employment and so on. We will begin with the case of penal standardization in Haiti.

CHAPTER IV

PENAL AID VIA PENAL STANDARDIZATION: PUNISHING INEQUALITY IN HAITI

[In Haiti], such a huge portion of the population just needs access to basic services that we take for granted [in Canada] like , healthcare, food and education. To go to [Haitians] and say, ‘what do you think of the judicial system?’ [Haitians] will say, ‘I need food!’

Justice is not on their radar.

~START Interview (February 2014).

4.1 Introduction

This chapter provides an empirical analysis of the ways in which penal standards are understood (by international development, security, and penal agents) as a means for correcting flawed penalty in Haiti through a new kind of international aid effort—what myself and a colleague call ‘penal aid’ (Brisson-Boivin and O’Connor 2013). I begin with a brief overview of the historical development of penal justice in Haiti paying particular attention to the punishmentalities and practices unique to the Haitian context. I demonstrate how Haitian penalty came to be problematized by a myriad of international actors, on account of punishment in Haiti being largely socially embedded, unbalanced, and uncivilized. As a result of this problematization, Haitian penalty has been (re)formed through a series of international efforts to strengthen the democratic, state-centric nature of punishment. I argue, that the current iteration of efforts to (re)form Haitian penalty, are intimately connected to Haiti’s post-colonial inheritance of humanitarian intervention and rely heavily on penal standards as a justification for these efforts.

The next sections examine in more detail the ways in which the penal landscape in Haiti is changing as a result of aid efforts. I argue that the fragmentation, or plurality of international penal authorities in Haiti reifies the need for penal aid in the form of penal standardization.

Particular attention is given to the ways in which Canada, through international (UN) efforts to reconstruct Haitian justice, has come to be a leading partner in the standardization of Haitian penalty. The aim of penal standardization is not to homogenize Haitian penalty; rather, as my research reveals, it is to measure, manage, and filter penal difference through a centralized mechanism for governing punishment. In other words, penal aid in Haiti promotes the virtue of the prison as a democratic institution reinforcing the moral sovereignty of the penal aid apparatus. In the Haitian case moral sovereignty is imposed from the *outside* by penal organizations from countries (such as Canada) working with the (UN) International Security and Stabilization mission providing penal aid via state-centric, carceral punishments. I argue that this moral sovereignty does more to benefit the enforcers of penal standardization, or the providers of penal aid (Canada), than it does the subjects of penal standardization (such as Haitian prisoners or Haitian COs) or the recipient of penal aid: in this case, Haiti.

I provide an account of the Canadian built prison in Croix-Des-Bouquets, Haiti. I argue that this prison is particularly important as it became the site of contestations over the seemingly trivial elements of penal design, construction, planning and operations—the material politics of penal standardization. Further, my empirical research on the Croix-Des-Bouquets prison illuminates the ways in which Canadian penal aid agents determine domestic customizations of penal standards in Haiti, which involves the selective and pragmatic application of penal standards rather than a universal application of the governmental technique. The Croix-Des-Bouquets prison came to represent a Haitian model (both in its structure and practice), such that derogations from the standard, or the pragmatic application of penal standardization, are justified as the manifestation of domestic customization. I argue that in Haiti the political economy of aid,

coupled with the logic of penal standardization, has resulted in an ethos of capacity building such that international efforts to standardize penalty are preoccupied with penal administration, infrastructure, and the spatio-material elements of punishment. This infatuation with what penal aid agents call Quick Impact Projects (or QIPs) will be juxtaposed with the work of local, Haitian penal administrations (specifically the *Department Penitenciaire Nationale Haiti* or the DAP) which struggles to combat penal crises such as food shortages, power outages, and disease control.

The chapter concludes with a discussion of the paradoxical forms of punishment in Haiti, what I call ‘punishing inequality,’ whereby, efforts to standardize penalty in Haiti come up against deeply rooted social inequalities. Systemic inequalities such as poverty and insufficient basic needs provision, inadequate housing, as well as access to health care and education challenge the standard conceptualization of punishment as a social good. The Haitian case illustrates the ways in which it is infeasible for penal administrations to meet the normative aims of rehabilitation and reintegration, for example, when the average law abiding citizen does not have access to many of the social services associated with these punishmentalities. Penal aid agents in Haiti have to contend with this dilemma: how to maintain penal legitimacy, or a monopoly over the authority to punish, without subjecting prisoners to patently inhumane conditions and practices? In other words, attempts to standardize punishment in Haiti call into question the very notion of punishment itself since the quality of life for prisoners cannot be understood as superior to that of law-abiding citizens or else punishment loses its force (i.e. its deterrence capabilities). In Haiti, standardization is a technique of government in the narrow sense, which, rather than guaranteeing prisoner human rights are met, utilizes government in the

wide sense in order to legitimize the work of penal aid organizations. To use the terminology of one of my respondents (UN Peace Officer Interview August 2014), social inequality acts as a ‘force multiplier’ in opposition to the aim of balanced/ethical punishment inherent in efforts to standardize penalty. While penal standards are supposed to be a technical and neutral tool of government, domestic customizations which intersect with social and cultural understandings of punishment in Haiti, expose the ‘first world’, post-colonial character of penal standardization. I argue that penal standardization problematically allows for the exaltation of penal aid in Haiti, while, through the non-compulsory, pragmatic implementation of standards, permits the dreadful within the carceral domain to persist.

4.2 Haiti’s Ephemeral Independence

A little over one week following the catastrophic earthquake that struck Haiti in January 2010, Mark Danner, an American journalist and op-ed writer for The New York Times, wrote an article titled: ‘To Heal Haiti, Look to History, Not Nature.’ In his article, Danner (2010: A31) argues that long before the earthquake struck, the outside world had marked Haiti by its suffering; “epithets of misery clatter after its name like a ball and chain: poorest country in the Western Hemisphere.” Characterizations of Haiti—in news media, by Non-Governmental Organizations (NGOs), as well as international aid and development organizations—are marked by pity in which, “Haiti takes its place as a kind of sacrificial victim among nations,” (Danner 2010). My aim in this section is to demonstrate, in conjunction with critical political scholars writing on intervention in Haiti (see Zanotti 2006, 2008, 2010; and Schuller 2007a, 2007b among others), that there is nothing mystical about Haiti’s place in the global order. Rather, as Danner’s (2010)

article highlights, “from independence and before, Haiti’s harms have been caused by men, not demons,” nor acts of nature alone.

During his first trip to the new world Christopher Columbus ‘discovered’ the island now known as Haiti and the Dominican Republic. Columbus encountered several native Arawak; groups of people indigenous to the Caribbean, known as the Taíno. At the time of Columbus’ ‘discovery’ (1492) there were over three million Taíno people in Haiti with a well established, peaceful agrarian society (Clark 2004). Haiti had by far the largest Arawak population in the Caribbean; however, 22 years after the encounter with Columbus there were fewer than 27,000 Taíno who had not fallen victim to the sword, forced labour, and diseases formerly unknown to them (Clark 2004: 1). Columbus named the island Santo Domingo for the Spanish and, by the end of the 17th century, Spain had ceded control of the Western part of the island to the French who called the area Saint Domingue (Frontline World 2011). Prior to the French Revolution Haiti was the richest slave-colony on earth, supporting much of France’s economy through the labour of the Taíno peoples as well as hundreds of thousands of enslaved Africans (Danner 2010). While Haiti’s exports of coffee and sugar were on the rise, so too were Haiti’s imports of African slaves to replace the thousands of slaves who died young due to brutal working conditions. At the time of Haiti’s slave revolt (beginning in 1791) the majority of the half-million black inhabitants in Haiti were slaves from Africa. According to Danner (2010: 1): “In an immensely complex decade-long conflict, these African slave-soldiers, commanded by legendary leaders like Toussaint Louverture and Jean-Jacques Dessalines, defeated three Western armies, including the unstoppable superpower of the day, Napoleonic France.” Under pressure from the insurgents, and desperate to secure the loyalty of the population, French republican commissioners abolished

slavery in 1793 and by 1794 French citizenship extended to men of all colours, creating the legal foundation for a multiracial democracy in the new world (see Dubois 2012: 29). While the French elite were confident that the abolition of slavery was a political aberration and that colonization would be re-instated, in 1803 the newly freed Haitian citizens drove out the French in a war of independence.

Following its independence, Haiti struggled to gain respect and allies in a world still largely controlled by European Empire. Yet, Haiti looked to Europe for models of government, despite the fact that Haiti had experienced the worst forms of government these models had to offer. As a result, former colonial masters took advantage of the opportunity to decisively shape Haiti's destiny in its post-independence. The great colonial powers (Britain, the United States, and France) rewarded Haiti's freedom with a crippling trade embargo and demanded that in exchange for peace the country pay enormous reparations to its former colonizer (150 million Francs) (Dubois 2012: 99-100). As Danner (2010) explains, "having won their freedom by force of arms, Haiti's former slaves would be made to purchase it with treasure." The extensive, disadvantageous loans needed to buyback Haiti's independence became known as Haiti's double-debt and France boasted that it gained much stronger control of Haiti through debt than had the country succeeded in war (see Dubois 2012: 100). In 1874-75 the Haitian government had to take out further loans, skyrocketing Haiti's debt from 16 million to 44 million Francs, and by 1898, 50% of the Haitian state budget was consumed by loan repayments (Dubois 2012: 175). While Haiti had managed to pay down its debt to France in the intervening years many other nations took advantage of Haiti's fragile finances. For example, the United States (US) used control over Haiti's finances to garner control over the Haitian military and then over the

country's government institutions. For 12 years elections were avoided by US leaders, propelling Haiti's political system backwards by a century to the days when there was no Haitian parliament at all.

By the 20th century Haiti was on the verge of a second revolution as a response to American occupation: then came François Duvalier, or 'Papa Doc'. While the presidential election of Duvalier (in 1957) was a moment to be celebrated—since it was the first time a US-supported regime was overthrown in Haiti—Duvalier unleashed political turmoil on the ground through the unceasing suppression of dissent by his military. Duvalier's military violence appeared limitless, and while it remains unclear just how many Haitians died at the hands of Duvalier's regime estimates range from twenty to sixty thousand people over three decades (Dubois 2012: 325). Duvalier's security forces became twice as large as the Haitian military and by the mid 1960s they consumed more than two thirds of the government's budget (Frontline World 2011). At the same time, the US began to experiment with a form of post-colonial control in Haiti: financial aid and humanitarian development. In the 1960s the US granted Haiti over nine million (US) dollars in aid and over two million (US) dollars in weapons. In 1964, Duvalier prepared a constitution declaring himself president for life; however in 1969 Duvalier, in bad health, made his presidency a dynasty by granting his son Jean-Claude Duvalier (or 'Baby Doc') political power. François Duvalier died in 1971: Jean-Claude was sworn in office the next day and maintained office for 14 years, pocketing much of the state's finances for his personal gain (see Dubois 2012: 350). By 1984 there were at least 400 NGOs operating in Haiti, and by 1986 a new aid group entered the country every week (Dubois 2012: 352).

At the outset of this section, I explained that contemporary characterizations of Haiti are predicated on sympathy and sacrifice; such characterizations owe their predominance to Haiti's history of external control through development assistance and humanitarian aid. Of particular importance are the ways in which international organizations in Haiti began to connect the country's struggle for successful self-government with the (re)establishment of accountable, democratic, and civilized government institutions. As a result of these concerns for 'good' government, the international development community³² instigated a decades long initiative to bolster the democratic integrity of the Haitian state. Many critical scholars and activists refer to this wave of international intervention as the establishment of the 'republic of NGOs' in Haiti (see Farmer 2011: 118, 190; Klarreich and Polman 2012; Ramachandran 2012; and Rodgers 2013 as examples). It is at this juncture in Haiti's struggle for independence, marked by a republic of NGOs battling for a piece of the humanitarian pie, that the justice system in Haiti became problematized as a site of government in need of intervention.

4.3 Haitian Legal Traditions and Penal Practice

Before I provide a discussion of the international (UN led) civilian mission charged with evaluating and reforming Haitian justice, I want to first provide a working knowledge of Haitian legal tradition and penal practice. Haiti's Code of Criminal Investigation is derived from the inquisitorial method of the French civil code (*Code Napoléon*) inherited from Haiti's former French colonial masters (see Brisson-Boivin and O'Connor 2013: 523). The Haitian Criminal

³² Led by the United Nations, the international development community refers to the assembly of humanitarian organizations (both governmental and non-governmental) providing various social, political and economic services in Haiti sometimes in place of the state.

Code, established in 1835, gives an investigating judge three months to establish the truth of a crime, during which time the accused is typically held in detention. Detention (*mandat de dépôt*) is automatic in criminal matters and optional for misdemeanours (see Fuller et al. 2002: 21). The Code includes vagrancy and begging as criminal offences, in addition to unlawful conspiracy (*association des malfaiteurs*); the latter is typically used against gang members and is frequently cited as the sole grounds for detaining individuals (see Fuller et al. 2002: 22 in Brisson-Boivin and O'Connor 2013: 523).³³ Haitian law prohibits arbitrary arrest and detention, as the constitution stipulates that a person can be arrested (and subject to de facto detention) only if apprehended during the commission of an offence (*en flagrant delit*), or by means of a written summons by a justice of the peace (see Report on Human Rights Practice 2012). However, in Haiti many arrests described as *en flagrant delit* are actually based on *clameur publique* (public outcry)—also admitted in Haitian law as a basis for arrest. *Clameur publique* can be based on nothing more than unsubstantiated rumour and the practice enjoys broad public support (see Fuller et al. 2002: 23). *Clameur publique* is a popular penal practice in Haiti because its legitimacy is deeply embedded in the social—the authority to punish in this instance rests with Haitians (see Garland 1996, 2000, and 2006 on the social legitimacy of punishment). In Haiti, justices of the peace frequently order arrests based on public complaints, usually ordering a remand after a person has been brought in on a summons. Thus, an arrested person in Haiti may remain in detention even though their case file contains no substantiating evidence.

³³ Judges sometimes issue collective warrants for persons charged with the same offence, remanding groups of persons to custody with just one judicial order. When it reaches the national penitentiary, this order is placed in the case file of the first person named, making it difficult, if not impossible, to know the reason for the detention of the others involved. (Fuller et al. 2002: 26)

In Haitian penal justice, transformative punishments (following rehabilitation, reintegration, and/or enterprising punishmentalities) play a limited role, while detention, or what Yi (2008) calls ‘arrest as punishment,’ which utilizes punitive and incapacitation punishmentalities, plays a dominant role in the administration of crime and punishment.

Detention is common in countries such as Haiti, whose justice system is based on the civil law tradition characteristic of continental Europe and whose criminal proceedings involve lengthy, inquisitorial, written pre-trial investigations (Fairchild 1993 in Bouley 1995); whereas common law countries such as the United States, Canada, Britain, Australia, and Ireland, engage in oral and accusatorial criminal procedure where detention is said to comprise proportionately less of the incarcerated population and lasts for a shorter period of time. However, as I noted in Chapter III, the pre-trial detention population in Canada is rising exponentially; in 2012-2013 54.5% of Provincial and Territorial prison populations were in pre-trial detention, meaning these prisoners are legally innocent, awaiting trial or determinations of bail (see Canadian Civil Liberties Association 2014). Common law systems are, however, not the international norm; civil law traditions (such as those found in Haiti) dominate much of continental Europe and in many countries in South America, the majority (79%) of inmates are detainees (ranging from 43 percent in Columbia to 90 percent in Honduras; see Ungar, 2003). Further, in Haiti, few criminal trials take place and most detainees are eventually freed “after they have served the equivalent sentence they would have received had they been proven guilty,” (Fuller et al. 2009: 9). In other words, legal traditions in Haiti such as *mandat de dépôt*, *association des malfaiteurs*, and *clameur publique*, all of which utilize detention as punishment, are the norm. Nevertheless, the influx of international aid and humanitarian organizations that descended on Haiti following the

Duvalier regime (in the early 1990s), thrust the Haitian legal system (particularly the penal system) into the laboratory of humanitarian intervention and under a global microscope which would dissect the configuration of normative penalty in Haiti. As the following section will detail, the affects of this intervention and judicial dissection are the problematization of Haitian legal traditions on the basis that penalty in Haiti leads to exorbitant and unconscionable rates of pre-trial detention (despite Haiti falling well within the global norm, as I've just explained) lacks governmental coordination, capacity, and resources, and is in need of modernization which attempts to bolster the power to punish within state-centric authorities rather than socially-derived mechanisms (such as *clameur publique*).

4.4 Problematizing Haitian Penal Justice

At the same time (the late 1980s) as the international development community began to establish its ascendancy in Haiti, student activists took to the streets, challenging Duvalier's dictatorial regime following the charismatic leadership of a young priest—Jean-Bertrand Aristide. By 1990 Aristide was unequivocally elected as president; however, in 1991 the army—still very much influenced by the Duvalier regime—organized a coup against Aristide causing him to flee to the US. It was not until 1994, assisted by a US military escort, that Aristide returned to office. Upon his return to office, and motivated by his desire to reconstruct the military-security apparatus in Haiti, Aristide called for a country-wide reformation of the justice and security sector in Haiti. In 1993 Aristide, working with the UN and the Organization of American States (OAS), established the first international civilian mission in Haiti centred on justice reform, known as *Mission Civile Internationale en Haiti* / The International Civilian

Mission of Haiti (or MICIVIH). According to MICIVIH's (1996) terms of reference, MICIVIH's objective was "to ensure that the human rights inscribed in the Haitian constitution and international instruments to which Haiti is a party, are represented in Haiti." MICIVIH, along with the UN missions in Haiti,³⁴ attempted to re-align the authority to punish within the organization of the state, assembling a relationship whereby the state is the protector of human rights. I say organization of the state in this case because the ubiquity of NGOs, international aid organizations, and intergovernmental organizations in Haiti complicates the configuration of the Haitian state, such that it is often the international development community that fulfills the functions of the state—including the protection of human rights.

The numerous humanitarian development and civilian missions in Haiti share much in common with the missionary colonialism I described in Chapter II; providing UN officers with a sense of justice and moral authority that transformed their projects into civilizing and moralizing narratives (see Johnston 2003: 13). From 1994 to 1996 MICIVIH, along with a multitude of NGOs and foreign military agents, developed a report noting problems of judicial independence, concerns over slow judicial procedures, and many cases of prolonged detention in Haiti. In short, MICIVIH's (1996) report problematized the Haitian justice system for a lack of coordination,

³⁴ The first UN Mission in Haiti was the United Nations Mission in Haiti (or UNMIH) in operation from September 1993 to June 1996: then replaced by the United Nations Support Mission (or UNSMIH); followed by the Transition Mission in Haiti (or UNTMIH) and the Civilian Police Mission in Haiti (or MIPONUH); this was followed, in 1999, by the International Civilian Support Mission in Haiti (or MICAH) which was discontinued in 2000 due to lack of funding (see Zanotti 2011: 84-86). In 2004, the UN returned to Haiti with the UN Stabilization Mission or *Mission des Nations Unies pour la stabilisation en Haiti* known as MINUSTAH. MINUSTAH is still in operation in Haiti today.

capacity, and resources. In particular, MICIVIH (1996: 693) noted that the majority of Haitians speak Creole³⁵ while the primary language of the government is French. Today, French remains the primary language of the Haitian elite, and therefore the primary language of the government, with minimal Creole inclusions in either law or government communications. As a result, the majority of Haitians are incapable of reading or interpreting the laws under which they are being governed.

According to the MICIVIH report (1996: 694), “more than 80% of the prison population is awaiting trial. When detainees are released, it is often not as the outcome of a trial but on a provisional release that is contrary to legal provisions and which in practice become definitive.” Here we begin to see the ways in which ‘arrest as punishment’ (see Yi 2008), or locally engaged punitive practices, which result in de facto detention rather than a trial and provisional release, are problematized by the international development community on the grounds that they are too harsh, imbalanced, and contrary to the canon of international penal standardization, which prioritizes the use of trial and transformative punishments. However, the MICIVIH (1996: 693) report also noted that the penal system affects the least privileged sector of the population—with 60% of offences associated with economic inequality such as theft—and that the right to defence did not exist in practice since many could not afford a lawyer. MICIVIH (1996) also stressed the importance of proper registrations and prisoner records according to Haitian law and international standards, noting the importance of the SMRs as a necessary step to accelerate the legal process and develop a modern, technical penal system in Haiti.

³⁵ A language born of the encounter between French and African dialects in the 18th century.

Important for the Haitian case are the ways in which the MICIVIH report *backgrounded* rather than *foregrounded* the impacts of social inequality on the penal administration's ability not only to protect prisoner human rights, but to engage in some of the most basic practices of penal justice (such as the provision of food). In Haiti, the vast majority (80%) of the population lives below the poverty line (see Mobekk 2006: 115). The massive indemnity Haiti was forced to pay to France along with agricultural trade policies, environmental degradation, import quotas, and export policies have meant that Haiti has become a net importer of agricultural products, resulting in food insecurity and a crippling dependency on international financial aid. Eirin Mobekk (2006: 115), a research consultant with the Centre for International Security and Cooperation at the University of Bradford, argues, "it is within the context of socio-economic devastation that...international efforts and security sector reform must be viewed." However, backgrounding social inequality and economic disparity has become the pattern of penal aid missions in Haiti. As such, penal aid agents have had to find innovative ways to mitigate *the effects* of social inequality on the provision of penal justice and penal practice in Haiti without any significant efforts to mitigate *the existence* of social inequality in the first place.

One of my interviewees, working as an upper level penal administrator for CSC and who spent over one year working on the penal aid mission in Haiti explains: "the problems [in Haiti] are so systematic that it was hard for some [of us] to see that [our] contribution made any difference. We had to adjust the way we measured our success," (CSC Interview August 2014). The impacts of social inequality on the provision of penal aid are so significant that penal aid agents had to redefine 'successful' penal aid projects. In concentrating on pragmatic, concrete, and actionable changes to Haitian penalty, penal aid agents were able to implement the penal

standards, norms, and punishmentalities that were most likely to yield timely and measurable results. Later in this chapter, I will demonstrate how these pragmatic applications of penal standards work more to validate the work of penal aid organizations (such as CSC) than they do to bolster the standard character of penalty in Haiti let alone the actualization of prisoner human rights.

For now, I want to return to the specific recommendations of the MICIVIH report (1996: 687) which included a thorough overhaul of the Haitian penal code and the criminal investigation code, giving priority to criminal procedure within each. MICIVIH's (1996: 687) augmentation of criminal procedure, emphasizing practices of evidence collection, trials, and the ratification of all yet to be ratified human rights treaties, attempts to align Haitian penalty with the canon of penal standardization; as if endorsing these ideals, abstractly within law, would make them all the more possible to actualize in Haiti. While the MICIVIH report (1996) recommended that efforts to reform Haitian penalty concentrate on the pragmatic task of bolstering criminal procedure, MICIVIH failed to provide an equally pragmatic set of strategies or recommendations for achieving this goal. Instead, MICIVIH (1996) endorsed a project to monitor the status of individual detention records in Haiti and modernize penal infrastructure.

The United Nations General Assembly supported the MICIVIH report, suggesting that, despite some improvements, glaring violations of legal and constitutional procedures as well as continued shortcomings in the area of respect for due process remained an issue in Haiti (UN General Assembly 1996: 4-52). The UN General Assembly (1996: 33) noted that, "in the short term, the most critical problem and major bottlenecks remain exacerbated by the absence of a consensus on an overall strategy for penal reformation." This observation of the UN General

Assembly would result in an appetite for standardization on the part of penal aid organizations in Haiti, not dissimilar to that which had begun to sweep the Haitian development agenda at the time. As I have argued elsewhere with colleagues (O'Connor et al. 2014: 310):

The internationally driven Haitian development agenda would focus on promoting a governance strategy to ensure that aid and development are performed in accordance with donor expectations. To accomplish this aim, a culture of audit is being embedded in Haiti...enabling the transformation of Haitian government, its civic institutions, and its citizens into accountable entities.

Standardization would provide penal aid efforts in Haiti with an internationally accepted yardstick to measure Haitian penalty, as well as specific strategies for implementing recommendations to better meet the norms regarding penal administration (e.g. implement a policy regarding access to the outdoors, implement practices for the compilation of prisoner files, and so on). More importantly, the flexibility inherent within penal standards meant that penal aid organizations could use this technology as a means to govern penalty in Haiti without specific prescriptions for uniformity. Further, the UN General Assembly (1996: 36) determined that “the implementation of an agreed upon judicial reform process of the magnitude needed, together with the need to overcome remaining weaknesses in prison administration, will require continued assistance from the international community.” In these early appeals for penal aid, the UN manufactured a semi-permanent role for the international development community in the (re)formation of Haitian penalty, such that external aid organizations rather than local Haitian penal administration, or the state itself, would take the lead in efforts to standardize Haitian penalty.

The MICIVIH judicial report marks a pivotal moment in Haiti's history, whereby good (democratic) government is directly correlated with fortified and standard justice institutions

which follow international law and human rights treatises—the so-called universal values uniting global systems of justice. In other words, the MICIVIH report (1996) calls for moral sovereignty within Haitian penalty, which in turn marks penal institutions in Haiti as needing reformation since they neither enact an ethos of protection, nor promote punishment as a social good through the pragmatism of criminal procedure. However, transformations of punishment have to be read in the context of the emergence of new centres of power (that is modern state administrations) and a modality of rule (that is government) (see Foucault 1977/1995: 161; and Zanotti 2006: 156). In order to be able to govern, state administrations need to make a variety of local practices legible and knowable. In Haiti's case, the socially embedded practices of *mandat de dépôt*, *association des malfaiteurs*, and *clameur publique* locate the authority to punish within Haitian social networks, which is problematic for the international development community (highlighted by MICIVIH in 1996) since it aims to inculcate a state-centric model of punishment. As a result, the international development community aims to conscript these socially embedded penal practices into a state-centric model such that the monopoly over the power to punish rests with those international development and penal aid organizations working to (re)form the Haitian state (specifically the *Department Penitenciaire Nationale Haiti-DAP*).

Following the dictatorial regime of the Duvalier's, the UN's 1990s plan (adopted by the then Haitian president Aristide) resolved that Haitian institutions, starting with the penal justice system, had to be, as Zanotti (2006: 156) argues, extracted from the dictator's display of power and made transparent, predictable, and readable. The problem is that this emphasis on democratization in Haiti (much like the political hubris Peter Sloterdijk critiques in his installation on inflatable democracy) ends up increasing dependency on international assistance

and the risk of internal instability once this external assistance is suspended. Further, according to Zanotti (2006: 161), “in conditions of extreme poverty unsustainable democracy can end up not preventing but inciting unrest and instability.” MICIVIH ushered in an era of penal justice reform in Haiti that is another re-working of old formulae and established regimes of repression (see Duffield 2001: 33). As Zanotti (2006: 154) argues, the 1990s reformation of the penal system in Haiti “constituted the first step of the process of transforming Haiti from an abnormal, unruly, and dictatorial state into a democratic, orderly, and pacified one.”

4.5 How Penal Aid Became Mission Critical for Haiti

While the MICIVIH recommendations made appeals for international penal aid in Haiti, Canadian development organizations (such as the Canadian International Development Agency or CIDA³⁶) made use of Canada’s long standing relationship with Haiti to establish Canada’s role as mentor in security and justice reform (see Hammond 2010). Canada’s relationship with Haiti goes back to Haiti’s independence in the early 1800s when some of the first Haitians immigrated to Québec. As Hammond (2010), working for the Canada Haiti Action Network, explains, in the early 20th century French Canadians began to replace the French and Belgian missionaries who dominated Haiti’s Catholic community. Meanwhile, the wealthy Haitian elite chose Québec as its destination for education and immigration. As a result of this lasting immigration relationship, Haiti became one of the first Caribbean countries where Canada had official policy relations (see Government of Canada 2015a). However, as Haiti’s history of political instability unfolded in the 1970s and ‘80s, the pattern of Haitian immigration to Canada changed as poor, Creole-speaking

³⁶ CIDA is now Foreign Affairs, Trade and Development Canada

Haitians fled the Duvalier dictatorship to Canada (Hammond 2010). Around the same time, Canada signed the Free Trade and North American Free Trade agreements (in 1988 and 1994 respectively), and joined the OAS, marking a significant shift in Canada's relationship with Haiti. This was a relationship in which Canada was now in a position to intervene in Haiti's economic and political uncertainty, marked by a proliferation of Canadian development organizations in Haiti (Government of Canada 2015a). As a result, Haiti became the largest 'beneficiary' of Canadian development assistance in the Americas (see Government of Canada 2015a; Foreign Affairs, Trade and Development Canada 2015; Hammond 2010; and START 2012). Since the early 1990s, Canada has supplied Haiti with a contingent of over 1000 military, police, and justice officials in conjunction with the UN missions in the country (CTV News 'Canada's relationship with Haiti' 2010), and in 1995 Canada became justice and security mentor for the Haitian penal justice sector (UNMIH 'background' 2003). Canada remains at the helm of penal aid operations in Haiti to date, particularly through the work of the Stabilization and Reconstruction Task Force (START).

START was created (in 2005) by the department of Foreign Affairs, Trade and Development as "a response to the increased international demand for justice support in Haiti," (Foreign Affairs, Trade, and Development 'About' 2014). START is primarily concerned with enhancing policing, improving conditions for prisoners, strengthening borders, and deploying military, correctional, and police officers to the UN Mission (MINUSTAH) in Haiti. Much of START's involvement in Haiti has been with the national police force since, in Haiti, COs are a branch of administrative police falling under the jurisdiction of the Haitian National Police (HNP) (START Interview February 2014). However, Canada's efforts to "demonstrate a

long-standing commitment to Haiti,” (Foreign Affairs, Trade and Development Canada ‘Haiti’ 2015) are shaped by its position within Haiti’s larger ‘republic of NGOs,’ as penal justice expert, as well as the political economy of aid in Haiti which emphasizes donor, rather than Haitian, accountability. The result is a pragmatic implementation of penal standards with a concentration on penal administration, penal design, and the spatio-material elements of penalty in order for penal aid agents to demonstrate quick, efficient, and successful penal aid work to their donors. As such, Canadian penal aid missions, while making concrete improvements to certain of Haiti’s penal institutions, are reminiscent of Haiti’s post-colonial history of intervention, whereby development organizations take a piece of the humanitarian pie in order to carve out a role for themselves in the political economy of aid in Haiti.

In 1995, the US insisted that President Aristide step down, allowing a new presidential election, in which René Préval became president of Haiti. However, Aristide would return to the presidency in 2001 until he was ‘escorted’ again from office in 2004 by US and Canadian troops.³⁷ The capacity of Haitians to shape the direction of their country remained severely limited under a profusion of NGO and development organizations. As Dubois (2012: 365) argues: “the population has no control at all over foreign governments and organizations, which in many ways call the shots in contemporary Haiti.” Following Aristide’s (foreign induced) expulsion from office in 2004, the UN established another peacekeeping mission in Haiti: the

³⁷ While Aristide’s second term as president was marked by turmoil and an uprising in the plateau regions (sparked by a food shortage crisis), many activists and scholars have criticized Canada’s role in ousting Aristide as president. See the work of Engler (2009 and 2015), as well as Engler and Fenton (2005) for examples. René Préval would return as president from 2006 to 2011; Michel Martelly was democratically elected in 2011 and remains the incumbent president of Haiti.

Mission des Nations Unies pour la stabilisation en Haiti / the UN Stabilization Mission in Haiti, known as MINUSTAH. Established on June 1st 2004 for the maintenance of justice and security in Haiti, MINUSTAH would try to reinstate Haiti's monopoly over the use of force and the power to punish. At the outset of MINUSTAH's mission in Haiti (in 2006), the country's 22 prisons held 4,663 prisoners with approximately 89% of prisoners awaiting a judicial ruling on their case—only 417 prisoners were serving sentences (Report on judicial systems in the Americas 2006-2007: 1). In 2005, there were 40 inmates per 100,000 inhabitants in Haiti. Once again, echoing the MICIVIH (1996) report, MINUSTAH (see UN Security Council 2004: 2) remained critical of Haitian justice as a result of inadequate prison facilities, a lack of criminal procedure aligned with the rule of law, and a need for more democratic justice institutions. All of these problems are complicit in the internationally understood epidemic of detention clogging the Haitian penal system; however, as I explained earlier, the Haitian justice system is predicated on a tradition where detention is the penal norm. Nevertheless, for the international development community, all signs in Haiti pointed to penal reform.

On January 12th 2010, the earthquake that hit Haiti's capital, Port-au-Prince, resulted in 222,000 deaths and displaced one quarter of the country's population (MINUSTAH 'six months after' 2010). The earthquake destroyed or compromised 80% of Haiti's justice and security infrastructure (Government of the Republic of Haiti 2010: 46). Further, eight of the country's 17 prisons were totally or partially damaged, and 60% of the prison population (which had risen to approximately 8,700 in 2010) had escaped including some 4,115 prisoners from the *penitentiare nationale* in Port-au-Prince (UNDP 2010). Following the earthquake Canadian Prime Minister Harper reinforced that Haiti will remain a long-term priority for the government of Canada, and

that Canada will not leave Haiti until its job (penal justice reformation) is done (in Carment and Yiagadeesen 2010: 58). In 2012, START (Foreign Affairs, Trade, and Development 2012) deployed approximately 150 police, 25 corrections experts, and ten military officers to the UN mission in Haiti. A Canadian, Chief Superintendent Serge Therriault, currently holds the post of MINUSTAH's Police Commissioner, and Mr. Don Head (Commissioner of CSC) is currently the head of the organization Group of Friends of Corrections—a small group within the UN Criminal Law and Judicial Advisory Service deploying correctional advice in Haiti (UN Department of Peacekeeping Operations 2014). The earthquake triggered the international development community to “develop plans to aid the Haitian reconstruction effort, but it also served as a leverage point to engage state-transformation efforts and to press for fundamental reforms in the management of Haiti's justice institutions,” (Carment and Yiagadeesen 2010: 56; Dobbins 2010; Kiltgaard 2010: 5 in Brisson-Boivin and O'Connor 2013: 524). For example, the UN Security Council (2010a: 5) explains, “in the absence of any significant progress in the rule of law field in Haiti, all ongoing and future efforts in Haiti's recovery, economic and social development, humanitarian aid, security, and political stability might turn out to be unproductive.” Further, the UN Secretary General Ban Ki Moon (in Farmer 2011: 155-156) describes the need for Haitian reconstruction following the earthquake as “a wholesale national renewal, a sweeping exercise in nation-building on a scale and scope not seen in generations.” This devastating natural disaster put Haiti, once again, in the international spotlight, providing the impetus for the international development community to designate penal aid in Haiti *mission critical* for the overall democratic stability of the country.

As such, penal justice reform was once again understood as foundational for Haitian democracy, as if the earthquake destroyed Haitian democracy along with Haiti's infrastructure. Haitian authorities were encouraged by the UN (Security Council resolution 1944, 2010b: 2) to take advantage of MINUSTAH to allow inferior judicial institutions to function adequately and to address ongoing issues of prolonged pretrial detention and prison over-crowding, as well as to support the vetting, mentoring, and training of police and corrections personnel and strengthen the institutional and operational capacities of correctional services in Haiti. The development of standard penalty, connected to a body of international treaties and guidelines, has led to the emergence of what Jefferson (2007a: 33-34), writing about the African penal context, calls 'penal norm export.' In the Haitian case, the standardization of Haitian penalty by international (particularly Canadian) penal aid agents results in the export of normative punitiveness found within the penal standardization literature, but also national (Canadian) penal policies and practices. Penal aid, as part of Haiti's post-colonial history of state formation, aims to validate the virtue of democratic institutions beginning with the carceral institution.

4.6 Standardizing Penal Administration in Haiti

"In Haiti, and places like it, you have to establish what your minimum level of acceptable corruption is," (UN Peace Officer Interview August 2014).

In his work on *'anti-policy and anti-politics'* William Walters (2008: 271) explains, "government against bad things is government in its own right." Penal standardization in Haiti is a tool for governing against 'bad', immoral, uncivilized penalty—too harsh (imbalanced), non-normative, non state-centric penalty. Further, in Haiti government in the narrow sense (as the exercise of

political sovereignty) is widely understood by external development organizations and local Haitian organizations alike (such as the *Office de la Protection Citoyen Haiti*/Office of Citizen Protection-OPC) as corrupt. Common explanations among the NGO community regarding Haiti's so-called uncivilized penalty are: "the dependency of the judiciary on political and executive powers, poorly trained judges and prosecutors, widespread corruption, decades of conflicts, large-scale violence, intimidation of judicial staff and witnesses, and the partial destruction of infrastructure including police stations, courts and prisons, as well as outdated and inadequate criminal laws," (Albrecht et. al 2009: 2). One of my Haitian interviewees, working with the OPC (Interview June 2014), had a different take on the problem: "Haitians, they tell you that [the justice system] doesn't operate well, that it's *not just*. That it favours people who have money and it's the truth. Haitians don't believe in [the justice system] anymore. No, no, no, NO credibility!" For Haitians, judicial corruption is a problem of credibility, an erosion of judicial integrity—an erosion of justice itself.

However, corruption in government administration is one of the primary ways in which penal aid agents codify and repurpose practices of regulatory capture, evident in this section's opening quote from an interviewee who spent months in Haiti working with the UN as a Peace Officer. In his work on Anti-Corruption, Barry Hindess (2005: 1390-1391) explains that while corruption is everywhere it is presented as in *crisis* in developing countries. Rather than engage in direct state control, anti-corruption efforts regulate the conduct of individuals, private bodies, and public agencies through arrangements of auditing, measured performance, and social reform tutelage. Similar to James Ferguson's (1994) work on development programs in Lesotho, Africa, which highlights what he calls an 'anti-politics machine'—reducing poverty to a technical

problem of government—the Haitian case demonstrates how penal standardization renders punishment technical, spatio-material, and eminently practical. However, as Jonathan Joseph (2011: 58) warns, the depoliticized, technical approach to government that stems from promoting the ideas of transparency and anti-corruption makes appeals to the rule of law, but can also “be used to blame local practices and actors if things go wrong.”

When asked to reflect on the value of standards in penal aid efforts, respondents commented on the utility of standards as a tool for the implementation of good penal governance strategies in Haiti. However, respondents noted that not every country could recognize penal standards in the same way. As one penal aid agent with CSC (Interview August 2014) explains, “we as Canadians, we have a standard but this standard doesn’t really fit [in Haiti]. So we had to be conscious of bringing [Haitian penalty] to a higher standard but not *our* [Canadian] standard.” This quote is important for two reasons: first, not only does this respondent speak to manipulations of standard penalty, but she sees Canadian penalty as being more aligned with standard penalty, hence Canada’s role as penal mentor in Haiti; second, she reveals that penal standardization is not simply about projecting one model of penalty (Canadian) onto another (Haitian), rather, penal standardization in Haiti adopts a far less obtrusive approach. Penal standards are supposed to provide penal aid agents with a technical, neutral, and non-colonial tool for addressing non-standard punishment in Haiti; however, the technical and spatio-material focus of penal reformation in Haiti, is deeply embedded within the country’s political economy of aid, such that penal standards are something to aspire to—an ideal, rather than directly applicable or implementable. I agree with Walters (2008: 273): “in the guise of an agenda that appears to be combatting something inherently wrong [non-normative punishment] we find in

fact a somewhat more extensive project of exporting a Western institutional framework for government.”

All of the penal aid agents I have spoken with (Haitian, Canadian, or otherwise) made reference to internationally determined standards as guides for their work. OPC Haiti, the public auditor of the country, was keen to inform me of the many international treaties Haiti is a party to and that the OPC has received the “highest status amongst international commitments of human rights in Geneva,” ranking the OPC “amongst the greatest performers of its peers,” (OPC interview June 2014). Respondents working on the ‘front lines’ of Haitian penal justice, particularly Canadians, were quick to emphasize that they were tasked with assisting Haitians in the recognition of the UN SMRs (CSC Interview August 2014 ; UN Custer Interview June 2014; UN Peace Officer Interview August 2014). A significant portion of SMR recognition within penal aid efforts focused on the administration of penal justice in Haiti: the training of administrative police (correctional officers) and penal administrators; the loss of records and the need to modernize the national penal registry; the need for more human resources in the penal sector; as well as the development of policies and practices for effective and sound economic management of Haitian penitentiaries. The International Crisis Group (2007: 1) recommends that penal aid in Haiti focus on “commissioning additional staff, advisers, and computerized databases and, monitoring efforts to identify prisoners who should be released on bail or unconditionally because no charges are pending, no trial has been held, they are not a threat to society or they have served their time.” While well-intended, and on-point with producing standard penalty in Haiti, extensive economic inequality and a lack of public education make recruiting suitable penal staff and administrators difficult: bail is not an instituted penal practice within Haitian

penalty/law (recall the emphasis on ‘arrest as punishment’ via *flagrant delit*, *clameur publique*, and *association des malfaituers*) so instituting bail would require massive politico-legal changes; and digitized or computerized penal practice is reflective of the international post-colonial insistence that a modernized penal administration embraces technology.

In 2009 the UN Development Program (UNDP) began to track prisoners within the Haitian penal system through the development of a database (Report on Human Rights Practice 2012: 7). However, the 2010 earthquake wiped out previous efforts to modernize and institute a record-keeping system in Haiti because prisoner records were lost in the buildings that had crumbled in the earthquake. One of the primary tasks of Canadian penal aid agents was to assist the Haitian penal administration (the DAP) to rebuild its penal database in order to reduce the number of prisoners in pre-trial detention. As of 2011, 460 prisoners had been released due to improvements with the Haitian registrar (International Crisis Group 2010: 6). According to one interviewee with CSC (Interview August 2014), “part of our [CSC] role was to address those cases that were really neglected...one of our projects was to train all of the registrar/sentence managers across the country.” The most up-to-date report on Haitian prison figures (as of November 2013) puts the total number of prisoners at 9,794 with 2,954 convicted prisoners and 6,840 pre-trial detainees (UN Department of Peacekeeping Operations 2014: 10). While a strong contingent of Canadian penal aid works to establish a modern, technical penal registry there have, not surprisingly, been minimal improvements to the rates of pre-trial detention in Haiti. Not surprising because improvements to the management of prisoner records does not translate into fewer pre-trial prisoners in Haiti—since this is a regular practice of Haitian penalty; rather, it shores up a governing technique for gathering, managing, and warehousing data on prisoners.

In Canada a modern, technical penal registry satiates neo-liberal cravings for databases, paperwork, and red tape. However, in Haiti the penal registry has become a point of frustration for Haitians and Canadians alike. The emphasis on technical improvements to the registrar has not actually had the intended results of lowering pre-trial detention rates because of a lack of capacity in the judiciary and what I would argue is an ignorance of Haitian penal tradition (amongst international penal aid organizations) which embraces the punitive punishmentality of ‘arrest as punishment.’ Further, my interviewees explained the lack of significant improvement in the area of pre-trial detention has less to do with technological improvements in record keeping and everything to do with increasing rates of arrest due to the shoring up of Haitian police officers and a serious lack of judges available to handle sentencing, let alone review prisoner files that are beyond sentence expiration (CSC Interview August 2014; UN Peacekeeping Interview August 2014; OPC Interview June 2014). In their analysis of Canadian securitization aid to Haiti, Walby and Monaghan (2011: 273) demonstrate that between 2004-2009 Canadian efforts to reform the HNP led to higher arrests and ‘jail bloat’ creating conditions (such as overcrowding) that violated, rather than ameliorated human rights. I would argue that efforts to shore up the Haitian penal registry, from 2010 onwards, have simply documented this trend; that more police officers in Haiti result in higher rates of arrest and prison overcrowding. Criminologists (such as University of Toronto criminologist Anthony Doob) call this phenomenon of shoring up police officers the self-fulfilling prophecy of conservative ‘tough on crime’ policies (see Stastna 2013). In accordance with Walby and Monaghan’s (2011) findings, efforts to standardize penal administration by way of prisoner record-keeping, highlight existing judicial problems, putting

undue and unsustainable pressure on penal institutions demonstrating an ignorance of Haitian penal tradition.

One interviewee, who spent several months in Haiti working for START-Canada (and held a leadership role in the construction of the Croix-Des-Bouquets prison) explains the pressure exerted on the Haitian penal justice system as follows:

The justice system [in Haiti] it's been described as a stool. There are three legs: the police leg, the courts leg, and the prisons leg...the initial focus of MINUSTAH was police reform. [Police] became one of the respected government institutions in Haiti mainly due to the international community supporting [police] extensively through training. So the police got strengthened really quickly and started doing their job which was to arrest people and the prisons started to get really full. So you have one leg of the stool that's been strengthened and it's pushing down on the other two. So the next easiest [leg] to shore up is the prison system through the training of officers and renovating a lot of [prisons]...the last leg of the stool...is the judicial side which is much harder because it is much more politicized...the prison system is now at its maximum [capacity]...if [Haitians] don't start dealing with their over-crowding based on pre-trial detention you can build more prisons all you want, it's not going to solve the problem.

(START Interview February 2014)

While acknowledging the impacts of international aid on Haitian police and penal infrastructure (unsustainable pressure on the police and prison system legs of the Haitian justice stool) this interviewee emphasizes the responsibility to address prison over-crowding (judicial reform) rests with *Haitians*, negating the role of international penal aid organizations in contributing undue pressure on the Haitian penal justice system which requires long term development and reform planning rather than the Quick Impact Projects (QIPs) currently on offer. The international penal aid efforts that have focused on revisions to the Haitian criminal code, in accordance with international standards, target matters of habeas corpus—a court order for penal officials to prove the lawfulness of imprisonment in specific cases (International Crisis Group 2010). The introduction of habeas corpus in Haitian penalty involves a profound shift

from ‘arrest as punishment’ to legal procedure via trial in an attempt to lower rates of pre-trial detention, improve case management, and expedite prisoners through the Haitian justice system. While I am not denying that many prisoners in Haiti are problematically incarcerated well beyond their sentence expiry,³⁸ changes to Haitian penal policy and practice should reflect, not only Haitian penal traditions, but also take into account the wider context of social inequality in Haiti in which access to legal assistance is near impossible for most Haitians. And, yet, improvements to legal types of penal standards in Haiti, such as access to an attorney, have been the focus of *Haitian* penal reformers rather than international penal aid agents. For example, the OPC has sponsored several small legal clinics around the country to bring judges to prisons so that they can adjudicate cases, resulting in the release of dozens of prisoners (Report on Human Rights Practice 2012; and OPC Interview June 2014). The OPC is supposed to intervene in cases that go beyond 48 hours before being brought to a judge, but a representative from the OPC told me (Interview June 2014) that they cannot keep up with the volume of cases in Haiti.

The *penitentiare nationale* in Port-au-Prince is filled to eight times its capacity with 2,500 prisoners and only 25 administrative police or correctional officers (COs) (International Crisis Group 2007: 1). Following the 2010 earthquake, in an effort to build administrative capacity, 300 new COs were recruited and trained including 32 women, 63 registrar officers (file managers), and 43 executive managers (International Crisis Group 2010: 9). In regards to the Canadian contribution, an interviewee with CSC (Interview August 2014) explains, “the Canadian government committed to sending 25 correctional staff to [Haiti] post earthquake...the

³⁸ Many of my interviewees told me stories of prisoners serving years for crimes that, had they been convicted, they would have served only months for.

majority were correctional managers, some COs, and me as an administrator.” Again, there was also a strong contingent of Canadian police officers in Haiti working for MINUSTAH to train police. “Members of municipal [Canadian] police services...get seconded to the RCMP who put together a unit...provide training and send officers overseas and once overseas [Canadian police officers] are part of the UN under three umbrellas: the UN, the RCMP, and their original municipality,” (UN Peace Officer Interview August 2014). The multiple layers of governance (international and national—dependent on the country of origin) within MINUSTAH means that Haitians are receiving a patchwork of training and policy models from a multitude of international contexts.

In regards to training, a Canadian Peace Officer with MINUSTAH explains, “every single lesson plan that we developed [in Haiti] was based on Canadian content...we were teaching *our* use of force model...the options sent from other countries don’t necessarily have the same skill sets that are coming from Canada,” (UN Peace Officer Interview August 2014). Canadian penal aid experts were using *Canadian* training modules in their training packages for Haitian COs and administrators which was justified on the basis that there remains no formalized body of regulations, or codes of conduct, for COs in Haiti (UN Peace Officer Interview August 2014). The principal CSC administrator sent to Haiti to oversee training spoke to me about trying to “inject Canadian policy in Haiti in regards to visiting, recreation, rounds, counts, and emergency response...many of the practices that we have in [Canadian] prisons,” (CSC Interview August 2014). In conjunction with Jefferson’s (2007a: 33) findings regarding CO training in Africa, “the recipients of training are regarded not as state officials struggling to negotiate the tension between the demands of the job and the demand to survive but as ‘faulty operators’ in need of a

quick mechanical fix—namely an injection of rights discourse.” The injection of Canadian penal policy in Haiti demonstrates the ways in which international penal standards allow for national (in this case Canadian) policies to be exported in Haiti as variations on the customization of penal standards but, in this case, certainly not domestic customizations.

Many of the Canadian penal aid agents I spoke with reflected on the difficult working conditions of their Haitian counter-parts. One respondent noted a situation in which an officer was consistently late for training and when asked about his lateness the officer explained that he would wake up at 4:30AM everyday to take two tap-taps (public transit in Haiti) to the training site each day. The Haitian CO was making about 80 Haitian gourdes (or \$2.00 USD) a day and spent 20 gourdes (or 0.40c US) per day on transit (UN Peace Officer Interview August 2014). However, Canadian penal aid agents were aware that Haitian CO salaries could not create too much disparity between officers and Haitian civilians, but that Haitian COs needed to be paid enough such that the CO experience of the prison was differentiated from the prisoner’s experience. “The average salary of a Haitian is \$150 (CND) a month and COs are earning approximately \$350 (CND) a month,” (CSC Interview August 2014). The severe economic disparity in Haiti led penal reformists to embrace a pragmatic attitude when it came to wage increases for Haitian COs which, while over two times that of the average Haitian’s monthly salary, remains significantly below the average salary of a Canadian CO (approximately \$50,000-\$60,000 CND). This salary disparity is indicative of international efforts to navigate a version of the Haitian penal paradox: how to address penal reform in the context of deeply rooted social inequality: in this instance, how to make changes to the working conditions of Haitian COs when the welfare of the wider Haitian civil society comes up (considerably) short.

Respondents also raised concerns regarding the fact that Haitian penal administrators and COs were themselves living at the prison—enduring some of the same hardships as prisoners such as a lack of proper sanitation (CSC Interview August 2014; OPC Interview June 2014). However, the cohabitation of prisoners and COs in the prison is an example of what penal aid agents classify as ‘systematic problems in Haiti,’ requiring an adjustment in the framing of the problem and the ‘measurement of a successful response,’ (CSC Interview August 2014). Take for example this re-framing of the problem offered by the CSC administrator I interviewed: “officers were living at the prison and one thing that was hard for [Canadians] was that they would...buy a beer and bring it in the prison [after a shift],” (CSC Interview August 2014). Focusing on the CO’s beer consumption in the prison, rather than the fact that COs were living in the prison, allowed penal aid agents to work through a far more technical and pragmatic problem: the separation of work time/space from personal time/space which could be easily remedied by making the necessary adjustments to the codes of conduct for Haitian COs (CSC Interview August 2014). However, the pragmatic solution of compartmentalizing on-the-clock time from off-the-clock time provides a technical solution to a systemic problem of social inequality (COs having to live in the prison), requiring far more fundamental changes to the distribution of wealth and resources within Haiti. In the backgrounding of the social inequality which underpins the cohabitation of COs and prisoners in Haiti, penal aid (in the form of technical penal standardization), rather than a neutral tool of government, promotes the significantly unequal status quo in Haiti.

4.7 The Matter of Penal Standardization In Haiti

Much of the penal aid effort in Haiti has concentrated on spatio-material improvements to penal infrastructure: for example, in March 2006, a \$2 million (CND) dollar donation from Canada (managed by START) went to support the DAP (over three years) with the majority of funds earmarked for infrastructure projects (International Crisis Group 2007: 7). While the materiality of punishment plays an integral role in the political contestations over what counts as legitimate punishment in Haiti, the concentration on infrastructural improvements has not always garnered the results intended by penal aid efforts. For example, over the course of MINUSTAH's mission (beginning in 2004) the average space within a Haitian cell per inmate has not improved: in 2007 cells averaged 0.77 sq.m per prisoner, and in extreme cases could be less than 0.55 sq.m per prisoner; by 2011 the average space was 0.59 sq.m per prisoner, and by 2013 the average holding space at the penitentiare nationale was 0.63 sq.m (or 2.6 ft by 2.6 ft) (International Crisis Group 2007, 2010; and UN Department of Peacekeeping Operations 2014). The Haitian target for space per prisoner is 2.5 sq.m, the UNDP recommends 4.5 sq.m as a minimum standard, and the ICRC states that even in the worst of circumstances each prisoner should have at least 2 sq.m (see International Crisis Group 2007 and 2010). An interviewee with OPC (June 2014) Haiti was deeply concerned about the lack of space in Haitian prisons: "A big problem is space...0.5 sq.m is just enough space to stand up, to put a vase or a decorative plant, and people sleep in hammocks or standing up." In some prisons, prisoners have to sleep in shifts due to a lack of space and most Haitian prisons have no beds whatsoever (Report on Human Rights Practices 2012: 5).

The individuals I interviewed who work for START informed me that the typical Haitian prison, even the ones that have been renovated, utilize large cells holding multiple (upwards of 200) prisoners, because all of the Haitian prisons, with the exception of the Canadian funded Croix-Des-Bouquets prison, are repurposed military barracks (START Interview February 2014). The ICRC repaired and refurbished the largest wing of the penitentiare nationale in Haiti, nicknamed the Titanic, with a capacity for 700; however, rather than reconstruct the prison utilizing the single-cell standard design, the massive barracks-style holding cells were left in tact (International Crisis Group 2010: 5). Further, all Haitian prisons cells (with the exception of the Croix-Des-Bouquets prison), contrary to the SMRs for cell design, have no access to sunlight (Report on Human Rights Practice 2012: 5; OPC Interview June 2014). According to the OPC (Interview June 2014): “the cells are not well ventilated and...you can find 200 people in one cell. One cell with no windows and just one entrance.” Pragmatism is not simply a strategy for implementing standards for penal administration but also for standards regarding the spatio-material elements of penal design.

The significant lack of space in Haiti’s non-standard penal design (re-purposed military barracks) translates into non-standard penal practice in other areas of penal administration. For example, prisoners convicted of committing serious bodily harm or death are not separated from prisoners convicted of property crimes such as theft. In fact, convicted prisoners on the whole are not separated from pre-trial detainees as the SMRs (1957) stipulate. Attaining corporeal types of penal standards such as the separation of men, women, and children has proven difficult for Haiti given space issues and a lack of staffing resources. Haiti does have a prison for women in Pétionville, a small suburb within Port-au-Prince, and all males under 18 were supposed to be held at

the juvenile facility at Delmas 33 (another suburb of Port-au-Prince), but DAP authorities could not always verify the ages of some detainees given poor national identification practices and limited channels in which to collect identifying information on prisoners (Report on Human Rights Practice 2012: 6). A lack of staffing resources means that Haiti is also well below the SMR standards for access to the outdoors. In order to reduce the possibility of disorder, since there are not enough staff to monitor prisoners outside of their cells in Haiti, the DAP limits the time prisoners spend out of their cells to 15-30 minutes per day. Further, outdoor time often includes the use of showers and toilets, sometimes one or the other, and in certain prisons the staffing resources are so limited that prisoners do not get out of their cell at all (International Crisis Group 2007; and OPC Interview June 2014). Prisoners are not given institutional clothing upon entry into a Haitian prison (because it's too expensive for the Haitian penal administration) so they remain in the clothing they wore upon entry for the duration of their imprisonment with very limited opportunities to wash their clothes—the washing of clothes was often done while showering (OPC Interview June 2014).

Further, my contact at the OPC (Interview June 2014) lamented the inability of DAP officials to properly maintain sanitation evacuation due to a lack of capacity: “I remember just a couple of months ago, in the plateau’s [the interior basin of Haiti], [prisoners] had to walk in their own feces because it had overflowed.” The lack of proper sanitation, coupled with overcrowding, provides fertile ground for the spread of communicable diseases in Haitian prisons such as cholera and tuberculosis. For example, in 2010 an outbreak of cholera, despite strenuous remedial measures, killed at least 70 prisoners and sickened many others (International Crisis Group 2010: 3). Once again, issues with space make it impossible for the DAP to isolate

contagious prisoners. Canadian penal aid agents, fixated on technical, administrative aspects of punishment, were concerned with the DAP's inability to *register* or monitor deaths in custody in Haiti as a result of the rampant spread of disease (CSC Interview 2014); while my contact at OPC Haiti (Interview June 2014) informed me that the DAP relies almost entirely on penal aid for the provision of medical and healthcare services for prisoners. There is very little, if any, penal aid devoted to developing medical units *within* Haitian prisons that could be run by the DAP, so the health needs of prisoners, when they are met, rely on visiting international NGOs such as Doctors Without Borders (CSC Interview August 2014; OPC Interview June 2014). Rather than investing in Haitian penal administration, such that they could develop health services for prisoners, penal aid works to benefit the international development community by way of cementing a role for international organizations in the provision of healthcare in Haitian prisons.

As I have explained, Canadian penal aid in Haiti has fixated on the spatio-material, infrastructural, and technical aspects of penalty, which penal aid agents refer to as Quick Impact Projects or QIPs. The ultimate QIP for Canadian penal aid in Haiti was the construction of the Croix-Des-Bouquets prison. To this day the Croix-Des-Bouquets prison remains *the* project that Canadian penal aid agents mobilize as evidence of their global penal excellence (see Ministry of Community Safety and Correctional Services 2015). However, the Croix-Des-Bouquets prison also poignantly illustrates the ways in which efforts to standardize punishment in Haiti produce controversies over the technical and material elements of punishment. The Croix-Des-Bouquets prison highlights, following Barry (2013: 4-5), the role that material elements play in the

political economy of (penal) aid and the ways in which the unpredictable behaviour of material environments is just as integral as human conduct in the production of standard penalty.

4.8 The ‘Canadian Prison’ in Croix-Des-Bouquets

I know the Canadians well...I was in a very good position to judge what Canada was doing in Haiti. I have a very good appreciation of Canadian support...Canadians were respectful of [Haitian] needs. There is less of a political taste in their dealings. Canadians do good quality infrastructure—they discuss with [Haitians] and even give training on how to use it. They did this for the Croix-Des-Bouquets penitentiary...we welcome Canadians here, (OPC Interview June 2014).

In May 2009 the Canadian government, working closely with the DAP and MINUSTAH, pledged \$6 million (CND) dollars for the largest penal aid project in Haiti to date: a newly constructed prison in the western department of Croix-Des-Bouquets.³⁹ The prison would be the first, and only prison in Haiti designed and constructed as a prison (recall all of the prisons in Haiti are repurposed military infrastructures), with a capacity of 750 prisoners. The prison was designed to have four separate units in order to accommodate men, women, and children (International Crisis Group 2011). In this way, the prison meets the SMR (1957) corporeal standard of separating categories of prisoners—although not in distinct prison facilities. The construction of the prison was delayed several times, most notably following the January 2010 earthquake when the (then under construction) prison suffered serious damages. As a result, “START had to bring in engineers to re-evaluate...at the Croix-Des-Bouquets prison you will see on the walls there are these big footings now that stick out...to make the walls more stable,” (START Interview February 2014). Canadian penal aid experts made adaptations to the

³⁹ The prison was completed in October 2012, began operation in November 2012, and cost approximately \$12million (CND) at the time of its completion.

standard prison design (see Figure A below), taking into consideration the possibility of future environmental hazards such as earthquakes in Haiti.



Figure A: An illustration of the addition of footings to the Croix-Des-Bouquets penal design in order to strengthen the external penal infrastructure from potential environmental hazards. Figure from: <http://i.huffpost.com/gen/1964444/images/n-CROIX-DES-BOUQUETS-large570.jpg>

The Croix-Des-Bouquets prison is made up of four cell blocks, a cafeteria, an infirmary, parlours for visits, and a multipurpose room for training, worship, and other activities (Haiti Libre 2012).⁴⁰ There are 96 cells constructed in an open arrangement for at least six, but more likely eight to ten prisoners—contrary to the SMR (1957) single cell standard. My contacts at START (Interview February 2014) explained to me that the DAP informed START that they did not want the single cell design: “financially [Haitians] can’t afford to do a single cell prison...it’s not feasible...it would require far too many human resources.” So, the Croix-Des-Bouquets prison became an active experiment in the development of domestic customizations of penal standards in Haiti. In regards to the prison design itself, START members explained to me

⁴⁰ See Appendix B for images from the Croix-Des-Bouquets prison.

(Interview February 2014) that the DAP drew up the designs for the cells and START, as the implementing agency, consulted with their donors (such as the ICRC) on whether or not the designs satisfied international penal standards. According to one penal aid agent working for START (Interview February 2014), “we got something everyone could agree on. It does not meet the international norms with respect to square foot per prisoner but it’s better than what it was.” While the Haitian cell design for Croix-Des-Bouquets illustrates the pragmatic approach to penal standardization adopted in Haiti, Haiti’s multi-prisoner cell allows for the prison to accommodate more inmates and, more importantly, requires fewer Haitian COs to oversee the prisoners, which is key given the struggle for human resources in Haiti. The penal pragmatism implemented in the Croix-Des-Bouquets cell design, while manipulating construction and corporeal standards addresses over-crowding, space issues, and staffing concerns simultaneously. According to START (Interview February 2014) the DAP “wanted to give [prisoners] beds so there are cement beds built in for mattresses...this should limit [sleeping space] in theory to six...this is the Haitian [norm],” (START Interview February 2014). The addition of beds (see Figure B below), while seemingly trivial by SMR (1957) standards, is a first in Haiti, even if at six beds per cell it does not meet the international norm.

START also explained that efforts were made to address corporeal standards in the form of water, sanitation, and hygiene: “we actually put running water in the cells (a toilet and sink) with the idea that the in-cell toilet was for emergencies at night since there were several other toilets outside in the yard for primary use,” (START Interview February 2014).⁴¹ START

⁴¹ See Appendix B, Figure three for an image of the outdoor toilets and Figure five bottom left image of in-cell toilet for emergency/nighttime use.



Figure B: An illustration of the pragmatic cell design in the Croix-Des-Bouquets prison in Haiti. Figure from: <http://www.haitipolitik.com/2012/11/dossier-clifford-brandt-suite-lancien.html>

respondents explained to me that when the project was first put together the DAP said it would be providing the “infamous stainless steel toilets,” (START Interview February 2014).

Unfortunately, the DAP could not secure the financial resources to install stainless steel toilets since the plumbing for stainless toilets is significantly more expensive than that required for porcelain, so START had to install porcelain.⁴² According to START (Interview February 2014), the toilets in the prison are “compromising on the standards...and you get criticism [from other international, primarily US organizations] saying: ‘you put ceramic toilets in [Croix-Des-Bouquets] they are going to break it and use it to kill each other’ and I respond, ‘they barely give them enough food!’” While seemingly trivial, the materiality of the prison toilet (porcelain or steel) is a site of controversy in which the social, political, and environmental consequences of penal design, coupled with the logic of risk and security, come up against the technology of penal standardization. The pixelating power effects of penal standardization render technical all elements of penalty down to the very material composition of the penal commode. At the Croix-

⁴² See Appendix B Figure five bottom left image of porcelain toilet.

Des-Bouquets prison penal aid agents had to develop domestic customizations of penal standards, fit for the Haitian context, while assuaging critiques of prisoner violence by invoking the Haitian penal paradox in which prisoners are not typically violent since they are focused on meeting their basic needs (nourishment).

On the whole, the Croix-des-Bouquets prison reflects an open penal design with large hallways and windows in order to alleviate the effects of the Caribbean heat.⁴³ According to START (Interview February 2014), the prison design was “a lot of trial and error, we [START] discovered [Haitian penal authorities] had turrets in the four corners but the design wasn’t high enough to be able to see [the entire prison grounds], so we [START] had to build an additional turret in the middle of the prison...trial and error, it was the first time Haitians had ever built [or designed] a prison.”⁴⁴ Members of START explained to me that the Croix-Des-Bouquets prison is often criticized by fellow members of the penal aid apparatus in Haiti (particularly by US organizations) for not meeting international standards. However, both Canadian and Haitian organizations are proud of what they see as significant improvements to Haitian penality (START Interview February 2014). Nevertheless, my interviews with START penal aid agents indicate a sort of rivalry between international development actors within the field of penal aid, whereby Canadians positioned themselves as willing to work *alongside* Haitian penal administration—validated by a leading member of OPC in the opening quote for this section

⁴³ See Appendix B Figure two and three for further illustrations of domestic customizations in Haitian penal design.

⁴⁴ Recall that all of the penal institutions in Haiti are re-purposed military infrastructures. See Appendix B Figure five, bottom right, for an illustration of the additional central guard tower.

where she ‘welcomes the support of respectful Canadians’—earning Canadian organizations (START) the lion’s share of penal aid and development work in Haiti.

For example, respondents with START were keen to distinguish their efforts from US approaches to penal aid, particularly in prison design, whereby the US approach would have been to contact Haitians when the prison was built (START Interview February 2014): “You can’t put a US-style prison [in Haiti]...[Haiti] cannot afford the man-power, the infrastructure, the cost...if you are looking at implementing a US-style or Canadian-style prison—single cells with toilets, that’s never going to happen!” The irony here is that START, in attempting to distinguish Canadian penal aid missions from American hyper-incarceration/punitiveness, provides no recognition of Canada’s *own* punitive turn (which I outlined in Chapter III) impacting the government of penality in Haiti by mobilizing strictly carceral punishment as standard—one of my main threads of critique in this dissertation. Moreover, Canadian penal aid efforts are not following the lead of Haitian penal authorities exclusively—Canadian agents are still very much in command of penal reform efforts in Haiti. It was in the areas of penal administration and policy development that Canadian penal aid agents got particularly frustrated with the need for domestic customizations and the ceaseless influence of Haitian penal traditions.

A penal administrator with CSC (Interview August 2014) who assisted with the Croix-Des-Bouquets prison explains, “I worked with the soon-to-be warden of Croix-Des-Bouquets... [Canadians] were injecting a lot of Canadian policy into the routine of the institution: one hour of open air per day, two meals per day, visits, recreation, rounds and counts, and emergency response management. A lot of practices that we have in [Canadian] prisons trying to inject them into [Croix-Des-Bouquets].” On the surface, this injection of Canadian penal policy in Haiti

appears to be a form of benevolent paternalism, particularly because these practices seem better aligned with the SMRs (1957). However, upon closer inspection, this injection blatantly ignores the social, political, and environmental challenges with which Haitian penal administrators must contend. “A lot of my work was harassing [Haitian penal authorities] into doing stuff that we [Canadians] wanted them to do... following up,” (START Interview February 2014). Once again, backgrounding the effects of social inequality in Haiti worked against Canadian efforts to implement standard penal practice in Haiti such that Canadian penal aid agents spent a significant amount of time with what START called capacity work (Interview February 2014).

START faced significant challenges in securing the necessary government funds (from the Haitian government) to operate the Croix-Des-Bouquets prison. START (Interview February 2014) saw this as evidence of poor penal governance and an inability to plan—a lack of capacity on the part of the Haitian government. However, given my conversations with the OPC regarding the austere financial resources available to Haitian penal organizations, as well as the Haitian state’s overall lack of finances, I would argue that this inability to secure penal funding is a product of years of post-colonial rule (and indemnity) and a disregard for the effects of social inequality on the legitimacy of penal law in Haiti—meaning, the Haitian state is so economically deprived that penal administration is nowhere near the top of the state’s budget (OPC Interview June 2014). Nevertheless, the frustration amongst members of START (Interview February 2014) with the DAP’s inability to secure funding was palpable in our interview: “we started constructing the [Croix-Des-Bouquets] prison in 2009...you know it’s coming, you know it’s coming, you know it’s coming, did [the DAP] put money in the budget for the prison? No!” START respondents explained that they had to go to the minister of justice, the Canadian

ambassador, and even the president of Haiti to argue that the DAP needed money to operate the Croix-Des-Bouquets prison. However, in the end, no formal budget was set and a lack of financial resources continues to stymie the Croix-Des-Bouquets prison. These struggles in penal capacity, generated by the political economy of Haitian penal aid which is fixated on penal infrastructure, come full circle in the inability of the Haitian penal administration to financially maintain the material, technical aspects of the Croix-Des-Bouquets prison. For example, despite all of the concerns regarding the porcelain toilets in Croix-Des-Bouquets, START informed me that, rather than an outbreak of violence, the biggest problem was that the prison could not afford toilet paper so prisoners began to clog the sensitive porcelain toilets with the foam from their sleeping mattresses causing a sewage backup (START Interview February 2014).

START agents were also frustrated with what they saw as penal-aid dependency generated by the construction of the Croix-Des-Bouquets prison:

I am still getting emails from people [at Croix-Des-Bouquets] informing me that the paint is peeling...or that the generator is broken and I am done with it! Not my problem anymore: It's hard though because it's capacity building and the mentality exists that[Haitians] are so used to people giving them stuff that they have an expectation that if something breaks you'll come and fix it (START interview February 2014).

However, this particular characterization of 'capacity building' as penal aid dependency fails to see the politics of penal aid in Haiti, whereby Canadians build the penal infrastructure and Haitians are on their own to fund and manage it within a geo-political context in which toilet paper is a luxury that the majority of Haitians go without. For all of the good work Canadians did in constructing a customized penal infrastructure in Haiti, the Haitian penal authorities lack the resources (financial and human) to be able to sustain such a prison in alignment with standard penalty. It makes sense that Haitians should look to their mentor in the north, who provided the

means for the prison to be built in the first place, for support and assistance in managing and operating a prison that requires more resources than any other prison in Haiti to date.

Prior to the opening of the Croix-Des-Bouquets prison, Canadian penal aid agents signed a memorandum of understanding (MOU) with the justice minister and the DAP stating that the prison would not hold any pre-trial detainees, which we know is in opposition to the Haitian penal tradition embracing the punitive punishmentality of ‘arrest as punishment.’ According to START (Interview February 2014): “we tried to ask the Haitians to live by those standards [no pre-trial detainees]...we later learnt that this was not truly respected from their [Haitians] side.” This is not surprising given the Haitian penal tradition, not to mention that this MOU is a completely idealistic and hypocritical request since the use of pre-trial detention (or remand), is a regular practice in penal systems around the world, including in Canada. At the time of writing, prolonged pre-trial detention and over-crowding continued to be an issue in Croix-Des-Bouquets. In August 2014, over 300 prisoners escaped from the Croix-Des-Bouquets prison in an organized attack aimed at freeing the prominent prisoner Clifford Brandt⁴⁵ (Associated Press 2014). At the time of the escape, the prison was 147 prisoners over-capacity, holding 897 prisoners in a prison that Canadians, working with Haitian penal authorities, intended to hold 750 *sentenced* prisoners (Associated Press 2014).

At the outset of the section on ‘Standardizing Penal Administration’ I discussed the ways in which characterizations of Haitian penalty as flawed, uncivilized, and/or corrupt provided the impetus for penal aid to engage penal standardization as a technique for governing against sub-

⁴⁵ Brandt, son of a wealthy and prominent Haitian family, was being held at the prison on kidnapping charges and had been awaiting trial since 2012 (Associated Press 2014).

standard and non-standard punishment in Haiti. Rather than engaging in direct control over Haitian penal administration, international efforts to standardize penalty in Haiti have concentrated on infrastructural, spatio-material, and technical improvements to punishment. Having provided some evidence of the ways in which Canadian-led penal aid in Haiti involves the pragmatic application of penal standards, I will now turn to a discussion of the ways in which penal aid is entrenched within the larger political economy of aid in Haiti explaining the logic behind these short term, small investment, high reward (for Canadian organizations) penal projects—or QIPs. Meanwhile, local Haitian penal administration struggles to deal with the long term effects of deeply embedded social inequalities in Haiti manifested as penal crises. The standardization tutelage offered by Canadian penal aid organizations in Haiti implements a form of penal standardization which better meets the expectations of aid donors securing Canadian organizations funding for future projects; rather than equip Haitian penal organizations with the tools to actualize moral sovereignty within penal government (especially the tools to better meet the human rights of prisoners) penal aid organizations concentrate on the matter of standards such that penal aid results in non-standard or, at best, sub-standard penalty in Haiti such that there remains a need for international intervention.

4.9 The Political Economy of Penal Aid

The Haitian penal system is reshaped not just through diplomatic pressure but through the material networks and channels in which aid flows—to infrastructure indicative of punitive, incapacitation punishmentalities, but not vocational training and education indicative of transformative, rehabilitative punishmentalities. In other words, while there exist several types of

penal standards, the ones that get impressed on Haiti are selective since they depend upon aid to support them and must exhibit (to donors) successful improvements to Haitian penalty.

From 2012 to 2014 MINUSTAH assigned \$359,483 (USD) to corrections QIPs: for example, in Port-De-Paix the prison was connected to city water networks and in Cap Haitien the prison infrastructure was reinforced (UN Department of Peacekeeping Operations 2014: 43). However, these QIPs are not the first efforts on the part of MINUSTAH to improve prison infrastructure in Haiti by way of quick infrastructural projects; in fact, many of these institutions have undergone two, sometimes three rounds of renovations (OPC Interview June 2014). The penal aid effort in Haiti seems to be fixed in a state of perpetual building repair, implementing quick fixes rather than long-term solutions to improve penal government in Haiti. As Mark Schuller (2007c: 99) points out in his work on the ‘invasion of NGOs’ in Haiti:

the former Haitian Minister of Social Affairs argued that the phenomenon of international funding going directly to [non-Haitian organizations] which have no public mandate, makes it hard for the government to establish priorities and ultimately undermines the ability of the state to govern: ‘Haiti’s biggest problem is that the tail is wagging the dog’ when it comes to foreign aid.

START’s penal aid has concentrated on what interviewee’s classified as the ‘difficult projects’—those that focus specifically on penal infrastructure and re-building (START Interview February 2014). In fact, penal aid agents with START understood their work as distinct from their development colleagues: “[START] works very different [sic] from our development colleagues in that we...have a very hands-on approach because our projects are supposed to be rapid...projects are supposed to take one to three years maximum” (START Interview February 2014). This respondent then explained that the objective of START’s penal aid was to “simply stabilize the situation so that development workers could take over in Haiti doing long-term

work,” (START Interview February 2014). While I think that Haitian government officials are far better suited to engage in the long-term development work that this interviewee notes as second to infrastructure, currently there are no long-term plans for penal development (such as judicial reform) in Haiti—certainly not from Canadian organizations.

Along with an infrastructural focus, QIPs often involved penal tutelage in the form of train-the-trainer programs whereby Canadian penal aid agents, working alongside other UN agents, would train large groups of Haitian COs in various aspects of penal administration with a specific focus on security management and disciplinary standards (UN Peace Officer Interview August 2014; and CSC Interview August 2014). For example, my primary contact with CSC (Interview August 2014) told me that while on one of her many visits to the Croix-Des-Bouquets prison she walked by one of the security towers and saw a gun sitting on a chair without CO supervision (CSC Interview August 2014). When this CSC official inquired with Haitian COs regarding their procedures for safety or security breaches the Haitian COs told her they blew a whistle to inform their colleagues of an incident (CSC Interview August 2014). This absolutely horrified the CSC official: that the safety of Haitian COs was dependent on a whistle being blown; that a colleague would have to be paying attention in order to blow the whistle; and that the whistle would result in an effective emergency response (CSC interview August 2014). However, when I raised the issue of prison violence with Haitian penal administrators (OPC Interview June 2014) they were quick to point out that Haitian prisons have extremely low rates of prisoner violence, and that “prisoners look after one another.” Even some penal aid agents working for START (Interview February 2014) tuned in to the lack of prisoner violence in Haiti noting that prisoners are so malnourished they often do not have the strength to act violently.

And yet, viewed through the lens of risk and security, the need to train Haitian COs to incorporate disciplinary standards (such as proper care for weapons) into penal practice was a priority for Canadian penal aid agents in Haiti.

Further, Canadian penal aid experts were all too aware of how affordability and credibility impacted their standardization efforts in Haiti. An interviewee with START (Interview February 2014) explains:

you want to have a quantifiable goal and you want to make it realistic. To go in and say [penal aid] will reduce the prison over-crowding in Haiti in two years is setting yourself up for failure...[the goal] has to be something such as we've improved the standard by *this* or we've improved the square feet by *this*.

As this interviewee points out, measurement for penal aid agents functions, not to signal failure, but to measure improvements—a move closer to the norm. Penal aid efforts prioritized administrative, spatio-material, technical punishment in Haiti because these types of standards (while still not directly transferable in Haiti) are seen as easier to implement in a timely, cost-effective manner. In this way, penal aid agents are able to cherry-pick the standards that they think can best influence Haitian penalty in a quick and efficacious way, motivated by the need to demonstrate aid accountability with donors, whether that be the UN, the federal government of Canada, or independent funding sources. It is important for penal aid organizations, such as CSC and START, to implement realizable penal aid projects if they are to maintain their reputation as successful penal mentors. More importantly, successful Canadian penal aid allows Canadian penal organizations to boast of their penal aid work in Haiti as a 'global service' (see Ministry of Community Safety and Correctional Services 2015) boosting the moral sovereignty of CSC despite the abject failures of CSC to meet many of the same penal standards in Canada. Where

Canadian penal aid meets the political economy of aid in Haiti, which promotes a governance strategy of accountability in accordance with donor expectations (see O'Connor et al. 2014), we have a situation in which Canadian penal aid agencies are vying for political, moral, and bureaucratic capital within the republic of NGOs.⁴⁶ However, we should not assume that Western agencies are fixed, assured, permanent or immovable in any way. In fact, the very real threat of their standardization work being deemed a failure (by local Haitian organizations and international oversight organizations such as the UN), along with the reality that these organization are themselves part of a national (Canadian) bureaucratic and political field, means that they are constantly negotiating for their own survival—both at home (in Canada) and in Haiti. In one of my follow-up conversations with START (Interview September 2014) I was told that START's mandate in Haiti had been extended until 2016; however, START is currently re-evaluating their penal aid projects in Haiti in order to “get more bang for their buck.”

While Canadian organizations are concerned with their survival within the political economy of penal aid, the impacts of QIPs, rather than long-term sustainable development projects (such as efforts to support Haitian penal administration in determinations of penal priorities in Haiti), are felt on the ground by Haitian penal agents. OPC Haiti evaluated the international penal aid efforts as such:

The evaluation is that [Haitian prisons] are getting worse every day...so if that is a measure of [penal aid] then I would say it's a complete catastrophe...it's a whole bunch of UN functionaries, public servants, and they always try to do *just* enough so that

⁴⁶ On the phenomenon of competition within the NGO/humanitarian field see the work of: Alesina and Dollar (2000) on 'Who gives Aid to Whom and Why?'; Power's (2004) work on calculation and control in humanitarian aid; Ikeda's (2009) work on 'Humanitarian Competition'; Hilhorst et al (2010) on the 'Humanitarian Arena'; and Caple James' (2012) work on what she calls 'bureaucraft' in Haiti among others.

[Haitians] can't say that they didn't do anything but then *just* enough so that there is *always* more work to do, (OPC Interview June 2014).

The phenomenon of ensuring there is always work to be done in Haiti, carving a permanent place in Haiti for the penal aid apparatus, bares an uncanny resemblance to Haiti's history of external control—particularly by the ever-present republic of NGOs. And, while the international development community engages in short-term, small investment, high reward (for penal aid organizations) QIPs, local Haitian penal administrators struggle to mitigate the acute-on-chronic effects of social inequalities which profoundly impact the capacity of Haiti's DAP to administer punishment in a standard fashion.

For example, during one of my interviews with OPC Haiti (June 2014), the interviewee had to stop our conversation to take a phone call from one of the penal administrators in the Plateau region of Haiti. Following the phone call the interviewee (OPC Interview June 2014) explained:

when I stopped talking with you, to take the phone call, I was discussing the fact that there is no food or water in the Central Plateau [prison]. So, the penitentiary authorities are calling me to tell me to 'please do advocacy for us because we don't have water and it's becoming very serious; at any time the prisoners can rebel and have a mutiny.'

In another one of my conversations with the OPC, the same interviewee was speaking to me while driving back to her office from the prison in Cap-Haitien which was experiencing generator problems. Without a functioning generator the prison administration could not properly manage sanitation and electricity in the prison (OPC Interview June 2014). It was during these particular interviews that I began to understand the severity of the situation for penal justice advocates in Haiti. Haitian proponents of penal reform such as the OPC Haiti—while they would

like to see changes in penal legislation, penal procedure, and support for long-term *Haitian* penal administrative capacity—are inundated with pleas to assist in penal crisis management.

Despite the intervention of international penal aid organizations, meeting the basic human needs (food, water, and shelter) of prisoners remains a key concern amongst the DAP and OPC in Haiti. Prison authorities generally provided prisoners with one or two meals a day, none of which provided prisoners with sufficient calories according to medical standards (Report on Human Rights Practice 2012: 6). OPC Haiti informed me (Interview June 2014) that the DAP has been unable to increase its food budget since the MICIVIH mission in 1996. In fact, the food budget for prisons in Haiti relies on aid from international humanitarian organizations, primarily the International Red Cross (Fuller et al. 2002). I was also informed (OPC Interview June 2014) that it has been a longstanding practice in Haiti for families of prisoners (who are able) to bring meals to the prison for their loved ones—meals that are often shared with other inmates. The provision of food within Haitian prisons involves multiple levels of governance: from international organizations supplementing the Haitian prison food budget; to the OPC advocating with international and national organizations for further aid in times of crises; to the enrolment of Haitian families into the penal aid process as providers of meals for prisoners.

Furthermore, while the OPC is supposed to fulfill its mission of “protecting citizens from abuses of public administration and protecting citizens human rights,” (OPC ‘Mission’ 2015) the organization lacks the resources to provide channels for, and investigations of prisoner complaints—their time and resources are almost entirely exhausted by penal crisis management. However, as I learned (OPC Interview June 2014), more often than not Haitian penal agents will call the DAP or OPC themselves pointing out their inability to meet the basic needs of prisoners

due to a severe lack of resources. The OPC, rather than operating as an internal review mechanism for Haitian penalty, operates as a sort of penal crisis first responder providing local penal aid in the form of basic needs provision for prisoners. Penal crises in Haiti, such as a lack of food, water, or power within Haitian prisons, are connected to the chronic scarcity of resources within the Haitian government, but they are also a product of the penal aid apparatus situated within the political economy of aid in Haiti: the impetus of which privileges short term, immediate response projects which bolster the moral sovereignty of penal aid organizations, rather than long-term, sustainable projects to rectify the impacts of social inequalities on Haitian penalty. Not only does this disconnect between international penal aid and local Haitian penal crisis response demonstrate that there is power in determining how aid is to be delivered—quickly and visibly to get the ‘most bang for your buck’ or as a response to the acute-on-chronic effects of social inequalities—but it is also illustrative of the ways in which prisons reflect the broader economic deprivation that Haiti experiences (the third core argument of this dissertation on the paradox of punishing inequality). Penal aid in Haiti treats penal institutions as if they do not have to contend with issues of social inequality first and administrations of penal justice second.

In one of my conversations with a UN Habitat officer I was told that most aid efforts in Haiti were self-serving:

[aid organizations] wanted visibility and political points...the picture-worthy, sexy projects...what was needed [in Haiti] was fundamental strategic-planning but instead, the resources, time, energy and the concentration went into stand alone capital projects...[aid organizations] wanted small things that they could fully control because they knew they could deliver on it but...it really does become very small (UN Cluster Interview June 2014).

Yes, while building prisons in Haiti is a sexy and deliverable goal for Canadian penal aid organizations, in the grand scheme of Haitian penal reform, as an element of Haitian state building, the contribution of penal infrastructure is quite small. That is not to say that the efforts of Canadian penal aid organizations were not worthwhile or unappreciated by Haitian penal organizations such as the OPC; however, these efforts do little by way of producing a standard penalty in Haiti, which may be the result of standards more directly providing a justification for external penal aid efforts and the political economy of standards themselves which focuses on more actionable, technical, spatio-material penalty. Not only do penal standards provide the means to streamline penal aid, managing domestic customizations of penalty, but such a technical focus is also aligned with, and further imbeds the post-colonial politics at the core of the political economy of aid in Haiti. As a result, penal aid efforts have a tendency to focus on the supply of justice—better penal infrastructure—rather than on the demand for justice—the treatment of prisoners—which is directly correlated with social inequality in Haiti.

For example, penal aid in Haiti meeting the types of cognitive/affective, social/collective, and spiritual/cultural standards which adhere to transformative, rehabilitative punitiveness is sparse. Another example in Haiti: penal projects in the area of education and vocational training rise and fall with donor funding since there is no national budget for prisoner education or training in Haiti. In 2009, there was a UN pilot project at the *penitentiare nationale* offering 25 prisoners literacy courses—a drop in the bucket given that half of the population in Haiti is illiterate and that 60% of Haitian families cannot afford to send their children to school (UN TV 2009: 1). However, at the time of my research, there were no internationally funded, long-term programs for education or vocational training in Haiti's prisons. Further, while Haitian law

permits religious observance in prisons and prisoners can request to see a Protestant minister, Catholic priest, or a Vodou Hougan (male leader) (Report on Human Rights Practices 2012), prisons provided few, if any, regular religious services for prisoners. I asked my interviewees about international efforts to include any religious or culturally specific programming in Haitian prisons, as per the SMRs (1957), and one particular respondent with CSC (Interview August 2014) explained: “culturally specific is having religious groups come in [to prisons] and do their thing. That’s it!” I continued to ask about the nature of this ‘thing’ that these religious groups deliver in Haiti and she said, “it’s all Christian-ish...paternalistic...‘we are going to save you’ ministry,” (CSC interview August 2014). There remains nothing on MINUSTAH’s agenda, nor START nor CSC’s agenda, that indicates that transformative, rehabilitative or reintegrative standards are a priority for penal aid efforts in Haiti. Despite all of the literature, data, and living proof elsewhere around the globe (Canada as a prime example)—that punitive, incapacitation punishmentalities alone simply do not work, penal infrastructure remains the sine qua non in the political economy of penal aid.

However, Haitian penal administrators are trying to make a case for penal aid that reflects transformative, rehabilitative punishmentalities. For example, the Haitian project manager with the UN Office on Community Violence Reduction states: “[prisoners] need to be rehabilitated...they are citizens who are supposed to one day return to the community—prisoners should learn a marketable skill that will reduce repeat offences,” (UN TV 2009). However, the international development community maintains its position as outlined by the NGO International Crisis Group (2007: 2); that the Haitian state does not yet have sufficient financial and human resources to reintegrate prisoners or to include a comprehensive non-custodial, parole

policy into the penal system. Yet, international development organizations (such as the International Crisis Group) make no reference to the conditions of structural inequality which permeate the Haitian government leading to insufficient resources in the first place. Moreover, I see another sort of complication arising in the use of rehabilitative and reintegrative punitiveness in Haiti: complications that are a result of the Haitian penal paradox in which rehabilitative and reintegrative penal practices would shift the balance of punishment in Haiti such that it would be understood as too lenient by the majority of Haitians who would not have the same access to these social goods (education and vocational training for example). In this way, penal aid projects engender deplorable practices of state-centric penal government (such as hyper-incarceration) while neglecting the needs of those who continue to suffer from extreme poverty and a lack of justice or a disregard for human rights. As I noted earlier, following Walby and Monaghan (2011), the treatment of prisoners and the actualization of prisoner human rights is not likely to improve as prisons continue to be over-crowded and penal resources in Haiti are exhausted. Also following Jefferson (2007a: 34), it is far from clear that increasing the scope of state institutions within developing states is a move that will promote penal justice in Haiti. Rather, as Christopher Stone (2010: 14) from the Harvard Kennedy School of Government argues, “no amount of financial assistance can make enough of a difference without a willingness on the part of [international actors] to face difficult questions about what justice means for Haitians.”

Instead of providing Haitian penal agents with the capacity for self-governance, penal standards provide penal aid organizations with a technique for governing Haitian penalty from a distance. Governing penalty (through penal aid efforts) further erodes the ability of Haitian

penal administrations to demonstrate good governance capacities which has consequences for Haiti's international reputation as a 'fragile' state. I agree with Ilcan and Phillips (2008: 722) that "the management of social transformation practices does more to legitimize the field of development than to address the needs of those who become...the objects of development." Penal aid efforts in Haiti foster a semi-permanent authoritarian government-at-a-distance, such that external penal aid organizations bolster their own moral sovereignty through the facilitation of 'sexy' QIPs (UN Cluster Interview June 2014), while local Haitian penal organizations struggle against penal crises born of the backgrounding of social inequality within the political economy of penal aid.

4.10 The Post-Colonial Politics of Penal Aid

In Haiti, MICIVIH marked the beginning of a succession of international 'humanitarian missions' in which the Canadian government and Canadian development organizations operated as what Michael Hecter (2013: xiv) calls, "alien rulers—authorities in a given collectivity who are themselves not members of that collectivity." Within the field of penal government, the aim of Canadian 'alien rule' is to tame local, Haitian penal traditions enfolded within technical, standard punishment as domestic customizations in order to meet the penal objectives and punishmentalities set out in international standard models (such as the SMRs). As my analysis has demonstrated, international penal aid operations in Haiti have continually designated the Haitian judicial sector as uncivilized and in need of modernization. However, the export of penal norms under the guise of penal development is a presumption of expertise which, as Jefferson (2007a: 34) argues, is itself questionable since this expertise is located *outside* the Haitian

juridical domain. While international penal standardization aims to encode and regularize penalty, pixelating punishment in Haiti into the smallest possible arrangement of elements, down to the very material substances of punishment (from guard towers, to weapons, to toilets), there has been little to no improvement in the conditions of imprisonment for prisoners in Haiti. More often than not, a lack of improvement in the area of prisoner human rights in Haiti is attributed, by the international development community, to a perceived breakdown in the monopoly over punishment, unbalanced (too harsh) punishment, and the need to manage penal difference. As a result, penal aid organizations invoke an enduring post-colonial narrative in which the Haitian penal system must, as Zanotti (2006: 155), argues, “become functionally distinct, comprehensive and continuous and...operate in a co-ordinated manner throughout the Territory with no overlaps or gaps.” However, as Chatterjee (in Thobani 2007: 24) argues, “the ‘true’ form of colonial rule is that of a modern regime of power destined to never fulfill its normalizing mission because the premise of its power is the preservation of the alienness of the group.” In Haiti, Canadian ‘alien rule’ (see Hecter 2013) depends on the ability of Canadian penal aid organizations to maintain the ‘alienness’ of Haitian penalty.

As international actors came to understand penal aid as mission critical for Haitian democracy, descriptions of Haitian justice as unruly, uncivilized, and vacuous proliferated. Take, for example, this characterization of Haitian legality from a Canadian police officer who worked with MINUSTAH as a UN peace officer:

To be honest, I think the laws have no effect [in Haiti]. There are ridiculous rules down there...you have a crime scene and it’s the justice of the peace that comes...which is totally out to lunch. In the nine months I was [in Haiti] I don’t think I had seen legal action...people know instinctively what is right and what is wrong but there wasn’t a law really, (UN Peace Officer Interview August 2014).

This interviewee substantiates their characterization of Haitian justice as ‘out to lunch’ by pointing to a lack of criminal procedure, or what they refer to as ‘legal action,’ as well as Haiti’s so-called ‘ridiculous’ legal stipulations exemplified by a justice of the peace (rather than police) arriving at a crime scene. However, legal action in Haiti follows the logic of automatic detention in which the justice of the peace arriving at a crime scene would be normal procedure for cases of *mandat de dépôt* as well as *flagrant de lit*. There is an important disconnect evident here between this Canadian penal aid agent’s conceptualization of Haitian penalty (viewed through the lens of Western, common-law penalty) and Haiti’s tradition of penalty relying on social controls for crime. Such dismissals of Haitian penalty as uncivilized and obsolete echo Fanon’s (1965: 38) findings in *The Dying Colonialism* regarding the French colonial denouncement of the ‘Algerian way’ described as ‘medieval and barbaric’; as well as Mitchell's (2005: 151) discussion of the sterilization of old traditions of indirect rule in Egypt through the proliferation of bureaucratic administrative structures. The proliferation of penal aid in Haiti is another reworking of the post-colonial project of modernization which attempts to relocate the power to punish in Haiti within narrow conceptualizations of government (state-centric authorities) rather than wide conceptualizations of government (social authorities).

Problematically, ‘alien rule’ often does not consider, or fails to understand the complexities of the Haitian geo-political context mobilizing an overly simplistic, homogenized conception of cultural identity. As Glen Coulthard’s (2014: 81) work on the post-colonial politics of recognition demonstrates, a failure to comprehend cultural intricacies, when institutionalized in the form of public policy and practice, risks essentializing the idea of culture as the property of

a distinct ethnic group, reifies culture stereotypes, and fetishizes particular cultural practices. For example, Haitian penal authorities with the OPC expressed their frustrations in regards to an international ignorance regarding Haitian cuisine and meal preparations:

the national penitentiary was only given [via food aid from the ICRC] macaroni and vegetables so they made a kind of vegetable mixture with some boiled herring from New Brunswick...this is the *last* kind of food that Haitians will accept to eat. Because in Haiti you don't eat macaroni with anything else but cheese...or if you are in prison with salt and a little herring sauce! (OPC Interview June 2014)

Yet, culturally specific practices within Haitian penalty were often understood by Canadian penal aid agents (CSC Interview August 2014) to be synonymous with Haitian religious practice—Vodouism. Further, there are no designated penal aid resources to support the provision of spiritual/cultural standards from *within* Haitian penal administration or by local Haitian organizations. Penal aid agents invoked what they called Haitian ‘cultural taboos’ (START Interview February 2014) as justifications for why the Haitian penal system was lacking in particular areas of penal government. For example, an interviewee with START commented on the lack of mental health resources for prisoners in Haiti attributing this to Haitian ‘cultural taboos’:

You have to learn from the culture right? Like here [in Canada] when somebody [is assessed] in the prison there is a mental health questionnaire where ‘are you suicidal?’ gets asked. You don't ask that in Haiti because it's taboo. [Haitians would ask] ‘why would anyone commit suicide? If prisoners do [commit suicide] it is just not talked about so there are certain things you simply cannot ask... (START February 2014).s

However, Coulthard (2014: 81-82) warns of the consequences of treating culture like “badges of group identity; it tends to fetishize them in ways that put them beyond the reach of critical analysis.” In this particular case, the fetishization of Haitian cultural practice, as something that is uncontested and homogenous, is particularly problematic as it is used as a

justification for non-standard practices regarding prisoner mental health in Haiti. However, this example also demonstrates the ways in which culture and domestic customizations of penal standards are by no means synonymous, but neither are they entirely divisible. Most problematic is that, following Coulthard (2014: 97), the need to determine domestic customizations of penal standards leaves in tact “the colonial, social and political structure that is assigned the adjudicative role,” in attempting to make these distinctions in the first place. Again, it is primarily penal aid agents who make determinations regarding domestic customization in penal standardization in the Haitian case rather than Haitian penal authorities. And, penal aid agents, following the logic of penal standardization, describe the need for paternalistic moral sovereignty in Haiti in order to teach good governance: “you really have to...take on the paternalistic role and step [Haitian penal agents] through to achieve...self sufficiency. You know that whole: if you give him a fish he will eat for a day but if you teach him how to fish then he will eat all the time,” (CSC Interview August 2014). This characterization of penal aid as the paternalistic teaching of self-sufficiency is ironic given that Haitian self-sufficiency is certainly not the end goal of penal aid, but rather the goal is to legitimate the penal aid apparatus such that “there is always more work to do,” (OPC Interview June 2014). Furthermore, for all of the problems plaguing Haitian prisons, the OPC was critical of ‘big countries’ penal systems (like CSC), claiming that countries like Canada had ‘worse’ kinds of problems: “in the big countries you don’t have this kind of problem [referring to the lack of food and water in Haitian prisons] but you have *worse* kinds of problems: personal security, sexual abuse, and drugs which we don’t have in Haiti because we watch very carefully and drugs are expensive.”

Nevertheless, the post-colonial politics of penal aid in Haiti advocates an increased technicization of punishment utilizing modern, technical forms of punishment and sees other penal aid organizations, which are not technologically adept themselves, as ‘force multipliers’ to Haiti’s uncivilized forms of penalty (UN Peace Officer Interview August 2014). For example, one interviewee with MINUSTAH (UN Peace Officer Interview August 2014) speaks of a ‘first world influence’ within the penal aid apparatus:

Computer skills...this is amazing: the African cops I was working with [in MINUSTAH], there was one guy he didn’t even know what a thumb drive was. [Computer skills] is now one of the questions that the UN asks when they are trying to recruit UN officers because people have such varied backgrounds. [Computer skills] is why you see first world countries tend to have positions of influence within the service (UN Peace Officer Interview August 2014).

Interestingly, the majority of corrections personnel deployed to Haiti to train Haitian COs are from African countries (UN Department of Peacekeeping Operations 2014; UN Peace Officers Interview August 2014; and CSC Interview August 2014). When I asked interviewees why they thought the largest contributor of training officers to MINUSTAH in Haiti were African they replied: “because it’s so lucrative—countries (including Canada) that contribute officers to UN missions get a mission subsistence allowance from the UN for doing so,” (CSC Interview August 2014; and UN Peace Officer Interview August 2014). While the UN Peace Officer (Interview August 2014) went on to discuss at length the wage disparity amongst UN Peace Officers and the HNP, as well as how the presence of international Peace Officers contributed to the inflation of an already unequal wealth distribution in Haiti, this officer still found it challenging to work with officers from Africa:

In Africa, they have very similar [approaches to penalty] as in Haiti. For example, one of the officers I worked with in the police academy was from the Ivory Coast and there

is a UN mission in the Ivory Coast...we call those officers force multipliers. So, if we are to discount all of the officers that don't have much to bring [to Haiti] that leaves first world countries (UN Peace Officer Interview August 2014).

Officers from 'under-developed' countries are seen as potential forces of corruption threatening to undo or forestall the work of 'first world' penal training in Haiti as a result of their inability to contribute a model that is improved from the Haitian situation.

Rather than acknowledging the value of shared experiences that officers from UN mission countries bring to the field—places experiencing similar levels of international 'aid and assistance'—in Haiti Canadian penal aid agents often discounted such contributions as threats to their penal standardization mission. The CSC administrator I interviewed (Interview August 2014), described working with her African colleagues as such: "the people [I] worked with, the Africans, they would say to us; 'well [Haiti] is very similar to our own system' and I would go, 'Oh? it's not any better?' It's like: Ohhhh!" The so-called 'first world' Canadian penal aid agents in Haiti saw their African colleagues as incapable of engaging in effective penal norm export (see Jefferson 2007a: 33-34) since African penalty is, like Haitian penalty, non-normative (see Jefferson 2007a: 33-34). As such, penal aid agents saw their engagement with African UN Peace Officers as an opportunity to expand their mission, in effect, training the African Peace Officers alongside the Haitian HNP. In fact, one Canadian Peace Officer in Haiti dreamed of a Canadian United Nations in Haiti:

If we had Canadian coppers, and I can say this with confidence, if we had Canadian coppers in charge of all key positions at the time of the earthquake we would have had a very effective United Nations. But, it wouldn't be the United Nations then, would it? (UN Peace Officer Interview August 2014).

This interviewee's comments regarding an 'effective UN' illustrate a tension within the post-colonial politics of penal aid: that the political economy of penal aid is both a way to carry on a post-colonial government of the developing world, as well as a project that, because of its formal commitment to internationalism (evident in the inclusion of Peace Officers from Africa), faces limits in its governing. International penal standards are caught within this tension; they are supposed to maintain the appearance of technicality and neutrality while actualizing the post-colonial mission of crafting standard, technical, punishment in Haiti and, where possible, globally.

The domestic customization of penal standards is supposed to take into account the Haitian context—forms of local penal knowledge and practice such as *flagrant delit*, *clameur publique*, and *association des malfaituers*. The issue is that these practices of punishment, specific to Haiti, are in conflict with the post-colonial project of bolstering the state-centric character of punishment via penal standardization. While penal aid agents are aware that simply exporting penal norms from Canada would fail without some effort to “inject Canadian policy” (CSC Interview August 2014), doing so would not further advance the mission of penal standardization in Haiti since Canadian penalty is on the whole sub-standard itself. As Coulthard (2014: 41) argues in the context of Aboriginal recognition, “the colonial powers will only recognize the collective rights and identities of Aboriginal peoples insofar as this recognition does not throw into question the...legal, political, and economic framework of the colonial relationship itself.” Local, socially embedded penalty in Haiti defies the legal and political framework of the post-colonial relationship of penal aid which, through penal standardization, aims to induce state-centric penal justice in Haiti. As such, penal aid in Haiti is fixated on QIP

projects not only because of the pressures of donor expectation but because domestic customization in the areas of technical, spatio-material, penal design does not throw into question the legal, political, and economic framework of the penal aid relationship. In fact, QIP projects intensify the indirect post-colonial power-relations of penal aid in which the Haitian penal administration relies on penal aid organizations to provide much of the economic and human resources for penal government in Haiti.

According to Don Macnamara (2005: 63), a senior fellow at Queen's Centre for International Relations, Haiti has become a place where Canadian development organizations can "project [their] modest influence in the world in a way that makes a significant difference for the better." However, the question is: better for whom? One of my respondents, working as a UN Peace Officer in Haiti at the time of the earthquake had the following to say regarding the 'difference' that Canada makes in Haiti:

I think it does more good for Canadians to know that we are helping than the actual good that it does on the ground [in Haiti]... I think that it is important for Canadians to feel like we are helping—our money, our tax payer dollars are helping—I think the Canadian population expects [police officers] to take a leadership role in the world... [Canadians] expect us to do that (UN Peace Officer Interview August 2014).

This interviewee's observation that Canadian 'alien rule' (Hecter 2013) in Haiti does more good for Canadian nation-building and morale (the perception that Canada is a penal justice role model abroad) than it does for bringing about meaningful and lasting change in Haitian penal governance cannot be over-stated. Canadian penal aid agents working in Haiti engage in reputational work whereby they locate Canada as a model of penal excellence globally, placing Canada on the standard side of international comparisons, despite glaring violations of penal

standards within Canadian penal administration.⁴⁷ Penal aid in Haiti exacerbates the social inequality facing Haitian penal authorities, such that, following Coulthard (2014: 100), the efforts of the penal aid apparatus in Haiti “is perversely undercut by the very success of the colonial project itself. The adverse effects of colonization demand more colonial intervention.”

4.11 Punishing Inequality in Haiti: Paradoxical Punishment

Systemic forms of inequality in Haiti, such as poverty and insufficient basic needs provision, inadequate housing, as well as access to health care and education, challenge the standard conceptualization of punishment as a social good: punishment in Haiti cannot be seen as providing opportunities for prisoners that are not readily available to all Haitian citizens. This is the paradox to which penal aid agents in Haiti have to contend: how to maintain the monopoly over the authority to punish, or penal legitimacy (premised on punishment understood as state sanctioned rather than socially derived) without subjecting prisoners to patently inhumane conditions and practices? In this way, social inequality acts as another ‘force multiplier’ (UN Peace Officer Interview August 2014) in the standardization of Haitian penalty, particularly in efforts to balance too much (harsh, uncivilized) punishment with not enough (too soft, illegitimate) punishment. As my analysis of penal aid efforts in Haiti has demonstrated, rather than address the existence of social inequality head on, penal aid organizations find innovative ways to pragmatically implement penal standards such that the effects of social inequality are momentarily mitigated but never fully eradicated.

⁴⁷ The following chapter (V) on the Nunavut encounter will further elucidate this inconsistency.

We saw the penal paradox in action in the Canadian funded, supported, and governed-at-a-distance Croix-Des Bouquets prison, where seemingly trivial elements of penal design, construction, planning, and operations became controversial sites of penal standardization. The installation of porcelain toilets at Croix-Des-Bouquets resulted in controversy over the potential for these materials to become weapons, within what international penal aid agents see as the violent and dangerous penal environment. However, Canadian penal aid agents invoked the Haitian penal paradox explaining that the Haitian penal context is one of survival— “they don’t give them enough food!” (START Interview February 2014)—rather than violence. For all of the anticipation of violent misuse, the installation of porcelain toilets at Croix-Des-Bouquets resulted in yet another iteration of the paradox of punishing inequality: the issue with the porcelain toilet was not that it would be utilized as a weapon but that, given the widespread effects of economic disparity in Haiti, the Haitian penal administration could not make a case to secure the financial resources necessary to upkeep the sensitive plumbing in the prison by providing prisoners with toilet paper. Nevertheless, Canadian penal aid agents could not see how this posed a dilemma for Haitian penal administration: how can the Haitian government budget for toilet paper in the Croix-Des-Bouquets prison when the state is struggling to meet the basic needs of the majority of law-abiding citizens?

We saw the Haitian penal paradox at work in the Canadian focus on disciplinary types of standards such as the proper care and use of weapons, despite the fact that the Haitian penal administration justified its decision to not provide COs with weapons, on account of prisoners and Haitian penal administration alike being far more concerned with meeting the basic needs of prisoners than with a need to manage violence by force. Similarly, we saw paradoxical

punishment at work in the OPC's claims (Interview June 2014) that prisons in Haiti do not face the same sorts of personal security threats and drugs use issues as Canadian prisons because prisoners attempt to care for each others basic needs, and drugs are expensive. We saw the penal paradox at work in the disparity issues regarding salaries for Haitian CO's. While international penal aid agents wanted to ensure Haitian CO's were earning enough money to compensate the difficult working conditions in Haitian prisons, CO's could not be paid an exorbitant amount of money as compared to the average Haitian salary. In other words, Haitian CO's have to make a comparable Haitian salary but they also need to be compensated enough such that they are not essentially prisoners themselves. This dilemma was further complicated by the fact that, as a result of the effects of systemic social inequality (a lack of or inability to afford housing), CO's were often living at the prisons they worked in. In this example, Canadian penal aid organizations provided technical, code of conduct corrections for Haitian COs in the form of designations of work time/space versus personal time/space, managing to circumvent the effects of social inequality—the fact that COs were living in the prison in the first place.

We saw paradoxical punishment at work in the ways in which it is impractical for Haitian penal administrations to implement certain penal norms in Haiti such as rehabilitative and reintegrative punishmentalities; these are penal norms that simply cannot be exported to Haiti because doing so would mean undermining the efficaciousness of punishment and potentially leading to civil unrest. As the NGO Action Aid Haiti (2006: 9) observes: “creating jobs and giving educational opportunities for members of criminal groups without parallel processes of economic development, job creation, and educational opportunities for the average Haitian can lead to further conflict in the country.” My respondents echoed these concerns, evident in the

opening quote for this chapter, in which members of START explained that interests in issues of penal justice were ‘just not on the radar’ of Haitians. Another respondent with START (Interview February 2014) explains, “if Haitians are worrying about how to feed themselves, how to shelter themselves, how to get water and how to keep safe, the judicial system’s problems are so far down the line...” As I mentioned in my discussion of social/collective punishments in Haiti, paid labour programs are completely absent from Haitian penal policy and practice due to the disparity this would create amongst prisoners and members of Haitian civil society. Penal aid organizations are all too aware that in order to strengthen the state-centric character of Haitian penalty and maintain the credibility of punishment in the process, prisoners cannot be seen to enjoy a quality of life that is better than the average Haitian citizen.

In other words, while penal aid organizations want to raise the standard of Haitian penalty they cannot raise the standard so high that the prison becomes illegitimate—no longer associated with punishment. Implementing penal practices associated with rehabilitative and reintegrative punishment would shift the balance of punishment in Haiti such that it would be seen as too lenient (or soft) and therefore not punishment at all. Yet, rather than conclude that Haiti is doomed to standard failure from the outset, because implementing penal standards would mean eroding the force of punishment in Haiti, the value of penal standards lies in their non-compulsory, non-uniform flexibility. In Haiti, the pragmatic implementation of penal standards, within a political economy of penal aid that emphasizes short-term, low-risk, deliverable QIPs, makes *some* impacts on the standard character of Haitian penalty, all the while allowing the dreadful conditions of incarceration and the systemic issues of social inequality to persist; therein lies the power in determining how penal aid is to be done in Haiti.

Perhaps most troubling is that rather than addressing the underlying impacts of social inequality on the standard nature of punishment in Haiti, the penal aid apparatus attempts to manage social inequality *through* penalty. As Wacquant (2008: 13) explains: “the police, court, and prison are not mere technical implements whereby the authorities respond to crime—as in the commonsensical view fostered by law and criminology—but a core political capacity through which the state both produces and manages inequality, identity, and marginality.” It remains to be seen whether, or to what extent penal aid efforts emphasizing criminal procedure (through the state) will take root in Haiti, given the predominance of victim-centred, socially embedded penal procedures (such as *mandat de dépôt*, *association des malfaiteurs*, and *clameur publique*). Further, as I have argued elsewhere (in Brisson-Boivin and O’Connor 2013: 525), “replacing detention with social redemption techniques to meet UN normative goals and procedural standards would be a significant change in the trajectory of Haitian justice.” In Haiti, Penal standardization missions take as their aim not the eradication of social inequality, nor the transformation of prisoners, nor the conditions of imprisonment and the recognition of prisoner human rights for that matter; rather, penal aid in Haiti produces a form of penal government that embraces a post-colonial politics which bolsters the moral sovereignty of penal aid organizations leaving Haitian penal administration to stave off the acute-on-chronic crises born of the backgrounding of social inequality within the political economy of penal aid. The reason is that, if penal aid were to address the effects of social inequality, impacting the ability of Haitian penal administration to deliver standard penalty, there would no longer be a need for external penal aid in Haiti.

4.12 Conclusion:

In this chapter I have demonstrated the ways in which Haitian penalty continues to be problematized by international development organizations, and intergovernmental organizations (such as the UN), on account of the local, socially embedded authority to punish in Haitian penal traditions as well as a perceived lack of criminal procedure. I have argued that the current iteration of international efforts to (re)form Haitian penalty are intimately connected to Haiti's post-colonial inheritance of humanitarian intervention, via the political economy of penal aid, relying on penal standardization as a justification for these penal aid efforts. Moreover, this chapter has uncovered the insidious effects of penal aid, which promotes the virtue of the prison as a democratic institution, as a means of reinforcing the international development community's monopoly over the power to punish, such that penal aid efforts work to bolster the moral sovereignty of the penal aid apparatus—carving out a semi-permanent place for penal aid organizations (such as START Canada) in the republic of NGOs in Haiti. I argued that through the invocation of what penal aid agents call a 'paternalistic' ethos of protection (CSC Interview August 2014), penal aid efforts focus on the supply of justice—the shoring up of Haitian penal infrastructure—rather than on the demand for justice—access to penal law and the treatment of prisoners—connected to systemic issues of social inequality and 'alien rule' (Hecter 2013) in Haiti. The Canadian built Croix-Des-Bouquets prison highlighted the ways in which domestic customization focuses on spatio-material punishments, leaving in tact the post-colonial relationship whereby Canadian penal administrations (CSC) are standard enforcing and Haitian penal administrations (DAP and OPC) are struggling to forestall penal crises creating an environment of penal aid dependency in Haiti. I argue that penal aid organizations reproduce the

post-colonial legacy of social inequality in humanitarian aid efforts in Haiti such that penal standardization, rather than a neutral tool of government, promotes the deeply unequal status quo in Haiti. However, while CSC has been building its penal reputation through the delivery of penal aid in Haiti, Canadian penalty faces a situation of sub-standard, in many cases inhumane, punishment of its own (in Nunavut). In fact, many of the issues facing Nunavut corrections, sparking a federal investigation into NU.C and the treatment of Inuit prisoners in Canada, are in large part due to the Canadian government's failure to address the impacts of systemic social inequalities in its own country. It is to the case of penal investigation in Nunavut that we will now turn.

CHAPTER V

INVESTIGATING (NON) STANDARD PUNISHMENT: PUNISHING INEQUALITY IN NUNAVUT

It is necessary for [Canadians] to protect our rights against foreigners; to protect our fisheries and to take care of our property generally. I think it is wise for [the Canadian government] to exercise some oversight over the Canadian tribes, because if you do not protect them, the traders who are not particularly anxious about the welfare of the native Eskimo get in amongst them and debauch them, carry in liquor and evil influence among the tribes, then the responsibility is ours. The Eskimo problem is beginning to be a rather serious one for us to handle and we are establishing police posts at various points along the coast to protect the Eskimo and preserve their game.

~House of Commons speech, Canada 1924 in Inuit Tapiriit Kanatami (2004: 14)

We're getting too many Inuit incarcerated in southern Canada. It is not in our culture to be incarcerated forever. It is not our way of life. I want to make my fellow Inuit, incarcerated in southern Canada, Inuit men again.

~Elder Peter Irniq in Zarate (2010)

5.1 Introduction

This chapter provides an analysis of penal standardization as a tool of penal investigation in the case of Nunavut Corrections (NU.C) in Canada. In Haiti, the assumption amongst the international development community is that there is a lack of standard penalty given what has been framed by the post-colonial politics of penal aid as an uncivilized, non-technical, and socially embedded Haitian penalty; whereas in Canada the assumption amongst the Correctional Service of Canada (CSC), and for many law-abiding Canadians, is that penalty *is standard*, meaning it is aligned with the international human rights treaties and penal norms found within the canon of penal standards (such as the UN SMRS, UN Rule of Law Indicators, ICRC standards etc). My empirical analysis of the penal investigation in NU.C, and the treatment of Inuit prisoners in Canada, demonstrates how such assumptions—the taken-for-granted, standard nature of Canadian penalty—are fallacious. I begin with a discussion of an Inuit ethos of justice,

drawing on the work of Inuit organizations, Elders, and activists, not as a relic of the past but as a contested and changing ethos that is compatible with modern Canadian life. Similar to the Haitian case, the Inuit ethos of justice promotes socially located practices of crime control and order maintenance; however, the value of local social controls in Nunavut has been eroded by a post-colonial project of government (in the narrow sense) which aims to extend the Canadian state's moral sovereignty in the North. I will argue that the Inuit ethos of justice was, and continues to be, problematized (by the Canadian government) on account of it being unbalanced and in need of codification, regulation, and civilization. The next section provides an overview of the historical development of state-centric penalty in Nunavut as one feature of the post-colonial state project (see Abrams 1988: 59,76) in the Canadian North. I then outline the strategic 'games of power' (see Hindess 1996) at play in the creation of Nunavut as a Canadian territory (in 1999) such that the territory is granted what I call (following Hanafi's 2014 analysis of the UN's work with Palestinian refugees and Lippman's 1925/2011 analysis of the public as phantom) *phantom sovereignty* preserving the post-colonial organization of governmental relations in the North.

I will demonstrate that, since its establishment in 1999, the territory of Nunavut has faced severe economic and social disparity which, left unattended, has translated into the penal field resulting in reprehensible forms of penalty in Nunavut. As a result, in 2013, just 14 years after the establishment of the territorial government and the Nunavut Correctional Plan, the conditions of imprisonment in Nunavut were so abhorrent that the director of NU.C called for a national inquiry into the state of corrections in Nunavut. I analyze local calls for an investigation into NU.C and negotiations of the politics of corrections through NU.C.'s enlisting of the Office of the Correctional Investigator of Canada (OCI) in the administration of a comprehensive and

scathing investigation of NU.C. The 2013 OCI report was followed by significant Canadian media attention, and further reports on the dismal conditions of penalty in Nunavut (such as the 2015 Auditor General's Report), all of which produced evidence of sub-standard and non-standard penalty in NU.C.

In the next section I provide an analysis of the investigation into sub-standard penalty in Nunavut grounded in my interviews with penal agents (including those working on the construction of the case for penal reformation in Nunavut), and my participant observation within Ontario penal institutions—responsible for Aboriginal⁴⁸ penal programming for which Inuit prisoners are transferred. Of particular importance to the investigation in NU.C was Baffin Correctional Centre (BCC), the main penal institution in Nunavut, and one of Canada's worst prisons. I detail the sub-standard forms of penal administration, penal design, spatio-material, and technical penalty highlighted within the investigation as well as the continued repression of Inuit social, cultural, and spiritual understandings of punishment within Canadian (state-centric, carceral) penalty. Furthermore, like in the Haitian case, the value of penal standards in Nunavut lies in their flexibility—the pragmatic means by which penal agents can implement standards and engage in forms of domestic customization, which enlist or co-opt (as O'Malley 1996 argues) Aboriginal forms of governance, or an Inuit ethos of penal justice in the case of NU.C.

The following section will outline what I am calling the post-colonial politics of Canadian penalty and the cultural distinctions and appropriations reified in penal practice. This section is primarily concerned with questions of: who are the governed and who are the

⁴⁸ In this chapter, Aboriginal refers to First Nations, Métis, and Inuit peoples of Canada who differ in their approaches to government and justice but share in experiences of colonization by the government of Canada.

governing in the case of penal investigation in Nunavut? I argue that the penal investigation in NU.C, while uncovering the deplorable conditions of imprisonment in Nunavut, also illustrates the ways in which the Inuit continue to be subject to a state-centric, post-colonial apparatus of punishment which erodes an Inuit ethos of penality in the name of Canadian moral sovereignty. I argue that the use of penal standardization as a means of conducting a penal investigation into NU.C fails to account for the impacts of colonization on the capacity and conditions of punishment in NU.C. Following the work of O'Malley (1996), Coulthard (2014), Chatterjee (2001, 2011), and Watt-Cloutier (2015) among others, I argue that culture is not a stable object but is in fact at stake in the post-colonial politics of penality governing NU.C, such that cultural appropriation and resistance are intertwined. Similar to the Haitian case, the Inuit ethos of penal justice is problematized by a post-colonial politics on account of Inuit penality being non-standard—uncivilized, unbalanced, and lacking in central authority. However, my research demonstrates that it is the state-centric system of Canadian penality in Nunavut that is sub-standard. I argue that what remains a primary impediment to efforts to reform NU.C is the failure of penal investigation to recognize the ways in which penal government capacity is tied to the history of post-colonialism in Nunavut, (re)producing paradoxical forms of punishment in Nunavut.

The concluding section of this chapter will analyze the paradox of punishing inequality in Nunavut: how to make a case for penal reformation without compromising the legitimacy of penal government in Nunavut, given the prolific need for investment and reformation in other areas of social government. Similar to the Haitian case, the unabated, deeply entrenched social inequalities in Nunavut make it difficult for the director of NU.C and penal investigators to make

a case for punishment as a social good given the lack of social goods (such as healthcare and education) for law-abiding Nunavummiut. Despite the evidence of sub-standard, inhumane, and cruel punishment in Nunavut penal reformation is not a high priority for the federal or territorial government since, as my respondents explain, money would be best spent elsewhere (on housing, healthcare, education, and so on). Despite some instances of success in building a case for the reformation of NU.C, state-centric penalty continues to erode rather than recognize the human rights of Inuit prisoners, as well as the self-governing capacities of Inuit peoples, further entrenching Southern Canadian modes of government in Nunavut. The continued reliance on carceral forms of punishment in Nunavut inculcates the horrors of institutional punishment (including the hyper-incarceration of Inuit prisoners), leaves intact a non-standard mode of penalty, and reifies the impacts of social inequality and the effects of post-colonial relations of government in Nunavut.

5.2 An Inuit Ethos of Justice

Maligaq [an Inuktitut word for law] are inside a person's head, and they will not disappear or be torn to pieces. Even if a person dies the Maligaq will not disappear. It is part of a person.

It is what makes them strong.

~Elder Aupilaarjuk in *Interviewing Inuit Elders* (1999: 4)

Contestations over Arctic sovereignty in Canada are unremitting, owing to a pervasive narrative that the Arctic has endured as a 'no-mans land' (see Morrison for *Historica Canada* 2006).

However, these narratives are not simply the historical musings of explorers, nor records of expeditions into the great white North from centuries past. In 2014, I attended a 'Borders in Globalization' conference at Carleton University where there was a special panel on Arctic

politics. Several of the speakers on this panel (a combination of academics and public sector employees) spoke at length on the need to continue to patrol Canada's Arctic coastlines in an effort to assert Canadian sovereignty in regions that are experiencing increasing international traffic given the potential for untapped natural resources. For example, one presentation focused on the development of a fleet of Canadian ice-breaker patrol ships and the role of the Canadian Coast Guard in maintaining Arctic sovereignty.⁴⁹ During the question period, one of my fellow audience members informed the panel that he was an Inuit Canadian temporarily in Ottawa for graduate studies at Carleton. He asked the presenters if they were aware of the many and varied Inuit peoples living in Northern Canada and how they felt these efforts to exert Canadian sovereignty would impact the lives of Inuit peoples. Panelists appeared to be at a loss for how to respond given that they had just spent an hour implying that Canada's Arctic was a 'no-man's land,' neglecting the history of Inuit peoples and their understandings of Arctic Sovereignty. The Government of Canada (in 'Arctic Expedition' 2013) attributes to the Canadian Arctic expedition (1913-1918) a turning point in Canada's Arctic territorial history: "By asserting Canadian control over thousands of square kilometres and confirming Canada's modern Northern border, the Expedition and its activities laid the foundation for the future of Canada's development in the Arctic." Such descriptions of the "unparalleled...scientific and cultural discoveries...as well as the establishment of new settlements," (Government of Canada 'Arctic Expedition' 2013) suggest that the history of the Arctic began somewhere in the late 19th or early 20th century. Similarly, *Historica Canada* (Morrison 2006), the self-proclaimed largest

⁴⁹ In 2010, the Canadian federal government announced plans to build a fleet of six-to-eight "ice-capable, Arctic/Offshore Patrol Ships," to enforce Canada's sovereignty in the Arctic and by 2014 the Canadian Coast Guard operated a fleet of six icebreakers (Morrison for *Historica Canada* 2006).

independent organization for developing Canadian historical awareness, frames contestations over Arctic sovereignty as occurring amongst Canadians, Americans, Scandinavians, and the British with no mention of contestations on the part of the Inuit peoples living in these regions prior to colonial exploration. Yet, Inuit narratives of Arctic territorial history are quite different, suggesting that the Inuit have occupied the Arctic for thousands of years before colonial ‘discovery’.

For example, Inuit Tapiriit Kanatami (2004: 5), the national Inuit organization in Canada, explains that if we were to go back in time 8,500 years we would find small communities living along the stretches of land between what is today the Nunavut, Alaskan, and Siberian Arctic coasts. Many Inuit Organizations⁵⁰ do not divide the past from the present when discussing Inuit history, for example: according to Inuit Tapiriit Kanatami (2004: 4)

today, no matter where we choose to travel, hunt, or camp we find the traces of our ancestors. From these, we have come to understand that our life is a continuation of theirs and we recognize that their land and culture has been given to us in trust for our children.

Further, Inuit conceptualizations of history are fluid and flexible rather than confined to the past: “Inuit is not a culture frozen in time. Inuit adaptation is perhaps our most notable trait and this characteristic continues to serve us well in the modern context,” (Pauktuutit Inuit Women of Canada 2006: 8). Similarly Sheila Watt-Cloutier (2015: 321), a well-known Inuit environmental activist and human rights advocate, explains:

...when I talk about the importance of our traditional Inuit hunting culture, I’m not being nostalgic. Our hunting culture is not a fondly remembered relic of the past. It’s not history. It’s a continuing contemporary way of life. And it’s perfectly compatible with the modern world.

⁵⁰ See Inuit Tapiriit Kanatami (2004) and the Pauktuutit Inuit Women of Canada (2006) as examples.

Not only are there contested historical narratives about the ‘discovery’ of the Canadian Arctic but the very meaning and application of history are significantly different within Inuit and *Quallunaat* (non-Inuit) narratives. Within these historical contestations are accounts of an Inuit ethos of justice.

According to Pauktuutit Inuit Women of Canada⁵¹ (2006: 10), Inuit legal orders are characterized by an “informal nature, flexibility, and a reliance on social pressures to ensure people act appropriately,” (Pauktuutit Inuit Women of Canada 2006: 10). The Inuit have three Inuktitut words for law/legality: *maligaaq* meaning that which has to be followed—*maligaaq* is often translated as Canadian law, but the term is relational; *pigugait* meaning what has to be done; and *tirigusuusit* meaning what not to do (Interviewing Inuit Elders 1999). According to Loukacheva (2012: 204), a Southern Canadian researcher at the University of Toronto, Inuit legal orders “[are] oriented towards the restoration of peace and communal reconciliation rather than the exercise of justice through punishment.” Similarly, Sidney Haring⁵² (1989: 41) explains, “there is no emphasis on the meting out of ‘justice’ in Inuit society only on restoring social harmony, hence, no attempt is made to impose a uniform, individualized, ‘just’ sanction.” Inuit sanctions seek to aid the offender rather than impose a punishment: the determination of guilt and subsequent restitution are measured on the grounds of the offender’s situation, and not on the basis of an act or offence, and the system of social control is marked by flexibility in conflict management (Loukacheva 2012: 204). Inuit legal orders are not written, they are orally passed

⁵¹ A national non-profit organization representing Inuit women across Canada.

⁵² Professor Emeritus at CUNY law school who has done extensive research on Aboriginal legality and criminal justice issues for Aboriginal peoples in America, Canada, Australia, and Namibia.

down amongst generations and, rather than a single authority, the entire community is responsible for the maintenance of peace and order. If there was any question as to the penalty to be applied, the Elders would be consulted regarding how a similar situation was handled in the past (Pauktuutit Inuit Women of Canada 2006: 8). Following the work of Garland (2000: 354) on the culture of crime, I see the Inuit ethos of justice as one in which criminal wrongdoings are a collective experience in which what is and is not understood as criminal takes on different meanings for different Inuit collectivities at different times.

According to Pauktuutit Inuit Women of Canada (2006: 9), the priority within Inuit legality is not necessarily to punish the offender or provide justice per se, but to ensure the community returns to a state of harmony, peace and equilibrium. In past iterations of an Inuit ethos of justice,

in cases involving serious threats to the community, adults would meet to discuss the matter publicly and arrive at a *group decision* regarding what should be done. Individuals considered to be of particular value to the community, such as a hunter, would be treated with greater leniency since the imposition of a serious penalty in this case (such as banishment) would not be in the best interest of the community (Pauktuutit Inuit Women of Canada 2006: 15, my emphasis).

Here we see an example of the way in which punishment is individualized in Inuit legal orders, such that a decision can be reached that best fits the community; restoring order and harmony, rather than meting out justice. More importantly, the punitive decision is made collectively, by the group or community: there is no central authority figure or administration charged with weighing out crimes and punishments. Proper social conduct and order is upheld in the commonly held values, behaviours, and actions expected of all members of the community. Finn

Lynge, an accomplished academic Greenlandic Inuk (in Watt-Cloutier 2015: 292), outlines four values that are essential to the Inuit way of life:

Nunamut Ataqinninneq relates to a sense of pride and respect in a strong familiarity with, and knowledge of, the land and sea, including its animals. *Akisussaassuseq* is the responsibility that people have to the land and to everything that inhabits it. *Tukkussuseq* relates to the importance of generosity and hospitality to extended family, as embodied by the cultural sharing of our hunt. *Inuk nammineq* emphasizes individual autonomy and strength, particularly the wisdom to discern appropriate choices on the land and in one's life.

I agree with Haring (1989: 2), that the study of Inuit law and justice is significantly more difficult methodologically than the study of Canadian law since “it does not exist in readily interpreted statutes and cases or in wills or divided in divorces.” Inuit law is contextually and communally bound, the study of which requires either asking Inuit peoples about their legal cultures—which, as Haring (1989: 2) points out, is especially difficult to capture in non-Inuit language and cultural meaning—or by observing Inuit law in action.

Some of the most common (yet not uncontested and certainly not uniformly applicable to all Inuit communities) types of behaviour considered improper are: lying, stealing, laziness, excessive mocking or gossiping, volatility or unpredictability, jealousy, and excessive bragging (Pauktuutit Inuit Women of Canada 2006). Common responses to such behaviours include: ignoring the situation, mocking, public ridicule or shaming, gossiping, fist fights or wrestling, song duels, banishment, and counselling (Pauktuutit Inuit Women of Canada 2006; Haring 1989: 45; and Inuit Tapirit Kanatami 2004). According to the Elders interviewed for the Nunavut Arctic College's series on interviewing Inuit Elders (1999: 5, my emphasis), “murderers were killed, but only if they did not show remorse or it was believed they would murder again. This was done *not* as punishment but for the safety of the community.” Moreover, the idea of fate

plays a large role in deterring Inuit persons from acting violently or outside the commonly accepted social rules, since the Inuit believe that the wrongdoer's family will suffer the consequences of their actions (Interviewing Inuit Elders 1999: 5). When a community member engages in any form of collectively understood improper behaviour it is made common knowledge within the community so that community members can participate in the collective decision making process regarding how to respond to the improper conduct. In this way, the power to punish rests with the Inuit community as a *collectivity*, reinforcing the value of local, social means of managing conduct within Inuit communities and not the work of a designated penal authority according to pre-determined codes of conduct.

Nevertheless, an Inuit ethos of justice was, and continues to be eroded as traders, missionaries, and the RCMP began to establish a common law, state-centric system of justice in the Arctic. Academics and lawyers also contribute to the de-legitimation of an Inuit ethos of justice: as Haring (1989: 2, 41) argues, “they [are] trained in disciplines that den[y] its existence...Inuit law was understood by RCMP and early Anthropologists [including Franz Boaz and E. Adamson Hoebel] as uncivilized and therefore needing to be subsumed, like its people, into Canadian society to make the Arctic safe for white [*Quallunaat*] developers.” It was through these ethnocentric and *terra nullius* justifications erasing Inuit collective culture that Canadian settlers would roll out a machinery of state-centric justice in Nunavut, in the name of Canadian moral sovereignty, in which the federal Government of Canada (and CSC) would be the protectors of Inuit societies from the ‘evil influence of crime’—as the opening quote for this chapter, from the Canadian House of Commons, describes. A closer investigation of the imperial

development of state-centric penalty in Nunavut will uncover the ways in which an Inuit ethos of justice had to adapt to these coded, regulated, authoritative forms of social control.

5.3 Colonizing the Inuit (Ethos of Justice)

European encounters with the Inuit began in the late 1500s when the first explorers sailed into the Davis Strait, Hudson Strait and Hudson Bay. The arrival of Martin Frobisher, an English seaman and privateer (or licensed pirate), along with 22 other explorers in 1576, drastically changed the map of the Arctic and the cultural landscape of the Inuit (see Inuit Tapirit Kanatami 2004: 10). With each new mission the map of the Arctic became more European as the land was claimed by outsiders. According to Inuit Tapiriit Kanatami (2004: 10): “when the first schools were established in our communities we [Inuit] were taught that the Arctic lands remained undiscovered until Europeans arrived drawing their own maps...with English place names.”⁵³ By the early 20th century the Arctic was “the one remaining place in the world where great geographical discovery was possible,” (Dr. Reginald Brock, Director of the Geological Survey of Canada, 1913 in Government of Canada ‘Arctic Expedition’ 2013). These now frequently occurring encounters with settlers changed the materials, tools, and weapons utilized by the Inuit.

As Watt-Cloutier (2015:65) explains:

our hunters switched from traditional hunting weapons to rifles and ammunition, which they acquired through trade with the newly established Hudson Bay Company. We had no choice but to become more, in the absence of a better word, southernized...our populations became increasingly dependent on the government and southern institutions for survival.

⁵³ Most Inuit communities today have worked hard to reverse this process replacing European calendars and maps with those of the Inuit utilizing Inuktitut names on the official maps of Canada.

Whalers, fur traders, missionaries, and the government all fought for the right to claim the Arctic as their own (Inuit Tapirit Kanatami 2004: 11). The establishment of year-round whaling stations created a permanent presence of outsiders in the Canadian Arctic (Inuit Tapirit Kanatami 2004: 11). In the early 1900s the RCMP maintained sovereignty in the North through the creation of police posts in the territory: “It was simply up to the trader, missionary, and police to look after our lives and always on their terms and not ours,” (Inuit Tapirit Kanatami 2004: 13-14; also see Morrison for Historica Canada 2006).

The missionary colonialism of these early settlers aimed to conscript Inuit peoples to southern governing structures. For example, before contact with colonial missionaries Inuit peoples did not use last names, which made keeping track of nomadic Inuit populations especially difficult for the government (Watt-Cloutier 2015: 98). Watt-Cloutier (2015: 98-99) recalls the Canadian governmental response to the lack of Inuit surnames in which she had to participate:

In the 1940s, to solve this problem [of Inuit naming practices], Canada began assigning each Inuk man, woman and child with a number [card]. If you lived east of Gjoa Haven your number started with ‘E’, and if you lived west of that point, with ‘W’. The digits following this letter indicated what community you were from. The last set of digits was *your* number.⁵⁴

I agree with Coulthard (2014: 25), that, rather than relying solely on exercises of state violence, post-colonial rule in Nunavut rests on the state’s ability to entice Inuit peoples to “identify, either implicitly or explicitly, with the profoundly asymmetrical and non-reciprocal forms of

⁵⁴ It was not until the summer of 1969, that most Inuit had adapted to the southern governmental strategy of people registration by adopting surnames. “‘Project Surname’ inspired by Simone Michaels, the first elected Inuk of the Northwest Territories Council, and run by fellow council member Abe Okpik, led to the destruction of the Inuk number cards (Watt-Cloutier 2015: 99).

recognition either imposed on or granted to them by the settler state and society.” My research, on the conditions of imprisonment for Inuit prisoners in Canada, illustrates the ways in which post-colonial rule, like the governmental program of numerical identification cards for Inuit peoples, is not always exercised in showy displays of state violence, but rather in subversive materially based practices.

For many years, settlers in the Arctic disregarded the Inuit ethos of justice because it did not fit into their legal conceptualizations of how laws should ‘work’. You will recall from Chapter III, that the early work of penal reformers, in the establishment of penal codes, was to correct badly regulated distributions of juridical power, inconsistent applications of the law, and a multiplicity of legal authorities (see Foucault 1977/1995: 78-79). In the eyes of Arctic settlers all of these juridical ‘corrections’ applied to the Inuit ethos of justice. In the Arctic, settler law enforcement resulted in a drastic shift in the power to punish, from a collective experience to an experience of crime and legality that was re-embedded in a central, authoritative structure with little-to-no community consultation. According to Inuit Tapiriit Kanatami (2004: 20): “the Inuit were forced to comply with such alien legal concepts as conducting public confrontations between lawyers and people accused of crimes in order to establish guilt; placing accused people in jail; and the punishment of guilty people in order to repay their debt to society—a new conceptualization of restitution.” As such, Inuit offenders became less dependent on a small circle of kin for both their social and economic security. Mark R. Gordon (in Watt-Cloutier 2015: 91), a member of the municipal government in Nunavik (located in northern Quebec), explains the impacts of post-colonial forms of legality (or southern Canadian common law) on Inuit legality by way of a hunting story:

Six people were hunting only one generation ago. These six people were starving and trying to find food for their family. They saw a snowy-owl who had just eaten a lemming. Snowy-owls are very picky about their food, so they won't eat the insides of the animal but only the meat. These six hunters had to divide what the snowy-owl would not eat. Our trying to get legal concepts and legal rights recognized by the government is often like the snowy owl—we often have to eat what he won't eat, and we have to make do with that. But hopefully that will give us enough energy to go on with the hunt.

My analysis of NU.C illustrates, following Garland (2000: 367), the 'cultural effects' of adaptations to a state-centric penalty. While Garland (2000) was speaking to increased urbanization and technicization in industrialized societies, I argue that processes of colonization produce significant shifts in the Inuit collective experience of crime and punishment. Radical changes to a community's way of life alter how "the community thinks and feels...what they talk about and how they talk about it...[and] their values and priorities," (Garland 2000: 367). Despite post-colonial allegations—that Inuit communities were devoid of legal foundations—Inuit peoples have strongly resisted these claims. For example, Elder Imaruittuq explains (in Law Commission of Canada 2006: 9):

[Before the court system] came into our lives and before the RCMP we always had rules in our camps, misbehaviour has always been a part of life and when there was misbehaviour, the community Elders would gather together and deal with that individual...Nothing was written, what was said all came from the minds of the Elders.

However, the post-colonial imposition of state-centric forms of penalty in Nunavut is not grounded in the communal, shared wisdom of camp Elders; but as Garland (2006: 421) explains, is "expressed and embodied in the conduct of governmental actors." Garland (2006: 424) goes on to explain that these juridical practices are the product of "penal transplants," which refers to the process of transplanting legal terms and criminological concepts from "one culture to another," which tends to "change their character and connotations as they become embedded in

resourced political jurisdiction in Canada. In 1993, the Nunavut Land Claims Organization (*Nunavut Tunnagavik* or NTI), along with the federal government of Canada, was given ownership of all of the cash, lands, resources, royalties and powers provided in the Land Claims Agreement, but no responsibility to provide services to the people of the territory (Mifflin 2009: 92-93). At the time of the creation of the territory, the federal government put off devolution of land ownership to Nunavut citing governmental capacity issues (White 2009: 68). On resource availability in the North, former Canadian Prime Minister Stephen Harper has said, “in the far North, we have to be realistic—there is no possible way, in the vastness of the Canadian Arctic that we could have all of the resources necessary close by. It’s just not possible,” (Harper in Fournier 2012: 2). However, the premier of Nunavut, Paul Okalik⁵⁷ (in White 2009: 68), rejected this argument calling the federal government paternalistic and describing the Indian and Northern Affairs department as “reviled by Aboriginal peoples.” Nevertheless, the federal government has retained the title to crown lands in Nunavut, and the bulk of the territory’s land is crown land.

Moreover, the government of Nunavut differs from provincial government in significant ways. A fundamental attribute of all Canadian provinces is the ownership of land and resources, and the resulting royalties, within its borders (Mifflin 2009: 93). As Mifflin, a resident of Iqaluit and employee with the Department of Environment in Nunavut (2009: 94), explains, “under the terms of the Constitution Act of 1867, provincial governments are given exclusive powers for the exploration, development, conservation and management of natural resources.” Territorial

⁵⁷ Okalik is now the Minister of Justice in Nunavut; the current Premier (since 2013) is Peter Taptuna.

governments, however, are not extended these same rights and governmental powers without decades of negotiation with the federal government—control over land and resources was granted to the Yukon in 2002. The result is a form of phantom sovereignty⁵⁸ in which the government of Nunavut, without any significant resources of its own, almost completely depends on the federal government of Canada to fund the most basic⁵⁹ of governmental operations in Nunavut. As University of Toronto political scientist Graham White (2009: 59) explains, “in no other jurisdiction, save the National Capital Region, does the influence of the federal government loom so large.” In 2015-2016 the government of Nunavut will receive \$1.5 billion (Canadian) dollars through federal government transfers—the highest in the territory’s history (Department of Finance Canada ‘Federal Support to Provinces and Territories’ 2015). Nunavut’s financial dependence on the federal government of Canada has significant consequences for the amount and types of public, social services the government of Nunavut can offer its citizens. As Mifflin (2009: 93) argues: “In Canada, all governments seek financial independence because of the

⁵⁸My conceptualization of phantom sovereignty is based on the work of critical political scholars who are writing on the effects of illusory forms of government. For example, Walter Lippman (1925/2011) has written extensively on the notion of the public as a phantom, expressing a lack of faith in democratic systems—although, I take issue with his overly narrow conceptualization of government as an administrative problem. Daniel Byman and Charles King (2012) write on the phenomena of phantom states within an international system of multilateral government. Sari Hanafi (2014) uses phantom sovereignty to describe the work of the United Nations Relief and Works Agency for Palestinian Refugees. And, Richard Longworth (2015) criticizes UN peacekeeping forces as phantom forces. However, scholars have yet to demonstrate how territorial politics *within* a sovereign state are evidence of phantom sovereignty as I am doing in this chapter.

⁵⁹ For example, in Nunavut, all nurses and teachers, including those at the Arctic College (the Territory’s only post secondary institution), are directly employed by the government of Nunavut which receives funding and housing allowances for such employees through the federal government of Canada. Housing is at a premium, given that there is no private housing market in Nunavut (White 2009: 71). In one case, an Arctic College instructor in Kugaaruk had to live in an old jail cell for four months while delivering a course (CBC news 2007 in White 2009: 71).

greater control it affords them to provide culturally or regionally appropriate services to their citizens”—an important governmental power lacking in the government of Nunavut.

Another major difference in the governmental structure in Nunavut is the use of co-management boards. Nunavut inherited the governmental organization of co-management boards from other territorial and provincial governments (such as the Northwest Territory and Saskatchewan), in which the *minority* of the population consists of Aboriginal peoples. However, Nunavut differs from other Canadian territories and provinces in that Inuit peoples make up the *majority* of the population and occupy a majority of positions within the territorial government. Yet, the government of Nunavut does not exercise majority control over Nunavut’s land and resources. As mentioned, rather than empowering the government of Nunavut with decision-making powers over land and resource regulation, this power was given to the federal government and four independent co-management boards: the Nunavut Impact Review Board, Planning Commission, the Water Board, and the Surface Rights Tribunal (see Mifflin 2009: 95). Opinions differ on the value of co-management boards and the NTI in Nunavut: for example, White (2009: 60-61) contends that “the NTI (consisting of 80% Inuit staff) enjoys a broad base of political support and is not the least bit reluctant to engage in tough-minded public criticism of governmental relations.” Montreal based lawyer Paul Mayer (in Mifflin 2009: 96) wrote a report on the governmental structure in Nunavut concluding: “one of the largest roadblocks to the...powers of the Nunavut government was the regulatory [capture] of co-management boards—there is no clear mandate on where jurisdiction ends and begins.” Weighing in on this debate requires research outside the realm of my current project, but I think this debate illuminates that, for a numerically small Canadian population the government of Nunavut is unnecessarily

complex. More importantly, the strategic games of power behind the creation of the territory of Nunavut—in which federal (post-colonial) rule is active within the governmental processes and structures meant to govern a primarily Inuit population—is illustrative of Nunavut’s phantom sovereignty. The creation of the physical, geographical territory appears to have given birth to a machinery of state-centric powers and practices in which the primarily Inuit lead government could operate independently. However, in practice, the sovereignty granted to Nunavut, through the creation of the territory, is a misleading illusion—like a phantom, one can see right through it: it has no political bite.

5.5 The ‘Punitive Upsurge’ in Nunavut and A Typification of ‘Inuit Crimes’

It was during the creation of the territory of Nunavut that the Corrections Department (NU.C) was established, leading to what Wacquant (2008), referring to the expansion of the prison-industrial complex, calls a ‘punitive upsurge’. There are currently seven penal facilities operating in Nunavut: beginning with the conversion of a halfway house (opened in 1986) in Iqaluit into the Baffin Correctional Centre (BCC) in 1990; several outposts camps for offenders opened (throughout the territory) in 1999; Uttaqivik Community Residential Centre opened in 2000; Kugluktuk Centre opened in 2005; the Nunavut Women’s Correctional Centre (in Iqaluit) opened in 2010; Rankin Inlet Healing Facility opened in 2013; and Makigiarvik Correctional Centre opened in June 2015 (see Ferguson, Auditor General’s Report 2015: 8). Each of the seven correctional facilities in Nunavut is a territorial facility, operating within the jurisdiction of Nunavut, meaning none of these facilities is meant to hold federally sentenced (maximum security) prisoners. However, Nunavut Corrections and CSC have a MOU which allows the

territory to hold federal prisoners in exceptional circumstances (such as cases where prisoners are awaiting trial or awaiting a transfer to a federal institution) for limited periods of time—I will discuss the importance of this MOU in my analysis of the need for an investigation in NU.C. The recent establishment of this network of penal infrastructures⁶⁰ in the territory marks a pivotal development in the colonization of an Inuit ethos of justice, whereby the emergence of carceral infrastructure in Nunavut solidifies the territory’s authority over the monopoly to punish. I agree with Wacquant (2008: 23), that the prison-industrial complex is a “convenient pretext and propitious platform for a broader redrawing of the perimeter of responsibility of the state operating simultaneously on the economic, social welfare, and penal fronts.” This re-drawing of the state’s responsibility to punish puts added pressure on Nunavut’s already constrained government (its phantom sovereignty), in what I call the paradox of punishing inequality in Nunavut. Similar to the Haitian case, (penal) government in Nunavut operates as if it does not first have to contend with deeply entrenched social inequalities before making a case for punishment as a social good—addressing issues of punishment.

As of January 1, 2015 there were 36,702 individuals living in Nunavut and 1,700 people were unemployed (Nunavut Bureau of Statistics 2015). In 2012, the Canadian mean family income for families was \$74,540; however, in Nunavut the mean family income was \$65,530 (Statistics Canada “median total income” 2015c). At the time of writing, Nunavut occupies only one of 308 seats in the Federal House of Commons, and one of 105 seats in the Federal Senate (Parliament of Canada “party standings” 2015). On several different occasions, interviewees

⁶⁰ Prior to the construction of prisons in Nunavut prisoners were transferred to provincial or territorial institutions primarily in Ontario and the North West Territories.

compared social life in Nunavut to that of a small village in which everyone knew everyone else, there are limited options for places in which to socialize, and there is an extreme lack of mobility due to inclement weather, lack of public transportation, and a lack of navigable roadways (OCI Interview 1 and 2 June 2015; and Ottawa Police Interview November 2014). In an interview (Ottawa Police Interview November 2014) with a southern Canadian police officer on mission in Nunavut, he described the ‘challenges’ faced by Nunavummiut in this way:

...lack of resources is obvious, since many communities are remote, frozen and only reachable by airplane. Lack of leisure activities leads to alcohol and drug abuse. Lack of opportunity leads to low self-esteem...lack of females leads to high rates of sexual assaults which destroys generations of families. Daily life in the arctic depends on the weather which regularly shuts a village down and delays the arrival of resources. Lack of role models within the community...Clear segregation of classes between the whites who are well paid and the locals who rarely hold important positions. These challenges are unique to extremely remote Arctic communities...

Not only does this respondent connect ‘culture’ to location and environment, in which harsh weather conditions limit the opportunity of the Nunavummiut, but this lack of opportunity is presented as directly correlated with social disorder and crime; in particular, a propensity amongst Inuit people to abuse drugs and alcohol and commit sexual assaults—as if Inuit men are animals competing over scarce females. This sort of racist, stereotypical representation of the Inuit peoples as criminogenic references the similar “primitivist ideology of Blacks [specifically men] as animalistic,” as described by Patricia Hill Collins (2004: 103).

In her 2004 (103-105) work on *Black Sexual Politics* Patricia Hill Collins describes the historical discourses which link black sexuality to promiscuity and crime, “resurrecting images of black men as predatory and wild in which rape...became inextricably linked with black sexuality.” I argue we are seeing a similar phenomenon in this essentialist description of Inuit

criminality, or a typification of ‘Inuit crime’, which borrows from Kelly Welch’s (2007: 276-281) work on *Black Criminal Stereotypes* and the ‘black typification of crime’ whereby, the stereotyping of blacks as ‘criminal predators’ is so pervasive that it is used as a euphemism for ‘young black men’. Sherene Razack, a post-colonial feminist scholar at University of Toronto OISE, in her work on *Looking White People in the Eye* (1998: 69), explains: “the stereotype of Black men as bestial, violent, and criminal has an Aboriginal counterpart in the ‘bloodthirsty Indian’.” There is a large body of academic scholarship on the stereotype of the ‘bloodthirsty Indian’ as well as the ‘drunken Indian’⁶¹ that details the devastating impacts these post-colonial, racist narratives have on Aboriginal men and women. As Razack (1998: 69-70) explains, “viewing Aboriginal men as dysfunctional (and not, for example, as oppressed), and Aboriginal women as inherently rapeable confirms the superiority of white men.”

However, Inuit peoples have a very different understanding of the origin of alcohol and drug abuse which they believe is responsible for increased occurrences of violence and social disorder (Watt-Cloutier 2015). For example, Watt-Cloutier (2015: 62-64) describes witnessing

the painfully destructive connection between addiction, alcohol abuse, and violence...I share this not to be sensationalist but to show how quickly in my own life, in less than twenty years, the tumultuous changes from the outside were affecting the very core and soul of the grounded, reflective, caring hunter spirit of our men...it was evidence of the breakdown of Inuit society...‘the wounded hunter spirit’...Years of pent-up anger and frustration were finding an outlet in alcohol abuse, addiction, and violence...I began to appreciate the historical traumas that had led to this damaged state.

Rather than looking for individualistic, stereotypical justifications for such behaviours Watt-Cloutier turns to the ‘cultural effects’ of colonization that are changing, as she says, the very

⁶¹ See the work of Cherokee scholar Ward Churchill (1993), Aboriginal scholar Emma LaRocque (from the University of Manitoba), and Squamish political activist Teresa Nahanee’s study on sentencing cases of Inuit men and women (1994) among others.

‘soul’ of the Inuit peoples. Watt-Cloutier’s description of the shifting consciousness of the Inuit hunter is similar to Fanon’s (1963) work on ‘*Concerning Violence*’ in *the Wretched of the Earth*, in which he argues, having studied many cases as a psychiatrist during the Algerian war of independence, that colonization has psycho-social effects on the colonized. Like Watt-Cloutier, I use these quotes not to sensationalize the struggles facing Inuit peoples, nor to demonize *Quallunaat* living, working, or otherwise engaging in the Arctic, but rather as a means of demonstrating the pervasiveness of these stereotypes today—these are not simply narratives of colonial privateers from centuries past but contemporary depictions of Arctic Canada. Too often post-colonialism is framed as something that happened ‘before our time’, in the distant past (see Coulthard 2014: 127, Larsen 2008, and Loomba et al. 2005: 3). Investigating crime and punishment in Nunavut, like the case of penal aid in Haiti, demonstrates the predominance of post-colonial technologies of government *today*. I argue that these drastically differing understandings of the struggles faced by the government and citizens of Nunavut alike are illustrative of the ways in which culture is being (re)produced in the context of the struggles in which I have studied: the contestations over penal justice in Nunavut. In fact, since the outset of the ‘punitive upsurge’ in Nunavut, and the construction and implementation of carceral institutions, there has been a fascination with the Inuit ethos of justice and the ways in which it might be dis-embedded from social practices and re-embedded within state-centric penal justice practices in NU.C. The next section examines in detail the ways in which culture is contested in the lead-up to the investigation of NU.C and contestations over sub-standard conditions of penalty in Nunavut (and for Inuit prisoners in Canada generally), paying particular attention to who is included and excluded in exercises of defining culture.

5.6 What Ethos? The Need to Investigate Corrections in Nunavut

In 1999, at the time of the development of the Nunavut Correctional Plan,⁶² the Supreme Court of Canada made a landmark decision on a case involving a young Cree woman who entered a guilty plea to manslaughter after killing her common law husband. The Supreme Court advised that lower courts take into careful consideration an offender's Aboriginal background at the time of sentencing based on section 718.2 (e) of the Criminal Code of Canada⁶³ (see 'R vs. Gladue' Supreme Court of Canada Judgement 2015 and Bakht 2005: 239). The legacy of the case⁶⁴ was that all persons who self-identify as Aboriginal (Non-Status and Status First Nations, Inuit and Métis peoples) have 'Gladue rights' and are entitled to prepare a 'Gladue report' outlining mitigating factors for the sentencing judge's consideration (see Gladue and Aboriginal Sentencing 2015 and 'R. Vs. Gladue' Supreme Court of Canada Judgement 2015). The importance of the R. Vs. Gladue case was that it significantly influenced the work of the

⁶² The Corrections Planning Committee included public servants working in Nunavut, CSC staff, employees of BCC, a member of Nunavut's Social Development Council, Nunavut RCMP, and a member of Nunavut's Department of Justice.

⁶³ Sect 718.2 (e) states: "A court that imposes a sentence shall also take into consideration the following principles...all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders," (*Canadian Criminal Code*, RSC 1985, c C-46 s 718.2).

⁶⁴ The Gladue (1999) case has been reaffirmed many times since its ruling, most notably in R. Vs. Ipeelee (2012) which ruled: "To be clear, courts must take judicial notice of such matters as the history of colonialism, displacement, and residential schools, and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and of course higher levels of incarceration for Aboriginal peoples," (Justice Lebel for the majority in R. Vs. Ipeelee 2012 in OCI 'Aboriginal Offenders' 2013).

Nunavut Corrections Planning Committee in their development of a Correctional Plan which attempted to capture the social history considerations and system discrimination faced by Inuit peoples in Canada. Following the Gladue decision, the Nunavut Corrections Planning Committee determined that judicial decision makers must take into account Aboriginal social history considerations, including, “racial or cultural prejudice, as well as economic and social disadvantage, substance abuse and intergenerational loss, violence and trauma” when the liberty of Aboriginal offenders is at stake (including security classifications, penitentiary placements, community release, and disciplinary decisions) (Nunavut Corrections Planning Committee 1999 and CSC 2006-2011). However, nowhere in the report does the Planning Committee provide penal administrators with the tools for recognizing racial or cultural prejudice nor the tools for engaging with Inuit communities to better understand the ‘violence and trauma’ of post-colonialism. Similarly, the Nunavut Corrections Planning Committee (1999: 9), formulated entirely by governmental officials and public servants, states that the mission of NU.C is to provide a correctional system that promotes healing in ways that respect the culture and language of Nunavut and of all its residents via the R. Vs. Gladue (1999) decision. However, I find these terms to be vacuous: what is meant here by respect for culture? How is a penal agent to interpret these concepts and put them into penal practice? While I do not have the answers to those questions, references to a healing penalty (something that will come up again in regards to the healing facilities in Nunavut) appear to me to be an attempt on the part of NU.C to embed an Inuit ethos of justice within state-centric penalty—despite the fact that state-centric forms of hierarchical authority are in direct contradiction with an Inuit ethos of justice involving social, collective (widely governed) approaches to punishment.

Nonetheless, the Nunavut Corrections Planning Committee (1999: 10, 12-27) encouraged the least possible use of incarceration consistent with public safety and recommended that: offender risk management and assessment systems be used in all cases; the Government of Nunavut provide adequate financial resources for correctional programming; on-land programs be expanded to include more counselling and skill-development for living on the land by Elders; prisoners be assisted in the development of skills to increase their employability once they leave the prison; NU.C hire adequate staff and provide the necessary training for this staff; and perhaps most pressing, NU.C negotiate with the federal government to create a facility⁶⁵ in Nunavut for all federally sentenced Nunavummiut prisoners so that they are not transferred out of the territory. The NU.C Correctional Plan attempts to mould or synthesize an Inuit ethos of justice with the ethos of protection found within state-centric, standard forms of penalty. The hope of the Nunavut Corrections Planning Committee was that these recommendations would somehow better meet the needs and rights of Inuit prisoners (highlighted in R Vs. Gladue 1999). However, penal government in Nunavut, framed as the responsibility or authority of the territorial government (representing the state), remains primarily carceral, targets Inuit peoples, and administers some of the worst conditions of imprisonment in Canada. Despite the intentions of NU.C, and the Correctional Plan endorsing an ethos of protection grounded in standard penalty, the past 25 years of corrections in Nunavut has seen the further entrenchment of a punitive penalty that markedly disadvantages Inuit prisoners.

⁶⁵ Federal prisons (run by CSC) are responsible for prisoners serving sentences of two years plus a day (two years or longer), including life sentences.

While Aboriginal people make up about 4% of the Canadian population, as of February 2013, 23.2% (or 3,400 prisoners) of the federal inmate population were Aboriginal (First Nations, Métis, and Inuit) (Office of the Correctional Investigator ‘Aboriginal Offenders’ 2013). Statistics Canada projections up to 2017 suggest that the disproportionate representation of Aboriginals will continue to rise in both the federal and provincial correctional systems, particularly in the Canadian West and North (CSC 2006-2011: 12). This holds consistent with patterns of sentencing for Inuit offenders in which Inuit are serving some of the most severe and protracted sentences for some of Canada’s most serious criminal offences. For example, as of 2011, two-thirds of the incarcerated Inuit population (62%) were convicted of sex offences, which is substantially higher than First Nations (22%) and Métis (16%) (CSC 2006-2011). Prisoners convicted of a violent offence defined by the CCRA (1992), as sex offences are categorized, are systematically targeted at the beginning of their sentence for the most restrictive provision of the legislation—typically detention beyond their statutory release (2/3rds of a sentence). Furthermore, Aboriginal prisoners are more than twice as likely as non-Aboriginal prisoners to be charged or convicted of a violent offence while under CSC supervision (CSC 2006-2011). Federally sentenced Aboriginal prisoners continue to be more likely to be incarcerated than to be in the community on a supervised release, and when released, Aboriginal prisoners are subject to more restrictive forms of release, such as day parole or temporary absences rather than full parole (CSC 2006-2011). As of 2014, the rate of offenders incarcerated in Canada was about 8.5% greater for Aboriginal offenders (73.5% of 5000) than for non-Aboriginal offenders (64.4% of 25, 200) (Public Safety Canada 2014b).

Similar to the Haitian case, in Nunavut increases in remand (pre-trial detention) contribute to a growing problem of over-crowding in Nunavut's prisons. According to the latest Auditor General's report (Ferguson 2015: 9), "there were 658 adult male admissions to correctional facilities in Nunavut in 2013-2014 including 433 at BCC." Between 2001-2011, the average number of Nunavummiut men incarcerated across Canada rose from 94 to 147 (Ferguson, Auditor General's Report 2015: 9). The 1999 Nunavut Corrections Planning Committee had raised some red flags regarding the practice of transferring Inuit prisoners to southern Canadian prisons. Of particular concern was the large cohort of Inuit prisoners being transferred to Beaver Creek Institution located in Gravenhurst, Ontario. Despite concerns raised regarding excessive transportation costs, language barriers, and the difficulty Inuit prisoners face in trying to cope with life in mass-incarcerated populations, the practice of transferring Inuit prisoners to Ontario remains intact today.⁶⁶ According to the OCI report on Aboriginal Offenders (2013): "Aboriginal offenders lag significantly behind their non-Aboriginal counterparts on nearly every indicator of correctional performance and outcome," (OCI 'Aboriginal Offenders' 2013). As a result, Aboriginal prisoners are routinely classified as higher risk and higher need in categories such as unemployment, community reintegration and family supports; released later in their sentence (have low rates of parole); over-represented in segregation and maximum security populations; disproportionately involved in use of force interventions and incidents of prisoner self-injury; and more likely to return to prison on revocation of parole, often for administrative reasons rather than criminal violations (OCI 'Aboriginal Offenders' 2013). Here we begin to see

⁶⁶ I will return to a discussion of Inuit prisoners in Ontario prisons in the next section detailing my participant observation at these institutions including at Beaver Creek.

the ways in which state-centric penalty in Nunavut is in fact quite far from the international standards for the treatment of prisoners. Further, post-colonial (state-centric, carceral) penalty in Nunavut not only significantly disadvantages Inuit prisoners, but drastically alters the collective experience of crime and criminality (following Garland 2000) in the Arctic. In the case of state-centric penalty in Nunavut, changes to the common fears, resentments, narratives, and understandings of crime and criminality—what Watt-Cloutier called ‘the wounded hunter spirit’—become what Garland (2000: 368) calls “settled cultural facts.” These facts are sustained and reproduced by post-colonial cultural scripts, such as prejudicial claims that Inuit people are prone to violence and addiction, rather than considerations of social history or the ‘violence and trauma’ of post-colonialism which state-centric penal organizations in Canada (CSC and NU.C) claim to prioritize.

Despite the prolonged problems within NU.C it was only very recently (2013) that a national inquiry has been conducted on the state of corrections in Nunavut. Working in conjunction with the federal watchdog for corrections in Canada (the OCI) NU.C was able to publicize the sub-standard, deplorable conditions of incarceration in Nunavut. The 2013 report of the OCI on NU.C, while initially kept under wraps by the territorial government, was made public and gained wide-spread media attention in articles and videos circulated by CBC, CTV, and Canadian print news media. The scathing report of the OCI on NU.C, and specifically BCC, relied heavily on penal standards (specifically the SMRs) to demonstrate the lack of standard penalty in Nunavut and a need for penal reform. While it might sound contradictory or counter-intuitive for NU.C to play a role in the creation of a report which would effectively call its practices sub-standard and deplorable, it is important to recall that the territorial government’s

phantom sovereignty is such that it depends on the federal government for any form of social or public service. As such, NU.C was looking to draw attention to itself, even negative attention, in order to make a case with the federal government for greater allocations of funding and resources to address the issues facing corrections in Nunavut. I find the fact that NU.C was instrumental in the facilitation of the scathing report on its own practices a particularly interesting, and rarely seen technology of governing through failure (in this case, the failures of penal government). It is not every day that a government-authorized organization (NU.C) works to publicly criticize its reputation in order that the federal government will be sufficiently motivated to send the necessary resources to rebuild that organization's reputation. Yet, recalling my discussion of Osborne's (2003) work on the productive power of governing through failure, NU.C's strategy makes sense in that pointing out situations of governmental failure provides opportunities for government to be re-imagined—for new technologies and new mechanisms of government to be developed. Of course, the act of publicly demonstrating the sub-standard character of NU.C did not come without risks; primarily that the government of Nunavut or the federal government of Canada would shut NU.C down.

Similar to the penal aid environment in Haiti, since the late 1990s NU.C has been thrust under a bureaucratic microscope, providing the impetus for several surveys, reviews, and reports on corrections in Nunavut. As one of my interviewees (OCI Interview 2 June 2015) explained, while the OCI was doing a systematic investigation of Aboriginal corrections in Canada, examining specifically sections 81 and 84 of the CCRA—on the supervision and custody of Aboriginal offenders *within* Aboriginal communities respectively—the OCI grew concerned that there were no section 81 or 84 agreements in the Arctic. As a result, the OCI decided that they

should go to Nunavut to speak with the director of NU.C in order to get a clearer picture as to why there was such an absence of Aboriginal penal governance strategies. According to one of the primary investigators from the OCI offices in Ottawa (OCI Interview 2 June 2015), “at that time, I contacted the director of Nunavut Corrections....and he was very receptive he said; ‘yeah sure you can come and visit BCC but I got to tell you this is a problematic institution’.”⁶⁷

However, the director of NU.C was keen to see the OCI write a report on BCC because he was trying to build a business case to have BCC shut down (OCI Interview 2 June 2015).

I talked to the director and said; ‘well there are a lot of reports on BCC so what would make our [OCI] report different?’ BCC was deemed a fire trap, it was reviewed by engineering firms saying it was problematic, it had mould everywhere...so I eventually suggested to [the director of NU.C] that we could do a report through a *human rights lens* and we could do a *real* prison inspection (OCI Interview 2 June 2015).

Rather than a business case, relying on the work of health inspectors and engineers, the OCI suggested a prison inspection, utilizing the tools of penal standardization, would be more successful in making a case for the closure of BCC and penal reform in NU.C generally (OCI Interview 1 and 2 June 2015). However, there was one major roadblock to the OCI’s investigation: the OCI had no jurisdiction in the territory. The OCI has an ombudsman function, operating as a watchdog for federal corrections in Canada and so it needed to develop an MOU in order to conduct the prison inspection and write the report on NU.C. According to one of the inspectors (OCI Interview 2 June 2015): “we wanted to work around the jurisdictional issue while still being within our mandate and the hook for me was that there is a MOU between Nunavut corrections and CSC for the possible housing of federal offenders in BCC—meaning

⁶⁷ The Correctional Investigator of Canada, along with staff of the OCI, flew to Iqaluit and visited BCC, the Nunavut Women’s Centre, and the Rankin Inlet Healing Facility (which at the time of the visit was not yet open).

federal offenders could end up in BCC although historically this rarely happens.” Nevertheless, since there was a possibility that BCC could hold federal prisoners, the OCI felt that this provided them with sufficient jurisdiction for inspection.⁶⁸ One of the OCI investigators conducted the prison inspection in Nunavut while the other investigator concentrated on a review of the policy and legal frameworks for NU.C:

The first day I observed and arranged to have interviews with inmates. I first conducted group interviews in the cafeteria...I was sitting there and not insisting [that prisoners speak to me] but...once you explain what it is that you do suddenly there are 20 guys around you and I started to take notes. I visited all of the ranges at least twice...and took pictures...In the evenings, I would sit with the guards in the observation ‘bubble’ and talk with them. I had one-on-one interviews with prisoners, a nurse, parole officers, correctional officers, and the warden (OCI Interview 1 June 2015).⁶⁹

The report did not result in the closure of BCC. However, there have been (in 2014) efforts to remove mold from the prison and the government of Nunavut, through federal government grants, has recently (October 2015) allotted \$18.7 million (CAD) for renovations, although the budget is still awaiting final approval. Recently, in March 2015, the office of the Auditor-General released a report (to the Legislative Assembly of Nunavut) based on its investigation of NU.C.

⁶⁸ The OCI site visit in Nunavut took place over three days (March 12-14, 2013) conducted by the OCI manager of investigations and the executive director and general counsel (OCI report 2013: 2) both of whom were trained in 2007 as prison inspectors (OCI Interview 2 June 2015).

⁶⁹ Once the OCI report was finalized it was sent to the department of NU.C which had authority over the report. Several months later, during an interview with CBC, the Correctional Investigator of Canada mentioned that the OCI had done some work on NU.C. However, when the CBC reporter tried to access the OCI report the government of Nunavut’s initial response was to deny the report’s existence (OCI Interview 2 June 2015). The OCI suggested the CBC appeal the decision of the department with the Nunavut Information Commissioner, which the CBC did and the commissioner ruled that the report should have been publicly released (OCI Interview 2 June 2015). According to this investigator (OCI Interview 2 June 2015): “...[the report] was [hidden] because of the embarrassment of having more of these negative comments [about BCC] again in the public domain plus the pictures which I think are quite telling.”

According to the report (Ferguson, Auditor General's Report 2015: 10), the audit covered the period of April 2012 to March 2014 and focused on whether NU.C was meeting its key responsibilities for prisoners within the correctional system in Canada including, "adequately planned for and operated facilities in compliance with key rehabilitation and reintegration requirements," (Ferguson, Auditor General's Report 2015: 10).

My examination of the investigation into NU.C demonstrates that a more destructive problem lurks beneath attempts to govern penalty in Nunavut through failure: the investigation of penal government in NU.C exposes the post-colonial politics of penalty in Canada, whereby non-standard penalty is attributed to an Inuit ethos of penal justice which is re-embedded in state-centric penalty—as evidence of standard customization—in such a way that punishment in Nunavut remains problematically sub-standard. This post-colonial politics of Canadian penalty fails to consider the impacts of post-colonial governmental arrangements in Nunavut which drastically reduce the capacity of NU.C to meet penal standards. Nor do Canadian penal administrators, or penal investigators address the significant social inequalities which are commonplace in Nunavut, resulting in the paradox of punishing inequality in Nunavut. In other words, the penal investigation in Nunavut, while certainly making a case for non-standard penalty, does so in such a way as to reinforce the post-colonial relations of government in the territory via the moral sovereignty of state-centric penal government, with little regard for the deeply unequal effects of these governmental relations.

5.7 Investigating Penalty in Nunavut

“Standards in and of themselves don't change correctional culture.”

(OCI Interview 2 June 2015)

Similar to the pragmatic application of penal standards by penal aid agents in Haiti, penal investigators in Canada also locate the utility of penal standards in their flexibility and selectivity rather than as universally applicable. Respondents pointed out the ways in which standards are not translated verbatim from written documentation into penal practice, nor did respondents believe it made sense to export penal standards across a variety of diverse geo-political settings.

According to an OCI investigator (Interview 1 June 2015):

family visitations...would be a cluster of information that I would look at. I don't think I would necessarily use the standard from the CCRA to export it to another place...or context. I think it would be irrelevant because it depends on culture, infrastructure, the possibility for the visit to even take place, and the nature of the institution...for example, within remand or intake centres, the possibility for visitations are almost non-existent because of the high turn-over rates of prisoners.⁷⁰

As with the Haitian case, penal standardization operates as a process of penal evaluation based on measurable benchmarks, norms, and indicators that are flexible ideals rather than uniform policy or practice directives. Nevertheless, the goal of the penal investigation was to build a case, demonstrating a lack of standard penalty in NU.C in order to shut down BCC and obtain the resources needed for penal reform in Nunavut. Importantly, a penal investigation conducted under the auspices of penal standards was understood as having the potential to civilize penal justice in Nunavut in accordance with the objectives of human rights legislation. As one penal investigator explains (OCI Interview 2: June 2015):

⁷⁰ High turn-over rates in remand and intake centres, such as CNCC where I conducted participant observation, is due to the fact that prisoners are transferred (upon being sentenced) to another institution where they will serve their sentence depending on their level of security classification: minimum, medium, or maximum.

Human rights legislation is helpful because Canada ratified a lot of those conventions...When a judge sentences an offender to jail the sentence is taking away the residual rights of freedom and liberty and the right to associate—that is the punishment. What a judge is not supposed to do, and does by default, is sentence someone to an environment where you have: increased chances of contracting a disease; you are in a violent environment so your personal safety is at risk; you are going to be at increased risk of self-harm and suicide—this should not be part of the punishment. People go to prison, and for me, this is a human rights issue that makes absolutely no sense on a public safety, public health, or human rights level (OCI Interview 2 June 2015).

For this inspector, penal standards were valuable insofar as they raised the stakes of inspection.

The inspector adopts the rationale of international penal standardization, outlined in chapter III, that the justifiable deprivation of a prisoner's right to freedom, liberty, and association requires that the state, or state authorized penal administration assume what Penal Reform International calls a 'duty to care' (PRI 2001: 7). As this inspector explains, without a sufficient 'duty to care' built into penal governance prisoners are subject, by being sentenced to carceral punishment, to a profusion of human rights abuses. Moreover, penal investigators (OCI Interview 1 and 2 June 2015) believed that the effects of their investigation in Nunavut came under "intense public scrutiny due to an elevated awareness of human rights violations" in NU.C. While I certainly agree that prisoners' human rights are being violated, not just in NU.C but throughout the Canadian correctional system, I have to disagree with the penal investigators I interviewed on the value of penal standards in the recognition of prisoner human rights.

As I demonstrated in my analysis of the canon of penal standardization in chapter III, and the case of penal standardization in Haiti in chapter IV, while penal standards espouse the principles and morality of human rights, in practice penal standardization results in technical and material forms of punishment. By highlighting the political contestations over materiality in punishment I am better positioned to point out the gaps in the dimensions of prisoner human

rights and more specifically, those patently material instantiations that are more readily actualized by penal administrations in the field. As we will soon see, the same is true in the penal investigation of NU.C, whereby, prisoner human rights are entangled in penal technicization. Further, evidence of sub-standard penalty in Nunavut is more often than not indicative of flawed uses of technical punishment rather than an absence of a ‘duty to care’. Rather, my analysis of the investigation of sub-standard penalty in Nunavut challenges the taken-for-granted assumption that designations of sub-standard or non-standard penalty necessarily result in an elevated awareness of human rights. Moreover, as with the Haitian case, penal standards are supposed to provide penal investigators and agents with a technical, neutral, and *non*-colonial tool for evaluating non-standard punishment. However, the forms of technical punishment cited within the penal investigation, as evidence of sub-standard or non-standard penalty in NU.C, expose the state-centric, carceral, and post-colonial character of penal standards.

5.7.1 Investigating Penal Administration

In 2013 NU.C had 190 full-time permanent employees—60 of whom worked at BCC (Ferguson, Auditor General’s Report 2015: 9). The Auditor General’s Report (Ferguson 2015: 31) noted that correctional staff had been working in facilities in Nunavut without training in first aid, mental health, the criminal justice system, or the proper use of force. Further, according to the Auditor General’s Report (Ferguson 2015: 28), (citing an over-reliance on casual staff and overtime to

address staffing needs)⁷¹ BCC was not adequately managing its staffing resources. A Native Inuit Liaison Officer (NILO Interview: September 2014), who spent several years working at BCC before transferring to Beaver Creek in Northern Ontario, spoke to me about the problems specific to local hires at BCC: “[Staff] turn-over rates are quite high at BCC, specifically with what we call local hires; [NU.C] hires an Inuit staff member and it gets quite difficult for them...the same as our Inuit becoming RCMP...a lot of cases you end up working with family members... or friends who are incarcerated.” Within the Inuit ethos of justice, kinship and community ties are an essential element of the collective experience of crime and punishment, and it is often the family and friends of a wrongdoer who determine and oversee the reparations of wrongdoing in their communities. However, within state-centric, authoritarian penal justice systems the same family and community ties are seen as a burden on Inuit COs who witness prisoners (their family and friends) lose their freedom and suffer under carceral forms of punishment. The NILO (Interview September 2014) went on to explain that Inuit COs are seen as betraying their communal values by taking up a job with the state: “there is a good representation of Inuit [within Canadian corrections] but again, they are more or less shunned by some of their friends or family for being a [correctional officer]...it's probably more in mind of a betrayal.”

⁷¹ An over-reliance on casual staff and overtime are problems plaguing prisons across Canada. The Ottawa-Carleton Detention Centre has come under fire, particularly by the Ontario Public Service Employees Union (OPSEU), for an excessive use of CO overtime resulting in what the union calls a ‘burn-out environment’ (CBC News ‘Ottawa Jail’ 2015a). This past June (2015) at CNCC, less than one year after my fieldwork at the prison, prisoners engaged in a six-hour riot in protest of the excessive use of lockdowns as a result of staffing shortages. According to Chris Jackel, president of the Union at CNCC, “I think every institution in Ontario is facing a staffing crisis...and [this] could be one of the hidden contributing factors to rising tensions in the prisons” (in CBC News ‘Prison Riot’ 2015b).

Along with the challenges experienced by local Inuit hires, NU.C also faces issues with hires from outside the territory: “I’ve seen officers come [to BCC] from Edmonton Max, and those officers, their training is almost no good...because [BCC] is such a different layout and operation...[their training] is almost counter-productive,” (NILO Interview September 2014). COs from outside Nunavut need to undergo a significant amount of (re)training given the non-standard layout and operations of BCC—compounding, rather than ameliorating the staffing issues at BCC. According to the NILO (Interview September 2015), staff hired from outside of Nunavut often have to undergo a significant cultural learning curve:

[BCC] has lots of staff from all over [Canada] but it would certainly help to have proper cultural training to be able to work with the Inuit properly...we had a guard from North Bay tell me [BCC] is the only place he had seen an inmate cry, out in the open, and have other inmates come up and try to console him...I mean, there are lots of cultural aspects that nobody knows or would see from another facility (NILO Interview September 2014).

Within NU.C there exists what Watt-Cloutier (2015: 318-321) refers to as a “lack of culture match between the institutions now in place in Inuit communities and Inuit values and traditions.” However, cultural difference was not the only discordant element of penal administration in NU.C. One of the southern Canadian investigators with the OCI explained the stark racial differences between penal administrators and prisoners in Nunavut:

One of the things that I wasn’t prepared for [in Nunavut] is the fact that...the Nunavut justice minister is Inuit but the deputy minister is a guy from the South, the head of corrections is a guy from the South, the deputy directors are people from the South...the wardens and all the guards, save two, are white...and out of 160 inmates there was *one* white guy the rest were Inuit (OCI Interview 1 June 2015).

This interviewee went on to explain that he expected that most of the correctional management would be white southerners, but that the majority of the COs working with prisoners would in

fact be Inuit. “I was really not expecting to see an image so close to the apartheid that I read about...or what you hear about in the southern United States...I was a white guy coming from the South to witness this,” (OCI Interview 1 June 2015). This ‘white guy from the south’ is both a witness to, and further evidence of the stark racialization of penal relations in Nunavut, whereby punishers are white and the punished are Inuit. Drawing on the work of Fanon, Coulthard (2014: 136-138) speaks of the ways in which, for colonized black persons, domination is “mediated through the lens of race and through the lived experience of racism,” the same can be said for Inuit prisoners in Nunavut (and the rest of Canada for that matter). Inuit prisoners cannot pass as anything other than Inuit in a penal system in which they are literally fixed, or walled-in, and confronted with their lack of whiteness on a regular basis (see Fanon’s 1952/1986 *Black Skin, White Masks*).

Nevertheless, rather than seeing this ‘apartheid’ like (OCI interview 1 June 2015) penal system as steeped in post-colonial relations of racial dominance, this interviewee went on to nuance his understanding of the racialized punishment he observed based on the remote Arctic location of the prison. The investigator explained that the small village nature of Iqaluit made what he first interpreted as a serious issue of racism far more complex. Following work one evening, the investigator decided to have a drink in his hotel bar which, thanks to a chicken wing special, had attracted the attention of the majority of Iqaluit (OCI Interview 1 June 2015). According to the investigator (OCI interview 1 June 2015): “all of the staff of the jail that were not working that night were [in the bar]...and I got the sense that wives, brothers, parents of inmates were in that bar too...so the picture of an apartheid situation got really entangled when I saw the people living and drinking together...I can’t even try to understand...I won’t, I don’t.”

The investigator explained that elsewhere in Canada the mixing of prison staff with the family and friends of prisoners in the community does not happen: “in Donnacona maximum institution in Québec [a small town located in Western Québec], the bars in Donnacona...people know where the officers go and families [of prisoners] are not going to go there!” (OCI Interview 1 June 2015). And so, in Iqaluit, the interactions of prison staff with prisoner families drastically altered this interviewee’s interpretation of race relations in Nunavut. However, the interviewee goes on to explain that “racial tensions do exist in [NU.C] it’s as simple as that,” (OCI Interview 1 June 2015). This interviewee’s analysis illustrates that while the small village context of Iqaluit appears to blur racial divisions—on account of there being limited places for people to socialize—these divisions are intensified by a penal system in which 99% of the prisoners are Inuit, while 95% of correctional staff are white southerners.

However, it is not only in Nunavut that Inuit prisoners are confronted with racial and cultural contestation. During my visit to CNCC, the Ojibwe Elders explained to me that, like many Aboriginal cultures, the Inuit culture is peaceful and pacifist, so often times when an Inuit prisoner is undergoing an assessment by correctional staff they ‘shut-down’ as a result of what is often an interrogating-style of inquiry (Field Notes August 2014). Similarly, according to Pauktuutit Inuit Women of Canada 2006: 45): “Inuit tend not to display strong emotions publicly and emotions can be expressed subtly through body language...in an unfamiliar social milieu Inuit will likely withdraw and seem uncommunicative.” However, in the penal domain, in which penal agents are tasked with extracting information on prisoners (and building prisoner files), this calm, control, focus, and reflexivity signifies a ‘shut-down’ or a failure to communicate on the part of Inuit prisoners. Moreover, these examples of reserved and quiet Inuit prisoners are

quite different from the above example where a NILO who worked at BCC explained that southern prison staff were unable to recognize outward emotional displays (such as crying) on the part of prisoners as ‘cultural aspects’ specific to Inuit prisoners. While both examples illustrate the ways in which the behaviour of Inuit prisoners is often misunderstood within the context of state-centric punishment, the evidence of Inuit ‘cultural aspects’ presented is acutely distinct: open displays of emotion met by collective efforts of consolation as opposed to quiet and reserved prisoners who do not display emotions publicly. These examples are important because they illustrate the ways in which culture, like standard penalty, is not homogenous. Not only is culture contested in efforts to designate standard and non-standard punishment but culture itself is not a rigidly agreed upon concept by Inuit peoples. As Bhabha (in Coulthard 2014: 82) explains: “cultures are fluid, porous, and contested phenomena which are internally riven by conflicting narratives.”

This fluid and contested nature of culture is particularly difficult to capture in rigid systems of carceral penal government. One of the social workers on site at CNCC spoke to me about having to make adjustments to the standard intake and assessment forms provided by CSC so as to better suit and capture the profile of Aboriginal prisoners. CSC’s prisoner assessment forms utilize a combination of static and dynamic risk assessment factors,⁷² in which static factors are unchangeable (such as a prisoners criminal or personal history), whereas dynamic factors are considered to be factors that the prisoner has the power to control (such as education, employment, and in some instances health) (Taylor for CSC Research Branch 2015). Standard

⁷² See Brisson (2011: 5, 18-20) for an in-depth discussion of static and dynamic risk assessment as part of a hybrid assemblage of penal government in Canada.

CSC forms involve the use of flowcharts, Likert scales, and tick boxes,⁷³ whereas the social worker's form at CNCC was free-flowing with space for hand-written notes and reflections based on questions under themes such as personal history, education/employment, family/marital status, leisure/recreation, companions, substance abuse, and mental health (Field Notes August 2014). The social worker explained (Field Notes August 2014), that she felt her adapted and fluid assessment form better aided her in asking difficult questions, especially about the personal histories of Aboriginal prisoners.⁷⁴ She also felt that her form allowed her to capture, in written form, important embodied responses to her questions including the blink of an eye or the shrug of a shoulder (Field Notes August 2014). In regards to prisoner assessment within NU.C, the Auditor General's Report (Ferguson 2015) raised concerns regarding the lack of staff available to carry out assessments, noting that many prisoners at BCC were only there because BCC is the only institution in Nunavut with staff resources, albeit limited, for carrying out assessments. However, the concentration of assessment activities at BCC severely taxes staffing resources and contributes to the problem of over-crowding. Similar to the social worker at CNCC, the Auditor General's Report (Ferguson 2015) found that assessments within NU.C were not carried out as prescribed by the standards found within the CDs of CSC since correctional staff felt that the

⁷³ See Appendix C for an example.

⁷⁴ In 2009 CSC Research Branch conducted an analysis of the 'feasibility of an Inuit specific violence risk assessment instrument' (in Harris et al. for CSC Research Branch 2009). While such an assessment instrument has yet to be formalized in CSC these studies verify that current CSC assessment forms are validated only on non-aboriginal prisoners and highlight concerns for differences of treatment for various racial, ethnical, and cultural groups (Harris et al. for CSC Research Branch 2009, and CSC 'recidivism risk assessment' 2011). At the time of writing, CSC was in the process of reviewing the CDs for assessments of Aboriginal prisoners such that they consider special cultural and community circumstances and are conducted either by or in the presence of an Aboriginal liaison officer (CSC 'Correctional Planning and Criminal Profile' 2015).

directives did not adequately capture the needs of Inuit prisoners. While adaptations to information collection and assessment practices on the part of correctional staff in NU.C (and Ontario) are conducted with the intention to more accurately capture the experiences of Aboriginal—specifically Inuit prisoners, these practices are cited by the Auditor General’s Report (2015) as evidence of *sub*-standard penalty.

5.7.2 Investigating Spatio-Material Punishment

BCC was constructed according to a non-standard penal design: the building is square and its interior is shaped like a ‘U’ with the cafeteria in the middle of the institution, housing units for inmates on one side, and program and service areas on the opposite side (OCI Report 2013: 3).

This U-shape design is antithetical to Jeremy Bentham’s panopticon; the archetypal design for prisons in Canada. Bentham’s panopticon was built on the following principles:

at the periphery, an annular building; at the centre, a tower; this tower is pierced with wide windows that open onto the inner side of the ring; the peripheric building is divided into cells, each of which extends the whole width of the building; they have two windows, one on the inside, corresponding to the windows of the tower; the other, on the outside allows light to cross the cell from one end to the other (in Foucault 1977/1995: 200).

Bentham’s design created a penal machine in which prisoners are totally seen without ever seeing (Foucault 1977/1995: 202). The panoptic design has been re-created in many prisons across Canada, for example: the former maximum security Kingston Penitentiary (built 180 years ago) took architectural inspiration from Bentham’s design;⁷⁵ the medium security Beaver Creek Institution I visited also includes elements of Bentham’s design, where the living units

⁷⁵ See Appendix B Figure seven for an aerial view of Kingston Penitentiary

were placed along a circular track, with a wide open field in the centre, so that all movement occurred in open space;⁷⁶ and the super-max CNCC consists of six hexagonal panoptic living units.⁷⁷ BCC in Nunavut, originally designed as a halfway house, fails to implement any recognizable, standard penal architecture. According to the NILO (Interview September 2014) who worked at BCC, “all Nunavut corrections did [to BCC] was put 600 pound steel doors on it and call it a jail.” As one of the penal inspectors with the OCI (Interview 2 June 2015) explains:

BCC was built as a minimum security institution and now it’s run like a maximum security institution and it wasn’t built for that level of security...the infrastructure was completely wrong it wasn’t designed for that...even the engineering reports were saying [NU.C] shouldn’t spend a penny on [BCC]...just tear it down and rebuild.

I will return to a discussion of the success and failures of claims to tear BCC down in the later sections of this chapter in which I discuss the cultural justifications for sub-standard penalty in NU.C. The dorm units at BCC consist of seven cells per unit with six prisoners per cell on average—recall that the international standard, supported by CSC, is single cell occupancy. Each dorm cell has three mattress and a small window. Linoleum has been laid over cement floors but the floors remain extensively damaged. The cell walls are made of drywall and plywood; materials deemed inappropriate and insecure when viewed through the lens of risk and security (OCI Report 2013: 4-5). Also contrary to SMR standards, cells do not have running water or toilets; rather, there are shared bathrooms which must be unlocked for prisoners by COs.

In BCC the ‘behavioural unit’ refers to the section of the prison where prisoners are kept in segregation, either because their behaviour has breached institutional codes of conduct (known as administrative segregation), or because prison staff have deemed them too risky to engage

⁷⁶ See Appendix B Figure eight for an aerial view of Beaver Creek Institution

⁷⁷ See Appendix B Figure nine for an aerial view of CNCC



Figure C: 'Behavioural unit' cell at BCC. Image from the National Post 'Welcome to Hell' (2015). <<http://news.nationalpost.com/news/canada/welcome-to-hell-inside-canadas-most-decrepit-prison-baffin-correctional-centre>>

with the larger prison population (also administrative segregation), or at the request of prisoners themselves for their personal safety (protective custody). Further, this 'behavioural unit' has two single-cell accommodations, which at the time of the OCI visit were housing three prisoners each (OCI Report 2013: 4). Within the 'behavioural unit' the floors have been completely removed exposing cement flooring, and the original drywall has been replaced with plywood. As seen in Figure C (above), and noted in the OCI Report (2013: 4), in order to hold three inmates per 'behavioural' cell a mattress rests on the concrete floor beside the bunk bed. Accompanying increasing rates of over-crowding are increased occurrences of physical assaults on prisoners, staff, and visitors which rose from 57 in 2002-2003 to 185 in 2012-2013 (Ferguson, Auditor General's Report 2015: 7). However, during the process of conducting research I was reminded that Inuit culture is peaceful and pacifist (Field Notes August 2014), and that it is not within the Inuit culture to be violent. For example, the NILO I interviewed (Interview September 2014) explained that increasing violent occurrences, especially at BCC, were more "environmental than cultural." When I asked the NILO (Interview September 2014) about the effects of over-

crowding at BCC he responded: “These guys are literally in each other’s pockets 24 hours a day and frustration [sets in] and it gets quite tense in [BCC] and it’s not that it’s a cultural thing it’s more of a sardines in a can thing.”

In 2012, NU.C predicted it would need 268 correctional beds by 2026; even with the new Makigarivik facility (completed in June 2015) the territory will still lack 70 beds in 2026 (Auditor General’s Report - Ferguson 2015: 15). According to the OCI Report (2013), based on their interviews with prisoners, “inmates at BCC raised concerns about their personal safety and fears of physical and sexual assault as a result of over-crowding.” These concerns over prisoner and staff safety resulted in an alarmingly high reliance on segregation, or confinement in a ‘behavioural unit’—a favourite method of punitive forms of penalty (see Garland 2000). The OCI Report (2013: 12) noted several instances, specifically regarding the use of segregation, in which correctional practices “were inconsistent with the [Canadian] charter or evidenced-based correctional policy including: the use of a straight-jacket for up to 24 hours; the use of chemical restraints without consent; no outside contact while in segregation; and intrusive search and seizures.” All these are practices which are counter to both international and Canadian specific penal standards (such as the SMRs, the CDs of CSC, and the CCRA).

Nevertheless, over-crowding at BCC is so problematic that it cannot be contained in the prison’s dorm units or the ‘behavioural’ units. During the OCI’s site visit the prison gymnasium (see Figure D below) was used to hold 15 inmates on pre-fabricated plastic beds typically used by governmental agencies in major emergencies such as floods or fires (OCI Report 2013: 5). It was also noted by the OCI report (2013: 5) that cells in the admissions and discharge area were often used for general population inmates due to pressures of over-crowding; moreover, over-



Figure D: Image of the prison gymnasium at BCC. Image from: CBC ‘Baffin Correctional Centre’ (2014) <<http://www.cbc.ca/news/canada/baffin-correctional-centre-appalling-and-should-be-closed-report-says-1.2596322>>

crowding at BCC spills-over into other areas of spatio-material design. For example, the OCI (Report 2013: 5-7) noted, “42 inmates from the dorm unit and 15 from the gymnasium shared two showers, two toilets, and two urinals...the available showers and toilets cannot keep up with the current number of inmates and shower and toilet areas are poorly ventilated resulting in a permanent smell, rot, rust, and mould.” During interviews with the OCI investigator (OCI Report 2013: 8), prisoners in BCC explained that at nighttime they had to knock on their cell doors to ask COs permission to use the bathroom, since there are no toilets in the cells, which is highly disruptive for other inmates. As with the Haitian case, the ability of BCC correctional staff to meet penal standards for hygiene is significantly impacted by the prison’s material infrastructure—in this case, a lack of plumbing in the cells.

While I was observing at Beaver Creek Institution I was taken inside the newest living unit in the prison (built in April 2013). The unit, resembling a typical maximum security unit, has two-tiered ranges containing single cells with a bed, sink, and toilet within each. While having a look inside one of the cells I immediately noticed the porcelain toilet—you will recall the big

fuss over the use of porcelain at the Croix-des-Bouquets prison in Haiti. I asked the CO-on-duty about the use of porcelain toilets, and he explained it was a budget issue—porcelain toilets were cheaper—but that as soon as a prisoner used the toilet to inflict harm on themselves or someone else every toilet in the unit would be replaced with stainless steel (Field Notes August 2014). As with the controversy over the use of porcelain in the Croix-Des-Bouquets prison in Haiti, the material politics of the penal environment surfaced in my observations at Beaver Creek. While the porcelain toilets were part of an economical design plan (on the part of CSC), the CO, immersed in the ways by which seemingly passive material objects have the potential to be utilized as weapons, explains that thrifty design plans will be expanded—in the case of violence—to accommodate the more expensive stainless steel.⁷⁸ Once again, a porcelain toilet illustrates the unpredictable material networks of punishment. Both the OCI (2013) and the Auditor General (2015) Reports, despite claims that these investigations take a human rights perspective, focus primarily on the material politics of punishment such that they provide critiques of penal infrastructure, the use of space and materials, and the impacts of non-standard penal design on penal legislation and administration. According to the OCI Report (2013: 6), “the existing reviews provided sound evidentiary basis to justify the closure of BCC and the construction of a new facility...BCC has been grossly overcrowded for decades and is now well past its life expectancy.” Despite these blatant reports of unsound, unsafe spatio-material penal arrangements which bluntly justify the ‘closure of BCC’ the prison continues to operate today.

⁷⁸ The CO did note that because Beaver Creek is a medium security institution it is not required by CSC standards to have stainless steel toilets. Stainless is required for maximum and super-maximum security institutions such as CNCC (Field Notes August 2014).

However, my interviews with southern Canadian penal agents responsible for composing the OCI's (2013) Report on NU.C provide significantly different justifications for sub-standard spatio-material punishment in Nunavut—citing what investigators saw as a non-standard penal 'culture' in Nunavut:

inmates were telling me it wasn't a problem to be six, seven, eight in a small dorm room...they would say: 'that's how we prefer it, being alone isn't something we are looking for'...it may not be true for everyone but I suspect there is truth to that...that the collectivity of a small group is preferable in the Inuit culture to having their own cells to themselves (OCI Interview 1 June 2015).

This investigator's characterization of the 'collectivity of Inuit culture' is reflective of a strategic appropriation, or what O'Malley (1996) calls co-option, of the social and collective nature of Inuit communities; as if distinguishing that Inuit communities are not individualistic provides the justification for cramming eight men to a cell without plumbing. I think this is indicative of a novel, albeit troubling, instantiation of an argument of cultural exception. Typically used by non-Western countries against universalized human rights (see Cowan et al. 2001: 27-30), the cultural exception argument in this case is mobilized by agents working on behalf of the Canadian state against the utility of universalized penal norms: that penal standards do not make sense given the Inuit communal way of life and so they must be customized. Despite justifying the use of communal cell design in NU.C on the basis of a non-standard Inuit penal culture, the same southern Canadian penal investigator (OCI Interview 1 June 2015) went on to reject the practice as it currently operates in BCC: "what remains unacceptable is the clear over-crowding at BCC...you can put six guys in the same cell but they need beds...and a toilet," (OCI Interview 1 June 2015). It strikes me as paradoxical that while Canadian penal agents (specifically CSC staff) have built 'closer-to-the-standard' communal cells (including

beds and toilets) in the Croix-Des-Bouquets prison in Haiti, that such a cell design is not being pursued in any facilities in Nunavut, including the newly (2015) constructed Makigarivik facility.

5.7.3 Investigating Corporeal Punishment

The OCI Report (2013) very clearly states that Nunavut corrections is in violation of corporeal standards: “the crowding of inmates, some with violent pasts, mental health issues, cognitive deficits, and substance abuse problems—is inconsistent with good correctional practice and violates international human rights standards.” At BCC 70% of inmates are remand inmates while 30% are convicted prisoners (OCI Report 2013). As with the Haitian case, due to a significant lack of space and over-crowding, NU.C fails to separate remand from sentenced prisoners which is in violation of the SMRs.⁷⁹ The OCI investigators reported (OCI Report 2013: 14) that the practice of holding remand and sentenced prisoners together is “highly problematic as it suggests that correctional authorities can contract out of their domestic and international human rights obligations,” (OCI report 2013: 14). Yet, just as we saw with the Haitian case, the selective application of penal standards is one of the primary values of this tool of penal government. And, as I demonstrated in chapter III, one of the primary reasons behind its widespread international support: standards are not legally binding.

Within NU.C (particularly at BCC) correctional staff explained that their ability to implement the international (SMR) standard of one hour outdoors per day is at the mercy of Nunavut’s environment. For example, one of the inspectors I interviewed (Interview 1 June

⁷⁹ Recall it is in violation of a prisoners legal rights, if they are awaiting their sentence (and innocent until proven guilty) to be imprisoned alongside convicted (legally determined guilty) prisoners.

2015) explains: “one hour of fresh air [the standard] in the winter [in Nunavut] it makes no sense. You can’t go outside in a blizzard. At the same time, usually guys in federal institutions down South don’t go outside when it’s -39 degrees outside. But they do [at BCC].” As with the Haitian case, the standard of one hour of open air per day does not translate into penal practice in Nunavut: prisoners in Nunavut often have very limited access to the outdoors due to Arctic storms and so, they go outside as often as they can—even if that means in -39 degree weather.

Snow accumulation acts as a further hindrance to access to the outdoors:

at BCC the snow accumulates in the yard [see Figure E below] along the fence and the guys could climb [the snow] and jump the fence. So this is seen as a security issue. But guys don’t really escape from [BCC] I mean they can escape sure, but there is nowhere to go...there is no road to anywhere... it’s a futile effort (OCI Interview 1: June 2015).



Figure E: Outdoor ‘yard’ space at BCC. Image from <<http://www.cbc.ca/news/canada/north/nunavut-jail-poses-significant-constitutional-and-legal-risks-memo-1.2987692>>

While snow accumulation during winter months makes escape from BCC entirely possible: there is nowhere for prisoners to escape *to* and so they don’t. A southern Canadian prison inspector with the OCI (Interview 1 June 2015) credited both climate and culture as evidence for why the SMR standard for outdoor access does not apply in Nunavut: “yes, yard-time is a right,

absolutely, but [in Nunavut] this is one aspect where culturally and climate-wise it's not relevant in the same way [as in the SMRs or CSC policy]...and I think it's really stupid and idiotic just to put it this way [according to the one-hour standard]." I was intrigued by the inspector's separation of climate and culture in his explanation so I asked him why the standard for outdoor access doesn't apply culturally in Nunavut: he replied, "because the Inuit have a very different—this is what I felt—they have a different relationship to the outdoors than we do...keeping Inuit inmates indoors for a long period of time...culturally speaking it doesn't have the same meaning...it doesn't have the same effect on them," (OCI Interview 1 June 2015). While I think the inspector is very right—that culture is intimately connected to the environment—he engages a problematic cultural justification for keeping Inuit prisoners indoors. As I pointed out at the outset of this chapter, according to the Pauktuutit Inuit Women of Canada (2006: 8) and Watt-Cloutier (2015: 321), adaptation is one of the many assets of the Inuit peoples. Inuit peoples have had to adapt to inclement weather for centuries 'waiting out the storm' (Pauktuutit Inuit Women 2006) from indoors, yes, but they also have the skills, knowledge, and patience to endure long hours on the ice and snow during a hunt. I think it is a terribly misguided misinterpretation to use Inuit adaptability, patience, or the quiet 'waiting out of the storm' as 'cultural evidence' to support either longer sentences or a lack of access to the outdoors. Rather, as Watt-Cloutier (2015: ix, 236) explains, "the land is such an important part of [the Inuit] spirit, our culture, our physical and economic well-being...Inuit culture is inseparable from the conditions of [our] physical environment." Access to the land, to the outdoors, should be a top priority for Inuit prisoners who have learned patience and adaptability from a strong physical and spiritual

connection to the land itself. Nevertheless, Inuit prisoners remain confined to over-crowded cells at BCC more so than most prison populations in Canada (see OCI Report 2013).

5.7.4 Investigating Social/Collective and Spiritual/Cultural Punishment

There is a significant dearth of policy regarding the provision of penal programming within NU.C. The only specific program provisions are for the On-The-Land and Inuit Culture Skills programs which include a bare-bones carving program and a few scattered outpost camps throughout the territory. While aimed at meeting the aims of reintegrative punishmentalities, connecting prisoners with local social supports, the funding for these programs is scarce and the number of prisoners who benefit from these ‘cultural integration’ programs are scarcer still (see OCI Report 2013). For example, one of the investigators with the OCI (Interview 1 June 2015), explained the ways in which Inuit cultural practices often encounter interference on the part of penal administration:

Country food is brought into [BCC] by family members...and inmates have access to this and can eat it. Of course, if it's coming from a family, normally the institution as soon as they take the food, they are responsible for it and have a legal obligation to ensure that [the food] is proper for consumption...this is difficult because it may not be prepared... as the family intended.

Similar to the Haitian case, food is an integral part of Inuit cultural practice and knowledge. The state-centric, penal administrative apparatus in Nunavut (re)interprets Inuit cultural knowledge and practice regarding country food as a health risk requiring intervention and modification on the part of prison staff who have a ‘duty to care’ (PRI 2001: 7) for the health and well-being of prisoners. However, in this case, the penal ‘duty to care’ manifests as a post-colonial re-visioning of centuries old Inuit cultural practice.

In Ontario, Beaver Creek medium security institution is known across Canada as offering the best Aboriginal-specific penal programming in the country. The Pathways unit at Beaver Creek, designed especially for Aboriginal prisoners, housed several Inuit prisoners at the time of my visit. Located within one of the main living units, the Pathways unit was divided into pod-style cells much like a university dormitory. Upon entering the range there was an open-concept living room, kitchen, and dining area which the prisoners shared. The living room had couches and a television and was decorated with various Inuit, Métis, and First Nations artwork. Prisoners slept in several single-cell rooms along a main corridor. I was struck by how small the cells were with no toilet or sink, and just enough room for a single bed, a desk and one chair (Field Notes August 2014). Contrary to SMR standards which stipulate that cells are to be furnished with the necessary plumbing to facilitate the needs of nature, prisoners living in the Pathways unit had to share the toilets and showers located at the end of the main corridor. However, the aim of the Pathways unit, in both design and penal practice, is to promote communal living such that prisoners share their living space, cook their meals together, and engage in various Aboriginal specific programming such as the on-site sweat lodge, a drumming circle, a garden for growing Aboriginal medicines, and an outdoor camp space with a fire pit (Field Notes August 2014). Moreover, prisoners shop for their groceries on site at the institution's grocery store. In order to purchase groceries, prisoners pool their resources with fellow prisoners from their living unit. This pool of money typically amounts to \$20.00 per week for several inmates and grocery items are purchased at regular cost (Field Notes August 2014). When I asked the programs officer at Beaver Creek why prisoners were given such a small budget with which to purchase groceries his response was that prisoners needed to learn how to

make do with very little because upon release the majority of prisoners would be on social assistance (Field Notes August 2014). Correctional staff at Beaver Creek explained that such communally-based practices are ‘brutally realistic’ training for reintegration into society (Field Notes August 2014); while indicative of an effort to meet the aims of rehabilitative and reintegrative punishmentalities, I see the case of prisoner grocery shopping as another instance of state-centric penalty reifying existing social and economic inequalities which prisoners will have to face upon their release from prison.

Aboriginal programming at CNCC, and to a lesser extent at Beaver Creek, was ‘one-size-fits-all’: each of the prisons I visited in Ontario are equipped with rooms for Aboriginal ceremonies specifically for smudging—a First Nations cleansing ceremony involving the burning of medicinal herbs such as sage, sweetgrass, cedar or tobacco. However, Beaver Creek has the largest Inuit soapstone carving program in Canada—significantly better staffed and resourced than the soapstone carving program at BCC in Nunavut.⁸⁰ At Beaver Creek, there were Aboriginal, although not Inuit, Elders on site as well as a Native Inuit Liaison Officer (NILO) who oversaw all of the Inuit specific programming and was considered a great comfort to the Inuit prisoners (Field Notes August 2014). Inside the NILO’s office were two large chest freezers full of Inuit country food—caribou, seal, arctic char and whale—used in the monthly feasts offered at Beaver Creek. The NILO’s office also had beautiful artwork, soapstone carvings, and seal skin mittens all made within the prison by Inuit prisoners. The Ojibwe Elders at CNCC spoke to me about the various cultural and religious ceremonies offered at CNCC including

⁸⁰ Similarly, CNCC also offered a week-long soapstone carving program for its Inuit prisoners (Field Notes: August 2014).

monthly sweat lodge ceremonies (Field Notes August 2014). The Elders at CNCC informed me that while the sweat lodge ceremony is not a tradition of the Inuit peoples, the Inuit prisoners were invited to attend and they often enjoyed participating (Field Notes August 2014). However, there was no specific programming at CNCC for Inuit prisoners and this frustrated the Elders because they felt they were not able to accommodate their “Inuit brothers appropriately because they did not know enough about the Inuit culture,” (Field Notes August 2014). The same is true at Beaver Creek: Inuit prisoners are invited to participate in sweat lodge ceremonies which, had they not been incarcerated in southern Canada (in Ontario), they might otherwise never have experienced.⁸¹ Despite this one-size-fits-all Aboriginal programming, one of the program officers at Beaver Creek informed me that, at the time of sentencing, judges will often manipulate the law by adding a couple of days onto a sentence for an Aboriginal offender (making the sentence two years plus a day and, therefore, a federal sentence) so that the Aboriginal prisoner will be sent to Beaver Creek to participate in the Pathways programming (Field Notes August 2014).

However, in Nunavut, where correctional programming is few and far between, prisoners not only miss out on the enterprising, rehabilitative, and reintegrative opportunities afforded prisoners in better resourced correctional jurisdictions but they are also deprived of services to support their mental health and well-being. For example, according to the Auditor General’s Report (2015: 37), in 2012 prisoners at BCC did not have access to substance abuse programming for several months since over-crowding concentrated staffing resources around managing prisoners rather than on providing programming. Similar to the Haitian case, limited

⁸¹ The NILO at Beaver Creek, explained that he had aspirations to run more Inuit specific programming such as the construction of an *Iglu* for one of their monthly feasts (Field Notes August 2014).

staffing resources are focused first and foremost on maintaining a secure penal environment and then, if possible, on the provision of programs—scarce to non-existent in both Haiti and Nunavut. There were few qualified staff within NU.C who could provide counselling services; there is only one psychologist responsible for all of NU.C despite the fact that the number of inmates with mental illness is on the rise (Ferguson, Auditor General’s Report 2015: 39).⁸² Moreover, the OCI Report (2013: 13) strongly criticized BCC’s policy of automatically placing suicidal prisoners in protective segregation emphasizing that this practice is not consistent with evidenced-based suicide prevention practices which states that suicidal prisoners should not be isolated and need constant observation, interaction, and support.

Despite recommendations (see OCI Report 2013) for increased governmental support for substance abuse and mental health services, an additional challenge facing NU.C are the widespread social attitudes towards the government among Inuit people. For example, the NILO (Interview September 2014) explained to me that, “typically in Nunavut, any government office is frowned upon...like social services, they do a lot for the community but everyone just looks at them like they are child nappers—they will take your child.” The importance of understanding post-colonial governmental relations in Nunavut cannot be under-stated. Inuit skepticism and fears regarding the government’s motivations, particularly in light of the Residential Schools Act

⁸² Rates of suicide for Inuit persons are eleven times higher than the Canadian average leading Inuit community leaders to call the mental health crisis in Nunavut a national tragedy (Inuit Tuttarvingat ‘Suicide Prevention’ 2015). According to Inuit Tuttarvingat (‘Suicide Prevention’ 2015)—the Inuit-specific centre of the National Aboriginal Health Centre— common factors for suicide among Aboriginal populations includes: the breakdown of cultural values and belief systems; community instability and lack of prosperity; poverty and limited opportunities for employment; lack of proper housing; and loss of control over land and living conditions.

and the forced adoption of Aboriginal children in the 1960s-1980s⁸³—which did in fact remove many Aboriginal (including Inuit) children from their homes—has significant impacts on the ways in which Inuit view state-centric, government-provided social services in their communities. The Elders at CNCC echoed the NILO at Beaver Creek speaking about the culture of distrust among Inuit prisoners (similar to many of the other Aboriginal prisoners in the institution) given the history of violence and the treatment of Aboriginal communities by the state (Field Notes August 2014). For example, the Elders at CNCC told me of one particular Inuit prisoner who had a ‘deep anger towards authority’ because he had witnessed the RCMP shoot a sled dog team in his village as a means of keeping the Inuit off of the ice and therefore more manageable (Field Notes August 2014).⁸⁴

To make matters worse for Inuit prisoners there are no opportunities for closed visits with family, friends, and the community supports they do trust. At BCC there are three pay phones in

⁸³ The ‘60s Scoop’ refers to the adoption of Aboriginal children in Canada between the 1960s-1980s (Sinclair 2015). The phenomena is so named because children were “literally scooped from their homes and communities without the knowledge or consent of their families or bands,” (Sinclair 2015). It is estimated that approximately 20,000 children were taken from their homes during the 60s Scoop (Pelley 2015). Many Aboriginal groups claim that in cases where consent was not given, “government authorities and social workers acted under the colonial assumption that Native people were culturally inferior and unable to adequately provide for the needs of their children,” (Sinclair 2015). In June 2015, the government of Manitoba was the first provincial government to issue a formal apology to survivors of the 60s Scoop. Aboriginal activists maintain that there is a disproportionate number of Aboriginal children in foster care in Canada today—as of 2011 there were over 14,000 Aboriginal children in foster care in Canada (Pelley 2015).

⁸⁴ Watt-Cloutier (2015: 70-71) describes this process of state-sanctioned violence in her book:
...in the 1950s and 1960s RCMP searched out dog teams...claiming they were infected with canine distemper...hunters were instructed to bring their dogs to a designated spot. The animals were not inspected for illness, no questions were asked of the owners. The dogs were simply shot...In all, over 1,200 dogs were destroyed...many now suspect that the destruction of the dog teams was a way to force Inuit families to move from outpost camps into settlements by removing their mode of transportation...

the cafeteria; however, the location means that prisoners have no privacy when making calls. According to the OCI (Report 2013), contrary to SMR standards, prisoners in segregation at BCC have no correspondence or visitation with their family, friends, or community supports. My observations in Ontario allowed me to uncover additional challenges in regards to visitations and social connections specific to Inuit prisoners who are transferred from NU.C to prisons in Ontario. On multiple occasions I was told that the number one challenge for Inuit inmates was the distance from their social, community, and familial ties (Field Notes August 2014). For example, many Inuit prisoners do not speak English, have never left their community, and have never been on a bus let alone an airplane (NILO Interview September 2014). Further, correctional staff must accompany Inuit prisoners on the plane⁸⁵ to either Ottawa or Toronto and from there the prisoner is transferred via armoured vehicle to a prison in Ontario—primarily Beaver Creek. The route by vehicle is on average five hours long and requires scheduled stops at correctional facilities along the way in order to allow the prisoner washroom breaks and/or meals. As correctional staff at Beaver Creek explained: “it’s not as if you can take the 401 and stop at Tim Hortons with a convicted prisoner,” (Field Notes August 2014).

Once successfully transferred to an Ontario prison, the prisoner is thousands of kilometres away from their family so visitation is simply not possible—Inuit families often cannot afford the costs of travel to Ontario (Field Notes August 2014). As such, Inuit prisoners in Ontario can go several months, or even a year without seeing family or friends. Personal calls are

⁸⁵ During my observations at Beaver Creek the NILO informed me that the very next day he was accompanying an Inuit prisoner, who had completed his sentence, on a plane back to his home in the Cambridge Bay, NU area. A journey that would take over 18 hours with flights costing approximately \$4,000.00 each (Field Notes August 2014).

equally as challenging for Inuit prisoners in Ontario: “I’ve seen guys whose family do not have a phone....and employment for Inuit is a struggle so they don’t have money for a calling card to cover the long distance charges to Ontario,” (NILO Interview September 2014). When I asked the staff at CNCC about procedures for connecting Inuit prisoners with their families, staff explained that there were no means to connect Inuit prisoners to family or community supports in Nunavut at all. The Elders at CNCC describe how a transfer to an Ontario prison rips an Inuit prisoner from their home and suddenly the Inuit find themselves in a new province, with a new language and strange ways of life, which often causes Inuit prisoners to become depressed (Elders at CNCC in Field Notes August 2014). Transferring Inuit prisoners to Ontario is a cruel and inhumane form of punishment resulting in: a severe disconnection from family and friends; isolation from familiar surroundings; and forces many Inuit to cope with interacting in large populations of people in an environment that tends toward violence. The 1999 N.U.C Corrections Plan condemned the practice of transferring Inuit prisoners outside the Territory as inhumane penal practice—echoed in the 2006-2011 Strategic Plan for Aboriginal Corrections, the 2013 OCI Report, and the 2015 Auditor General’s Report. However, as a consequence of overcrowding and a lack of maximum (federal) penal infrastructure in Nunavut the practice of transferring Inuit prisoners to Ontario continues today.

The 2015 Auditor General’s Report (Ferguson 2015: 39) highlighted the importance of including traditional Inuit legal principles and values within N.U.C’s policies which have remained unchanged for 25 years. The Auditor General’s Report (Ferguson 2015: 39-40) recommended that N.U.C update its directives and operating procedures to incorporate principles and values of Inuit *Quajimajatuqangit*—Inuktitut for ‘that which has long been known by Inuit’.

Similarly, the OCI Report (2013: 16) noted that the penal law in Nunavut “made use of the outdated concept of ‘good order and discipline of the correctional centre’ a vague, catch-all discretionary provision that has exceptional latitude for correctional authorities to justify almost any correctional decision.” However, there are currently no CSC or state-sponsored efforts to investigate alternative forms of penalty in Nunavut. While I agree that it is important for NU.C’s legislation and policy to reflect Inuit principles and values I find these recommendations to be empty given that carceral forms of punishment continually disadvantage and disproportionately target Inuit prisoners in the Arctic. Like with the Haitian case, changes to the material politics of punishment in Nunavut as they are currently imagined, do not challenge the legal, political, and economic framework of post-colonial government relations in Nunavut; whereas, the adoption of a mode of penalty consistent with an Inuit ethos of justice would require (re)thinking the prominence of carceral punishment in the Arctic.

My analysis of the penal investigation into non-standard penalty in Nunavut uncovers the ways in which Inuit peoples, subject to post-colonial, state-centric forms of penal government are left little choice but to engage with those governmental structures, logics, and practices if they want to make a case for penal reformation—much like Mark Gordon’s depiction of the hunters picking off the carcass left by the snowy owl. In the investigation of NU.C, penal standardization is another tool of post-colonial government that locates Inuit prisoner human rights in relation to post-colonial apparatuses of penal government rather than Inuit ethos of justice. In other words, because penal standardization takes carceral penalty as the global norm for punishment, it does not provide penal investigators with a tool to evaluate the utility and effects of carceral punishment in relation to an Inuit ethos of justice—because this ethos falls

outside of the realm of accepted, standard modes of penal government as *non-standard*. The post-colonial politics inherent in Canadian penalty fails to see the ways in which post-colonial relations of government in Nunavut—the state’s phantom sovereignty—are directly relevant to the capacities of NU.C. More problematically, a penal investigation conducted via penal standardization fails to see that it is state-centric, carceral punishment that plays a leading role in the continued inhumane treatment of Inuit prisoners in Canada. The result is that penal investigators, along with penal administrators from NU.C continue to struggle with convincing people, especially Inuit peoples, that punishment is a social good worthy of investment and reformation.

5.8 The Post-Colonial Politics of Canadian Penalty

“I think what happens in Nunavut it’s not...it can’t be oversimplified as a cultural thing...I think we are talking about capacity and in many ways Nunavut lacks capacity,”
(Ottawa Police Interview 2 November 2014).

The post-colonial politics of penal practice and the investigation of NU.C mobilize contestations over culture—what counts as culture and who gets to define culture—which has significant consequences for the future of penalty in Canada’s Arctic. On many occasions, the penal investigators or penal agents working in NU.C, who are primarily *Quallunaat* federal government employees, failed to see the ways in which culture and capacity in Nunavut are inseparable. Take for example the above quote from a southern Canadian police officer on mission in Nunavut; the officer explains that to categorize the problems facing the justice system in Nunavut as ‘cultural’ would be an over-simplification and instead explains these problems as a lack of capacity (Ottawa Police Interview 2 November 2014). I think this desire to try to separate

culture from penal government is part of the problem in Nunavut because it fails to account for the ways in which what ‘counts’ as culture is inextricably tied to post-colonial relations of government in the territory which reify, rather than challenge post-colonial forms of penalty. Blind to its own Western, Euro-centric biases, penal standardization fails to account for the impacts of post-colonization on the capacity and conditions of imprisonment in NU.C. Furthermore, capacity is often used as a synonym for technical penalty. The fixation with technical punishment in the investigative reports ends up, above all, adding to the laundry-list of reports which make a case for the reformation of penal infrastructure (prison buildings) and the materiality of punishment in NU.C. In other words, the political economy of penal standards further ensnares prisoner human rights in technical, regulated, material punishments rather than in an ethical commitment to the value of human life or a ‘duty to care’ for prisoners. In the Haitian case, penal standards are used by international penal aid agents to justify the continued presence of penal aid efforts; in Nunavut, penal standards are utilized by investigators as evidence of sub-standard penalty, or a non-standard Inuit ethos of punishment, and the need for penal reformation.

While conducting participant observation in Northern Ontario, several of the correctional administrators I spoke with emphasized the challenges of meeting the demands of changing political powers, which impacts correctional budgets and the capacity of penal administrations to meet the needs of prisoners (Field Notes August 2014). An Elder at CNCC told me that funding for Aboriginal programming is ‘here today and gone tomorrow’ which makes it incredibly challenging to run programs consistently or make adaptations to programming (Field Notes August 2014). Similarly, a programs officer at CNCC told me he felt that 80% of his job was

begging the government for program funding (Field Notes August 2014). In other words, a penal administration's ability to successfully meet standards having to do with programming and prisoner needs (such as Aboriginal penal programming) is often dependent on the political climate of the day which dictates where penal funding will be concentrated. This is particularly important in the contemporary Canadian political climate which, while I was writing my dissertation, has undergone a drastic change in government after almost ten years of Conservative government to a majority Liberal government. For example, a programs officer at Beaver Creek spoke to me about the disconnect between the political climate in which Beaver Creek was built—under a penal welfare model with a commitment to rehabilitation and reintegration—and the political climate in which Beaver Creek operated at the time of my research—a Conservative 'tough on crime' model focused on the incapacitation and carceral management of 'criminal' populations (Field Notes August 2014). These sorts of changes in the political climate, from Conservative 'tough on crime' agendas, to Liberal revisions of those agendas, result in changing directives for penal government and fluctuating budgets for correctional programming—which we are already beginning to see with the Liberal review of mandatory minimum sentences.

Prisoner needs and programming are also connected to the physical design of the prison. While the logic of penalty may change as political powers shift within Canada (from penal welfare to penal control), the physical structure of the prison remains fixed and so correctional staff are expected to meet the new goals of a particular punishmentality—adapting practices, programming and so on—within the confines of the existing penal infrastructure (Field Notes

August 2014). One penal investigator (OCI Interview 1 June 2015) explained how changes to penal infrastructure do not always translate into changes in punishmentalities:

Rankin Inlet was built according to international and Canadian standards but the notion of programs...and community corrections was used in the building [design] with Inuit architects and a lot of attention to Inuit culture...but when [Rankin Inlet] opened staff [from southern Canada] ran the institution like a Federal penitentiary. It was almost segregation like. Staff were seeing the [physical structure] of the prison wide open, with a lot of areas to gather, and staff felt this was insecure and they could not accept that the prison was supposed to be run [with an open design] like a healing centre.

Viewed through the lens of risk and security, the open-concept communal design of Rankin Inlet was subverted by southern hires working for NU.C who subverted the rehabilitative and reintegrative punishmentality behind the penal design. The state-centric, punitive, risk-averse post-colonial policies and practices of punishment were so strong that not even the spatio-material conditions of punishment, nor the prison's design, could detract from the punitive, incapacitative punishmentalities ingrained in the post-colonial politics of punishment. As this same investigator (OCI Interview 1 June 2015) explains: simply putting an “inukshuk in front of [a prison] does not make it Inuit...Rankin Inlet is still a jail,” (OCI Interview 1 June 2015).

Similar to the Haitian case, alterations to the logic and practice of punishment at the Rankin Inlet Facility came from outside, from southern Canadian correctional staff who were ill-equipped to operationalize the logics of healing and communal living, mobilizing instead the punitive logic they were much more familiar with. My analysis of the penal investigation in NU.C illustrates the ways in which the political climate impacts the material networks and channels through which penal government flows: to infrastructure indicative of punitive, incapacitation punishmentalities but not healing and communal living indicative of transformative, rehabilitative punishmentalities aligned with an Inuit ethos of penal justice. My

point here is not to suggest that addressing unsafe, dilapidated, inhumane penal infrastructure is not an important element of penal reformation. By all means, penal reform should make the necessary improvements to infrastructural and spatio-material elements of penality; however, to suggest that in so doing penal government has comprehensively addressed the human rights of prisoners is seriously short-sighted. Rather, contestations over penal programming are themselves located within broader contestations over the dis-embedding and re-embedding of customized (socially relevant) penal practice within carceral, institution-centric forms of penality, which in turn mobilize various forms of cultural appropriation, distinction, justification, and resistance.

Following the work of O'Malley (1996), Cowan et al (2001), Chatterjee (2001, 2011), Coulthard (2014), Thobani (2007), and others, my analysis of the penal investigation of NU.C uncovers the ways in which culture is not a stable object but is at stake in contestations over Canadian penal politics and practice. For example, 'one-size-fits-all' Aboriginal programming is a consequence of significant cuts to correctional programming, but also an institutional disregard for the diversity across and within Aboriginal cultures (Field Notes August 2014). Not only does this programming homogenize First Nations, Métis, and Inuit cultural practice, but it also presents culture *within* Inuit (for example) groups as universal. However, my fieldwork uncovered instances in which designations of Inuit culture were inconsistent and in some cases antithetical. Such as the NILO's explanation of the failure of southern COs to recognize outward emotional displays (crying) on the part of prisoners as 'cultural aspects' specific to Inuit prisoners. Juxtaposed with the quiet, reserved, and controlled Inuit prisoner who is often further penalized by prison staff for what they interpret as non-cooperative, failures to communicate,

rather than recognizing these behaviours as ‘cultural,’ as per the Elders at CNCC and Inuit descriptions of Inuit culture (see Inuit Tapirit Kanatami 2004; and Pauktuutit Inuit Women 2006). In these examples, descriptions of ‘Inuit culture’ are at odds—open versus reserved emotional displays—illustrating that what is understood as ‘cultural’ within Inuit communities is diverse. At the outset of this chapter I explained the competing discourses of the history of Canada’s Arctic as long inhabited by Inuit peoples as opposed to post-colonial depictions of the Arctic as a no-mans land. I explained that, rather than the exclusive discourse of explorers from Canada’s distant past, invocations of land and location were crucial to contemporary representations of Nunavut. While land and location is a crucial part of what Watt-Cloutier (2015: ix, 236) calls the ‘Inuit spirit,’ southern Canadian penal investigators are quick to isolate location and point to the impacts of (non-standard) penal culture as this more often than not exasperated sub-standard penalty in Nunavut. For example, penal investigators wanted to make clear distinctions amongst culture and location in their descriptions of contraband⁸⁶ issues at BCC:

Another thing that is not cultural...it’s really because of the situation at [BCC] and the [small village nature] of Iqaluit is contraband...the pressure to bring contraband into the institution is very high and the measures to limit contraband are fairly low...a lot of inmates were refusing to go to outside activities because if they didn’t bring back contraband they were beat up...all of the best intentions in the world to allow [prisoners] to go hunting, carving, to fish on the land, these activities were very often cancelled due to a lack of inmate participation because of contraband pressures (OCI Interview 1 June 2015).

When I asked the interviewee to elaborate on the reasons behind the contraband pressures at BCC, he explained that because of the small village nature of Iqaluit, prisoners could not leave the institution without seeing someone they knew which made it easy for prisoners to arrange for

⁸⁶ Contraband refers to band substances (such as drugs, alcohol, and sometimes cigarettes) and objects (such as weapons, cameras, and phones) from the prison.

contraband exchange (OCI Interview 1 June 2015). Whereas, “if an inmate accepted an escorted temporary absence at Beaver Creek Institution [in Gravenhurst Ontario] he doesn’t know where he is going, or who he is going to meet...so it’s much more difficult for contraband to be re-introduced into the [prison]...so guys wouldn’t be treated badly by other inmates upon their return [to the prison] for not bringing back contraband,” (OCI Interview 1 June 2015). In this way, the social and environmental context of Iqaluit (coupled with prison staff shortages) is cited as responsible for exacerbating issues of contraband at BCC. Similarly, at CNCC, the Elders informed me that they faced immense challenges in getting correctional staff at the prison to accept the Ojibwe practice of using medicine bags (for sage and tobacco) because COs, trained by CSC in static and dynamic forms of security and risk management, saw the medicine bags as a means for carrying contraband in the prison (Field Notes August 2014). However, with their persistence and proper training, the Elders were able to teach the COs at CNCC that the medicine bags were a marker of pride and privilege for Aboriginal prisoners, and that prisoners would not taint the sacred, spiritual object with contraband items (Field Notes August 2014).

Nunavut’s remote, Arctic location was also referenced as an explanation for what southern Canadian justice officials saw as non-normative judicial administration. For example, justices of the peace in Nunavut often had other jobs:

The justice of the peace was also the garbage man...he is a local Inuit that is older and well respected in the community...and a garbage truck pulls up to the police station and the garbage man would get out in his garbage man suit and he is filthy and his hands are dirty and you say: ‘good morning your lordship’...it’s kind of like you are *playing* criminal justice system...sitting at a plastic, Canadian Tire table [the justice of the peace] reads the Queen’s preamble...he makes his decision and then he gets back in his garbage truck and picks up our garbage (Ottawa police interview November 2014).

This police officer connects a lack of judicial capacity in Nunavut with a lack of judicial *credibility*. Despite the fact that the justice of the peace is a respected community member, this police officer could not get past the fact that the justice of the peace was also a garbage man; that the courthouse was a portable unit with plastic folding tables. These factors lead the interviewee to problematically conclude that he felt he was ‘playing’ at justice rather than engaging in a legitimate judicial hearing. However, we know that Nunavut’s financial dependence on the federal government of Canada has significant consequences for the amount and types of public service on offer in Nunavut, including court services. Rather than seeing the garbage man / justice of the peace as evidence of a distortion of justice, I would argue this is evidence of attempts, on the part of territorial government and judicial officials, to circumvent the impacts of post-colonial relations of government at play in Nunavut which significantly limits judicial capacity in NU.C.

The post-colonial politics of Canadian penalty is also starkly apparent in issues of language plaguing Canadian corrections. At Beaver Creek, the NILO emphasized the importance of language for Inuit prisoners—many of whom do not speak English—so the support of penal staff, like the NILO who can speak Inuktitut and translate English, is critical (Field Notes August 2014). However, at CNCC, the Elders explained that there are no staff on site who could speak Inuktitut and this has significant impacts on the treatment of Inuit prisoners in the prison. For example, one particular Inuit prisoner at CNCC could not speak English and since there were no correctional staff who spoke Inuktitut the staff at CNCC relied entirely on another Inuit prisoner to translate for them (Field Notes August 2014). While I was not all that surprised by these language barriers for Inuit prisoners transferred to Ontario, I was surprised to learn that these

same struggles with language were also true of BCC in Nunavut: “[In BCC] half of the inmate population speaks *only* Inuktitut and only two Inuit guards could speak Inuktitut: the rest, the majority of the staff, spoke English,” (OCI Interview 1 and 2 June 2015). Similarly, my research highlighted the ways in which Inuit peoples communicate non-verbally, using their bodies in ways that are not recognized within the penal field. As the NILO (Interview September 2014) explains: “A lot of these guys, the language spoken in their homes is Inuktitut and so even little facial expressions can have meanings and it is likely no officer....would understand. So, it would certainly create a barrier or seem like the inmate is not answering questions, but he is.” More often than not, Inuit non-verbal communication is interpreted through the assessment and administrative processes of Canadian penalty as evidence of disobedience. As such, what the NILO describes as Inuit cultural practice (in this case verbal and non-verbal communication) clashes with the punitive culture of carceral penalty which, imagined through the logics of security, risk, and ‘protection,’ drastically alters the meanings and experiences of these practices (Inuit language).

5.9 Resisting the Post-Colonial Politics of Canadian Penalty

While designations of the ‘cultural’ are at stake in contestations over standard and non-standard penal practice, I do not want to, as Huxley (2007: 91) says, “uncritically celebrate culture as resistance.” Instead, following the work of O’Malley (1996) and Cowan et al. (2001: 28), I see the co-option of Aboriginal (Inuit) culture and resistance to this co-option as historically specific, fluid, contested, and continually changing. In other words, penal standardization in the investigation of NU.C does not present either a one-sided account of cultural repression, nor

should it be celebrated as a triumph of resistance; rather, (following Hindess 1996: 97) penal standardization, as a technology of penal government, lies somewhere between domination and reversible relations of power. While the introduction of state-centric, carceral punishment in Nunavut is indicative of what Garland (2006: 424) calls a ‘penal transplant,’ the pragmatic use of penal standards attempts to avoid grafting legal terms and criminological concepts from one culture to another. The utility of penal standards for penal investigators, like penal aid agents in Haiti, was their flexibility and pragmatic application depending on the context. While the aim of the penal investigation in Nunavut was to compile a report that documented sub-standard and non-standard penalty for the purposes of penal reform, penal investigators remained highly critical of the SMRs and how they did not always apply in Nunavut. For example, penal investigators with the OCI (Interview 1 June 2015) called the SMRs standard of one hour outdoors per day ‘stupid and idiotic’ in the Nunavut context.

Similar to the Haitian case, penal investigators were able to selectively cherry-pick the standards that would best make their case. In doing so, the OCI Report (2013) in particular has provided NU.C with increased media attention⁸⁷ and an increased public awareness regarding the deplorable conditions at BCC. As a result, some headway has been made on building repairs to BCC following the OCI Report, beginning with the removal of mould, the replacement of broken fire sprinklers, holes in walls and unsanitary washrooms (Weber ‘Canadian Press’ 2015). Further the construction and recent (June 2015) opening of the minimum security Makigiavik prison has helped to alleviate, but certainly not eradicate, over-crowding at BCC such that prisoners do not

⁸⁷ In particular, CBC News, CTV News, Huffington Post Canada, The National Post, and The Globe and Mail have all run stories on the horrible conditions at BCC.

have to bunk in the gymnasium on a regular basis (Weber ‘Canadian Press’ 2015). Nevertheless, the focus of the reports on NU.C have been, as per the political economy of penal standardization, on the technical and spatio-material elements of punishment; such that, while there have been some observable improvements to penal infrastructure and administration in NU.C. the same cannot be said for the adoption of a mode of penalty within NU.C consistent with an Inuit ethos of justice aligned with Inuit *Quajimajatuqangit*—‘that which has long been known by Inuit’. Furthermore, there is a real danger in circulating a report that cites further evidence of a lack of governmental capacity in Nunavut without a parallel discussion of the historical development of penal justice in Nunavut and the post-colonial relations of government, specifically the federal government’s financial stranglehold over the territory, which impacts NU.C’s penal capacity and its ability to meet penal standards in the first place. The fact of the *matter* is that the problems facing NU.C today are directly correlated with the historical imposition of a common law, carceral system of punishment. Moreover, the central impediment in efforts to reform corrections in Nunavut—to shift the paradigm or the punishmentality behind punishment—are the impacts of post-colonial relations of government in the territory: the prevalence of systemic social inequality in Nunavut or the reproduction of the Nunavut penal paradox. How can the government of Nunavut make a case for penal reformation, without compromising the legitimacy of penal government, given the prolific need in Nunavut for investment and reformation in other areas of social government? In the context of wide spread social inequality NU.C struggles to convince the people of Nunavut that punishment is indeed a social good worthy of public investment.

5.10 Punishing Inequality in Nunavut

Efforts to address the inhumane treatment of prisoners in Nunavut, mired in penal standards, reify, rather than eradicate, the problems facing NU.C and the government of Nunavut more generally. The political economy of penal standards prioritizes penal infrastructure and the materiality of punishment (the supply of justice) rather than the actualization of a ‘duty to care’ (the demand for justice) or a paradigm shift from a punitive punishmentality to one that is aligned with an Inuit ethos of justice. Similar to the Haitian case, where evidence of deficient penal practice resulted in penal aid dependency (in which there is always work for penal aid organizations to do), the proliferation of non-standard penalty in Nunavut results in the shoring up of state-centric, carceral penalty which exasperates many of the problems facing NU.C, and solidifies the territorial government’s dependency on the federal government for the provision of social services in Nunavut (such as corrections).

As I demonstrated throughout the chapter investigators, penal agents, and prisoners alike all agreed that BCC should be demolished. Both of the investigators working on the OCI (2013) Report explained that BCC remains a marker of shame for the people of Nunavut:

No one wants [BCC] to stay up. They all want something else built...there is a feeling of shame among people...you don’t direct yourself professionally in the [penal] field if it is to be a torturer (OCI Interview 1 June 2015).

What I’ve seen [at BCC] it doesn’t make sense. I think a lot of people are scratching their heads about what is going on in Nunavut (OCI Interview 2 June 2015).

Yet, when I asked interviewees to explain why BCC was still running, despite the widespread agreement that BCC should be shut-down, they responded with some variation of paradoxical explanations of punishment—what I call punishing inequality (in Nunavut):

Building a new facility in Nunavut is extremely costly...and [NU.C] had a number of reports made from various stakeholders whether it was specialists in fire protection or in infrastructure showing how problematic [BCC] is...but, money! money! Try to bring steel there [Nunavut]—it's costly. Then, it's frozen ground so all the materials you need to build cost ten times as much as anywhere else...you need to find workers and bed them and feed them...and yet any government situation where you have scarce resources such as education, or hospitals...resources will funnel into [those] things (OCI Interview 1:June 2015).

Penal agents in Nunavut, specifically the director of NU.C, struggle to make a case for punishment as a social good worthy of public investment when, as the investigator above explains, the enduring effects of systemic inequality in Nunavut result in the need for public funding and investment in social goods or services for law-abiding Nunavummiut, such as hospitals or schools. The epidemic social and economic inequality within Nunavut results in a competition over public funding which is an enormous barrier to penal reform. As another penal investigator (OCI Interview 1 June 2015) explains:

The problem in Nunavut is funding...and when there are competing priorities, for example, when the schools have mould, public housing has mould, and hospitals are problematic, public works focuses their energy on that. The director of Nunavut corrections can jump up and down and say the prison is not up to code...he won't get the money to fix it (OCI Interview 2 June 2015).

The director of NU.C continues to struggle to convince the government and people of Nunavut that punishment is a social good when the average citizen does not enjoy many of the social goods provided to Canadians in other provinces and territories, such as adequate housing. As the Native Inuit Liaison Officer I Interviewed (NILO Interview September 2014) explained: "When it comes to Nunavut tax dollars [the government] is more apt to put in another school or improve something along those lines as opposed to BCC." Even CSC (2006-2011: 7), in its Strategic Plan for Aboriginal Corrections, noted that while Aboriginal communities are interested in the

development and implementation of community corrections, “priorities for remote communities, including the North, were focused on more immediate needs such as healthcare, housing, and economic development.” In the Nunavut case, the penal paradox emerges as a pattern of failed attempts to mobilize the ideology, inherent in penal standardization, that punishment is a social good.

As a consequence of the scarcity of social goods in Nunavut, post-colonial relations of government in the territory spark a cycle of increased federal government dependency which reifies social inequality in the territory and acts as a barrier to penal reformation. Watt-Cloutier (2015: 317) describes this pattern as an unhealthy co-dependence on governmental bureaucracy and social services in Nunavut:

As social problems increase, more social workers are brought on board; as crime rates increase, more police are hired and court halls get bigger, as accidents and diseases continue to increase, more hospital staff are hired—yet many of our problems do not seem to be getting better. Instead, it is the institutions that are thriving while our people are becoming increasingly dependent on their [southern] processes and systems...if these systems do not contextualize our community’s problems, helping individuals and communities to understand the historical context from which the problems arise and address their roots...things simply won’t get better.

While I do not think, given the evidence provided in this chapter, that we can conclude that the penal institution in Nunavut is thriving—yet, it certainly remains the sine qua non for penal standardization—I do agree with Watt-Cloutier that unless the case for penal reform in Nunavut is presented alongside efforts to address systemic social inequality, both of which have roots in the colonization of the Arctic, things will not get better. Punishment will not possibly be understood as a social good in Nunavut unless there are twin processes of efforts to address the lack of social goods in the territory as a whole, and efforts to shore up, following Mifflin (2009),

the governmental authority to determine programs and services that are meaningful and relevant to the regional politics of Nunavut. Nevertheless, as Coulthard (2014: 94-95) explains, what is lacking in articulations of Aboriginal community needs is a deep understanding of the complex web of oppressive social relations that anchor the Canadian state's relationship with Aboriginal nations:

[A]dverse social indicators such as poverty, unemployment, substandard housing conditions, infant mortality, morbidity, youth suicide, incarceration...are much more common in Indigenous communities than they are in any other segment of Canadian society, whereas educational success and retention, acceptable health and housing conditions, and access to social services and economic opportunities are generally far lower.

Similar to the Haitian case, the pattern of social inequality in Nunavut constitutes a paradox in which penal investigators and penal agents struggle to make a successful case for penal reformation because the quality of life for prisoners in Nunavut cannot be greater than that of the average Nunavummiut or else punishment loses its legitimacy, its force, and its deterrence capabilities.

Nevertheless, the penal justice system in Nunavut remains a reflection of the broader social and economic inequality in the territory. As the NILO (Interview September 2014) explains: "Everyone knows [BCC] wasn't the nicest place in the world and the mentality was if you don't like it don't come back, right? But what you see in Nunavut is a sort of revolving door of inmates and it's typically always the same guys from certain communities so we see a lot of the same faces come back." BCC is Arctic Canada's version of what Wacquant (2008: 18), referring to the marginalized black populations of the metropolis, calls the 'carceral assistential net': Canada's Inuit peoples of Nunavut find themselves on the track of de-skilled

(un)employment and warehoused out of reach in the prisons of the devastatingly under-resourced North. Priorities for government reform in Nunavut are not aligned with the demand for social inequality amelioration:

Nunavut is an interesting place because there is no money [for prisons] which in my view is a flagrant human rights violation—housing people in overcrowded and unsanitary conditions—but at the same time [the government of Nunavut] found three hundred million dollars to build a brand new airport so they can bring people in for exploration and mining in the North...this could be great for Nunavut eventually but the priorities don't seem to be [where] the demand is (OCI Interview 2 June 2015).

The governmental priorities in Nunavut today share in some of the same priorities as earlier Arctic post-colonial state projects; the promotion and expansion of Canadian moral sovereignty. Carceral penalty was not imposed in Nunavut as a result of a concern for human rights but, rather, as a means of (re)embedding the communally grounded authority to punish within a state-centric penal apparatus reinforcing the predominance of post-colonial relations in the territory. Paradoxical punishment in Nunavut works against claims that punishment is a social good in need and deserving of reformation when there are many other more worthy social goods in need of investment. Similar to the Haitian case, NU.C continues to rely primarily on carceral punishment as a means of mitigating the penal paradox, which erodes Inuit self-governing capacities and further entrenches, rather than ameliorates, sub-standard forms of penalty (such as the hyper-incarceration of Inuit peoples).

5.11 Conclusion

In this chapter I have demonstrated that the introduction of carceral penalty in Nunavut is part of a post-colonial state-project which, in its earliest stages, problematized the Inuit ethos of justice

on account of unbalanced, unevenly distributed, and uncivilized punishment. Common law, state-centric forms of codified penalty were transplanted into the Canadian Arctic, as a manifestation of Canada's post-colonial state project which aimed to establish Canadian moral sovereignty in the Arctic. I argued that the imposition of state-centric forms of penalty in Nunavut are indicative of just some of the post-colonial changes to organizational life in Canada's Arctic. In the case of penal justice, these changes give rise to new collective experiences of crime in which the authority to punish is (dis)embedded from a communal, shared wisdom of community members (particularly Elders) and (re)embedded in the conduct of governmental actors. However, the construction and operation of carceral institutions in Nunavut, which I have called, following Wacquant (2008), the 'punitive upsurge' is relatively recent, occurring alongside the establishment of the territory (and its subsequently problematic phantom sovereignty) in 1999. I argued that in the short span in which carceral institutions have existed in Nunavut, the territory has witnessed the adverse effects of a punitive punishmentality actualizing the self-fulfilling prophecy: if you build them (prisons) they (prisoners) will come. More troubling, the punitive punishmentality in Nunavut has subjected Inuit peoples to skyrocketing rates of incarceration in which Inuit prisoners are serving some of the most protracted sentences in Canada.

As a result, in 2013, just 14 years after the establishment of the territorial government and the Nunavut Correctional Plan, the conditions of imprisonment in Nunavut were so abhorrent that the director of NU.C called for a national inquiry into the state of corrections in Nunavut. However, my empirical analysis of the penal investigation in Nunavut uncovers how the technology of penal standardization, as a means for measuring successful penal government,

continues to promote the moral virtue of the penal institution reinforcing carceral punishment as the norm in NU.C. I argued that a primary impediment to penal reform in NU.C is the failure of penal investigation to recognize the ways in which penal government is tied to the history of post-colonial state projects in Nunavut—projects which attempt to civilize mechanisms and rationales of Inuit governance. Despite some (small) successes in the area of spatio-material and technical punishment in Nunavut, I argue that state-centric penalty continues to erode rather than recognize the human rights of Inuit prisoners, as well as the self-governing capacities of Inuit peoples, further entrenching southern Canadian modes of government in Nunavut. The following chapter elucidates the common thread of the carceral norm mobilized in penal standardization missions and the cases of paradoxical punishment in Haiti and in Nunavut: through an examination of the monopoly over the power to punish, whereby punitive incapacitation has become the primary means by which penal governments recognize standard penalty, I will argue that penal standards (as they are currently conceived) are in fact part of the non-standard penal problem rather than a ‘natural’ or inevitable solution for abnormal and unjust forms of punishment.

CHAPTER VI

WHEN PUNISHMENT IS NOT A SOCIAL GOOD: STANDARDIZING PUNITIVE INCAPACITATION

The degree of civilization in a society can be judged by entering its prisons
~Fyodor Dostoyevsky, Russian Novelist, 1821-1881.

Prisons [in Haiti] are a reflection of how well the needs of the citizens are being met
~CSC Interview August 2014.

Prison or offender populations [in Nunavut] are a barometer of the failures of public policy
~OCI Interview 2 June 2015.

6.1 Introduction

Not long after I began my doctoral studies, Mariana Valverde—highly regarded University of Toronto criminologist of urban law and governance—wrote an article on *Analyzing Punishment: Scope and Scale*. In this article, Valverde (2012: 247) writes: “penology has died a really quiet death.” Certainly not words of inspiration for a doctoral student about to embark on a dissertation project examining the science of prison administration (penology). The short article is a comment piece for a special edition of the journal *Theoretical Criminology* on “Theorizing Punishment’s Boundaries,” and is certainly not one of Valverde’s most frequently cited works; yet, Valverde’s assertion that penology is dead has resonated with me over the course of my research. For Valverde (2012: 246-247), objective scientific evaluations of punishment have played as small a role in the death of penology as they did in its birth, such that the demise of penology cannot be attributed to the results of so-called objective studies which delineate ‘what works’ and what does not. Rather, Valverde (2012: 247-248) explains that the field of penology has advanced many significant studies of aggregate data documenting the systemic effects of imprisonment. Not to mention that long before its proper induction into academia, the study of

punishment had uncovered what Valverde (2012: 249) explains are the multifaceted ways in which punishment is “delivered...and has been justified using a variety of rationales...since Foucault’s ‘age of confinement’.” So, what then, would lead Valverde to assert that penology has quietly died? Simply put, a failure of penological imagination. Valverde (2012: 248-249) explains that critical criminologists and left-thinking penologists have excelled at critique but floundered in regards to policy proposals.

While I do not agree that penology is dead, or even moribund, Valverde’s assertion that penology suffers from a failure of imagination has been a primary subject of my rumination over the course of my research. However, Valverde’s article, written for a theoretical journal, is intended for an academic audience—she is primarily critiquing a lack of penal imagination within criminological research and the study of crime and punishment, whereas my empirical analysis of penal standards highlights the ways in which there is a lack of penal imagination within the very government and practice of penalty itself. The failure to think outside the carceral box is a theme that emerged and re-emerged in my examination of penal standards as a tool of post-colonial government. The archive of penal standardization literature, along with the two cases of penal standardization that I have analyzed, demonstrates a lack of innovative and imaginative penal policy and practice since such imaginative punishment falls outside the deeply entrenched carceral norm, or what Piché (2012), following Thomas Mathiesen, calls the ‘prison idea’.

In this chapter, I examine in closer detail the consequences of a failure of penal imagination, not within the discipline of penology (as Valverde has done), but within the field of penal standardization or penal government itself. Utilizing my empirical research on penal

standards I will demonstrate how penal standardization contributes to a lack of penal imagination in the name of ‘protection’ and moral sovereignty—evidence of moral, ethical, and civil penal conduct. Following the first core argument I’ve traced in the dissertation, while penal standards espouse an ethos of protection (steeped in prisoner human rights), the governmental aim to maintain the state’s monopoly over the authority to punish mobilizes the primacy of the penal institution, such that standards strengthen penal technē rather than the actualization of prisoner human rights. I begin this chapter by tracing the tensions my research has uncovered within penal standardization and the doctrine of punitive incapacitation that permeates penal standardization missions. Having uncovered the hypocrisy behind Canada’s efforts to attain standardized punishment in Haiti, given the proliferation of sub-standard penalty in Canada’s territory of Nunavut, my research challenges the dichotomy of ‘first world’ and ‘third world’ penal government. In this chapter I critique exaltations of Canadian penal excellence abroad (by CSC) as a mechanism to divert attention away from sub-standard penalty at home in Canada. Nevertheless, in both the Haiti and Nunavut case studies, penal agents must contend with the paradox of punishing inequality; how to maintain the state’s monopoly over the authority to punish (penal legitimacy) without subjecting prisoners to inhumane conditions and practices of punishment within contexts of deeply entrenched marginalization and inequality—the third core argument I contribute in this dissertation.

In this chapter I trace the consequences of this core argument regarding the paradoxical forms of punishment in Haiti and Nunavut—albeit differently conceived in either geo-political context given their distinct post-colonial histories—which illustrate the challenges of investing in penal reconstruction projects in contexts where the ideology of punishment as a social good has

failed to take root. In these cases punitive and incapacitation punitiveness—which take the carceral institution as the primary mechanism through which punishment is achieved—have become the primary means through which standard penalty is achieved. In both Haiti and Nunavut the work of demonstrating successful penal standardization is especially challenging given the deeply entrenched forms of social inequality that call into disrepute the very function and purpose of punishment, as articulated within penal standard documents: the social good of protecting law-abiding citizens by way of ‘correcting’ criminal populations. However, these paradoxical forms of punishment in Haiti and Nunavut uncover the post-colonial government technique of attributing sub-standard,⁸⁸ and more importantly *non-standard*⁸⁹ punishment to culturally distinct, non-carceral forms of penalty, rather than as evidence of the effects of social inequality and the struggles of penal administration in either case.

Finally, I will argue that these paradoxical forms of punishment, left unchecked by standardization efforts, relieves the state of the responsibility for inequality (see Wacquant 2008 and 2011; Coulthard 2014; and Angela Davis 2003). While respondents often referenced carceral punishment as a barometer of social inequality, the desire to protect the monopoly over the power to punish engenders unethical punishment practices (particularly hyper-incarceration). In this way, I argue that penal standards, as they are currently imagined, are in fact part of the problem, rather than a natural or essential solution to abnormal forms of punishment. However, as my research demonstrates, the power to punish is not the innate authority of the state nor does it have to be—since penal organizations manipulate and select penal standards on the basis of

⁸⁸ Recall sub-standard penalty refers to penalty that fails to meet relevant standards.

⁸⁹ Recall non-standard penalty refers to penalty which suggests the existence of a different (non-carceral) penal model entirely.

maintaining their authority to punish. Similarly, punishment does not have to be imagined primarily as incapacitative—as evidenced by the seldom used punitiveness of rehabilitation and reintegration—and adaptations or domestic customizations of penal standards would be better employed should they reflect more imaginative, socially relevant forms of punishment. Drawing on the empirical research I have presented in the preceding chapters, I argue that in order for penal standards to accurately reflect the geo-political contexts in which they are implemented there needs to be a recognition of the effects of post-colonial government relations (which penal standards currently reinforce) on penal administration and a twin process of social inequality amelioration, such that punishment might indeed become a social good worthy of investment in both Haiti and Nunavut.

6.2 The Doctrine of Contemporary Penal Standardization

In Chapter III I traced the historical development of penal standards from the early work of penal reformers who wished to extract the authority to punish from the absolute, and often inconsistent, will of the sovereign. You will recall that penal codes marked the first step towards regulated, measurable penal practice and they paved the way for the contemporary canon of penal standardization to which states subjected themselves to penal regulation following the humanitarian and social ambition to reconcile penal government and prisoner human rights. Further, penal standards were promoted as particularly valuable in that they are to provide penal administrations with the tools for mitigating the centuries old problem of balancing punishment: balancing too much (too punitive) and not enough (too lenient) punishment. In order to achieve

balanced punishment, penal standardization regulates scales of governmental conduct in the narrow and wide sense.⁹⁰ In chapter III I examined the ways in which the various instruments of penal standardization are inscribed with punishmentalities—the logics of punishment I articulated in chapter II— from punitive and incapacitation punishmentalities, to enterprising punishmentalities, to rehabilitative and reintegrative punishmentalities. In analyzing these penal standard documents, I uncovered that the value of penal standardization, as a tool of penal government regulation, lies in the cohabitation of a variety of sometimes contradictory penal logics or punishmentalities. In this way, penal administrations could mobilize a multitude of penal practices, from incapacitation to prisoner education projects, as a means of demonstrating their standard character. And yet, my analysis of the penal standardization archive also reveals that efforts to standardize punishment (especially the establishment of the UN SMRs in 1957) worked to validate the penal strategies of confinement and containment as a globally accepted penal norm. As such, my research reveals a tension in the technology of penal standardization, whereby, standard penalty allows for the enforcement of a variety of punishmentalities and their accompanying penal practices, while simultaneously bolstering the preeminence of punitive incapacitation, the prison, as the penal norm.

I have also provided an account of the economy of penal standards within the penal standards archive which form what I am calling a web of technical penal administration. The practices brought into being through penal standardization are technical, as illustrated by a

⁹⁰ Recall narrow government refers to the exercise of political sovereignty—which we saw in the regulation of states and state authorized penal organizations in the Haiti and Nunavut cases—and government in the wide sense refers to the regulation of conduct—which we saw in the regulation of prisoner and correctional officer conduct within the Haiti and Nunavut cases.

fixation with the spatio-material elements of penalty, in both the Haiti and Nunavut case studies. While there are significant issues of prison over-crowding in both Haiti and Nunavut, which have dire consequences for the physical and mental well-being of prisoners, penal aid agents in Haiti and penal investigators in Nunavut draw our attention to the impacts of over-crowding on the *matter* of punishment, such as the prison's sanitation system. Moreover, my analysis demonstrates the ways in which this web of technical penal administration, or penal technē, aims to encode the entire field of penalty with measured, regular punishment which produces what I have called pixelating power effects. We saw many examples of these pixelating power effects including the ICRC's attempt to calculate prison density and the quality of air per cell, as well as in penal aid agents' descriptions of the debates regarding the materiality of prison toilets. While these seemingly mundane elements of penal government are evidence of systematic and regularized punishment, I argue that they are not directly evident of the actualization of prisoner human rights and a moral commitment to the value of human life (core argument one). As such, my research uncovers another tension in penal standardization: between the ethical commitment to recognizes prisoner human rights, espoused by penal standardization missions, and the failure to actualize these rights within the penal field.

The ethical commitment to actualizing prisoner human rights is encapsulated in the ethos of protection which permeates the penal standardization archive. This ethos constitutes a power relation in which states, and state authorized penal administrations, are established as the overseers of punishment and, therefore, the protectors of law-abiding citizens from the problem of crime, as well as the protectors of the human rights of prisoners. As such, at the core of the penal standardization literature, lies the ideal of punishment as a social good—a solution to the

Hobbesian problem of social order and crime control— and an essential characteristic of good, democratic government. My empirical research illustrates the ways in which the ideal of punishment as a social good is, more often than not, utilized as a justification for penal intervention or reformation in Haiti and in Nunavut. As such, my cases uncover a tension within penal standardization missions: that penal standardization aims to bolster the democratic necessity and civic virtue of the prison (via moral sovereignty) rather than address the underlying post-colonial government relations which impede the recognition of punishment as a social good within these particular geo-political contexts. The effect is that despite the most ardent efforts to promote punishment as a social good, for the DAP in Haiti and NU.C in Nunavut, punishment as a social good remains an ideal rather than a realistic expectation.

While the Haiti and Nunavut case studies provide distinct illustrations of penal standardization,⁹¹ as well as different mobilizations of the ideal of punishment as a social good, the intention of both penal aid experts in Haiti and penal investigators in Nunavut is to strengthen the moral sovereignty of specifically *Canadian* penal administrations. These efforts to strengthen the state-centric authority to punish, often through the re-embedding of socially relevant penal practices (such as *clameur publique* in Haiti or community sanctions in Nunavut), are important since they demonstrate the taken-for-granted assumptions within the archive of penal standards I examined in chapter III. While the archive of penal standardization tends to assume that punishment is the exclusive authority of the state, my empirical research demonstrates the ways in which penal agents consistently have to justify their work by demonstrating ‘successful’

⁹¹ In the Haitian case penal standardization is the contribution of the Canadian-led penal aid effort; whereas, in Nunavut penal standardization is the instrument through which the OCI conducted its investigation into NU.C.

standardization. As penal agents working in both Haiti and Nunavut were quick to point out, successful standardization is not determined by the universal rolling out of penal standards as a singular technology of penal government. Instead, my respondents explained that the value of penal standards lie in their selectivity; in their ability to manipulate standards or create what the UN Rule of Law Indicators (2011) call ‘domestic customizations’ of standards. Throughout the Haiti and Nunavut case studies, I provided evidence of the ways in which respondents rejected the notion that standards could be uniformly applied across distinct geo-political contexts. In some instances respondents went so far as to explain that certain standards simply did not make sense in either case: such as the one hour of open air per day in Nunavut or the single cell standard in Haiti. The value of this selective, rather than universal, application of penal standards is that definitions of successful penal standardization are differentially defined by penal agents working in the field.

Even the SMRs (1957: 2) themselves articulate a level of flexibility in penal government: “It will always be justifiable for the central prison administration to authorize departures from the rules in the spirit of experimentation.” Therefore, if standards are not one-size fits all, and if there are built-in mechanisms within the archive of penal standardization for flexible, customized penal government, where lies the issue of penal imagination? My empirical research on the cases of penal standardization in Haiti and in Nunavut reveals the ways in which customization and adaptability within penal standardization are in fact significantly limited in practice. Penal agents in Haiti or Nunavut are free to be as imaginative as they can be so long as they remain within the confines of moral sovereignty and the pervasive carceral norm embedded within penal standardization. As such, penal standards indoctrinate punitive incapacitation within penal

government globally. In both cases, penal infrastructure is the sine qua non of penal government, although in opposite ways: in Haiti penal standards are mobilized as evidence of the excellent penal infrastructure constructed by international (Canadian) penal aid agents; whereas, in Nunavut penal standards are mobilized as a means of drawing attention to deplorable penal infrastructure and the need for a new, standard, carceral institution.

Furthermore, a doctrine of punitive incapacitation is evident in the manifestation of the standard fixation with technical, spatio-material punishment that I uncovered in both the penal aid effort in Haiti and the penal investigation in Nunavut. In either case, the primary means through which penal agents imagined standardization was through the maintenance and re-enforcement of the punitive, carceral norm as a means to mitigate the effects of the collapse of punishment as a social good. In both cases penal agents often mobilized a discourse of ‘the rules do not apply here’ in order to justify the continued use of state-centric, carceral forms of penalty. As such, my research exposes how the imaginative customization of penal standards, advocated within the penal standard archive, is overstated. Instead, my research highlights a *lack* of penal imagination in penal standardization missions which problematically reify the sub-standard penal practices (particularly hyper-incarceration) that such efforts aim to curtail. While each case demonstrates a unique application of penal standards (within a unique history of penal development), both the Haiti and Nunavut case studies reveal the duplicity behind the ethos of protection I uncovered in my examination of the penal standardization archive. Penal standards do not necessarily establish punishment as a social good, nor do they explicitly protect prisoner’s human rights; rather, penal standards protect a punitive, carceral monopoly over the power to punish.

6.3 Penal Standard Hypocrisy: Manufacturing ‘First World’ and ‘Third World’ Penalty

I strongly wish to avoid an overly-simplistic reading of the two case studies presented in the previous chapters as illustrative of the homogenization of something we can distinctly call, following Garland (2006), ‘culture’ and ‘not culture’. Rather, my research has provided evidence of the ways in which penal culture is often inseparable from penal practice and, more to the point, the matter of punishment—controversies over stainless steel versus porcelain toilets, the misuse of foam mattresses, and debates regarding the use of medicine bags are just some of the examples I noted. While penal standardization in Haiti and in Nunavut is indicative of efforts to dis-embed and re-embed local, collective responses to crime in more state-centric, carceral forms of penalty, the cases studies illustrate how distinctions between social responses and state responses to crime control are blurred. Furthermore, I want to emphasize the significance of the dual case study and the (albeit minority) perspectives of Haitian and Elder voices in my research, in demonstrating divergent applications of penal standardization in unique geo-political settings; such that, the findings of the case studies affirm that a division between ‘first world’ and ‘third world’ penalty is fallacious. My research lays bare the myriad ways in which distinctions of ‘first world’ and ‘third world’ penalty are discursive political tools with significant impacts on the standard reputation of penal administrations. In both cases respondents from the dominant group (white, *Quallunaat* Canadians promoting carceral forms of punishment) aimed to maintain a distinction between ‘first world’ penal practice which they strategically aligned with standard penalty, and ‘third world’ penal practice which they aligned with non-standard penalty—as deviating from the ‘first world’ rather than a different penalty of similar legitimacy and status. Yet, such ‘first world’ and ‘third world’ distinctions were rejected by the minority voice within

my research belonging to Haitians, Elders, and Inuit penal agents, as we will soon see in the NILO's rejection of the labeling of BCC as 'third world'. While we can see instances of 'first world' penalty in Haiti and 'third world' penalty in Nunavut, to simply conclude that the so-called non-standard Haitian penalty is somehow similar to the so-called non-standard penalty in Nunavut would be wholly incorrect, and would fall into the trap of post-colonial homogenization which ignores the distinct history of post-colonial government in either case. Rather, my aim in exposing the slippage between 'first world' and 'third world' penalty is not to claim 'Canada is like Haiti' or vice versa, but is to expose the strategic, standard value for Canadian penal administrations in maintaining Canadian, 'first world' penal excellence despite the hypocrisy behind this false dichotomy.

Canadian penal agents working as penal aid experts in Haiti or investigators in Nunavut maintain the superiority of Canadian penal administration in meeting penal standards. For example, penal aid agents were quick to point out how their training modules, assessments of risk, and capacity for penal administration were of higher caliber than their Haitian, and in some cases African, counter-parts. As one respondent with CSC (Interview August 2014) explains: "the Canadian corrections system is where it is because it has organization, structure, accountability, and financial resources [which are] in short supply in Haiti." However, it is not only individual respondents working in Haiti who mobilize the political discourse of Canadian, 'first world' penal excellence, but Canadian penal administrations mobilize the work of penal aid agents in Haiti as a means of demonstrating their "global service and high calibre correctional services," (Ontario Ministry of Community Safety 2015: 1). For example, the Ontario Ministry of Community Safety and Correctional Services (2015: 1) provides a write-up on the penal aid

work of Ottawa Carleton Detention Centre (OCDC) superintendent Maureen Harvey as evidence of the “commitment, compassion and professionalism” of Canadian penal administrators, as well as the “key achievements and initiatives in fostering stronger, safer communities across the province”—as if Harvey’s penal aid work in Haiti is indicative of penal excellence in Ontario, Canada. According to the Ontario Ministry of Community Safety (2015: 1), Harvey was appointed by CSC and the UN on a mission to “strengthen Haiti’s correctional system,” a mission that was “difficult,” requiring “courage, leadership, and initiative during a time of recovery from natural disaster.” The article goes on to praise Harvey for her work in fostering “capacity building within Haiti’s correctional system...stabilizing the security sector...and re-establishing the rule of law,” (Ontario Ministry of Corrections 2015: 1). The article on Harvey’s penal aid work (see Ontario Ministry of Community Safety 2015: 1) congratulates her for the many awards and honours she has received, “highlighting her respect for human and prisoner rights,” and the ways in which Harvey has utilized her “global service” in Haiti, in her career within Canadian corrections as the superintendent of OCDC.

My aim in drawing attention to the work of superintendent Harvey—as with the penal aid agents I have interviewed—is not to diminish her efforts in Haiti; however, my aim is to address the ways in which this commendation of the work of a Canadian penal aid agent in Haiti diverts our attention from the deplorable, non-standard conditions of penality in Canada. In the case of OCDC, the penal administration has come under fire in recent years for its poor treatment of prisoners, a significant lack of correctional staff, and extensive overcrowding which has resulted in the over-use of lockdowns and a recently avoided (although very nearly un-avoided) correctional officer strike (see Egan 2015; Seymour and Cobb 2015; and Seymour 2015).

Prisoner rights activist and Carleton Sociology PhD Candidate Laura McKendy, Carleton Sociology Professor Aaron Doyle, and members of the Criminalization Punishment Education Project (CPEP) have successfully drawn public attention to the proliferation of pre-trial (unsentenced), mentally ill, and segregated prisoners in OCDC. Both the Ontario Minister of Correctional Services (Yasir Naqvi) and superintendent Harvey have spoken out on their attempts to address the accumulating problems at OCDC, noting that there are “no quick fixes to address these challenges” in penal government (in Seymour 2015: 1). However, prisoner rights groups such as CPEP (in Seymour 2015) criticize the ministry’s response for being too vague, and McKendy (2016: 1) rightly contends that we need to “challenge warehousing people—many who have no place behind bars—as an expensive and failing solution to a range of social problems.” Despite the gross violations of prisoner rights, the indefensible conditions of imprisonment, and sub-standard character of penal practice at OCDC, the Ontario Ministry of Community Safety and Corrections mobilizes an exaltation of Canadian penal aid work in Haiti as evidence of Canadian penal excellence within Ontario—specifically at OCDC, a widely criticized non-standard penal institution. Similar exaltations of Canada’s global penal excellence can be found within CSC (see CSC ‘In The World’ 2013a and CSC ‘in Haiti’ 2013b), in which Corrections Canada praises Canadian efforts to develop “safe and effective correctional systems in line with international standards,” (CSC ‘In The World’ 2013a) despite the sub-standard operation of the majority of Canada’s penal administrations: the case of NU.C that I have examined in this dissertation being an all too clear example of the inhumane, sub-standard conditions of imprisonment in Canada.

Similarly, in her work on *Exalted Subjects* (2007: 219), Sunera Thobani draws from a *Globe and Mail* editorial in which Canadian development work is praised for its “noble tradition of helping the needy and a strong history of international engagement both in defending human freedom and peace-keeping.” I agree with Thobani (2007: 219), that such “self-exaltations deeply re-shape the national [Canadian] imaginary such that assuming a more militaristic presence in the world is deemed a reflection of a nation's innate masculine nobility, its viral goodness.” Likewise, exaltations of Canadian penal aid re-shape the Canadian penal imagination, such that Canadian efforts to standardize penal practice abroad, in Haiti, are not only evident of good aid work, but they also represent a de facto standard penalty within Canadian penal administrations (such as CSC). As Walby and Monaghan (2011: 282) point out in their work on security-development in Haiti, there is an “international trade in penal expertise,” in which prison management is a central component: “Canada is a front runner in the global bureaucratization of punishment,” and I would add, the materialization of the carceral norm. It follows then that these standard exaltations of Canadian penalty (demonstrated by Canadian penal aid in Haiti) work to manufacture a distinction amongst ‘first world’ and ‘third world’ penalty, in which Canadian penalty is a model of penal excellence despite the many instances of non-standard penalty in Canadian penal administrations.

Following Heron’s (2007: 4-5) work on *Development, Whiteness and the Helping Imperative*, I contend that what is really preserved in these distinctions of ‘first world’ and ‘third world’ penalty is our belief in Canada as a model of penal excellence: the rhetoric that it is Canadian peace-keeping, the Canadian compulsion to help, and humanitarian altruism at the heart of penal aid and standardization efforts; rather than the continuation of colonization via penal government—a point I will return to in the next section—and a need to maintain the

monopoly over punishment via (the export of) the punitive incapacitation punishmentality. We saw evidence of the preservation of these Canadian values in the explanation of the UN Peace Officer (Interview August 2014) who saw the penal aid work he was engaged in on the ground in Haiti doing “more good for Canadians than actual good on the ground,” as well as in the conviction of penal aid agents who thought a Canadian standard in Haiti was not only impractical but inconceivable (CSC Interview August 2014; and START Interview February 2014). Further, while Canadian penal aid agents were wary of their dominant positions in the ways in which they framed their experiences of penal standardization, they also boldly classified their non-Canadian colleagues as ‘force multipliers’ (UN Peace Officer Interview August 2014) contributing to further non-standard penal logics and practices.

While these distinctions of ‘first world’ and ‘third world’ penalty are certainly more frequent within the Haitian case, they are not exclusive to Haiti. The Nunavut case made reference to such distinctions, albeit in subtler ways, in the characterization of the territorial capacity for penal administration in Nunavut in comparison to Canada’s federal penal government. Furthermore, in both the penal aid efforts in Haiti and the investigation into NU.C, police officers (Ottawa Police Office Interview November 2014; and UN Peace Officer Interview August 2014) deplored the lack of urban, civic development such that policing crime and making arrests was especially difficult in these disorderly contexts. For example, according to a UN Peace Officer (Interview August 2014) on ‘mission’ in Haiti:

Port-au-Prince is a maze right... so on one side of the main road the...numbers [addresses] don’t correspond to a particular side of the road: even numbers on one side and odd on another. You could have 48 on one side and 50 something on the other.

Similarly, according to an Ottawa Police Officer (Interview November 2014) on ‘mission’ in Nunavut:

There is no rhyme or reason as to the chronological order of the addresses you know? Like when you are looking on the map it will go: house number 12, house number 8, house number 52 and then you are thinking: “what the hell? How am I supposed to find this address I am looking for if there is no laws around how to place your home?”

These descriptions of a lack of modern, Western city planning on crime control in Haiti and in Nunavut both contradict and validate a distinction of the ‘first world’ and the ‘third world’. On the one hand, these characterizations validate what Fanon (1963: 35) describes as the ‘colonial world cut in two,’ whereby the world of the colonizer appears to be orderly and the world of the colonized is in need of order-making. However, when taken together, the respondents illustrate the slippage between ‘first world’ and ‘third world’ characterizations; that there is a lack of order in the ‘first world’ (the Canadian Territory of Nunavut) as well as in the ‘third world’ (Haiti). However, efforts to off-shore the responsibility of the failures of penal standardization in Nunavut to the territorial government, and NU.C specifically, are indicative of the consistency with which the post-colonial government relations within Nunavut—the federal government’s stronghold over financial and human resources and the resulting phantom sovereignty in Nunavut—are overlooked. Furthermore, one Inuit interviewee (NILO Interview September 2014) who worked at BCC strongly rejected the efforts of penal investigators to compare NU.C with penal administrations of the so-called ‘third world’:

[BCC] was never a great facility to begin with but I don’t believe BCC is in violation of human rights...I am sure there are just as bad facilities in [Canada] and [the OCI report] was basically saying BCC was comparable to facilities in Mexico...I don’t believe it to be THAT bad! I mean, since the report came out nothing has been done!

This interviewee’s rejection of the labeling of NU.C as comparable to that of the ‘third world’ illustrates that such characterizations are anything but clear and, more importantly, that they are discursively enacted and as such can be rejected.

Despite the inaccuracies of ‘first world’ and ‘third world’ penal distinctions, this dichotomy remains a valuable political tool. You will recall that an essential benefit of penal standardization is that it can shift or steer the definition of good penal governance, or standard penalty, such that Canadian penal administrations can mobilize exaltations of Canadian penal aid work abroad in order to steer the focus away from standard derogations in Canadian penalty. However, following the work of Jefferson (2007a: 34), we need to ask: “what kinds of expertise are represented [in penal aid efforts] by the soaring prison populations in the West and the increasingly punitive distribution of justice? What kind of legitimacy do Western penal reform experts have given the shameful penal institutions in their own countries?” In other words, what are the costs of successfully manufacturing Canadian penal excellence on the back of penal aid efforts abroad, in Haiti for example? Based on the research I have presented in the proceeding chapters I would say the costs could not be higher. Not only do these false distinctions of ‘first world’ and ‘third world’ penalty highlight the hypocrisy of Canadian ‘standard penalty’ allowing for the deeply unethical and baseless (see McKendy 2016; Doyle in Eagan 2015; Kerr and Doob 2015; and Doob 2012 among others) practices of punitive incapacitation to persist within Canada, but these inhumane practices are also promoted as *global* solutions to non-standard penalty.

In order to advance these global solutions to non-standard penalty, penal administrations engage in what O’Malley (1996) calls governmental co-option, and Brown (2014) calls the conscription of Indigenous knowledge and practice. Such conscriptions involve a series of adjustments, whereby, the authority to punish is dis-embedded from local, socially relevant penal practices (such as *clameur publique* in Haiti and banishment in traditional Inuit penalty) and re-embedded within the jurisdiction of state authorized penal administrations. Penal standardization

mobilizes a regulated penal government rather than an imaginative penal government, establishing punitive incapacitation as a settled penal practice and, therefore, a powerful tool of post-colonial government within Haiti and Nunavut.

6.4 The Continuation of Post-Colonialism by Penal Means

A fundamental technique of post-colonial government is the framing of post-colonialism—the repression and exploitation of beliefs, ideas, images, symbols, and knowledges outside the post-colonial project—as a technology of the past or a mode of government tethered to a former age.

In his work, *Red Skins, White Masks: Rejecting The Colonial Politics of Recognition* (2014), Glen Coulthard traces the ways in which the politics of recognition in Canada problematically situates colonialism as a historical event exclusive to Canada's past. According to Coulthard (2014: 108,121):

in settler-colonial contexts—where there is no period marking a clear or formal transition from an authoritarian past to a democratic present—state-sanctioned approaches to reconciliation must ideologically manufacture such a transition by allocating the abuses of settler colonization to the dustbins of history...if there is no colonial present...then the Federal government need not undertake the actions required to transform the current institutional and social relationships that produce the suffering we see reverberating at pandemic levels within and across Indigenous communities today.

Similarly, critical anthropologists (such as Mark Schuller) and political sociologists (such as Laura Zanotti) have demonstrated the post-colonial logic behind mainstream accounts of Haiti's lack of progress which explain the persistent political and economic disparity within the country as the offspring of Haiti's centuries old war of independence. Zanotti (2008, 2010, 2011) ardently critiques the failures of state-building, NGO peace-keeping, and international aid efforts for replicating the structures, techniques, and politics of post-colonial government in Haiti.

Likewise, Schuller (2007a, 2007b, 2007c) critiques the international development efforts in Haiti

as contemporary forms of invasion and attributes what he (Schuller 2012: 180-181, 184) calls the “trickle down imperialism” of humanitarian aid to the continued assertion of post-colonial power relations in Haiti. In her work on *Post-Colonial Studies and Beyond* Ania Loomba and colleagues (2005: 3) explain that the “project of post-colonial studies is a much larger and more variegated set of intellectual enterprises than presumed thus far and very different kinds of scholarly inquiry now seem in fact post-colonial (even when practitioners shy away from such identification).” One of the principal contributions of my analysis of penal standardization is the way in which my research contributes to these efforts to reject the ideological manufacturing of post-colonialism as a governmental tool of the past. Rather, the cases of penal aid in Haiti and penal investigation in Nunavut reveal penal standardization as a tool of post-colonial government in the *present*.

In the case studies I have analyzed, not only does penal standardization fail to account for the effects of post-colonial government in the narrow sense (as an exercise of political sovereignty) on a penal administration’s ability to carry out standard punishment, but penal standards are themselves a tool of post-colonial government. As both the Haiti and Nunavut case studies have illustrated, penal standards are a governmental tool for managing penal difference—particularly penalty that embraces punishmentalities or practices outside the carceral (punitive incapacitative) norm. My discussion of the history of penal development in Haiti and in Nunavut highlights the ways in which post-colonial regimes have and continue to problematize local, socially embedded forms of penalty as archaic, barbaric or uncivilized, and typically too punitive (or unbalanced), which is ironic given the exorbitant rates of punitive incarceration promoted by standard penalty. In both the Haiti and the Nunavut case studies the power to define standard and non-standard penalty is located *outside* the local penal jurisdiction—by

penal administrations, such as CSC, which have been able to successfully align (or exalt) their penal government practices with standard penalty. As my analysis uncovers, since the power to define standard penalty rests with penal administrations understood to be ‘standard’ themselves, what results, following the work of Homi Bhabha (1984), is what I call penal mimicry. Rather than harmonization or reproduction, penal mimicry produces an other that is ‘almost the same’ but still visibly different. According to Bhabha (1984: 126),

mimicry emerges as one of the most elusive and effective strategies of colonial power and knowledge. Colonial mimicry is the desire for a reformed, recognizable other as a subject of difference that is almost the same, but not quite. Which is to say, that the discourse of mimicry must continually produce its slippage, its excess, its difference.

In the cases I examine, penal mimicry is not about an exact replication of Canadian penalty, or even standard penalty, as evidenced by my respondents’ continual rejection of the notion that standards can be copied and pasted from one geo-political context to the next. Yet, respondents also expressed their desire to bring about penal government reform in Haiti by way of ‘injecting’ Canadian policy (CSC Interview August 2014), and similarly in NU.C by rejuvenating southern Canadian penal logics and practices. For example, one interviewee with the OCI (Interview 1 June 2015) explains: “the biggest and best impact [on Inuit justice] is if people from the South, Canadians outside Nunavut, try to force Inuits, a bit, to think about what kind of justice system they want,” (OCI Interview 1 June 2015). It is an awful irony that our ‘best impacts’ involve making Inuit communities (or Haitian communities) articulate ‘what kind of justice system they want,’ when it is the post-colonial project of maintaining the monopoly over the power to punish that entrenches the post-colonial norm of carceral penalty in both Haiti and in Nunavut in the first place. Again, as I have stressed throughout the case studies, the aim of penal standardization is not to erase or homogenize penal difference since this difference is what

allows the colonizers—the ‘first world’, standard penal administrations—to stand apart from the colonized—the ‘third world’, non-standard penal administrations. As such, penal mimicry encompasses the second core argument I contribute in this dissertation: the post-colonial tension to both copy and distinguish penal difference; to manage and yet maintain the ‘alienness’ (following Hecter 2013) of non-standard forms of penal government, such that there always remains a need for penal standardization and post-colonial intervention from outside.

Following the work of post-colonial scholars (see Fanon 1963; Copper and Stoler 1997; Zanotti 2006; Thobani 2007; and Coulthard 2014 among others), which maintains that colonization ensures the structures of domination remain unchanged, both the Haiti and Nunavut case studies illustrate the ways in which standard penalty is actualized such that the dominant legal, economic, and/or political frameworks of the post-colonial relationship are cultivated rather than abolished. In this way, the lack of penal imagination within penal standardization is an intentional, post-colonial strategy which fosters a culture of governmental dependence in both Haiti and in Nunavut—albeit differently in either case. In the Haitian case, penal aid, as part of the larger political economy of aid in Haiti, constitutes a form of penal dependency, whereby, the Haitian penal department (the DAP), having exhausted its resources on penal crisis management, relies on international (specifically Canadian) support for some of the most mundane aspects of penal administration—such as peeling paint and broken generators (START Interview February 2014). Similarly, as I demonstrated in the Nunavut case, the territorial government of Nunavut, granted a form of phantom sovereignty, remains almost entirely financially dependent on the federal government. Nevertheless, despite the territory’s governmental constraint, the penal investigation in NU.C called for more, rather than less, federal intervention in NU.C, reinforcing

the territory's dependence on the federal government. I agree with Asch (in Landau 2006: 196), that, "governments in Canada say they support Aboriginal self-government and have a number of programs to promote this objective. However, none actually promote a form of self-government consistent with the aim of self-sufficiency." In both the Haiti and Nunavut cases, penal standardization facilitates the post-colonial project of maintaining dominant relations of ruling rather than paving the way for autonomous, self-sufficient government.

One of the primary means through which penal administrations mobilize penal standards to bring about the post-colonial project of preserving relations of penal domination is, as I have been arguing in either case, by fostering a culture of punitive incapacitation. In accordance with Garland (2000), I have argued that this culture of punitive incapacitation has distinct cultural effects in both cases and has resulted in a changed collective experience of crime control in Haiti and in Nunavut respectively. We saw evidence of these changes in the struggles of Haitian COs to adapt to the 'Canadian' prison in Croix-Des-Bouquets, and the way in which Haitian penal agents resumed their established practice of 'arrest as punishment' (Yi 2008) despite signing a MOU with Canadian penal aid agents against such non-standard practices. In the Nunavut case we saw the ways in which a culture of punitive incapacitation not only erodes socially embedded rehabilitative and reintegrative practices—such as Elder counselling and the use of outpost camps—but also disposed of sentences following sections 81 and 84 of the CCRA (on the supervision and custody of Aboriginal offenders within Aboriginal communities). Following the work of Brown (2014) on *Penal Power and Colonial Rule*, I have demonstrated the ways in which penal standardization aims to harness and meld imaginative penal practice, such that the

collective experiences of crime control in Haiti and in Nunavut are recruited in efforts to reinforce the dominant relations of penal government and post-colonial rule more generally.

Following the work of Foucault (2006: 40-41), my aim in revisiting the ways in which penal standardization is the continuation of colonization through penal means is to ‘unmask the political violence’ behind these post-colonial relations of domination such that we can fight against them. I agree with Brown (2015: 15) that we can use the instances in which post-colonial rule and penal power never meet their intended goals, are unproductive, or fail to promote a singular, unified and coherent force of domination as the basis for our resistance. Rather than the romantic unification of resistance from below, or from within concrete binaries (such as ‘first world’ and ‘third world’), resistance is about multiplicities of imaginative penal government—a point I will return to in my concluding chapter. As I have demonstrated repeatedly in my analysis of the penal standardization archive and the cases of penal standardization, processes of defining and implementing standard penalty are messy, contradictory, and in some cases repudiated—even by those charged with the task of enforcing standard penalty. There were many instances, in my conversations with penal agents who work(ed) in Haiti and in Nunavut, in which respondents spoke out against the culture of penal dependency and the promotion of a carceral norm:

I think throwing money at a problem doesn’t necessarily fix it. It can create a dependence for more money and that is where we are at in Haiti (CSC Interview August 2014).

I’d like to see more dollars spent on prevention rather than...building this great big massive facility which I don’t think will ever be built [in Nunavut] anyway... (NILO Interview September 2014).

Corrections culture has to be tackled in multi-faceted ways...and in our current⁹² law and order government there is no real accountability...my concern is that when you get into overcrowding, when you get into less programming, less opportunities for work and education...no real engagement of correctional staff with offenders...all of this makes for the prison to be a more violent and less constructive place (OCI Interview 2 June 2015).

Do we want to resort to jail as much as they do [in Nunavut]? Is there another form of punishment, of social control that could be used for people who misbehave? What is the social control that [NU.C] can use? [NU.C] has to think about it...They will probably need a jail, pretty much every society has one. But, how many guys do they need to put there? When you have 7,000 population in Iqaluit do you really have to have 150-200 beds in a jail? (OCI Interview 1 June 2015).

There has been an over-investment in institutional corrections...which has had a differential impact on various groups and of course Aboriginal offenders and Inuit offenders have suffered disproportionately from some of those policies which appear to apply to everyone equally but they don't. They just, simply, don't (OCI Interview 2 June 2015).

These reflections not only illustrate the messy, contradictions of penal standardization, they also attest to my earlier argument that punishment does not necessarily, naturally, or inevitably *have* to be carceral. In fact, as these respondents describe we need less, not more, punitive incapacitation if we are to meet the ethical objectives within penal standardization: the actualization of prisoner human rights and the promotion of punishment as a social good. Yet, despite these strong arguments against the dominant, carceral relations of penal government we have “seen an erosion of best practices in corrections and also an erosion of innovations and less costly alternatives [to incarceration],” (OCI Interview 2 June 2015).

However, the ‘punitive upsurge’ (see Wacquant 2008), ‘penal expansionism’ (see Piché 2012), ‘penal excess’ (see Brown 2002: 403), or carceral norm behind the post-colonial politics of penal standardization serves a further purpose in Haiti and in Nunavut. In both cases, punitive

⁹² Referring to the Harper government of 2006-2015.

incapacitation is a means through which penal administrations can mitigate the effects of the failure of the ideology of punishment as a social good—embodied in paradoxical punishment. Punitive incapacitation is particularly useful since it not only ensures the post-colonial project via the creation of a culture of penal government dependency (and the monopoly over the power to punish), but, as Wacquant (2008:19) has argued, it relieves the state of the responsibility of mitigating inequality. Similarly, Angela Davis (2003: 16) explains: “...the prison relieves us of the responsibility of seriously engaging with the problems of our society, especially those produced by racism, and increasingly global capitalism.” While penal agents working in Haiti and in Nunavut see the prison as a ‘barometer’ of social inequality, the prison also serves as a temporary solution—although I agree with McKendy (2016) and Wakefield and Uggen (2010), that prison is an expensive, inefficient, failing, and I would add unethical solution—to crime control in contexts where the standard ethos of punishment as a social good is absent.

6.5 When Punishment Is Not A Social Good

You will recall that within both the Haiti and Nunavut case studies agents of penal standardization had to contend with paradoxical forms of punishment. Systemic social inequality, such as poverty and insufficient basic needs provision, inadequate housing, as well as access to health care and education, challenge the standard ethos of punishment as a social good. Said another way, the scarcity of social goods in Haiti and in Nunavut opposes the provision of punishment, whereby prisoners are afforded opportunities that are not available to all (specifically law-abiding) Haitian or Nunavummiut citizens. As my case studies have illuminated, in such contexts of widespread social inequality, non-carceral forms of punishment

—particularly rehabilitative and reintegrative punitiveness—are often seen by penal standard enforcers as too lenient and, therefore, imbalanced or unjust. Penal aid agents in Haiti and penal investigators in Nunavut are faced with a dilemma: how to recognize prisoner human rights when these rights are not recognized for all citizens within either case? To do so would be to challenge the very idea of punishment in either context; moreover, the lack of widely shared social goods in Haiti and in Nunavut makes it especially difficult for penal agents to convince citizens and government organizations alike that punishment is a social good worthy of public investment. As a result, punitive incapacitation (carceral punishment) provides a means through which penal standardization missions can circumvent social inequality all the while meeting the objectives of the post-colonial, standard penal project.

Nevertheless, as I have been arguing throughout this dissertation, the issue remains that punitive incarceration results in the proliferation of sub-standard, unethical penal practice—such as hyper-incarceration and the ensuing health, hygiene, staffing, and capacity issues that accompany hyper-incarceration. As such, I agree with Walby and Monaghan (2011: 273) that efforts to mitigate the effects of the paradoxical punishment “create the conditions that violate rather than ameliorate human rights.” We need to ask, and more thoughtfully investigate the social costs of the standard solution of punitive incapacitation (the carceral norm) in situations in which punishment is not a social good. We need to dispute the ways in which a lack of prisoner human rights, in contexts of systemic social inequality, have been relegated to, what Bauman (2011: 9) calls, “the status of ‘collaterality’—marginality, externality, disposability, not a legitimate part of the political agenda.” Critical criminologists (see Jefferson 2007; Wacquant 2008; Wakefield and Uggen 2010 among others) have consistently drawn our attention to the

ways in which prisons ‘house’ the jobless, poor, racial minorities, uneducated, mentally ill, and drug addicted, rather than distinctly criminal categories. What the penal paradox in Haiti and in Nunavut illuminates is a chronic cycle of sub-standard, inhumane penal conditions as a response to chronic systemic social inequality, or what one interviewee with the OCI (Interview 2 June 2015) called ‘a failure of public policy’. Not only does penal standardization in Haiti and in Nunavut promote unethical, dubious penal government, but these projects also neglect the needs of those who continue to suffer under the conditions of extreme inequality connected to the politics of development and post-colonial government in either case. Moreover, local penal administration in both Haiti (the DAP and OPC) and Nunavut (NU.C) exhaust their time, energy, and resources on mitigating penal crises (such as a lack of food, staffing shortages, and hazardous building conditions) that stem from the utilization of punitive incarceration as a means of crime control in either locale.

As Trouillot (2012: 107) has argued in her work on *Reconstructing Exclusion* in Haiti, such international development efforts promote ‘institutional infantilism and a diminished state,’ rather than a self-sufficient government. I agree with Schuller (in Elfman 2015: 1) that we need to ground our conversations about governmental reform in the political, economic, and global realities in which they occur, which means that we have to first acknowledge and admonish the ways in which penal standardization is a tool within the larger political context of post-colonial government in Haiti and in Nunavut. Indigenous rights activists and legal scholars (see Borrows 2002; Napoleon 2007; Milward 2012; and Coulthard 2014) have long criticized settler/post-colonial legal practice for the continued erosion of Indigenous ethical and spiritual teachings which, Milward (2012: 16) argues, could act as an alternate form of social control against

criminal behaviour. The cases of penal standardization in Haiti and in Nunavut are indicative of such an erosion, whereby, socially-embedded, Indigenous forms of penalty (such as *mandat de dépôt* in Haiti and Elder counselling in Nunavut) are problematized for committing the earliest sins of penalty (pre penal codification)—for being arbitrary, abnormal, and for circumventing governmental jurisdiction. Once again we are faced with the repression of penal imagination within penal standardization which fails to recognize Indigenous ways of knowing (epistemologies) and ways of being (ontologies) as viable solutions for crime control in these paradoxical circumstances.

6.6 Conclusion

Contrary to the UN Expert Group's (2012a and 2012b) claims that the SMRs (1957) have withstood the test of time, my research uncovers the ways in which the rules (penal standards), in cases of deeply rooted social inequality, simply do not apply. Furthermore, the mobilization of the global norm of punitive incapacitation (carceral punishment) as a means of circumventing the problem of paradoxical punishment begets *more* rather than *less* sub-standard penalty in Haiti and in Nunavut. It is for these reasons that I argue strongly against these civilizing claims in favour of significant changes to the SMRs for the treatment of prisoners such that they might address the conditions of inequality and post-colonial rule facing penal administrations in Haiti and in Nunavut, and in doing so will be better equipped to mobilize the ideology of punishment as a social good and protect the human rights of prisoners. Only once punishment is established as a social good, alongside education, healthcare, employment and so on, can we begin to address the conditions of imprisonment and human rights of prisoners in Haiti and in Nunavut.

Moreover, I strongly believe we need to reject the carceral norm within the SMRs (and the penal standardization archive more generally) in favour of more imaginative penal government. Not only will a multiplicity of penal government logics and practices create an opportunity for providing socially just solutions to paradoxical punishment, but imaginative penalty also challenges the post-colonial politics of penal standardization as it is currently conceived. In the concluding chapter, I provide an example of how penal standards can be used as a tool of liberal government to successfully address contexts of social inequality. I argue that imaginative penalty can be as simple as bringing back some of the lesser used punitiveness (such as rehabilitation and reintegration), but that it should also involve the broadening of our definition of punishment, beyond punitive incapacitation, to include a wide-range of social controls. In other words, penal standards need to be revised such that they embrace, rather than exclude, penal difference.

Chapter VII

CONCLUSION

The likelihood of becoming a ‘collateral’ victim of any human undertaking, however noble its declared purpose, and of any ‘natural’ catastrophe, however class-blind, is currently one of the most salient and striking dimensions of social inequality—and this fact speaks volumes about the already low yet still falling status of social inequality inside the contemporary political agenda. ~Bauman (2011: 7)

7.1 Addressing the Collaterality of Penal Standardization

In this dissertation I have examined the role of the prison and punishmentalities within projects of state formation by way of the instrumentalization of punishment in accordance with penal standards. Penal standardization, as a mode of penal government, is a central means by which states enact what I have called moral sovereignty—or the manufacturing of democratic penal institutions. My dissertation has challenged the taken-for-granted assumptions of sovereignty as the inherent characteristic of a state. Instead, my research deepens our understanding of state formation, and what Abrams (1987) calls ‘state projects’, in its analysis of the ongoing efforts to maintain the monopoly over the power to punish under the umbrella of liberal democracy—or government in the narrow sense. As my research demonstrates, penal standardization involves contestations over ruling punishmentalities and more specifically, contestations over who gets to define the objectives of punishment—international humanitarian and intergovernmental organizations, nation states, national penal justice administrations, penal reformers, human rights activists, culturally specific social controls, or some configuration of these multifarious governmental administrations.

While penal justice organizations attempt to address the problem of crime, my research, following Garland (2000), illustrates the ways in which practices and policies of punishment are

heavily influenced by cultural conventions, economic relations, institutional dynamics, and (global) political norms. My examination of the historical development of penal standards in the penal standardization archive, coupled with an empirical analysis of the technology of penal standardization in the contexts of penal government intervention in Haiti and in Nunavut, has uncovered the selective, pragmatic, and often unequal application of penal standards. More importantly, my research helps us to understand that penal standardization does not take place in a governmental vacuum; rather, penal standardization is intimately tied to the geo-political history of the specific locality in which the technology is being deployed. In both the Haiti and the Nunavut case studies, standardization efforts are steeped in the history of colonization, albeit differently conceived in either case (as I have traced within each case study), such that the governmental capacities of the state are severely limited. In both cases, there exists such chronic social and economic inequality that efforts to standardize punishment must circumvent the ideology of penal standardization in either case—that punishment is a social good. As a result, one of the primary contributions of my research has been to expose the ‘collateral damage’ (following Bauman 2011) of penal standardization: the endurance of post-colonial rule within penal government; the permanence of social inequality in both Haiti and Nunavut resulting in paradoxical forms of punishment; and the inadequacy of penal standards to protect prisoner human rights and generate imaginative modes of penalty outside the globally accepted carceral norm. By way of concluding this dissertation I will outline the main theoretical and empirical contributions of my research, with a particular focus on resistance-as-multiplicity rather than romanticization, as well as suggestions for future research and concrete steps for action in the field of penal standardization.

7.2 Research Contributions

Penal standardization is a technology of government that aims to manage, measure, and steer the conduct of institutions, organizations, practitioners of punishment and prisoners, in order to uphold an ethos of protection. I have argued that this ethos of protection allows standard enforcing states, like Canada, to usher in the dream of moral sovereignty, whereby, the state authorized penal organization (such as CSC) is the protector of society from the ‘evils’ of crime as well as the protector of prisoner’s human rights. However, not long after the inception of penal standards there arose a tension between the desire to universalize penal government and the desire for specificity within distinct geo-political contexts, most recently deemed the ‘domestic customization’ of penal standards (see UN Rule of Law Indicators 2011). The primary contribution of my dissertation research has been my analysis of this tension within penal standardization in the field of penal government projects; specifically, Canada’s role as an international enforcer of penal standards in Haiti, juxtaposed by the lack of standard penalty in Nunavut. My analysis of the penal standardization archive has uncovered a fixation with penal administration, spatial design, and the materiality of punishment such that penal standards promote the transmission or importation of *technē*—the technical administration of modern penal justice systems. Herein lies the first core argument I mobilized in my research: that there is a disconnect between a moral commitment to the value of human life and the protection of prisoner’s human rights (in penal standard documents), and the technical administration of penal government on the ground within efforts to standardize punishment.

My analysis of the technicization versus actualization of prisoner human rights (core argument I), as well as the tensions of universality and specificity have made both theoretical and

empirical contributions to the fields of critical criminology, governmentality studies, and post-colonial studies. Theoretically I have exposed the logic of moral sovereignty behind penal standardization efforts paying particular attention to the relations of power and technologies of missionary colonialism inscribed within practices and policies of penal standardization. Empirically my international (Haiti) and national (Nunavut) cases illustrate the ways in which penal standards traverse traditional understandings of sovereign boundaries. While the applications of the standard technology, and the contexts in which it is applied are different, the processes and aims are similar: penal standardization aims to dis-embed a penal government's relationship with a specific locality or culture, recasting this relationship as a universal, normalized, and primarily carceral response to punishment—the second core argument I mobilize in the dissertation. Penal standardization in Haiti and in Nunavut, reflect governmental efforts to cultivate 'correct' or standard modes of modern sovereign power which reproduces post-colonial relations of domination. However, both cases illustrate the ways in which non-Western, local, and socially embedded forms of penalty come up against exported penal norms. Following the work of critical criminologists (see Garland 1997:175-178; and O'Malley 1999 among others) my empirical research uncovers the ways in which punishment is consistently dis-embedded from local, culturally relevant punishmentalities and re-embedded within state-centric punishment. Most importantly, my case studies demonstrate that culture is a contested object of penal government located within the larger history of post-colonial government in either case.

Moreover, my empirical analysis of the project of penal standardization in Haiti and in Nunavut has addressed the critique (see Selby 2007 and Joseph 2011) that international studies is beyond the reach of governmentality studies. My dissertation provides an account of

governmentality beyond the typical Western-focus within the discipline and contributes to the small but budding body of literature on penal government as it intersects with post-colonial rule (see Jefferson 2007a; Brisson-Boivin and O'Connor 2013; and Brown 2014 among others).

Following Foucault's conceptualization of power as productive, my research explains the power behind penal standardization, not as an omnipotent force, but as multiple and heterogeneous.

Another important theoretical contribution of my research is what I have elucidated regarding the strategic game of power behind penal standardization projects which produces what I call pixelating power effects. The pixelating power effects of penal standardization were evident in the standardization archive which aims to measure the materiality of punishment (e.g. down to cubic meters of air per cell and the material composition of toilets in prisons), as well as in the standardization work of penal aid agents in Haiti and penal investigators in Nunavut who are fixated on the material politics of penalty and the reconstruction of penal infrastructure, first and foremost, in either case. The pixelating power effects of penal standardization reveal that the ethos of protection within penal standardization is a self-interested governmental enterprise since the penal institution is promoted as the primary mechanism through which punishment is administered. Moreover, I have argued that the ethos of protection promotes penal standards as a superior mode of governmental rule, since they have the ability to code social relations within Haiti and Nunavut onto sites of penalty. In other words, the deeply unequal social relations within Haiti and Nunavut are coded onto sites of penal government as a strategy to maintain the dominant relations of post-colonial rule in either case, resulting in what I have uncovered as paradoxical forms of punishment—the third core argument that I contribute in the dissertation. In this way, my research has offered a valuable post-colonial critique of the penal standardization

mission and the subsequent ‘collaterality’ of so-called standard punishment: the actualization of prisoner human rights and the promotion of punishment as a social good in cases of extreme inequality.

Following Stoler’s (2006: 24) analysis of empire, my dissertation uncovers a power/knowledge relationship behind penal standardization that is indicative of imperial attempts to establish truth claims about race and difference (the macro dynamics of post-colonial rule) and the micro-sites of government on which they are enacted. The Haiti and Nunavut case studies illustrate international efforts to mitigate heterogeneity in punishment through the management of penal difference; the adversarial strategies of imposition, restriction, and regulation alongside the co-option, conscription, and appropriation of penal difference. I have demonstrated that local penal customs in Haiti and in Nunavut are often utilized by penal agents as justifications for the need for penal standardization which involves (re)embedding local, penal customs into large-scale penal operations. I argue, that these processes of dis-embedding and re-embedding are evidence of the post-colonial desire to copy or import extra-judicial penal knowledge and practice and the equally strong desire to distinguish judicial from extra-judicial forms of penalty. As a result, I argue that penal standardization is a technology of post-colonial rule in which culture (or what counts as culture) is at stake in determinations of standard penalty. My research also highlights the ways in which these technologies of post-colonial rule are a part of the contemporary liberal democratic landscape since prison is promoted as a fundamental democratic institution not only for overseas others, but also within ‘internal frontiers’ (see Stoler 2006 and Hecter 2013). Therefore, my dissertation provides a critique of a particular

conventional brand of post-colonial scholarship which draws stark divisions amongst temporality, actors, and locations of colonization.

As I have mentioned, my primary empirical objective has been to document the process of penal standardization in my detailed study of the Canadian-led penal aid effort in Haiti and the penal investigation in Nunavut. My rich empirical research, while providing a nuanced account of penal standardization, reveals the following: first, that penal standards *matter* as evidenced by the matter (or materiality) of penal standards. Second, that the power to punish is flexible and fluid and not necessarily the exclusive authority of the state, such that there are tensions between local, socially-embedded forms of punishment and dominant carceral, state-centric forms of punishment. Third, that distinctions of ‘first world’ and ‘third world’ penalty are taken-for-granted, untenable, and mobilized as a tool of Canadian penal exaltation. This was especially visible in the ‘injection’ of Canadian penalty in Haiti, which in turn was used by CSC as evidence of Canada’s ‘global penal excellence’ (‘CSC in the world’ 2013), despite the failures of Canadian penal organizations to measure-up to the same standards in Nunavut. Fourth, penal standardization missions are informed by a post-colonial politics of rule which promotes the continuation of colonization by penal means, and the primacy of punitive incapacitation. Fifth, and finally, penal standardization in Haiti and in Nunavut results in paradoxical forms of punishment (albeit differently conceived in either place), in which systemic social inequality challenges the legitimacy and logic of punishment in both places. While the lack of standard penalty in Haiti and in Nunavut was said (by penal aid organizations such as CSC and START, as well as penal investigators such as the OCI) to be due to a severe lack of penal capacity on the part of Haitian and Nunavummiut penal justice administrations, I argue that the lack of standard

penalty in either case can be attributed to the post-colonial politics of penal standardization, which continues to promote carceral punishment as a means of mitigating paradoxical punishment. As a result, I argue that we need to refute the technology of penal standardization, as it is currently conceived, since it is part of the non-standard problem.

I agree with Walby and Monaghan (2011: 276) that a lack of historical and contextual understanding within development, security, and penal policies leads to arbitrary and symbolic policy decisions rather than concrete changes to social or penal justice. I believe that expanding the penal imagination within penal standardization will lay the foundation for socially and culturally relevant penal practice and concrete political action towards the validation of prisoner's human rights. My research uncovers the need for penal government beyond the exclusive jurisdiction of state-centric, carceral punishment. Issues of penal justice in Haiti and in Nunavut, along with social inequality issues are plagued by the flattening of the multi-dimensional character of Indigenous ontologies—ways of being—and epistemologies—ways of knowing—as they are inserted into standardized, Western cultural forms. For example, penal systems which follow normative assumptions that justice best operates through equality before the law, and through indifference to persons, remove the offender and the offence from the social context in which they occurred. This is evident in the ways in which Haitian penal justice traditions (such as *clameur publique*) and Inuit penal justice traditions (such as Elder counselling), when read through the lens of penal standardization, are deemed too specific and unbalanced since they rely primarily on social responses to crime control. Having been inserted into the normative machinery of penal standardization, Haitian and Inuit penal justice have been reworked in ways that even more drastically narrows the already limited resources available for

controlling crime in either case—by privileging punitive over rehabilitative justice and by using incarceration as the leading modality of punishment.

As my observations regarding Inuit prisoners in Ontario highlight, removing prisoners from their social context eliminates the possibility of using local, social controls for the prevention and control of crime. Such standard practices, which regulate and limit local forms of control, are particularly problematic in encounters between Western government organizations and Indigenous communities. At the same time, for Indigenous peoples, governments may be tempted to instrumentalize local, cultural practice in pursuit of standard punitive penalty—denaturalizing such practices in the process. Yet, another scenario I want to trouble is the over-romanticization of traditional Indigenous practices of justice as if these were fully formed, universal, and not contested within Indigenous groups and independent of the effects of colonization. In this regard, I borrow from Mark Brown's (2014: 15) work on *Penal Power and Colonial rule* in which he says, to “speak of resistance is to speak of multiplicities”—as a way of rescuing resistance from the grip of binaries. Multiplicity challenges the romantic view by refusing the notion of a homogeneous or unified Indigenous subject as the presupposition of Indigenous politics. My empirical research uncovered several instances within the Haiti and Nunavut case studies in which the Indigenous subject and/or Indigenous penal traditions were described in contradictory terms. You will recall participants described both open displays of emotion as well as guardedness or unresponsiveness as characteristic of Inuit prisoners linked to Inuit cultural identity. Similarly in the Haitian case, participants described punishment in Haiti as exceedingly punitive and in violation of prisoner human rights however without the violent threats to personal security plaguing many Western penal institutions since prisoners care for one

another. I mobilize resistance-as-multiplicity as a particularly useful tool: for refusing top-down, traditional conceptualizations of post-colonialism as a relic of the past; for rejecting strict categories of standard punishment as punitive incapacitation; and for studying alternative fields, domains, and objects of penal government in non-Western, non-liberal democratic forms. I will discuss the possibilities afforded by resistance-as-multiplicity in my suggestions for future research, and concrete steps for action, in the field of penal standardization.

7.3 An Agenda for Research

While one of the key contributions of my research has been to provide an account of governmentality beyond the traditional boundaries of (liberal democratic) international relations, there remains a need for further scholarship in the field of global governmentality specifically as it intersects with penal justice/government. If we are to challenge the normative apparatus of state-centric, carceral punishment we need to more attentively examine the seemingly negligible forms of penal justice that persist alongside dominant state forms. Following Garland (1997), O'Malley (1999), and Wacquant (2008), future research in the field of penal government should study the effects of a relationship between both state and non-state actors (such as family and community) in the determination, prevention, and control of crime. Overwhelmingly within critical criminology and penology these alternative forms of penal justice are siloed within the field of restorative justice studies. Following the work of Zehr (2003) and Braithwaite (2004) among others, restorative justice is more often than not presented as a stark opposition to more punitive approaches to penal government which seek to retributively punish criminals. In

contrast, restorative justice is promoted as a form of penalty that focuses on the needs of victims and offenders and fosters an open-dialogue about accountability.

While I think restorative justice policies and practices have made significant gains in challenging dominant penal government norms (punitive incapacitation), and while I think we stand to benefit from the principles of restoration and reconciliation over disembodied, adversarial justice practices, there has been a proliferation of scholarship on restorative justice in the past two decades including Sherman and Strang's (2007) meta-analysis of restorative justice research projects. More importantly, as Zehr (2003: 268-269) has pointed out, restorative justice practices such as victim-offender mediation, group-conferencing, sentencing circles, and circles of support and accountability owe much of their contributions to "the First Nations people of Canada and the US, and the Maori of New Zealand...whose traditions were often discounted and repressed by Western colonial practices." In this regard I agree with the critiques of Canadian Indigenous legal scholar John Borrows (2002), that Indigenous legal orders have problematically been romanticized as alternatives to *the* law or state-centric penal justice. The work of Indigenous legal scholars—such as John Borrows, Val Napoleon, and David Milward—provides a roadmap for how to conduct research on alternatives to normative penal justice while avoiding the appropriation or romanticization of Indigenous legality as resistance.

In his work on *Aboriginal Justice and the Charter*, David Milward (2012: 2-3) explains that within criminology and legal studies some Aboriginal scholars (such as Taiaiake Alfred and Jeff Corntassel) have argued that working within a state framework does not truly amount to self-determination and is a recipe for continued post-colonialism, whereas non-Aboriginal scholars often argue that self-determination outside a state framework would destabilize the existing

social order. However an alternative approach—a middle ground if you will, has been offered by Aboriginal scholars such as Dale Turner and John Borrows (in Milward 2012: 3) who argue for self-determination and alternative legal orders that do not eschew participation within a state-framework, but involve “Aboriginal peoples obtaining considerably more control over their institutions, government arrangements, and law than they have now.” All of this to say that, while there is a need for more research regarding alternative domains and objects of penal government, researchers should be mindful not to set up dichotomies of judicial and extra-judicial in their analyses. More importantly, following the critiques of Indigenous legal scholars (such as Borrows 2002 and Milward 2012), research needs to avoid the problematic portrayal of Indigenous justice as a yet to be realized ideal. Rather than eschew participation within state-centric penal justice, alternative punishmentalities can be used as a means through which to oppose the prevalent homogenization of penalty within penal government mechanisms such as penal standards. Not only will the consideration of alternative forms of penalty expand our penal imagination but the value of exploring diversity within penal government is that it opens up a range of punishmentalities that might more directly address the problem of crime in a specific locale in more meaningful, just, and egalitarian ways—a point I will return to in my suggested steps for concrete action in the field of penal government. For now, I want to suggest that future scholarship in the field of critical penal government studies should examine penal forms outside the carceral standard, not to add to problematic dichotomies of juridical and non-juridical penalty, nor to uphold Indigenous or alternative penal logics⁹³ as non-punitive ideals, but to

⁹³ Recall that both the Haiti and Nunavut case studies provided illustrations of alternative penal practices that were punitive in their logic—such as the traditional Inuit practice of banishment, and the Haitian penal traditional of arrest as punishment.

challenge the current homogenization of penalty and closed-mindedness within penal government and the technology of penal standardization.

While my dissertation has provided an empirically rich documentation of penal standardization, it has done so through the lens of penal administration and the perspective of penal agents responsible for the implementation of penal standards. An objectively similar but empirically unique study would examine the process and effects of penal standards from the perspective of prisoners. While my research experience (specifically with CSC in Canada) indicates that access would be a challenge for this type of project (particularly in the case of interviewing and participant observation), Piché, Gaucher, and Walby (2014), as well as Marutto and Hannah-Moffat (2006) have conducted penal justice research from the perspective of prisoners in Canada with great success. Similarly, Piché's (2011), and Walby and Larsen's (2011, 2012) work on access to information requests as a research methodology is invaluable to penal justice research and offer researchers practical tools for accessing often inaccessible data channels. Furthermore, while I conducted participant observation in prisons in Northern Ontario I was not able to conduct observation in either Haiti or Nunavut specifically. A research project that engages in participant observation in either Haiti or Nunavut would be able to provide a far more extensive empirical analysis of alternative punishmentalities and modes of penal government in either case than was possible within the scope of this project.

What is more, as I have mentioned throughout this dissertation, penal standardization research would benefit greatly from longitudinal studies that capture the effects of changes in political power on penal standardization. The recent (November 2015) federal election of a Liberal majority government in Canada will undoubtedly change the Canadian penal landscape;

these changes should be studied in light of any consequences they may have on penal standardization in Canada, and more importantly Canada's (global) penal reputation. Likewise, the intergovernmental expert group on the SMRs (1957) had yet—at the time of my writing—to produce any definitive changes or suggestions to the SMRs for the treatment of prisoners. Future penal standardization research should examine any proposed changes. While change within the SMRS is much needed I do not foresee any imminent changes given the problematic, yet popular, opinion within the expert group (2012a and 2012b) that the SMRs (1957) have 'withstood the test of time'. Which brings me to my suggestions for concrete action in the field of penal standardization.

7.4 Concrete Steps for Action

If, as Valverde (2012) has argued, penology is dead, then penology has experienced a fervent resurrection thanks to the predominance of politically engaged 'public'⁹⁴/ critical criminology projects.⁹⁵ For example, the recently (2012) formed Criminalization Punishment Education

⁹⁴ There exists an ongoing debate (see Wacquant 2011: 439-440) regarding: the value, necessity and composition of 'public' sociology/criminology; whether there is a political utility in naming the discipline 'public'; to what degree 'public' sociologists/criminologists are more engaged than official sociologists/criminologists; and whether or not the Habermasian-sounding qualifier 'public' is justified or simply a faddish 'public-itis' within social science which over-emphasizes the public engagement of scholars, such that public sociology is but a disciplinary institutionalization of the frustrated political aspirations of official sociology/criminology itself.

⁹⁵ Here I am thinking of the work of critical criminologists such as Aaron Doyle, Dawn Moore, Anthony Doob, Kevin Walby, Justin Piché, among many others. As well as the hard work of many prisoner rights organizations including the John Howard and Elizabeth Fry Societies of Canada, Circles of Support and Accountability, Canadian Prison Consulting, MOMS (Mother's Offering Mutual Support-Ottawa), End Immigration Detention, No One is Illegal Ottawa, Smart Justice Network Ottawa, and the recently (2012) formed Criminalization Punishment Education Project (CPEP).

Project (CPEP) brings together students and researchers from the University of Ottawa and Carleton University as well as Ottawa community members who work together to make visible criminal justice issues in order to bring about social change (see CPEP 2016). Currently, penal standardization is one of the least visible and least known practices of penal government—what one of my respondents (OCI Interview 1 June 2015) referred to as a ‘specialized form of penal knowledge’. However, groups like CPEP provide scholars, like myself, with a platform and a model for petitioning penal organizations for policy change.

I believe one of the most important concrete steps for action within penal standardization involves more engaged discussions about the necessity for changes to penal standards as they are currently conceived. I agree with Michael Power (2004) that there is far too much complicity with ‘the fashion for quality assurance mechanisms’ such as penal standards, that appear as natural solutions for problems of imbalanced, inhumane, and abnormal punishment. While penal standards commission penal administrations with an ethos of (human rights) protection, in their application penal standards allow for an excess of unethical penal practices inculcating the horrors of carceral punishment, and so penal standards must be changed. I firmly disagree with the civilizing logic of the expert group on the SMRs that penal standards have ‘withstood the test of time’. Solitary confinement of mentally ill prisoners, little-to-no healthcare provisions, severe cuts to penal programming, the over-incarceration of racialized and poverty-stricken groups, and hyper-incarceration as a global norm are not reflective of an ethical commitment to prisoner human rights and have no place in the 21st century.

I want to emphasize that I am not suggesting we should abolish penal standards outright; rather, penal standards can be a tool of a more liberal/social approach to punishment. Take for

example the case of penal reformation in the Dominican Republic: a country which shares some elements of its post-colonial history with Haiti having been discovered by Christopher Columbus and named for the Spanish in the end of the 17th century (Frontline World 2011). Similar to the Haiti and Nunavut cases I've presented in this dissertation, the history of prisons in the Dominican Republic has been one of over-crowding, a chronic shortage of resources for basic human needs, a lack of proper budgetary arrangements, and no proper prison administration with half of the prisons under military control and the other half run by police (see Coyle 2016: 18). As a result, the penal system in the Dominican Republic has been over-burdened by what I have called penal crises rather than normative forms of penal government characterized by human rights protections and rehabilitative and reintegrative punishmentalities. However in 2003, Andrew Coyle, a British prison warden-turned-reformer (Coyle was the then Director of the International Centre for Prison Studies), visited the country and conducted a standard investigation into the penal system at the request of the Dominican government (Fieser 2014: 1). Rather than chipping away at what was characterized by Coyle and Dominican penal administrators as a 'largely broken penal system,' the Dominican government set out to design an entirely new system to replace what was 'broken' (Coyle 2016: 18).

This large scale penal reform project, initiated and implemented by Dominican government officials, was led by the newly elected Attorney General of the Dominican responsible for the country's judicial systems. Penal reformers within the Dominican Republic decided that the newly designed penal system would aim to meet the objectives of rehabilitative and reintegrative punishmentalities—the success of which would depend on the quality of the penal administration (or staff). Nationally distinguished educator and former rector of the

University of Santo Domingo, Roberto Santana—who had himself been imprisoned under a past dictatorial government—was appointed director of the ‘new model’ as it became known, and Ysmael Paniagua, a former director of the capital’s largest prison, became the deputy director and co-ordinator for the ‘new model’ (Coyle 2016: 18 and Fieser 2014: 1). Together, Santana and Paniagua established a national penitentiary school, recruiting their colleagues from education, administration, and select prison officials as professional development directors in the school, which attracted a highly motivated group of new students to be trained in prison administration. According to Paniagua (in Fieser 2014): “we do not hire any guards who have previous experience in the military or police. We train people ourselves...we don’t want any connection to the [old] model because it’s corrupt and continues corrupting.” Working with blank slate recruits was one way for penal reformers to eliminate old ‘corrupt’ models of penal government and ensure that the ‘new model’ did not suffer from regulatory capture. The training of new recruits has continued for a decade, and as new prisons open a new cohort of staff is enrolled within that institution.

The ‘new model’ required that major repairs and prison re-builds occurred throughout the country—aligned with the international standards for penal design. By 2014, 18 of the country’s 35 prisons had been renovated and were being run by ‘new model’ penal administration (Coyle 2016: 19 and Fieser 2014). Of particular importance was the transformation of the Najayo prison — a longtime symbol of overcrowding and human rights abuses within the Dominican Republic —which has been transformed under the ‘new model’ of prison government to a “state of the art” prison with “clean living conditions” and “zero tolerance for human rights abuses,” (Fieser 2014: 1). I want to note a fundamental difference with the case of the Dominican’s penal reformation

(from the Haiti and Nunavut cases): repairs to buildings or rebuilds are considered secondary to what Coyle (2016: 18-19) calls the ‘political will’ to change the dominant logic of punitive incapacitation in the Dominican Republic. Alongside the establishment of educated and trained administrators, the ‘new model’ in the Dominican is built upon the enterprising and rehabilitative punishmentalities which give primacy to prisoner education: the penal system has a zero percent illiteracy goal, basic education is compulsory, and university level courses are on offer. By focusing on rehabilitative and reintegrative punishmentalities, which begins by training staff on the importance and benefits of such practices, the Dominican’s penal system has seen astounding changes to its rates of recidivism: only 5% of prisoners from ‘new model’ prisons have been convicted of further crimes within three years of their release—under the old model the rates were 50% (Coyle 2016: 18).

Of course there is still much work to be done in the Dominican and not all problems have been solved by this new approach to penal government. Prison over-crowding, as a result of harsh sentencing laws, remains an issue and at its core the new model is still predicated on the carceral norm with little to no community sanctions; however, what is most significant about the case of penal reform in the Dominican Republic is that it is happening in a geo-political context *not* unlike those I have presented in this dissertation in which conditions of economic and social inequality are commonplace. According to the Director of the UN Latin American Institute, Elias Carranza (in Fieser 2014), “what’s remarkable about the Dominican Republic’s example is that it has taken place in a country that has the same socio-economic conditions as other Latin American countries.” Those conditions include high rates of poverty and subsequently crime, a poor education system and rampant unemployment, all of which contribute to high incarceration

rates. And yet, despite the struggles within the country to establish these basic social goods, the new penal model in the Dominican has been successful in making a case for punishment as a social good worthy of public investment. Rather than viewing punishment through the lens of risk and security, or strictly punitive incapacitation, penal reformers have successfully established the long-term value of reintegrative and rehabilitative punishmentalities in the country. For example, while the new penal system costs double the old one, officials say the government will save over the long run: “when you have so few people re-offending the societal costs are substantially lower. There’s no comparison,” (Paniagua in Fieser 2014). Prisoners also approve of the changes to the penal system noting a shift in how penal administration treats them: “they treat us like human beings, not just criminals,” (prisoner from Najayo prison in Fieser 2014).

Over a decade after Santana and Paniagua set out on their mission to establish a new prison model in the Dominican successive governments of different political persuasions have maintained the importance of the ‘new model’ since the societal benefits are clear. Moreover, the success of the ‘new model’ has been substantial enough to lead other countries (such as Ecuador, El Salvador, Panama, Honduras, and Chile) to begin adopting parts of the model in their own penal systems (Fieser, 2014). As Elias Carranza (in Coyle 2016: 19) explains: “Before I would go to a government [in Latin America] and say, ‘look what they’re doing in Switzerland’ but they’d say ‘that’s a different world.’ But now, I can say; ‘look at the Dominican Republic.’” I provide the example of the largely successful penal reform project in the Dominican not as a solution to the penal problems in Haiti or in Nunavut, since both of these cases have distinctly different post-colonial histories and contexts of social inequality; however, the Dominican’s

success does occur in a similar ‘world’ (as Carranza explains)—once again proving the fallacy of ‘first world’ and ‘third world’ dichotomies. In the case of the Dominican Republic the end result is not to further punish inequality in the country—resulting in paradoxical forms of punishment; rather, the legitimacy of penal government in the Dominican Republic is built upon a shared desire to treat criminals as human beings and lower the societal costs of relentless punitive incapacitation.

The case of penal reform in the Dominican demonstrates that standard penalty can be (re)imagined in the socio-economic and cultural conditions in which punishment exists. As such, rather than nullify penal standards outright, we need to change penal standards such that the technology accomplishes in practice what it advocates as a moral ideal. For example, there should be standards against the use of hyper-incarceration and the over reliance on punitive incapacitation. In Canada specifically, the use of solitary confinement for the mentally ill should be replaced with greater healthcare supports and training for CO’s, such as the Mental Health First Aid training initiative of the Mental Health Commission of Canada (see Mental Health First Aid Canada 2016). Similarly, penal standards that enact a commitment to the value of human life would set out provisions for the management of disease control within penal institutions. Furthermore, penal standards, in recognizing that prisoners are social beings requiring social contact, should embrace imaginative penal practice outside of carceral punishment. Such changes within standard penal practice requires flexibility in penal government and a restructuring of governmental resources that takes into account the diversity of penal government capacity within specific geo-political contexts. For example, in Haiti penal government needs to be supported such that penal organizations (such as the DAP and OPC) can address immediate

needs—those penal crises that currently exhaust Haitian penal government—so that more long-term investments can be made into discovering what imaginative penality in Haiti would look like. Penal standards need to be expanded such that they embrace alternative punishmentalities so that rehabilitative and reintegrative punishmentalities are no longer the square peg in the round standard hole. In Nunavut, for example, this means implementing sections 81 and 84 of the CCRA—on the supervision and custody of Inuit offenders within Inuit communities.

Following Jefferson's (2007b: 265) work on penal practice in Nigeria, I believe that in making such changes to penal standards we can enact change through small signs of disturbance in penal government, through changes to everyday penal operations, rather than attempting to confront the monolithic prison juggernaut head-on. Similarly, as Butler (2000: 14) explains, social transformation can occur "precisely through the ways in which daily social relations are re-articulated and new conceptual horizons open-up in the inclusion of subversive practices."

The Haiti and Nunavut case studies demonstrate that penal standardization in contexts of extreme social disparity further erodes penal legitimacy. Expanding the penal imagination within penal standardization provides an opportunity to consider the otherwise subjugated, or sometimes co-opted local, socially embedded penal practices of a specific geo-political context as valuable and productive crime controls. After all, as CSC Director of Intergovernmental Relations in Afghanistan, Lee Redpath (in CSC Afghanistan 2012b: 13) explains, "whether [punishment] is meant as a preventative or corrective measure it must, above all, remain credible to people." Once again, we can turn to the work of Indigenous legal scholars for guidance in regards to the implementation of traditional legal orders as mechanisms of social control that hold communities together. As Val Napoleon (2007: 13) explains: "culturally appropriate laws

command allegiance and respect. Laws based on a community's own traditions and principles, would be more relevant and meaningful to its members and could thus strengthen the rule of law in the community." I will not offer prescriptions regarding what I think are socially or culturally relevant punishments in either Haiti or in Nunavut since I have barely scratched the empirical surface regarding Haitian and Inuit punishmentalities in this project. Nor do I think I am the person to be making such distinctions; rather, culturally appropriate and relevant punishment should be articulated by those who live in and will be held accountable to such determinations. For now, I want to emphasize that revising penal standards such that they embrace imaginative punishment, or the experimentation endorsed in the original SMRs (1957), need not resort to dichotomies of judicial and extra-judicial, or less punitive and more punitive, and need not romanticize Indigenous legal orders as an idealized solution to carceral punishment. Rather, expanding the penal imagination within penal standardization is about resisting the homogenous carceral norm and actualizing prisoner human rights.

However, enacting such changes to penal standards is no simple process, particularly in geo-political contexts in which the social state is near to non-existent. As I argued throughout this dissertation, concrete action must be taken to ameliorate, rather than subvert, social inequality such that punishment might be understood as a social good. Without the twin process of the eradication of post-colonial government relations, ethical punishment (whereby prisoner human rights are upheld) remains the collateral damage of the unmitigated inequality that accompanies post-colonial rule. Sherene Razack's (1998: 159-160,170) conceptualization of a politics of accountability is particularly helpful in this regard. A politics of accountability within penal standardization projects (rather than a politics of post-colonialism) would "take as its point

of departure that systems of domination interlock and sustain one another,” (Razack 1998: 159). I have demonstrated the ways in which post-colonial rule works through penal government in Haiti and in Nunavut, as evident in the use of overly harsh, acutely punitive punishmentalities which operate as a means of enacting the state’s power to punish. In both Haiti and in Nunavut, those who suffer from severe social inequality in these contexts continue to suffer further under these oppressive penal regimes. A politics of accountability within penal standardization would work to reverse what, following Landau (2006: 195), I have explained is the discourse of individual pathology within penal government which relieves the state of the responsibility for both contributing to and sustaining high levels of inequality and conflict within the criminal justice system. A politics of accountability within penal standardization aims to correct, not just individual penal subjects (prisoners), but the post-colonial relationship itself which perpetuates the conditions of inequality that lead to an over-reliance on punitive incapacitation (and paradoxical punishment) as a means of maintaining penal credibility in such contexts.

Rather than offering apologies for post-colonialism, as if the technology was a relic of past governmental mistakes, accountability aims to reverse the post-colonial relations of inequality which normalize the injustices it has perpetuated against colonized populations (see Coulthard 2014: 147). By and large, in Haiti and in Nunavut, social goods generally (such as healthcare, education, and unemployment) must be augmented if punishment is to be included in the classification of social goods. Penal standardization that mobilizes a politics of accountability refutes power relations which, following Razack (1998: 26-27), are predicated on notions of individuals in competition for pieces of the (humanitarian-development, penal aid, social good) pie. As Paul Crowley (in CBC News ‘Poverty trap’ 2014), secretary to the Premier of Nunavut,

claims: “the pie has to be bigger.” Concrete steps toward change in penal standardization necessarily involve concurrent efforts to revoke the post-colonial politics of penal government and redress conditions of social inequality such that punishment is understood as a social good worthy of investment. Doing so creates the space needed to implement penal standards that aim to generate more imaginative, ethical, and accountable punishment. In working towards more imaginative penal standards, Foucault (1983b: 20) reminds us that, “justice must always question itself, just as society can exist only by means of the work it does on itself and on its institutions.” The only failures within penal standardization are those ideas and practices never even considered, or systematically discounted, by the normative assumptions ingrained within penal standards—the failure to imagine punishment as anything other than carceral. Penal standards should not be an end in and of themselves—something we say we have reached and no longer need to be concerned with—but a process, and a means through which punishment is questioned and continually (re)imagined.

REFERENCES

- Abrams, P. (1987). "Notes on the Difficulty of Studying The State," *Historical Sociology*, (1)1: 58-89.
- Action Aid Haiti. (2006). "MINUSTAH: DDR and Police, Judicial and Correctional Reform in Haiti-Recommendations for Change," *Action Aid Haiti*, last retrieved on September 2015. From <<http://issat.dcaf.ch/content/download/2089/18037/file/MINUSTAH.%20DDR%20and%20Police>>
- Albrecht, H, L. Aucoin. and V. O'Connor. (2009). "Building the Rule of Law in Haiti: New Laws for a New Era," *United States Institute of Peace*, Washington, 1-9.
- Alesina, A. and D. Dollar. (2000). "Who Gives Foreign Aid to Whom and Why?" *Journal of Economic Growth*. 5, 33-63.
- Anderson, J. (2009). "Bodily Privacy, Toilets, and Sex Discrimination: The Problem of 'Manhood' in a Women's Prison," *Ladies and Gents: Public Toilets and Gender* Gershenson, O and B.Penner(EDs). Philadelphia, PA.Temple University Press. 91
- Angrosino, M. (2008). "Re-contextualizing Observations," in *The Sage Handbook of Qualitative Research*, N. Denzin and Y. Lincoln (EDs), 161-185.
- Associated Press. (2014). "Haiti Police Search for 329 Escaped Prisoners," *Associated Press*, retrieved on September 2015. From <<http://www.dailymail.co.uk/wires/ap/article-2722060/Haiti-police-search-329-escaped-prisoners.html>>
- Bakht, N. (2005), "Problem Solving Courts as Agents of Change," *Criminal Law Quarterly*, 50, 224-254.
- Barnett, M. and J. Gross Stein (2012). "The Secularization and Sanctification of Humanitarianism," in M. Barnett and J. Gross Stein (EDs) *Sacred Faith and Humanitarianism*. Oxford University Press. New York. New York. 1-18.
- Barry, A. (2013). *Material Politics: Disputes Along the Pipeline*, West Sussex. Wiley-Blackwell.
- Bauman, Z. (2011). *Collateral Damage: Social Inequalities in a Global Age*. Cambridge, U.K. Polity Press.
- Bennett, P. (2016). "Chapter 18: Prisons and Human Rights," *Handbook on Prisons 2nd Edition*. Jewkes, Y., J. Bennet. and B. Crewe (EDs). Routledge. New York. New York. 324-336.
- Bevir, M (2010). "Rethinking Governmentality: Towards Genealogies of Governance," *European Journal of Social Theory*, 13, 423-441.
- Bhabha, H. (1984). "Of Mimicry and Man: Th Ambivalence of Colonial Discourse." *Discipleship: A Special Issue on Psychoanalysis*, 28, 125-133.
- Blatter, J and M. Haverland. (2012). *Designing Case Studies: Explanatory Approaches in Small-N Research*, New York. Palgrave Macmillan.
- Borrows, J. (2002). *Recovering Canada: The Resurgence of Indigenous Law*. Toronto. University of Toronto Press.
- Bouley, E. (1995) "The Federal Penitentiary Service of Argentina.," *International Criminal Justice Review*, 5(1), 45-61.
- Braithwaite, J. (2004). "Restorative Justice and De-Professionalization." *The Good Society*, (13)1, 28-31.

- Brighenti, A. (2007). "Visibility: A Category for the Social Sciences," *Current Sociology* 55(3), 323-342.
- Brisson, K. (2011). "'Struggling' Through Public Safety: An Examination of Parole Policy and Practice in Canada," *Master's Thesis*. University of Windsor. 1-43.
- Brisson-Boivin, K. and D. O'Connor. (2013). "The Rule of Law, Security-Development, and Penal Aid: The Case of Detention in Haiti," *Punishment and Society*, 15(5), 515-533.
- Brown, M. (2014). *Penal Power and Colonial Rule*. New York, New York. Routledge.
- Brown, M. (2002). "The Politics of Penal Excess and The Echo of Colonial Penalty." *Punishment and Society*. (4)4, 403-423.
- Butler, J. (2000). "Restaging the Unilinear: Hegemony and the Limits of Formalism." In J. Butler., E. Laclau, and S. Zizek (EDs). *Contingency, Hegemony, Universality, Contemporary Dialogues on the Left*. New York, New York. Verso Publications.
- Byman, D. and C. King. (2012). "The Mystery of Phantom States," *The Washington Quarterly*. 35(3): 43-57.
- Calhoun, C. (2008). "A World of Emergencies: Fear, Intervention, and the Limits of Cosmopolitan Order," *Canadian Review of Sociology*. 41(4). 373-395.
- Canadian Association of Elizabeth Fry Societies (2015). "About," last retrieved July 2011. From <<http://www.caefs.ca/about-us/>>
- Canadian Civil Liberties Association. (2014). "By The Numbers: Crime, Bail and Pre-trial Detention in Canada," Retrieved on September 2015. From <<https://ccla.org/cclanewsites/wp-content/uploads/2015/02/2014-07-23-By-the-numbers1.pdf>>
- Canadian Criminal Code (R.S.C. c. C-46) (1985). "Purpose and Principles of Sentencing," Retrieved November 2015. Retrieved from: <http://laws-lois.justice.gc.ca/eng/acts/C-46/page-426.html?texthighlight=718.2#s-718.2>
- Canada Haiti Action Network (2015). "Crime and Prison Statistics in Haiti in September -October 2011," Last retrieved September 2015. From <<http://canadahaitiaction.ca/content/crime-and-prison-statistics-haiti-sept-oct-2011>>
- Canadian Police Officer (2014). *Interview*, November.
- Caple James, E. (2012). "Whichcraft, Bureaucraft, and the Social Life of (US) Aid in Haiti," *Cultural Anthropology*. 27(1), 50-75.
- Carment, D. and S. Yiagadeesen (2010) "Haiti without Tears: Getting Aid Right," *Policy Options*, 56-63.
- CBC News (2014). "Poverty trap keeps Nunavummiut in Tragic Conditions." Retrieved January 2016 from: <http://www.cbc.ca/news/canada/north/poverty-trap-keeps-nunavummiut-in-tragic-conditions-1.2685450>
- CBC News (2015a). "Ottawa Jail Guard Shortage Causing 'Burn Out': Union," *CBC News Ottawa*, Retrieved November 2015. Retrieved from: <http://www.cbc.ca/news/canada/ottawa/ottawa-jail-guard-shortage-causing-burn-out-union-1.3026820>
- CBC News (2015b). "Prison Riot in Penetanguishene prompts ministry investigation," *CBC News Toronto*, Retrieved November 2015. Retrieved from: <http://www.cbc.ca/news>

- canada/toronto/prison-riot-in-penetanguishene-prompts-ministry-investigation-1.3121573
- Chamlay, S. (2015). "The Everyday Sexism of Women Waiting in Public Toilet Lines." *Time*. Retrieved from: <http://time.com/3653871/womens-bathroom-lines-sexist-potty-parity/>. Retrieved on: January 2016.
- Chandler, D (2010). *International State building - The Rise of Post-Liberal Governance: Critical Issues in Global Politics*. New York. Routledge.
- Chatterjee, P. (1995). "A Modern Science of Politics for the Colonized," *Texts of Power: Emerging Discipline in Colonial Bengal*, P. Chatterjee (ED). Minnesota. University of Minnesota Press, 93-117.
- Chatterjee, P. (2001). "Democracy and The Violence of the State: A Political Negotiation of Death," *Inter-Asia Cultural Studies*, 2(1), 7-21.
- Chatterjee, P. (2011). *Lineages of Political Sociology: Studies in Post-Colonial Democracy*, New York. Columbia University Press.
- Chen, X. (2005). *Tending the Gardens of Citizenship: Child Saving in Toronto 1800's-1920's*, Toronto. University of Toronto Press.
- Clark, R. (2004). "Haiti's Agonies and Exaltations," *International Action Centre*, Retrieved on September 2015. Retrieved From <<http://www.iacenter.org/haiti/ramsey.htm>>
- Collier, S. J. (2009). "Topologies of Power: Foucault's Analysis of Political Government beyond 'Governmentality'," *Theory, Culture & Society*, 26, 78-108.
- Comack, E. C. Fabre, S. Burgher. (2015). "The Impact of the Harper Government's 'Tough on Crime' Strategy: Hearing from Frontline Workers." *Canadian Centre for Policy Alternatives*. Manitoba. 1-44.
- Cooper, F. and A.L., Stoler (EDs) (1997). *Tensions of Empire: Colonial Cultures in a Bourgeois World*, Berkeley. University of Berkeley Press.
- Corbin, S. and J. Buckle (2009). "The Space Between: On Being An Insider-Outsider in Qualitative Research," *International Journal of Qualitative Methods*.(8)(1): 54-64.
- Corrections and Conditional Release Act (CCRA) (1992). *Department of Justice Canada*. 1-135.
- Corrections and Conditional Release Act (CCRA) (2012). "Statistical Overview-Annual Report," *Public Safety Canada*. December, 1-145.
- Correctional Service of Canada. (CSC). (1997). "Human Rights and Corrections A Strategic Model-Report of the Working Group on Human Rights," *Solicitor General Canada*, 1-82.
- Correctional Service of Canada. (CSC). (2006-2011). "Strategic plan for Aboriginal Corrections- Innovative Learning and Adjustment." *Correctional Service of Canada*: 1-22
- Correctional Service of Canada. (CSC) (2011). "Recidivism Risk Assessment for Aboriginal Males: A Brief Review of the Scientific Literature," Retrieved on November 2015. Retrieved from: <http://www.csc-scc.gc.ca/research005008-0239-eng.shtml>
- Correctional Service of Canada. (CSC) (2012a). "Mission," Last retrieved on July 2015. From <<http://www.csc-scc.gc.ca/about-us/index-eng.shtml>>
- Correctional Service of Canada. (CSC). (2012b). "CSC in Afghanistan-Part 2." *Correctional Service of Canada*, 1-58.

References

- Correctional Service of Canada. (CSC). (2013a). "CSC in the world." Last retrieved January 2016 from: <http://www.csc-scc.gc.ca/in-the-world/index-eng.shtml>
- Correctional Service of Canada . (CSC). (2013b). "CSC in Haiti." Last retrieved January 2016 from: <http://www.csc-scc.gc.ca/in-the-world/004002-1001-eng.shtml>
- Correctional Service of Canada. (CSC) (2014). *Interview*, August.
- Correctional Service of Canada. (CSC) (2014). "1980-1990: New Perspectives, New Demands," Retrieved on May 2016. Retrieved from: <http://www.csc-scc.gc.ca/about-us/006-2005-eng.shtml>
- Correctional Service of Canada. (CSC) (2015). "Commissioner's Directives CD001-890," Last Retrieved on August 2015. From <<http://www.csc-scc.gc.ca/politiques-et-lois/005006-0001-eng.shtml>>
- Correctional Service of Canada. (CSC) (2015). "Correctional Planning and Criminal Profile-Commissioner's Directives", last retrieved November 2015. Retrieved from: <http://www.csc-scc.gc.ca/acts-and-regulations/705-6-cd-eng.shtml#s6>
- Coulthard, G.S. (2014). *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*, Minnesota, University of Minnesota Press.
- Cowan, J., M-B. Dembour, R. Wilson. (2001). "Setting Universal Rights," in *Culture and Rights Anthropological Perspectives*, Cowan, J. M-B. Dembour, R. Wilson (EDs). Cambridge. Cambridge University Press. 27-31.
- Coyle, A. (2016). "Prisons in Context" in Y. Jewkes, J. Bennett, and B. Crewe (EDs) *Handbook on Prisons—2nd Edition*. New York. New York. Routledge. 5-23.
- Criminalization Punishment Education Project (CPEP) (2016). 'Home', Retrieved January 2016 from: <http://cp-ep.org/>.
- CTV News (2010). "A Look At Canada's Relationship with Haiti," Retrieved September 2015. From <<http://www.ctvnews.ca/a-look-at-canada-s-relationship-with-haiti-1.473667>>
- CTV News (2015). "Justice Minister: 'Complete Review' needed to address higher number of aboriginal inmates," Retrieved November 2015. Retrieved from: http://www.ctvnews.ca/canada/justice-minister-complete-review-needed-to-address-high-number-of-aboriginal-inmates-1.2666689#_gus&_gucid=&_gup=Facebook&_gsc=ASfAvwK
- Culhane, D. (2003). "Their Spirits Live Within Us: Aboriginal Women in Downtown Eastside Vancouver Emerging into Visibility," *The American Indian Quarterly*, 27(3/4), 593-606.
- Curtis, B. (1992). "Introduction," *True Government by Choice Men? Inspection, Education, and State Formation in Canada West*, Toronto. University of Toronto Press, 3-15
- Curtis, B. (2002). "Foucault on Governmentality and Population: The impossible Discovery," *Canadian Journal of Sociology*, 27(4), 505-533.
- Danner, M. (2010). "To Heal Haiti, Look to History, Not Nature." *The New York Times. The Opinion Pages*. Retrieved on October 2015. From <http://www.nytimes.com/2010/01/22/opinion/22danner.html?_r=1>
- Davis, A. (2003). *Are Prisons Obsolete?* Seven Stories Press. New York. New York. 1-128.
- Dean, M. (2010). *Governmentality, Power, and Rule in Modern Society*. 2nd Edition. Sage Publishing. London, UK
- Dean, M. (2013). *The Signature of Power: Sovereignty, Governmentality and Biopolitics*. Sage Publishing. London, UK.

- DeGenova, N. and N. Peutz. (2010). *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement*, Durham. Duke University Press.
- Demos, T. J. (2009), "The Right to Opacity: On the Otolith Groups' Nervus Rerum," *MIT Press*, (129), 113-128.
- Department of Finance Canada. (2015). "Federal Support to Provinces and Territories," Retrieved from: <http://www.fin.gc.ca/fedprov/mtp-eng.asp>. Retrieved November 2015.
- Dobbins, J. (2010) "Reconstructing Haiti," Testimony presented before the Senate Foreign Relations Committee, January 28, 2010 by the RAND Corporation, 1-9.
- Doob, A. (2012). "Principled Sentencing, Politics, and Restraint in the Use of Imprisonment Canada's Break with its History." *Champ Penal/Penal Field*, IX. Retrieved January 2016 from: <http://champpenal.revues.org/8335>
- Dreyfus, H. and P. Rabinow. (1983). *Michel Foucault: Beyond Structuralism and Hermeneutics* (2nd ED), Chicago. University of Chicago Press.
- Dubois, L. (2012). *Haiti: The Aftershocks of History*. New York. Macmillan publishers.
- Duffield, M. (2001). "Governing the Borderlands: Decoding the Power of Aid." *Disasters* 25(4) 308-320.
- Durkheim, E. (1895/1982). *The Rules of Sociological Method*. (W.D. Halls, Trans.) New York. The Free Press.
- Egan, K. (2015). "Egan: Profs, Moms, Lawyers alarmed at jail conditions at Innes Road," *Ottawa Citizen*, Retrieved January 2016 from: <http://ottawacitizen.com/opinion/columnists/egan-profs-moms-lawyers-alarmed-at-jail-conditions-at-innes-road>
- Elfman, L. (2015). "Scholars Accept Challenge of Telling Haiti's Complex Story." *Diverse Issues in Higher Education*, Retrieved January 2016 from: <http://diverseeducation.com/article/69938/>
- Elias, N. (1987). "The Retreat of Sociologists into the Present," *Theory, Culture, and Society*, 4, 233-247.
- Elias, N. (1998). "The Social Constraint Towards Self-Constraint," in *Norbert Elias on Civilization, Power, and Knowledge*, S. Mennell and J. Goudsblom (EDs), Chicago. University of Chicago Press, 49-66.
- Engler, Y. and A Fenton. (2005). *Canada in Haiti: Waging War on the Poor Majority*, Nova Scotia. Fernwood Publishing.
- Engler, Y. (2009). *The Black Book of Canadian Foreign Policy*, Nova Scotia, Fernwood Publishing.
- Engler, Y. (2015). "Canada in Haiti: Is This How Friend's Act?" Retrieved on September 2015. From <http://yvesengler.com/2015/09/06/canada-in-haiti-is-this-how-friends-act/>
- Fairclough, N. (2003). *Analyzing Discourse- Textual Analysis for Social Research*, New York, New York. Routledge.
- Fanon, F. (1952/1986). *Black Skin, White Masks*, C. Lam Markmann (TRANS), United Kingdom, Pluto Press.
- Fanon, F. (1963). "Concerning Violence," in *The Wretched of the Earth*, New York, Grove Press, 35-95.

- Fanon, F. (1965). *A Dying Colonialism*, (H. Chevalier, Trans), New York, Grove Press.
- Farmer, P. (2011). *Haiti After The Earthquake*, A. Gardner and C. Van Der Hoof Holstein (EDs), New York. Public Affairs.
- Fassin, D. (2012). *Humanitarian Reason: A Moral History of the Present*,” R. Gomme (translator), Berkeley, California. University of California Press.
- Fauteaux, G. W. Common, J.A. Edmison, J. Mcculley. (1956). “Report of a Committee to Inquire into the Principles and Procedures Followed in the Remission of Service of Canada,” *Department of Justice of Canada, 1-183*.
- Feeley, M. and J. Simon. (1992). “The New Penology,” *Criminology*, 30(4), 449-470
- Feeney, K. (2015). “The Throne is King: The Impact of the Prison Toilet,” Retrieved from: <http://www.numberten.com/blog/30-design-inspiration/275-the-creative-capital-of-canada>. Retrieved on January 2016.
- Ferguson, J. (1994). *The Anti-Politics Machine: ‘Development,’ Depoliticization, and Bureaucratic Power in Lesotho*, Minneapolis, University of Minnesota Press.
- Ferguson, M- Auditor General’s Report. (2015). “Report of the Auditor General of Canada to the Legislative Assembly of Nunavut-2015 Corrections in Nunavut-Department of Justice,” *Office of the Auditor General Canada*, Retrieved from: http://www.oag-bvg.gc.ca/internet/docs/nun_201503_e_40255.pdf Retrieved August 2014, 1-50.
- Fieser, E. (2014). “Dominican Republic’s More Humane Prison Model,” *Reuters*. Retrieved on April 2016. Retrieved from: <http://www.reuters.com/article/us-dominican-prison-reform-idUSBREA4M0GW20140523>
- Finlay, L. (2003). *Reflexivity*, Oxford. Blackwell Publishing Company.
- Finoki, B. (2006). “Instant Democracy: The Pneumatic Parliament,” *Subtopia*. Retrieved May 2016. Retrieved from: <http://subtopia.blogspot.ca/2006/02/instant-democracy-pneumatic-parliament.html>
- Fish, J.N. (2006). *Domestic Democracy: At Home in South Africa*. New York. Routledge.
- Flyvbjerg, B. (2001). *Making Social Science Matter: Why Social Inquiry Fails and How It Can Succeed Again*. Sampson, S. (Trans). Cambridge University Press. New York. New York.
- Foreign Affairs, Trade, and Development Canada (2012). “START in Haiti,” last retrieved on September 2015. From <<http://www.international.gc.ca/start-gtsr/haiti.aspx?lang=eng>>
- Foreign Affairs, Trade, and Development Canada (2014). “About START,” last retrieved on September 2015. From < http://www.international.gc.ca/START-GTSR/about-a_propos.aspx?lang=eng>
- Foreign Affairs, Trade, and Development Canada (2015). “Haiti,” Retrieved on September 2015. From <<http://www.international.gc.ca/development-developement/countries-pays/haiti.aspx?lang=eng>>
- Foucault, M. (1976/2003), *Society Must Be Defended*, F. Ewald and A. Fontana (EDs), New York. Picador.

- Foucault, M. (1977/1995) *Discipline and Punish: The Birth of the Prison*, New York. Vintage Books.
- Foucault, M. (1978/2004), *Security, Territory, Population*, (G. Burchell, Trans) New York. Palgrave.
- Foucault, M. (1978-79/2008). *The Birth of Biopolitics*, (G. Burchell, Trans) New York. Palgrave.
- Foucault, M. (1980a). *Power/Knowledge: Selected Interviews and other Writings*, C. Gordon (ED), New York. Pantheon Books.
- Foucault, M. (1980b). *The History of Sexuality- Volume One An Introduction*, (R. Hurley, Trans), New York. Vintage Books.
- Foucault, M. (1983). "Vous Etes Dangereux." *Liberation*, (IV)639, 20.
- Foucault, M. (1991). "Questions of Method," *The Foucault Effect*, G. Burchell, C. Gordon and P. Miller (EDs), Chicago. Chicago Press, 73-86.
- Foucault, M. (1998). "Nietzche, Genealogy, History," *Essential Works of Michel Foucault 1954-1984*. J. Faubion (ED), 369-391.
- Foucault, M. (and N. Chomsky) (2006). *The Chomsky Foucault Debate on Human Nature*, New York. The New Press.
- Foucault, M. (2007a), "Chapter I: Some Questions from Michel Foucault to Hérodote," *Space, Knowledge, and Power: Foucault and Geography*, J. Crampton and S. Elden (EDs), (S. Elden, Trans.) Hampshire. Ashgate, 19-23.
- Foucault, M. (2007b). "Chapter XVI: The Meshes of Power," *Space, Knowledge, and Power: Foucault and Geography*, J. Crampton and S. Elden (EDs), (G. Moore, Trans.) Hampshire. Ashgate, 153-163.
- Fournier, S. (2012). "Getting it Right: Assessing and Building Resilience in Canada's North," *Centre for the North-The Conference Board of Canada*, May, 1-66.
- Frontline World (2011). "Haiti's History," Retrieved on September 2015. From <http://www.pbs.org/frontlineworld/rough/2007/12/haiti_belos_sonlinks.html>
- Fukuyama, F. (2004). "The Imperative of State-Building," *Journal of Democracy*, 15(2), 17-31.
- Fuller, A, P. Texier, M. Brosseau, D. Lemaire, and P. Pierre-Louis. (2002). "Prolonged Pretrial Detention in Haiti," *Vera Institute of Justice*, Retrieved July 2011. From <http://vera.org/sites/default/files/resources/downloads/Pretrial_detention_in_Haiti.pdf>
- Gallager, C. (2000). "White like Me? Methods, Meaning and Manipulation in the Field of White Studies," *Racing Research Researching Race- Methodological Dilemmas in Critical Race Studies*, New York. New York University Press, 67-93.
- Garland, D. (1991). "Sociological Perspectives on Punishment." in Tonry, M. (ED). *Crime and Justice: A review of Research*, (14), 115-165.
- Garland, D. (1996). "The Limits of the Sovereign State, Strategies of Crime Control in

- Contemporary Society,” *British Journal of Criminology*. 36(4), 445-471.
- Garland, D. (1997). “Governmentality and the Problem of Crime: Foucault, Criminology and Sociology,” *Theoretical Criminology*, 1(2), 113-214.
- Garland, D. (2000). “The Culture of High Crime Societies: Some Preconditions of Recent ‘Law and Order’ Policies,” *British Journal of Criminology*, 40, 347-375.
- Garland, D. (2006). “Concepts of Culture in the Sociology of Punishment,” *Theoretical Criminology*, 10(4), 419-447.
- Ghani, A. and C., Lockhart. (2008). *Fixing Failed States: A Framework For Rebuilding a Fractured World*. Oxford University Press.
- Gladue and Aboriginal Sentencing (2015). “Gladue and Aboriginal Sentencing,” *Justice Education Society*, Retrieved November 2015. Retrieved from: <http://www.justiceeducation.ca/research/aboriginal-sentencing/gladue-sentencing>
- Goffman, E. (1961). “On the Characteristics of total institutions,” in *Asylums: Essays on the social situation of mental patients and other inmates*, Garden City, New York. Anchor Books, 3-60.
- Gordon, C. (1991). “Governmental Rationality: An Introduction,” *The Foucault Effect: Studies in Governmentality*, G. Burchell, C. Gordon and P. Miller (EDs), Chicago. Chicago Press, 1-53.
- Government of Canada. (2012). “Tribal Council Funding,” *Indigenous and Northern Affairs Canada*, Retrieved from: <https://www.aadnc-aandc.gc.ca/eng/1100100013812/1100100013813>. Retrieved November 2015.
- Government of Canada. (2013). “Canadian Arctic Expedition: 1913-1918,” *Canada’s Northern Strategy* Retrieved from: <http://www.northernstrategy.gc.ca/sov/cae-eng.asp>. Last Retrieved November 2015.
- Government of Canada. (2015a). “Government of Canada in Haiti: Canada-Haiti Relations,” Retrieved on September 2015. From <http://www.canadainternational.gc.ca/haiti_bilateral_relations_bilaterales_canada_haiti.aspx?lang=eng>
- Government of Canada. (2015b). “Indian Band Council Procedure Regulations-C.R.C., c. 950,” *Justice Laws Website*, Retrieved from: http://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,_c._950/FullText.html. Retrieved: November 2015.
- Government of the Republic of Haiti. (2010). “Action Plan for National Recovery and Development of Haiti: Immediate Key Initiatives for the Future,” retrieved July 2011. From <<http://www.ilo.org/gimi/gess/RessourcePDF.do?ressource.ressourceId=18481>>
- Gros, J.G.(1996). “Towards a Taxonomy of Failed States in the New World Order: Decaying Somalia, Liberia Rwanda and Haiti,” *Third World Quarterly*, 17(3), 455-471.
- Hacking, I. (1991). “How Should We Do The History of Statistics?” In *The Foucault Effect*, G. Burchell, P. Miller (EDs). Chicago. University of Chicago Press, 181-197.

- Haiti Libre. (2012). "Haiti- Justice: Inauguration of the new prison of Croix des Bouquets ,," *Haiti Libre*, last retrieved August 2013. From <<http://www.haitilibre.com/en/news-7025-haiti-justice-inauguration-of-the-new-prison-of-croix-des-bouquets-speech-of-pm.html>>
- Hammond, S. (2010). "Canada and Haiti: A Brief History," *Canada Haiti Action Network*, Retrieved on September 2015. From <<http://canadahaitiaction.ca/canada-haiti-history>>
- Hanafi, S.(ED) (2014). *UNRWA and Palestinian Refugees: From Relief and Works to Human Development*. New York. New York. Routledge
- Harraway, D. (1988). "Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective," *Feminist Studies*, 14(3), 575-599.
- Harring, S. (1989). "The Rich Men of the Country: Canadian Law in the Land of the Copper Inuit, 1914-1930," *Ottawa Law Review*, 21(1), 1-65.
- Harris, A. C. Cousineau, C. Page, P. Sonnichsen, S Varette. (2009). "Feasibility of an Inuit Specific Violence Risk Assessment Instrument," *Correctional Service of Canada Research Branch*, Retrieved November 2015 Retrieved from: [http:// www.csc-scc.gc.ca/research/r206-eng.shtml](http://www.csc-scc.gc.ca/research/r206-eng.shtml)
- Hechter, M. (2013). *Alien Rule*, New York. Cambridge Press: University of Cambridge Press.
- Hechter, M. (1975). *Internal Colonialism: The Celtic Fringe in British National Development, 1536-1966*, Berkeley. University of California Press.
- Heron, B. (2007). *Desire for Development: Whiteness, Gender, and The Helping Imperative*, Waterloo. Wilfrid Laurier University Press.
- Hill-Collins, P. (2004). *Black Sexual Politics: African Americans, Gender, and the New Racism*, New York, Routledge.
- Hilhorst, D. and B. Jansen. (2010). "Humanitarian Space as Arena: A Perspective on the Everyday Politics of Aid," *Development and Change*. 41(6), 1117-1139.
- Hindess, B. (1996). "Discipline and Cherish: Foucault on Power, Domination and Government," *Discourses of Power From Hobbes to Foucault*, New Jersey, Wiley-Blackwell, 96-137.
- Hindess, B. (2005). "Investigating International Anti-Corruption," *Third World Quarterly*, 26(8), 1389-1398.
- Holstein, J. and J. Gubrium, (1995). *The Active Interview*, Thousand Oaks, California. Sage Publications.
- Hunt, A. (1999). *Governing Morals: A Social History of Moral Regulation*. Cambridge University Press. New York. New York.
- Huss, K. (2010). "Haiti Awash in Christian Aid, Evangelism," *NBC News*. Retrieved May 2016. Retrieved from: www.nbcnews.com/id/35262608/ns/world_news_haiti/t/haiti-awash-christian-aid-evangelism/#.VyDwl.
- Huxley, M. (2007). "Chapter XX: Geographies of Governmentality," *Space, Knowledge, and Power: Foucault and Geography*, J. Crampton and S. Elden (EDs), Hampshire. Ashgate, 185-204.
- Ikeda, D. (2009). "Toward Humanitarian Competition: A New Current in History," *Peace Proposal*, 1-21. Retrieved from: <http://ftp.sgi-usa.org/newsandevents/docs/peace2009.pdf>

- International Centre for Prison Studies (2015). "Haiti," Last retrieved September 2015. From <http://www.prisonstudies.org/country/haiti>
- International Committee of the Red Cross (ICRC) (2005). "Water, Sanitation, Hygiene, and Habitat in Prisons," *International Committee of the Red Cross*. Geneva, Switzerland, 1-147.
- International Crisis Group. (2007). "Haiti: Prison Reform and Rule of Law," *Latin America/Caribbean Briefing*, 15, 1-12.
- International Crisis Group. (2010). "Haiti: Stabilization and Reconstruction After the Quake," *Latin American/Caribbean Report*, 32, 1-28.
- Interviewing Inuit Elders (1999). *Interviewing Inuit Elders-Volume One- Introduction*. J. Oosten and F. Laugrand (EDs). Nunavut. Nunavut Arctic College.
- Inuit Tapiriit Kanatami (2004). "5000 years of Inuit History and Heritage." *National Inuit Organization in Canada*. Last retrieved April 2015. From: <http://www.itk.ca/publication>. 1-17.
- Inuit Tuttarvingat. (2015). "Suicide Prevention," Retrieved November 2015. Retrieved from: <http://www.naho.ca/inuit/mental-wellness/suicide-prevention/>
- Iltis, S. and A. Lacey (2011). *Governing The Poor- Exercises of Poverty Reduction, Practices of Global Aid*. McGill-Queen's University Press. Kingston, ON.
- Iltis, S. and L. Phillips. (2008). "Governing through Global Networks: Knowledge, Mobilities and Participatory Development," *Current Sociology*, 56(5), 711-734.
- Jefferson, A. (2007a). "The political economy of Rights and Exporting Penal Norms to Africa." *Centre for Crime and Justice Studies*, (70), 33-34.
- Jefferson, A. (2007b). "Prison Officer Training and Practice in Nigeria," *Punishment and Society*, 9(3), 253-269.
- John Howard Society of Canada (2015). "About," Last Retrieved July 2015. From <http://www.johnhoward.ca/about/>
- Johnston, A. (2003). *Missionary Writings and Empire 1800-1860*. Cambridge University Press. New York. New York.
- Joseph, J. (2011). "Chapter Three: Governmentality of what? Populations, States, and International Organizations," *Foucault and International Relations-New Critical Engagements*. N. Kiersey, and D. Stokes (EDs). Routledge. New York. New York. 51-65.
- Justice Laws Website. (2016). "Youth Criminal Justice Act," *Government of Canada*. Retrieved May 2016. Retrieved from: <http://laws-lois.justice.gc.ca/eng/acts/Y-1.5/page-2.html#h-3>
- Kerr, L. and A. Doob (2015). "Lisa Kerr and Anthony Doob: How the Conservatives Have Changed Crime Policy." *Ottawa Citizen*. Last Retrieved January 2016 from: <http://ottawacitizen.com/news/politics/lisa-kerr-and-anthony-n-doob-how-the-conservatives-have-changed-crime-policy>

- Kendall, G. and G. Wickham (1994). *Using Foucault's Method's*, Thousand Oaks. Sage Publications.
- Klitgaard, R. (2010) "Addressing Corruption in Haiti," *Clairmont Graduate University*, Retrieved on September 2015. From <http://www.cgu.edu/PDFFiles/Presidents%20Office/Addressing%20Systemic%20Corruption%20in%20Haiti%20_3_.pdf>
- Klarreich, K. and L. Polman. (2012). "The NGO Republic of Haiti: How the international relief effort after the 2010 earthquake excluded Haitian from their own recovery," *The Nation*. Retrieved on September 2015. From <<http://www.thenation.com/article/ngo-republic-haiti/>>
- Landau, T. (2006). "Plus Ca Change? Correcting Inuit Inmates in Nunavut Canada." *The Howard Journal* (45)(2): 191-207.
- Larner, W. and W. Walters (2004). "Introduction: Global Governmentality," *Global Governmentality: Governing International Spaces*, W.Walters and W. Larner (EDs) New York. Routledge.
- Larsen, N. (2005). "Imperialism, Colonialism, and Postcolonialism," in H. Schwartz and R. Saengeeta (EDs), *A Companion to Postcolonial Studies*, Oxford, UK, Blackwell Publishing. XV-584.
- Latour, B. and P. Weibel, (2005). *Making Things Public: Atmospheres of Democracy*. ZKM/ Centre for Art and Media in Karlsruhe, Germany. 1072.
- Latour, B. (2005). "From Realpolitik to Dingpolitik or How to Make Things Public," in Latour, B. and P. Weibel, *Making Things Public: Atmospheres of Democracy*. ZKM/ Centre for Art and Media in Karlsruhe, Germany. 1072.
- Law Commission of Canada. (2006). "Justice Within: Aboriginal Legal Tradition," *Law Commission of Canada*, 1-37
- Legg, S. (2007). "Chapter XXIV: Beyond the European Province: Foucault and Post Colonialism," *Space, Knowledge, and Power: Foucault and Geography*, J. Crampton and S. Elden (EDs), Hampshire. Ashgate, 265-290.
- Leibling, A. (2011). "Moral Performance, Inhumane and Degrading Treatment and Prison Pain," *Punishment and Society*. 13(5). 530-550.
- Lemke, Thomas (2007). "An Indigestible Meal? Foucault, Governmentality and State Theory," *Distinktion*, 8(2), 43-64.
- Lippman, W. (1925/2011). *The Phantom Public*. London, UK. Transaction Publishers.
- Longworth, R. (2015). "Phantom Forces, Diminished Dreams," *Bulletin of the Atomic Scientists*. 51(2): 24-28.
- Loomba, A., K. Suvir., M. Bunzl., A. Burton., and J. Esty (2005). "Beyond What? An Introduction," in Loomba, A., K. Suvir., M. Bunzl., A. Burton., and J. Esty (EDs) *Postcolonial Studies and Beyond*. Durham, North Carolina. Duke University Press.

- Loukacheva, N. (2012). "Indigenous Inuit Law, 'Western' Law and Northern Issues," *Arctic Review on Law and Politics*, 3(2), 200-218.
- Lynch, M. (1998). "Waste Managers? The New Penology, Crime Fighting, and Parole Agent Identity," *Law and Society Review*, 32(4), 839-870.
- Macnamara, D. (2005). "Haiti- An Opportunity for Canada to Apply the "3-D" Concept." *Policy Options*, 63-68.
- Majone, G. (2014). "From regulatory state to a democratic default," *Journal of Common Market Studies*. 52(6), 1216-1223.
- Marat, J-P. (1790). *Plan de Législation Criminelle*. Paris: Rochette.
- Maurutto, P. and K. Hannah-Moffat. (2006). "Assembling Risk and the Restructuring of Penal Control," *British Journal of Criminal Justice*, 46, 438-454.
- Mauther, N. and Doucet, A. (2003). "Reflexive Accounts and Accounts of Reflexivity in Qualitative Data Analysis," *Sociology*, 37(3), 413-431.
- Mental Health First Aid Canada (2016). "Home." Retrieved January 2016 from: <http://www.mentalhealthfirstaid.ca/EN/Pages/default.aspx>
- McKendy, L. (2016). "Laura McKendy: Re-evaluate who spends time in prison." *Ottawa Citizen*, Retrieved January 2016 from: <http://ottawacitizen.com/opinion/columnists/laura-mckendy-re-evaluate-who-spends-time-in-prison>
- McEvoy, K. (2007). "Beyond Legalism: Towards a Thicker Understanding of Transitional Justice," *Journal of Law and Society*, 34(4), 411-440.
- Melossi, D. (2001). "The Cultural Embeddedness of Social Control: Reflections on the Comparison of Italian and North-American Cultures Concerning Punishment," *Theoretical Criminology*, 5(4), 403-424.
- MICIVIH. (1996). "Summary of MICIVIH's Report on Judicial System: Pre-trial in the European Union- An Analysis of Minimum Standards in Pre-trial Detention and the Grounds for Regular Review in the Member States of the EU," A.M. Van Kalmthout, M.M. Knapen, and C. Morgenstern (Eds). Wolf Legal Publishers, 687-716.
- Mifflin, M. (2009). "The Prince and the Pauper- Nunavut Tunngavik Incorporated and the Government of Nunavut," *Opinion Politiques*, July-August, 92-96.
- Miller, P. (2013). "The Case For Nation-Building: Why and How to Fix Failed States." NDU Press (3)(1). Retrieved on: September 2014. Retrieved from: www.ndu.edu/press/hot-to-fix-failed-states.html
- Miller, P. and N. Rose (2008). *Governing the Present: Administering Economic, Social, and Political life*. Cambridge. Polity Press.
- Milward, D. (2012). *Aboriginal Justice and The Charter: Realising A Culturally Sensitive Interpretation of Legal Rights*. Vancouver. University of British Columbia Press. 1-288.
- Ministry of Community Safety and Correctional Services. (2015). "Maureen Harvey: Correctional Services to Global Services," Retrieved September 2015. From http://www.mcscs.jus.gov.on.ca/english/TheMCSCSCCommunity/MCSCS_community.html
- MINUSTAH. (2010). "Haiti: Six Months After," last retrieved on September 2015. From http://www.un.org/en/peacekeeping/missions/minustah/documents/6_months_after_commemoration.pdf

- MINUSTAH. (2015). "Background," last retrieved on September 2015. From <<http://www.un.org/en/peacekeeping/missions/minustah/background.shtml>>
- Mitchell, T. (2002). *Rules of Experts: Egypt, Techno-Politics, Modernity*. Berkeley, California. University of California Press.
- Mitchell, T. (2005). "The work of economics: how a discipline makes its world." *European Journal of Sociology*. 46(2), 297-320.
- Mobekk, E. (2006). "MINUSTAH and the Need for a Context-Specific Strategy: The Case of Haiti," in *Security Sector Reform and UN Integrated Missions: Experience from Burundi, the Democratic Republic of Congo, Haiti, and Kosovo*, H. Hanggi, and V. Scherrer (EDs), Geneva Switzerland, 113-168.
- Morrison, W.R. (2006). "Arctic Sovereignty," Retrieved from: <http://www.canadianencyclopedia.ca/en/article/arctic-sovereignty/>. Last retrieved November 2015.
- Napoleon, V. (2007). "Thinking about Indigenous Legal Orders." *National Centre for First Nations Governance*. 1-25.
- Nascimento, D. (2015). "One Step Forwards Two Steps Back? Humanitarian Challenges and Dilemmas in Crisis Settings," *The Journal of Humanitarian Assistance*. Retrieved from: <https://sites.tufts.edu/jha/archives/2126> Retrieved on: May 2016.
- Native Inmate Liaison Officer (NILO) *Interview* September 2014
- Nunavut Corrections Planning Committee. (1999). "Planning for Nunavut Corrections," *Report for the Minister of Justice- Jack Anawak*, 1-45.
- Nunavut Bureau of Statistics (2015). "Nunavut quick facts," Retrieved from: <http://www.gov.nu.ca/eia/information/statistics-home>. Retrieved November 2015.
- Nunavut Tourism. (2015). "People of Nunavut." Retrieved from: <http://nunavuttourism.com/about-nunavut/people-of-nunavut>. Retrieved on: May 2016.
- O'Connor, D. (2002). *Mediated Associations: Cinematic Dimensions of Social Theory*. Montreal. McGill-Queens University Press.
- O'Connor, D., K. Brisson-Boivin, S. Ilcan. (2014). "Governing Failure: Development, Aid, and Audit in Haiti," *Conflict, Security, and Development*, 14(3), 1-22.
- Office of the Correctional Investigator of Canada. (OCI) *Interview 1*, June 2015
- Office of the Correctional Investigator of Canada. (OCI) *Interview 2*, June 2015
- Office of the Correctional Investigator of Canada- OCI. (2013). "Report on the Baffin Correctional Centre and the Legal and Policy Framework of Nunavut Corrections," *Commissioned by Nunavut Corrections*, April, 1-34.
- Office of the Correctional Investigator of Canada. (2013-2014). "Annual Report of the Office of the Correctional Investigator, 2013-2014," *Government of Canada*. Last retrieved September 2015. From <<http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20132014-eng.aspx>>
- Office of the Correctional Investigator(OCI)-'Aboriginal Offenders' (2013). "Aboriginal Offenders A Critical Situation," Retrieved October 2015. Retrieved from: <http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20121022info-eng.aspx>
- O'Malley, P. (1996). "Indigenous Governance," *Economy and Society*, 25(3), 310=326.
- O'Malley, P. (1999). "Volatile and Contradictory Punishment," *Theoretical Criminology*, 3(2),175-196.

- Ontario Ministry of Public Safety (2015). "Maureen Harvey: Correctional Service to Global Service." *Ministry of Community Safety and Correctional Services*. Last Retrieved January 2016 from: http://www.mcscs.jus.gov.on.ca/english/TheMCSCSCommunity/MCSCS_community.html
- OPC-Office de la Protection Citoyen Haiti/Office of Citizen Protection (2014) *Interview*. June
- OPC- Office de la Protection Citoyen Haiti/Office of Citizen Protection (2015). "Mission Mission de l'OPC" last retrieved September 2015. From: http://www.protectioncitoyenhaiti.org/index.php?option=com_content&view=article&id=52&Itemid=63
- Osborne, T. (2003). "What is a problem?" *History of the Human Sciences*, 16(4), 1-17.
- Ottawa Police Officer *Interview* (2014) November.
- Ouimet, R., G.A. Martin, J.R. Lemieux, D. McArton. (1969). "Report of the Canadian Committee on Corrections," Ottawa. Queen's Printer, 1-517.
- Quijano, A. (2007). "Coloniality and Modernity/Rationality," *Cultural Studies*, 21(2/3), 168-178.
- Parliament of Canada. (2015). "Party Standings," Retrieved November 2015, Retrieved from: <http://www.parl.gc.ca/parliamentarians/en/partystandings>.
- Pauktuutit Inuit Women of Canada (2006). "The Inuit Way- A Guide to Inuit Culture," *Canadian Heritage*, Retrieved from:http://www.uqar.ca/files/boreas/inuitway_e.pdf, retrieved August 2014, 1-50
- Pelley, L. (2015). "Indigenous Children Removed from Homes in the 1960s Begin to Heal," *The Toronto Star*, Retrieved November 2015, Retrieved from: <http://www.thestar.com/news/canada/2015/11/02/indigenous-children-removed-from-homes-in-the-1960s-just-now-beginning-to-heal.html>
- Piché, J. (2011). "Going Public: Accessing Data, Contesting Information Blockades." *Canadian Journal of Law and Society*, (26) 3, 635-643.
- Piché, J. (2012). *The prison idea (un)interrupted: Penal Infrastructure Expansion, Research and Action in Canada*. Doctoral Dissertation. Carleton University, Ottawa.
- Piché, J. and K.Major, (2015). "Prisoner Writing in/on Solitary Confinement: Contributions from the Journal of Prisoners on Prisons, 1988-2013." *Canadian Journal of Human Rights*, (4)1, 1-31.
- Piché, J., B. Gaucher and K. Walby, (2014) "Facilitating Prisoner Ethnography: An Alternative Approach to "Doing Prison Research Differently", *Qualitative Inquiry*, (20) 4, 392-403.
- Power, M. (1994) *The Audit Explosion*. Demos. London, UK.
- Power, M. (2004). "Counting, Control and Calculation Reflections on Measuring and Managing," *Human Relations*, 57(6), 765-783.
- Prison Reform International (PRI) (2001). "Making Standards Work: An International Handbook on Good Prison Practice," 2nd Ed. United Kingdom. Astron Printers LTD.
- Public Safety Canada. (2014a). "Federal and Provincial Responsibilities," Last Retrieved on September 2015. From <http://www.publicsafety.gc.ca/cnt/cntrng-crm/crrctns/fdrl-prvnc-l-rspnsblts-eng.aspx>
- Public Safety Canada (2014b). "The Proportion of Aboriginal Offenders Incarcerated is higher than for Non-Aboriginal Offenders," *2014 Corrections and Conditional Release Statistical*

- Overview*. Retrieved October 2015. Retrieved from: <http://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ccrso-2014/index-en.aspx#c11>
- Public Safety Canada (2015). "Corrections and Conditional Release Statistical Overview." Ottawa. Retrieved May 2016. Retrieved from: <https://s3.amazonaws.com/s3.documentcloud.org/documents/2110762/ps-sp-1483284-v1-corrections-and-conditional.pdf>
- Putnam, H. (1981). *Reason, Truth, History*. Cambridge. Cambridge University Press.
- Ramachandran, V. (2012). "Is Haiti Doomed to be the Republic of NGOs?" *The World Post-Huffington Post and Bergguruen Institute*, Retrieved on September 2015. From <http://www.huffingtonpost.com/vijaya-ramachandran/haiti-relief-ngos_b_1194923.html>
- Razack, S. (1998). *Looking White People in the Eye: Gender, Race, and Culture in Courtrooms and Classrooms*. Toronto. University of Toronto Press.
- Report on Human Rights Practice. (2012). "Haiti 2012 Human Rights Report," *United States Bureau of Democracy, Human Rights, Labour*, 1-40. Last Retrieved September 2015. From <<http://www.state.gov/documents/organization/204668.pdf>>
- Report on Judicial Systems of the Americas (2006-2007). "Haiti-Institutions/Criminal Procedure," Retrieved September 2015. From <<http://issat.dcaf.ch/content/download/2064/17761/file/Report%20on%20Judicial%20Systems%20in%20the%20Americas%202006-2007.%20Background%20info%20on%20Haiti%20judicial%20system.pdf>>
- Rod, M. (2000). "Developing Prison Standards Compared," *Punishment and Society*. 2(3). 325-342.
- Rodgers, M. (2013). "Haiti's 'Republic of NGOs' must be held accountable," *The Globe and Mail*, Retrieved on September 2015. From <<http://www.theglobeandmail.com/globe-debate/haitis-republic-of-ngos-must-be-held-accountable/article7209383/>>
- Rome Statute. (2002). "Rome Statute of the International Criminal Court," *International Criminal Court*, 1-88.
- Rose, N. (1996). "The Death of the Social? Re-figuring The Territory of Government," *Economy and Society*, 25(3), 327-356.
- Rose, N. and P. Miller (2008). *Governing the Present*, Cambridge. Polity Press.
- Rousseau, J. (1762/2004). *The Social Contract*, Toronto. Penguin Books.
- Saada, S., R. Epstein, L. Rosenthal, and Y. Vafa. (2015). "The Sexual Abuse to Prison Pipeline: The Girl's Story." *The Human Rights Project for Girls*. Retrieved from: http://rights4girls.org/wp-content/uploads/r4g/2015/02/2015_COP_sexual-abuse_layout_web-1.pdf Retrieved on: January 2016.
- Sarat, A.(1999). *The Killing State:Capital Punishment in Law, Politics and Culture*. New York. Oxford University Press.
- Sarat, A and C. Boulanger (Eds) (2005). *The Cultural Lives of Capital Punishment*. Palo Alto, California. Stanford University Press.

- Satterthwaite, M.L. (2011). "Indicators in Crisis Rights-Based Humanitarian Indicators in Post-Earthquake Haiti," *NELLCO Legal Scholarship Repository*, 272, 1-91.
- Schuller, M. (2007a). "Seeing Like a 'Failed' NGO: Globalization's Impacts on State and Civil Society in Haiti," *Political and Legal Anthropology Review*, 30(1), 67-89.
- Schuller, M. (2007b). "Invasion or Infusion? Understanding the Role of NGOs in Contemporary Haiti," *The Journal of Haitian Studies*, 13(2), 96-119.
- Schuller, M. (2007c). "Gluing Globalization: NGOs as Intermediaries in Haiti," *Political and Legal Anthropology Review*, 32(1), 84-104.
- Schuller, M. (2012). *Killing with Kindness: Haiti, International Aid, and NGOs*. New Jersey. Rutgers University Press.
- Selby, J. (2007). "Engaging Foucault: Discourse, Liberal Governance, and the Limits of Foucauldian IR," *International Relations*. 21(3): 324-345.
- Sexton, L. (2015). "Penal Subjectivities: Developing a Theoretical Framework for Penal Consciousness," *Punishment and Society*, 17(1), 114-136.
- Seymour, A and C. Cobb (2015). "Overcrowded, understaffed detention centre failing inmates and guards, says new report." *Ottawa Citizen*. Retrieved on January 2016 from: <http://ottawacitizen.com/news/local-news/overcrowded-understaffed-detention-centre-failing-inmates-and-guards-says-new-report>
- Seymour, A. (2015). "Yasir Naqvi, Ontario's corrections minister, says we need to go from a "warehouse" prison model to look at "individual needs." *Ottawa Citizen*, Retrieved January 2016 from: <http://ottawacitizen.com/storyline/yasir-naqvi-ontarios-corrections-minister-says-we-need-to-go-from-a-warehouse-prison-model-to-look-at-individual-needs>
- Shore, C. (2008). "Audit Culture and Illiberal Governance-Universities and the Politics of Accountability," *Anthropological Theory*, 8(3), 278-298.
- Sherman, L. and H. Strang (2007). "Restorative Justice: The Evidence." *The Smith Institute*. Retrieved January 2016 from: http://www.iirp.edu/pdf/RJ_full_report.pdf
- Simon, J. (1995). "They died with their boots on: The boot camp and the limits of modern penality," *Social Justice/Global Options*. 2(60), 25-48.
- Sinclair, R. (2015). "The 60s Scoop," *Origins Canada*, Retrieved October 2015. Retrieved from: <http://www.originscanada.org/aboriginal-resources/the-stolengeneration/>
- Solitary Watch. (2015). "Prison watchdog says solitary confinement in Canada is 'out of control'", *Solitary Watch*. August,12. Retrieved September 2015. From <http://solitarywatch.com/2015/08/12/outgoing-prison-watchdog-says-solitary-confinement-in-canada-is-out-of-control/>
- Soyini, M. (2012). *Critical Ethnography: Methods, Ethics and Performance* (2nd ED), London. SAGE publications.
- Stabilization and Reconstruction Task Force (START) (2012). "Canada's Role". Retrieved August 2012. Retrieved from: www.international.gc.ca/START-GTSR/index.aspx?lang=eng
- Stabilization and Reconstruction Task Force (START) (2014). *Interview*, February.
- Standard Minimum Rules for the Treatment of Prisoners (SMRs) (1957). *United Nations*

- Congress on the Prevention of Crime and the Treatment of Offenders, 1st Congress, Geneva, 1-14.*
- Stastna, K. (2013). "What's behind Canada's improving crime stats?" *CBC News Canada*, Retrieved on September 2015. From <<http://www.cbc.ca/news/canada/what-s-behind-canada-s-improving-crime-stats-1.1315377>>
- Statistics Canada. (2015a). "Adult Correctional Statistics in Canada, 2013-2014," *Government of Canada*. Last Retrieved September 2015. From <<http://www.statcan.gc.ca/pub/85-002-x/2015001/article/14163-eng.htm>>
- Statistics Canada. (2015c). "median total income," Retrieved November 2015 Retrieved from: <http://www.statcan.gc.ca/tables-tableaux/sum-som/101/cst01/famil108a-eng.htm>
- Stoler, A.L. (2006). "Chapter I Intimidations of Empire: Predicaments of the Tactile and Unseen," *Haunted by Empire: Geographies of Intimacy in North American History*, A.L. Stoler (ED), North Carolina. Duke University Press.
- Stone, C. (2010). "A New Era for Justice Sector Reform in Haiti," *Harvard Kennedy School Faculty Research Paper Series*, retrieved July 2011. From <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1676292>
- Storey, K. (2016). *Settler Anxiety at the Outposts of Empire—Colonial Relations, Humanitarian Discourse, and the Imperial Press*. UBC Press. Vancouver, B.C.
- Study Team Report. (1986). "The Justice System," Ottawa. Canadian Government Publishing Centre, 1-459.
- Supreme Court of Canada Judgement (2015). "R. vs Gladue 1999," Retrieved November 2015. Retrieved from: <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1695/index.do>
- Taylor, G. (2015). "Forum on Corrections Research," *Correctional Service of Canada*, Retrieved November 2015. Retrieved from: <http://www.csc-scc.gc.ca/research/forum/e131/e131e-eng.shtml>
- Thobani, S. (2007). *Exalted Subjects: Studies in the Making of Race and Nation in Canada*, Toronto. University of Toronto Press.
- Trouillot, E. (2012). "Reconstructing Exclusion" in M. Schuller and P. Morales (EDs) *Tectonic Shifts: Haiti since the Earthquake*. Virginia. Kumarian Press.
- Tubex, H. and D. Green. (2015). "Special Issue: Punishment, Values, and Local Cultures." *Punishment and Society*, 17(3), 267-270.
- Ungar, M. (2003). "Prisons and Pretrial Detention in Contemporary Latin American," *Human Rights Quarterly*, 25(4), 909-934.
- UN Cluster Interview (2014) June.
- United Nations Commission on Crime Preventions and Criminal Justice. (2014). "Open-ended Intergovernmental Expert Group on the SMRs of Prisoners Brazil," 1-49.
- UN Department of Peacekeeping Operations. (2014). "Justice and Corrections Update: Sustainable Peace Through Justice and Security," *Department of Peacekeeping Operations*, New York, 1-60.
- United Nations Development Programme. (2010). "Rule of Law, Justice, and Security for

- the Crisis and Recovery Phases in Haiti, Empowering Haiti to Build a Better Future,” *UNDP*, New York, 1-8.
- UN General Assembly. (1996). “The Situation of Democracy and Human Rights in Haiti-Report of the Secretary General,” UN General Assembly-51st Session-agenda Item 37: 4-52.
- UNMIH-The United Nations Mission in Haiti (2003). “Background,” *Department of Public Information, United Nations*, Retrieved on September 2015. From <http://www.un.org/Depts/DPKO/Missions/unmih_b.htm>
- United Nations News Centre. (2015). “UN launches ‘Nelson Mandela Rules’ on Improving the Treatment of Prisoners,” Retrieved on July 2016. Retrieved from: www.un.org/apps/news/story.asp?NewsID=52190#V3uqT46Uf2F
- United Nations Office on Drugs and Crime (UNDOC) Expert Group (2011). “Report on the meeting of the expert group on the SMRs Santo Domingo 3-5 August,” 1-13
- United Nations Office on Drugs and Crime (UNDOC) Expert Group (2012 a). “Report on the meeting of the expert group on the SMRs Buenos Aires 11-13 December,” 1-12
- United Nations Office on Drugs and Crime (UNDOC) Expert Group (2012 b). “Report on the meeting of the expert group on the SMRs Vienna 31 January 2 February,” 1-9
- UN Peace Officer *Interview* (2014) August.
- United Nations Office on Drugs and Crime (UNDOC) ‘Nelson Mandela Rules’ (2016). “The UN Standard Minimum Rules-Nelson Mandela Rules- An Updated Blueprint for Prison Management in the 21st Century.” Retrieved on July 2016. Retrieved from: <https://undoc.org/documents/justice-and-prison-reform/brochure-on-the-UN-SMRs.pdf>
- United Nations Rule of Law Indicators (2011). “Implementation Guide and Project Tools.” *Department of Peacekeeping Operations and Office of the High Commissioner for Human Rights*, 1-137.
- United Nations Security Council (2004) “The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies,” pp. 1-24.
- United Nations Security Council. (2010a) “Resolution 1927-6330th Meeting,” pp.1-3.
- United Nations Security Council (2010b) “Resolution 1944-6399th Meeting,” pp.1-4.
- United Nations (UN) TV (2009). “Haiti: Prison Education,” 1-4.
- Valverde, M. (2008). *The Age of Light, Soap, and Water: Moral Reform in English Canada 1885-1925*, Toronto. University of Toronto Press.
- Valverde, M. (2012). “Analyzing Punishment: Scope and Scale.” *Theoretical Criminology*, 16 (2), 245-253.
- Valverde, M. (2015). *Chronotopes of Law: Jurisdiction, Scale, and Governance*. New York. Routledge.
- Vannier, C. (2010). “Audit Culture and Grassroots Participation in Rural Haitian Development.” *POLAR- Political and Legal Anthropology Review*. 33(2), 282-305.

- Van Zyl Smit, D., S. Snacken, and D. Hayes. (2015). "One Cannot Legislate Kindness: Ambiguities in European Legal Instruments on Non-Custodial Sanctions," *Punishment and Society*, 17(1), 3-26.
- Wacquant, L. (2008). "Ordering Insecurity: Social Polarization and the Punitive Upsurge," *Radical Philosophical Review*, 11(1), 9-27.
- Wacquant, L. (2011). "From Public Criminology to the Reflexive Sociology of Criminological Production and Consumption." *British Journal of Criminology*, 51, 438-448.
- Wakefield, S. and C. Uggen (2010). "Incarceration and Stratification." *Annual Review of Sociology*, 36, 387-406.
- Walby, K and J. Piché. (2009). "Dialogue of the Status of Prison Ethnography and Carceral Tours: An Introduction," *Journal of Prisoners on Prisons*, 18, 88-90.
- Walby, K and J. Piché. (2010). "Problematizing Prison Tours," *British Journal of Criminology*, 50(3), 570-581.
- Walby, K. and J. Monaghan. (2011). "'Haitian Paradox' or Dark Side of the Security-Development Nexus? Canada's Role in the Securitization of Haiti, 2004-2009," *Alternatives: Global, Local, Political*, 36(4), 273-287.
- Walby, K. and M. Larsen. (2011). 'Getting at the Live Archive: on Access to Information Research in Canada'. *Canadian Journal of Law and Society*, (26)3: 623-634.
- Walby, K and J. Piché. (2011). "The Polysemy of Punishment Memorialisation: Dark Tourism and Ontario's Penal History Museums," *Punishment and Society*, 13(4), 451-472.
- Walby, K. and M. Larsen. (2012). 'Access to Information and Freedom of Information Requests: Neglected Means of Data Production in the Social Sciences'. *Qualitative Inquiry*, (18)1: 31-42.
- Walby, K and J. Piché. (2012). "Carceral tours and the Need for Reflexivity: A Response to Wilson, Spina, and Canaan," *The Howard Journal of Criminal Justice*, 51(4), 411-418.
- Walters, W. (2008). "'Anti-Policy and Anti-Politics' Critical Reflections on Certain Schemes to Govern Bad Things," *Cultural Studies*, 11(3), 267-288.
- Walters, W. (2010). "Deportation, Expulsion, and the International Police of Aliens," *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement*, DeGenova, N. and N. Peutz (EDs). Durham. Duke University Press, 69-100.
- Walters, W. (2011). "Foucault and Frontiers Notes on the Birth of the Humanitarian Border." in *U. Bröckling, S. Krassmann and T. Lemke (EDs). Governmentality: Current Issues and Future Challenges*. New York. Routledge, 138-164.
- Walters, W. (2012). *Governmentality Critical Encounters: Critical Issues in Global Politics*, New York. Routledge.
- Watt-Cloutier, S. (2015). *The Right To Be Cold: One Woman's Story of Protecting her Culture, the Arctic, and the Whole Planet*, Toronto. Penguin Canada.
- Weber, M. (1864/1968) "Appendix II: Parliament and Government in a Reconstructed Germany," *Economy and Society: An Outline of Interpretive Sociology*. R. Guenther and C. Wittich (EDs). California. University of California Press.
- Weber, B. (2015). "Welcome to Hell: Inside Canada's Most Decrepit Prison, Baffin Correctional Centre," *The Canadian Press*, May, Retrieved November 2015. Retrieved from: <http://news.nationalpost.com/news/canada/welcome-to-hell>

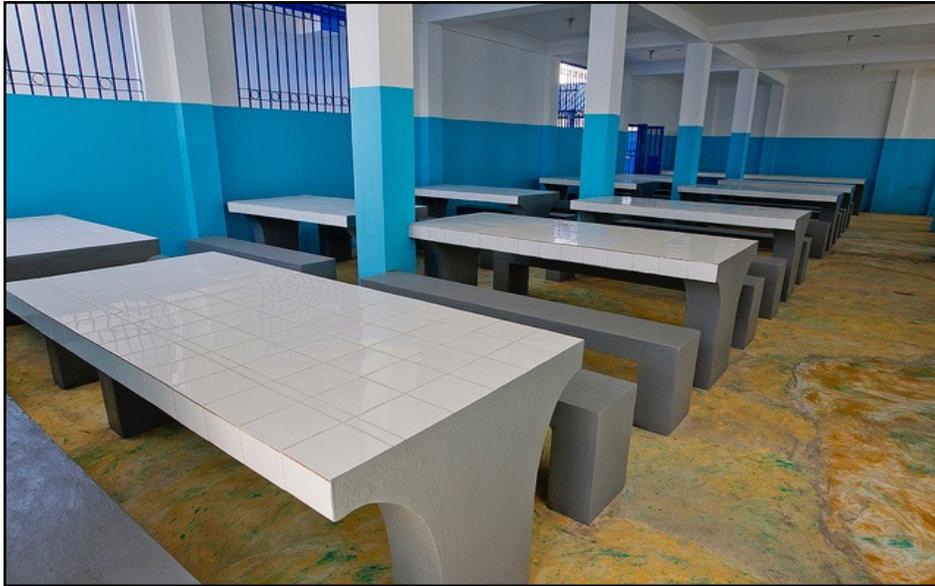
- inside-canadas-most-decrepit-prison-baffin-correctional-centre
- Welch, K. (2007). "Black Criminal Stereotypes and Racial Profiling," *Journal of Contemporary Criminal Justice*, 23(3): 276-288.
- White, G. (2009). "Governance in Nunavut: Capacity vs. Culture?" *Journal of Canadian Studies*, 43(2), 57-81.
- Yi, Y. (2008). "Arrest as punishment: The abuse of arrest in the People's Republic of China," *Punishment and Society*, 10(1), 9-24.
- Zarate, G. (2010). "Nunavut Parole Office gives public inside glimpse - we're getting too many Inuit incarcerated in Southern Canada." Nunatsiaq News. Retrieved from: www.nunatsiaqonline.ca/stories/article98789_nunavut_parole_office_gives_public_an_inside_glimpse/. Obtained October 2014.
- Zanotti, L. (2006). "Taming Chaos: A Foucauldian View of UN Peacekeeping, Democracy, and Normalization," *International Peacekeeping*, 13(2), 150-167.
- Zanotti, L. (2008). "Imagining Democracy, Building Unsustainable Institutions: The UN Peacekeeping Operation in Haiti," *Security Dialogue*, 39(5), 539-561.
- Zanotti, L. (2010). "Cacophonies of Aid, Failed State Building and NGOs in Haiti: Setting the State for Disaster, Envisioning the Future," *Third World Quarterly*, 31(5), 755-771.
- Zanotti, L. (2011). *Governing Disorder: UN Peace Operations, International Security, and Democratization in the Post-Cold War Era*, Pennsylvania. The Pennsylvania State University Press.
- Zanotti, L. (2013). "Governmentality, Ontology, Methodology: Re-Thinking Political Agency in the Global World," *Alternatives: Global, Local, Political*, 38(4), 288-304.
- Zehr, H. (2003). *Changing Lenses- A New Focus for Crime and Justice*. (3rd ED). Scotdale P.A. Herald Press.

APPENDIX A
TYPOLGY OF PENAL STANDARDS

TYPE OF PENAL STANDARD	EXAMPLE(S) OF PENAL PRACTICES ASSOCIATED WITH THE STANDARD
ADMINISTRATIVE	<ul style="list-style-type: none"> *Staff and employee conduct or qualifications *Prisoner record maintenance *Prisoner transfers *Prisoner grievance processes or structures
CONSTRUCTION	<ul style="list-style-type: none"> *Number of square feet per prisoner *Number of beds per cell *Number of toilets and showers per cell
CORPOREAL	<ul style="list-style-type: none"> *Separation of categories of prisoner *Food *Clothing and hygiene *Physical exercise
COGNITIVE / AFFECTIVE	<ul style="list-style-type: none"> *Education *Addiction counseling *Therapy *Psychiatric treatment
LABOUR	<ul style="list-style-type: none"> *Types of work *Wages for work *Oversight of work by penal administration
SOCIAL / COLLECTIVE	<ul style="list-style-type: none"> *Visitations *Temporary absence passes *Community programming
DISCIPLINARY	<ul style="list-style-type: none"> *Use of force or restraints *Cruel and inhumane treatment *Solitary confinement

TYPE OF PENAL STANDARD	EXAMPLE(S) OF PENAL PRACTICES ASSOCIATED WITH THE STANDARD
LEGAL	<ul style="list-style-type: none"> *Corrections and Conditional Release Act (CCRA) *CSC Commissioner’s Directives (CDs) *CSC Strategic Plan for Aboriginal Corrections
SPIRITUAL / CULTURAL	<ul style="list-style-type: none"> *Religious or cultural services / ceremony *Access to spiritual leaders / Elders *Access to spiritual, religious, cultural objects

**APPENDIX B
IMAGES**



**Figure One
cafeteria in
Croix-Des-
Bouquets
prison ***



**Figure Two
cell blocks
in
Croix-Des-
Bouquets
prison**

*Images One through Five from MINUSTAH Flickr account <http://www.flickr.com/photos/MINUSTAH/8136309086/in/photosstream/>



**Figure Three
outdoor
toilets and
water faucets
at Croix-Des-
Bouquets
prison**



**Figure Four
The
infirmary at
Croix-Des-
Bouquets
prison**



**Figure Five
Inauguration
ceremony at
Croix-Des-
Bouquets
prison**

***Bottom Left: porcelain toilet in the cell of the prison
*Bottom Right: additional central guard tower added to the design by START**



**Figure Six
Map of Canada
*Territory of
Nunavut**



**Figure Seven
aerial view
of Kingston
Penitentiary**

Image From: [http:// www.ottawacitizen.com/cms/binary/6485248.jpg?size=620x400](http://www.ottawacitizen.com/cms/binary/6485248.jpg?size=620x400)



**Figure Eight
aerial view of
Beaver Creek
Institution**

Image From: <http://www.csc-scc.gc.ca/001/002/091/002-3002.png>

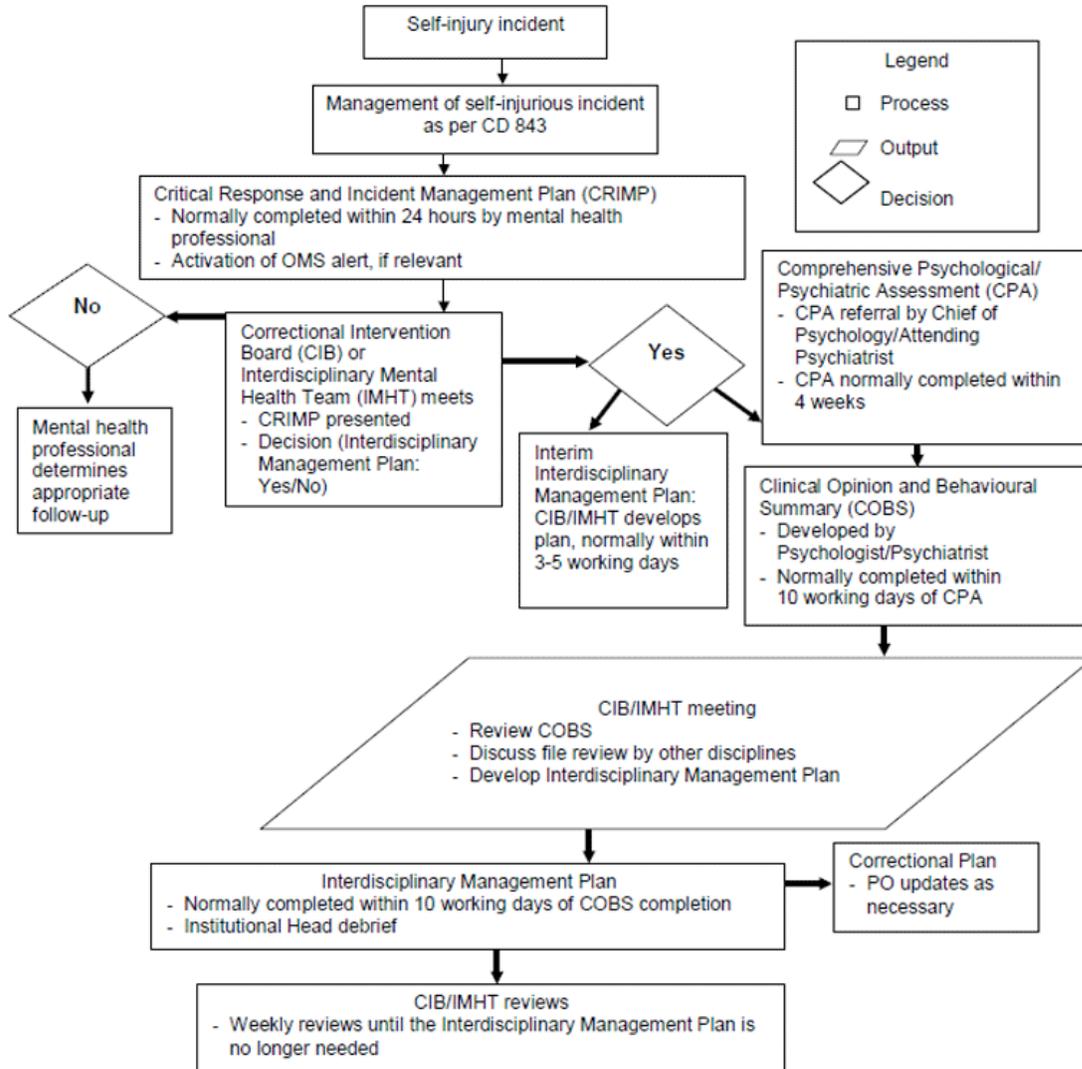


**Figure Nine
aerial view
of Central
North
Correctional
Centre
(CNCC)**

**Image From: [http://media.zuza.com/e/6/e684fa37-d1ff-4961-8fa9-fe1802fadd31/
Central_North_Correctional_Centre___Gallery.jpg](http://media.zuza.com/e/6/e684fa37-d1ff-4961-8fa9-fe1802fadd31/Central_North_Correctional_Centre___Gallery.jpg)**

APPENDIX C

FLOW CHART OF THE KEY STEPS FOR SELF-INJURY INTERVENTION IN INSTITUTIONS



*Figure 1. From CSC, Commissioner’s Directives, Management of Inmate Self-Injurious and Suicidal Behaviour <<http://www.csc-scc.gc.ca/acts-and-regulations/843-cd-eng.shtml>>