

A Disciplined Healing:
The New Language of Indigenous Imprisonment in Canada

by

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Je dédie cette thèse à ma grandmere,
Cecile Lepage

ABSTRACT

This study examines emerging criminological and penal discourse shaping the appearance of Correctional Service Canada's (CSC) 'Aboriginal Corrections' programme for Indigenous prisoners.

The recent growth in positivist criminological research and penal policy over the last decade has produced a 'regime of truth' regarding elements of criminality specific to Indigenous prisoners within federal prisons and suggests that criminalized deviancy is treatable through alternative therapy, specifically Indigenous healing models. One consequence of integrating elements of healing into penal policy through criminology is the extension of penal power to diagnose *a priori* assumptions of so-called 'criminality' based on one's social position in colonial history through the diagnoses of observed deviancy. Following a Foucauldian framework, this thesis problematizes the arrival of healing-based discourses in penal practice through an analysis of positivist-based criminological diagnoses and penal policy.

Through a discourse analysis, it is shown that CSC's absorption and re-appropriation of historical colonial harms as 'criminogenic' risk/need precursors to 'criminality' indicates a *recoding* of history and 'Aboriginality' as targets for 'correctional therapy'. This movement has effectively produced subjugated Indigenous prisoners as pathological and docile objects of difference (Bhabha, 1994).

In closing, this project suggests that CSC's 'Aboriginal Correctional' programme demonstrates a *continuity* of colonial projects and an *intensification* of disciplinary power that is interwoven with representations of Indigenous and criminological knowledges. Placing the rise of healing-based 'correctional therapy' among contemporary critical criminological debates, the thesis concludes that 'healing' for Indigenous prisoners in Canadian penitentiaries represents a continuity of disciplinary power and a challenge to the *New Penology* thesis.

LIST OF ACRONYMS

CCC – Criminal Code of Canada

CCRA – Corrections and Conditional Release Act

CSC – Correctional Service Canada

DJC – Department of Justice Canada

FASD – Foetal Alcohol Spectrum Disorder

OCI – Office of the Correctional Investigator

PBC – Parole Board of Canada

RCAP – Royal Commission on Aboriginal People

SCC – Supreme Court of Canada

TFAPFP – Task Force on Aboriginal People in Federal Prisons

TFFSW – Task Force on Federally Sentenced Women

INTRODUCTION

The location of institutions of confinement in social theory has been the topic of seminal work done in the social sciences in the 20th Century. From Rusche and Kirchheimer's (1939) Marxist analysis of penality and social structure, Michel Foucault's (1977) analysis of prison lineage and rise of disciplinary power, to more recently Garland's (2001) tracing of the rupture in penality illustrating the decline welfare and rehabilitative ideal; social sciences have repeatedly found in the evolution of punishment a significant indicator of broader sociohistorical change. In the past five decades, Canadian federal prisons have undergone significant structural metamorphosis, from the labour camps at Kingston Penitentiary to the 'dynamic security' measures at Millhaven Assessment Unit to the precarious 'healing village' of Kwikwèxwelhp. In the past twenty years, common language has portrayed the prison as 'punitive', 'institutional,' and most recently as a site of 'healing.' Indeed, the goal of most critical sociologies of prisons is to capture certain historical fluctuations and recurring patterns in penal practices and discourses in an effort to examine and reveal the broader relationship between punishment and society.

Exploring penal discourses through a critical lens, this thesis looks at some of the more recent movements in contemporary prison practice and language, as well as overarching disciplines of sciences that connect theories of deviancy to penal policy and discourse, particularly those focused on the governance of Indigenous prisoners.

The treatment and management of Indigenous prisoners within Canadian penal institutions has become the forefront of academic, governmental, and political debates concerning Canadian penal practice over the past three decades. It is no secret that the

population of Indigenous people within the confines of Canada's federal prisons¹ and provincial jails² are undergoing a process of mass-incarceration. As of 2009, Indigenous people accounted for 27% of provincial and territorial custodial sentences, 18% of admissions to federal custody, and 21% of admissions to remand while accounting for less than 3% of the Canadian population (Statistics Canada, 2010). Indeed, the empirical evidence suggests a clear rise in Indigenous imprisonment within Canadian carceral milieus, perhaps equally remarkable is the historical governmental response to Indigenous mass-incarceration in Canada, particularly discourse stemming over the past thirty years.

In the past three decades, the Indigenous people of Canada have been at the forefront of the Canadian law and punishment agenda, suggesting that the reality of mass-incarceration of Indigenous people behind bars are visibly influencing prisoner management, penal policy, practice, strategies, and architecture (CSC, 2006; Mann, 2010: Office of the Correctional Investigator, 2012; Roberts and Melchers, 2003; Statistics Canada, 2010). It is no secret that this time-frame has depicted a troubling growth spurt in Indigenous prisoner population followed by a sea-change in penal policies that govern them.

¹ As of 2012, Indigenous prisoners represent over 21.5% of all federally incarcerated prisoners (Office of the Correctional Investigator, 2011).

² We must further note disparities among different provinces. For example, during a 22 year span, between 1978-2001, the number of Albertan Aboriginal offenders sentenced to custody increased over 103% while the number of non-Aboriginal admissions slightly increased by 13%. During the same 22-year period, the numbers in Saskatchewan represented a decline of 50% of Aboriginal admissions and a 35% decline in non-aboriginal offenders. In general however, a continuous increase in Aboriginal admissions can be observed throughout all Canadian correctional institutions. See Roberts and Melchers (2003) for further reference.

Multiple Canadian inquiries ranging from the legal³, political⁴, and public⁵ realm inquiries have brought to attention the particular circumstances of Indigenous mass incarceration and the role which historical colonial relations may have played in the contemporary disposition of Indigenous communities. For example, in 1996, The Royal Commission on Aboriginal Peoples (RCAP) reported “inquiries... have not only confirmed the fact of over-representation but, most alarmingly, have demonstrated that the problem is getting worse, not better” (RCAP, 1996). Following findings by the RCAP, amendments within the Criminal Code of Canada⁶ as well as Supreme Court of Canada case law, specifically *R. v. Gladue*, expressed a need to recognize “unique systemic or background factors” which may have caused a particular Indigenous person to come before the courts. Furthermore, judges must take into account the circumstances of the individual’s “Aboriginal heritage or connection” while considering appropriateness of sentencing and sanctions.

In response to public inquiries, political pressure, and federal ‘correctional’ ombudsman reviews, CSC has invested a large portion of resources into criminological research and penal policy development to address and accommodate the rising Indigenous prisoner population.⁷ A gradual shift in penal policy and practice has slowly opened the penitentiary gates to allow “a place for Aboriginal spirituality and culture in

³ *R. v. Gladue*, 1999 [SCC]

⁴ Task Force on Aboriginal Peoples in Federal Corrections, 1988; Task Force on Federally Sentenced Women, 1989; Hamilton and Sinclair, 1991; Royal Commission on Aboriginal Peoples, 1996

⁵ Mann, 2009.

⁶ See, s. 718.2 (e) C.C.C.

⁷ Perhaps CSC’s most significant response to public pressure surrounding ‘Aboriginal offender needs’ stemming from the OCI and penal reformist groups such as Elizabeth Fry Organization (EFO) and John Howard Society (JHS), can be seen within the CSC *Transformation Agenda* (CSC, 2005), where the *Aboriginalization of prisons* is noted as one of the main priorities for CSC.

the correctional environment” (CSC, 2006: 6). Moreover, the move to integrate Indigenous culture and spirituality within the Canadian federal prisons has further provided penology and positivist criminology the abilities to foster new sensibilities to studying Indigenous prisoners as cultural objects of intervention.

Research Questions

With the recently observed growth in policies and practices, CSC demonstrates not only a shift in the economy of the prison, but also a shift in penal philosophy. This philosophy is noted to be geared towards the integration of new Indigenous knowledges such as ‘Aboriginal social history’, cultural healing, and ceremony alongside the practices of confinement, ‘correction’, and penalty. Observing specifically the rise of ‘healing’ as an alternative to ‘mainstream correctional-based programs,’ this thesis seeks to unpack some of the embedded theoretical and epistemological underpinnings of CSC’s *differential* approach towards the rehabilitation of Indigenous prisoners. Specifically it asks:

- How has the recent growth in positivist criminology surrounding Indigenous law-breaking open new areas of knowing about deviancy and the ‘Aboriginal offender’?
- How has positivist criminology, penal policy, and law shaped their object/subject of intervention?
- How is healing the constitutive technique of penal-based treatment for Indigenous prisoners in federal prisons?

This thesis explores the sociological relationship between the Canadian penal system and Indigenous people and critically analyzes this relationship as one that is, ultimately, a corollary of the broader Canadian colonial project. The historical and continued diaspora of Indigenous communities, human atrocities committed during the legacy of state and

church funded residential schools for Indigenous children,⁸ and a rising population within prison facilities all within the late 20th Century signal that Canada's relationship with Indigenous people is one founded on a project of governance, discipline, and control. While blueprints for modern institutions of correction and confinement for Indigenous people are presently being drafted, produced and erected throughout in Canada, the history of Indigenous confinement must not be considered as a relic of the past but a history of the present that is still in motion today. This history of the present focusing on Indigenous confinement within Canada must be considered as a field of interweaving nodes of power and knowledges that give rise to unified penal practices and new technologies/techniques of correction.

Thesis Outline

Chapter One proposes an analytical framework that locates my project among contemporary debates in critical criminology and broader sociological discussions surrounding punishment and prison reform. Specifically, I negotiate the strengths and weaknesses of contemporary theoretical frameworks such as the *New Penology* and *Post-Disciplinary* penalty. I propose to follow a Foucauldian analysis of disciplinary power that maintains a notion of penal continuity and intensification and mobilize this perspective to view Indigenous mass incarceration and the rise healing as one symptom of penal intensification in the past three decades.

Chapter Two provides the reader with an outline of the thesis's methodological approach. Introducing the method of 'Foucauldian discourse analysis,' this chapter

⁸ George Gordon First Nation, the longest running residential school for Indigenous children in Canada, closed in 1996.

focuses on the differences, commonalities, and methodological limitations between archaeology, genealogy, and discourse. Mobilizing primarily the work of Foucault (1972) and Andersen (2003), I propose an ‘analytical strategy’ to go forward with the analysis of penal and criminological discourse. This chapter concludes with a brief discussion on the limitations of discourse analysis.

Chapter Three presents the analytical contributions of the thesis. I have organized this chapter into two parts. *Part One* analyzes contemporary positivist criminological orderings of Indigenous-based criminalized deviancy. Applying Carrier’s (2006) model of ‘symptomatology of difference,’ gathered symptoms of deviancy uttered by criminological research are organized according to their discursive sites and deconstructed. These discursive sites are analysed as interdependent sites of knowledge that (re)produce diagnoses of Indigenous deviancy according to the Derridian notion of difference. *Part Two* pulls on CSC policy and observes how the ‘Aboriginal offender’ is constituted in law and how ‘healing’ has become the constitutive means of ‘correctional’ training for Indigenous prisoners. This chapter ends with positioning ‘healing’ as a product of the prison’s ability to absorb external discourse and refashion it into disciplinary technologies.

The final chapter concludes with a discussion based on the findings of my analysis. Here, I argue that CSC’s integration of Indigenous elements represents a continuity and intensification of disciplinary power rather than a complete rupture and rebirth of new ‘correctionalism’. This argument positions itself among the debates surrounding *New Penology* theories of carceral managerialism (e.g.: Garland, 2001; Feeley and Simon 1992, 1994) and *Post-Disciplinary* penalty (Castel, 1991) by

illustrating that the most recent shift in penal discourse represents a penal programme who's stated concern is the *healing* of Indigenous bodies, psyche, and communities, while simultaneously producing them through criminological discourse. A brief section follows on the possibilities of future research in the area of Indigenous imprisonment and the sociology of punishment.

CHAPTER ONE:

PENAL POWER AND THE MIMICRY OF INDIGENOUSNESS

The goal of this chapter is to consider certain conceptual frameworks to build a theoretical foundation for my analysis that will guide the research questions set out in the introduction. The following pages will consist of a broad literature review of the contemporary debates within contemporary critical criminology concerning the location of Canadian punishment, ‘correctionalism’, and the prison. While this project is mainly concerned with the intensification and shape of punishment into the 21st Century concerning Indigenous prisoners, it is also part of a larger commentary on emerging debates within the field of sociology of punishment concerning penal power and its hypothesised moments of intensification in recent history. As will be discussed, a remarkable growth in critical criminological theory has polarized many positions concerning penal trends in the late 20th Century. This has influenced my current analyses of Indigenous imprisonment and penal rationalities significantly. While some have called upon scholars to direct their observations through a *revisited* penological framework, one that has departed from the early ‘rehabilitative ideal’ and evolved to a penal regime based population management and risk calculation or a ‘*new penology*,’⁹ others have suggested that a new expressive penalty is symptomatic of the ‘late modern cultural condition’ or the new face of ‘punitiveness’¹⁰. These approaches have yielded a large scholarship

⁹ See Feeley and Simon (1991) and for a contemporary application of New Penology see Slingeneyer (2010); Garland (2001).

¹⁰ Pratt, and colleagues (2005) have argued that the increase in more ‘expressive’ sanctions since the mid 1970s such as the ‘The War on Drugs’, California’s ‘Three-Strike Law’, and insatiable appetite for incarceration has lead to increasingly more punitive sanctions in contemporary criminal justice practice.

influencing much of the critical criminological work done in the last two decades surrounding penal evolution and prisons. These sprouting criminological debates, while highly influential, have been recently analysed as fragmenting the unified grounding for critical criminology (Hutchinson, 2006; O'Malley, 1999, 2001; Sim 2009). With this fracture in criminological thought, it is necessary to avoid totalizing diagnoses of penal ruptures in order to avoid conceptual pitfalls.

The first area of investigation will briefly observe the institutionalization of the 'healing' and 'spiritual' approach in the CSC 'correctional' programme for Indigenous people. Locating the institutionalization of healing is relevant as a starting point for orienting historical trajectory of penal reforms concerning Indigenous mass incarceration. Following this, I turn to observe how the process of penal reform obfuscates reformist discourse by drawing largely on the theories of Michel Foucault and other critical scholars that have contributed to the analysis of penal reform, power, and discipline.

Following this, I will attempt to locate a middle ground between the notion of discursive penal shifts through the highly popularized 'new penology' and post-disciplinary thesis. Engaging with contemporary sociological concepts such as 'new penology', risk, post-discipline, and punitiveness, I will analyse to what extent these perspectives can contribute to an analysis of the rise of 'healing' within penal language

These authors have also suggested a rupture in penal rationality, indicating the "rehabilitative ideal" (see Garland, 2001) has become colonized by retributive justice and managerial techniques of government. Approaching from a more nuanced approach centered on continuity, Rigakos and Hadden (2001) suggest that "retribution...existed alongside the practices of early risk society" of the mid 17th Century (63). Arguing that risk calculation is inherently a political project anchored on 'olde' modes of social control, Rigakos and Hadden (2001) offer a perspective on risk management that at once responds to 'new penologists' and further appreciates the historical continuity of modes of governance of the contemporary society.

and what such perspectives offer in terms of developing a critical analytics of penal power in CSC's governance of Indigenous prisoners.

In this thesis I argue that penal power has undergone a process of intensification in the last two decades concerning the governance and treatment programme of Indigenous prisoners. I posit that three intersecting power/knowledges contribute to the confinement and control of Indigenous prisoners; they are criminological positivism¹¹, 'correctionalism', and colonialism. Working interdependently, they function as overall engines of a 'healing discourse' within Canadian penal rationality and policy.

The Appearance of Spirituality in Corrections

While spirituality and transformation programs within the prison system have a long historical relationship within penal regimes¹², the integration of Indigenous spirituality as prison mandated therapy is not so clear. While efforts were made in the last three decades by Canadian penal reformers to integrate Indigenous healing models as 'alternative' therapy to assist with needs of Indigenous people as they identified, only in the past fifteen years has CSC responded to reformers by implementing a model of penalty that is refined and supported by scientific knowledge and tailored to them (CSC, 2006).

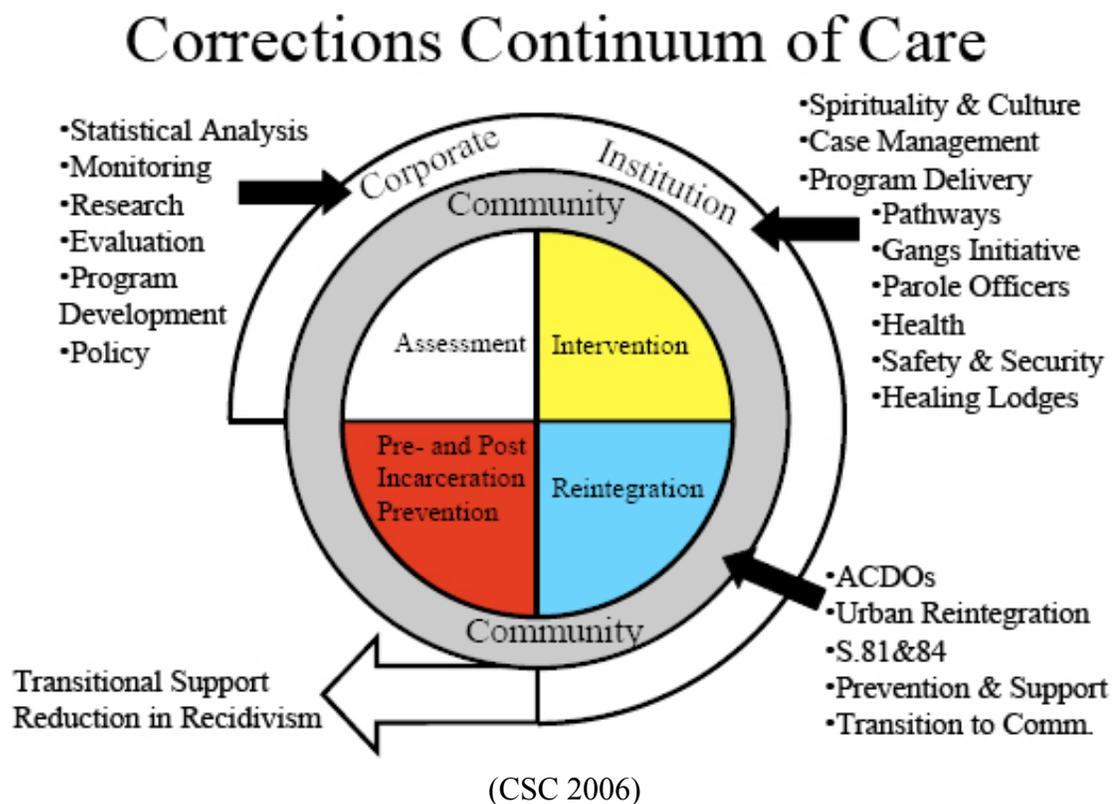
In 2003, CSC implemented a new approach to managing their Indigenous prisoners through the *Aboriginal Continuum of Care* (CSC 2006). This model represents a hybridized model of 'correctional' treatment that claims to blend both modern prison

¹¹ Criminological positivism is used throughout this thesis as a general term to broadly describe the *science* of criminology. The science of criminology seeks to explain acts of deviance and instances of 'crime' through the compilation and evaluation of empirical data. Methodologically, positivism rests on the extraction of *facts* and truth on social misbehaving or law-breaking through experiments and data gathering all through a reductive framework. This amounts to a deterministic view which takes, as Carrier (2006) suggest, "[the object of] deviance as a given" (p. 25).

¹² On this note see Opat, 2001.

therapy, or the *Risk-Needs-Responsivity* approach popularized by forensic psychologists Don Andrews and James Bonta (2007), and elements of Indigenous spirituality, which is described by CSC (2006) as to a holistic approach. The *Continuum of Care* model is presented in the figure below below.¹³

Figure 1:



According to CSC, the *Continuum of Care* represents a significant turning point for modern corrections. It offers prisoners a material break from what is commonly now

¹³ According to CSC, the Continuum of Care, combines various levels of governance and intervention with an ‘Aboriginal-based’ case management team. Section 81 and 84 of the CCRA governing healing lodge releases are included to provide Indigenous prisoners with an ‘option’ to such an institution provided successful completion of their custodial sentence as judged by their case management team. This team includes Aboriginal Correctional Program Officers (ACPO), Aboriginal Liaison Officers (ALO), various levels of governing strategies combine and layer for the normalization of Indigenous people.

referred to as ‘mainstream corrections’ within the CSC environment to an institutionalized ‘Aboriginal Corrections’. The institutionalization of the *Continuum of Care* is also recognized by the ombudsman of the federal penitentiary system, the Office of the Correctional Investigator (OCI), as a “major step forward compared to only three decades ago when sweet grass was routinely banned in federal institutions and elders were not given the respect they deserved” (OCI, 2012: para. 75).

Prior to 2003, CSC’s zeal for the spiritualization of Indigenous prisoners was present in various nodes of legislation, policy, and ‘correctional’ programs throughout their multiple institutions, but never unified through a correctional doctrine like the *Continuum of Care*. Perhaps the earliest shift towards the spiritualization of Indigenous prisoners occurred outside of CSC with the implementation of the Corrections and Conditional Release Act (CCRA, 1992) concerning the management of Indigenous prisoners. CSC (2006) indicates that their relationship with Aboriginal people was “redefined” by this legislation.¹⁴ CSC notes “for the first time, the law gave Aboriginal peoples a place in the development and delivery of federal correctional policies, programs and services and a place for Aboriginal spirituality and culture in the correctional environment”. Furthermore, the guidelines implemented through the CCRA (specifically sections 79-84) have obligated CSC to consider “offender health status... consistent with Aboriginal belief in the inter-connectedness of all aspects of life” (Ibid). Again, in 1995¹⁵, CSC made note of integrating “Aboriginal specific provisions” in policy and practice mentioning specificities of Aboriginal-related concepts such as ‘smudging,’

¹⁴ See Appendix A.

¹⁵ Subsequently revised in 2008.

‘sweat lodges,’ and the development of Pathway Units within their facilities (CSC, 2006, 2008).

Indeed, the very nature of introducing state-sanctioned spirituality in the ‘correctional’ regime begs the question: can one actually ‘heal’ or be ‘healed’ through the penal law? Or, can the force of law only control and punish? I think what is a larger and more pressing concern is how can these otherwise polemic forces, ‘healing’ and punishing, co-exist in the prison context? Perhaps a closer look at how power relations attempt to define penal strategies as a departure will provide more insight to this problem.

The Problem of Penal Reform

“...each reform is isomorphic, despite its ‘idealism’ with the disciplinary functioning of the prison” (Cohen, 1985: 27).

The rise of ‘healing’ and ‘Aboriginalized’ penal philosophy can be largely attributed to the political will of Indigenous activists, penal reformers, and the prisoners themselves.¹⁶

A series of efforts from organizations such as CAEFS, JHS, OCI, and Native Brotherhood and Sisterhood organizations to name a few, attempted to introduce new approaches to address the needs of incarcerated Indigenous people. Most reformers approached CSC with intent to disrupt the mass incarceration and/or integrate sensibilities within CSC to the plight of the Indigenous prisoner. Perhaps one of the most significant, or at the very least, visible, change introduced to CSC ‘from the outside’ was the establishment of ‘Aboriginal Healing Lodges’ through the Task Force for Federally

¹⁶ The prisoner struggle for penal reform has a foggy history in terms of identifying their role in reformation. LaPrairie (1997) documents Indigenous prisoner “self-help” movements in the early 1970s within CSC that have resulted in “moments of progress for Indigenous cultural integration”. However, perhaps the most significant movement is the formation of a network of Native Brotherhood and Sisterhood organizations. “The major aboriginal activity area,” she notes, “are community supervision and support, community outreach, counselling, case management facilitation, cultural sensitization, healing, cultural affirmation and training/education (LaPrairie, 1997: 79).

Sentenced Women (TFFSW, 1990) in 1995. Following the establishment of Healing Lodges, critics and reformers were quick to see their input and efforts absorbed into the larger prison discourse.

Critical scholarship has observed how the prison absorption of reformists and radical discourses occurs, shifting or moulding penal spaces, practices, and fit their existing overarching policies and mandates (Cohen, 1985; Hannah-Moffat, 2001; Hayman, 2006; Mathiesen, 1990; Rothman, 1980). It has been widely documented by many social scientist observing penal shifts that there are many risks and ‘consequences of cooperation’ for reformers and activists in the politics of penal reform (see Hayman, 2006: 246). As will be further demonstrated in later chapters, penal rationalities that govern policies surrounding imprisonment practices tend to be flexible, fluid, and allow for a redeployment of reformist and resistance discourses to fit their values of discipline, punishment, and ‘correctionalism’ (Montures-Anges, 2000). On penal reform, Foucault notes,

“The true object of the reform movement, even in its most general formulations, was not so much to establish a new right to punish based on more equitable principles, as to set up a new ‘economy’ of the power to punish... so that it should be distributed in homogenous circuits capable of operating everywhere, in a continuous way, down to the finest grain of the social body” (Foucault, 1977: 80).

Thus, prior to cultivating a blueprint for an alternative to ‘correctionalism’, Foucault shows that penal reform, from its earliest inception, was based on the efficiency, optimization, and an intensification of power redistribution. Elsewhere, Foucault (1980) notes that at a certain point in time “it was more profitable in terms of an economy of power to place people under surveillance than to subject them to some exemplary penalty” and that the prison, from its ‘birth’ through penal reform, was a “failed project

from the start” (38, 40). Following Foucault’s analysis, Mathieson (1990) suggests that a certain ‘prison fiasco’ propels the prison as the object of a self-legitimizing institution through its ‘ideological force’ fuelled by the lack of informed discourse in crime-related public debates surrounding reform. Advocating abolition of the prison, Mathieson (1990) positions penal reformers as ‘left-realist’ overly obsessed with pre-emptive intervention and alternatives to incarceration. As a result of penal absorption, Mathieson’s (1990) ‘Left-Realists’ reformers are largely responsible for the dissemination of carceral institutions and the ‘net-widening’ of social control (see also Cohen, 1985; Foucault, 1976).

Approaching the phenomenon from a specific angle, Hannah-Moffat’s (2001) important work on the prison’s absorption of reformist discourse surrounding women’s empowerment shows how CSC has absorbed, transformed, and redeployed this discourse (notably *healing*) as techniques of corrective therapy. As Hannah-Moffat (2001) demonstrates in her book, *Punishment in Disguise*, the introduction of *femininity* and *motherhood* by feminist activist groups have developed into pastoral and disciplinary techniques of governing where “benevolent lessons in motherhood and pastoral strategies of governing played a critical role in the moral regulation of women and in solidifying a role for women in penal governance” (43).

Interestingly, the paradox of reform absorption is indicative of the contradictory nature of penal discourse. This contradictory characteristic has been taken up in numerous theoretical frameworks and empirical studies (Blomberg and Lucken, 2010; Cohen, 1985; Cohen and Blomberg, 2003; Garland, 1990, 2001). Whether the case may be that the consequences of penal reform results in absorption, redeployment, or

proliferation of social control and discipline, it is undoubtedly a challenging task to grasp the complexities of “conflicting rationalities and operational features” of the prison’s “seemingly unending cycle of reform and failure” (Blomley, 2003: 428, 417). It is perhaps impossible to theorize adequately the consequences of penal reform without first assessing the political ideology fuelling the reform, in which most modern democracies change dynamically.

Power: Discipline & Punishment

“[disciplinary] power is one that possesses within itself the principles of transformation and innovation” (Foucault, 1977: 52).

The ambitious work of Michel Foucault surrounding power has offered social scientists with valuable insights in developing and advancing their analysis of punishment and prison expansion in society. Without offering an exhaustive review of Foucault’s oeuvre, I will limit my focus to his analysis of punishment, discipline, and the analytics of power/knowledge. Foucault’s impact and influence within the humanities and social sciences is nothing short of remarkable and his influence throughout this thesis is clear.

Foucault begins his analysis of punishment by locating the birth of the prison as his object of study. In his analysis Foucault suggests that the prison was constituted, from its beginning as a “project for the transformation of individuals” (Foucault, 1980: 39). This is to say that the prison is more than a space of penality, it is a place of transformation and reconstitution. Modern punishment embodies an “intensification of punishment” as the aim is no longer to bring pain to the body, but to control and mould the psyche (Andersen, 2003: 19).

Foucault’s seminal work *Discipline and Punish: The Birth of the Prison*, and his lectures on *Abnormal*, *Society Must be Defended*, and *Security, Territory, Population*

contextualized broader theoretical insights surrounding disciplinary power. However, it is in the latter work where Foucault revisits his notion of disciplinary power through the lens of sovereignty by shifting his focus to surveillance and population control. Foucault (2007) states that there is,

“not the legal age, disciplinary age, and then the age of security. Mechanisms of security do not replace disciplinary mechanism, which would have replaced juridico-legal mechanisms. In reality you have a series of complex edifices with are techniques in which changes... the system of correlation between the juridico-legal mechanisms, disciplinary mechanism, and mechanisms of society” (Foucault 2007: 8).

Here, Foucault is relocating disciplinary power as part of an overall system of governance of individuals. The power of the norm is produced through a tension between juridical and disciplinary mechanism. These powers are acting interdependently shaping and governing individuals. To quote Foucault again,

“we need to see things not in terms of the replacement of a society of sovereignty by a disciplinary society and the subsequent replacement of a disciplinary society by a society of government; in reality *one has a triangle*, sovereignty-discipline-government (Foucault 1991 [1978]: 102, emphasis added).

Sociologist Mariana Valverde’s has been a vocal critic of criminologists’ myopic application of the concept of discipline and panoptic power in their work. She warns of the conceptual-narrowing of ‘Foucauldian approaches’ stating “generations of graduate students [...] published papers which began with a general description of Foucault’s argument about sovereignty and discipline and went on to then use ‘discipline’ as a cookie cutter” (Valverde, 2008: 206). She argues that-scholars-to-be should focus on his broader disciplinary project such as biopolitics and biopower as the former was a used to only explain ‘moments’ of normalization. According to Valverde (2008), discipline, as a concept, has reached its conceptual climax. While Valverde offers some insightful and

cautionary prose, we must not completely turn our analysis away from Foucault's earlier work on psychiatry and correction and perhaps take her critique on the contemporary methodological perversion of discipline with some hesitation. On one hand, it is Foucault himself who rejected the notion that his work must be taken up in as a literary corpus and suggested his work be used as a conceptual "tool-box" further announcing "I don't write for an audience. I write for users, not readers" (Foucault, 1994: 523). On the other hand, again, according to Valverde, the abuse of this 'tool-box' has seen the misapplication of Foucauldian terms such as sovereignty, discipline, governmentality, and biopolitics causing fragmentation in the sociology of punishment.¹⁷ Taking a less pessimistic approach, below I present some of the contemporary debates concerning the shape(s) of penal power in modernity.

Shifting Correctionalism

Efforts to identify penal shapes in (late) modernity have led to what has become known as a 'new penology.' The 'new penology' thesis locates itself as one element of a broader sociological trend in the early 1990s to identify social, political, and economical shifts in what is considered as 'late-modernity' or 'reflexive modernity' (Feeley and Simon, 1992, see also: Bauman, 2000; Beck, 1992; Giddens, 1991; Giddens, Beck, and Lash, 1994). Central to the rise of 'reflexive modernization' is the rise of what Beck (1992) calls the 'risk society.' Beck (1992) defines the concept of risk,

¹⁷ Valverde takes up this problem again in a 2010 article titled "Specters of Foucault in Law and Society Scholarship" warning of the increasingly used Foucauldian terms throughout the human sciences without a general understanding of Foucault's epistemological approach to central themes such as truth, power, and knowledge. Scholarly warnings of this sort is of course nothing new from contemporary Foucauldian thinkers, Dean, Rose, and Hacking actively engage students of Foucault to follow a methodological prescription on 'how to use Foucault'. I am suspicious of such Foucauldian programmes as they present perhaps an 'anti-Foucauldian' Foucauldian analysis for the reasons I mention above.

“a systematic way of dealing with hazards and insecurities induced and introduced by modernization itself. Risks, as opposed to older dangers, are consequences which relate to the threatening force of modernization and to its globalization of doubt. They are politically reflexive” (21).

Beck (1992), among others, set the intellectual climate for critical sociology in the early 1990s with concepts such as the ‘Risk Society’. Within this new movement in sociology surrounding risk and security emerged Feeley and Simon’s (1992) highly influential ‘new penology’ thesis. The new penology is characterized by the emergence of ‘new’ modes of penal governance, such as ‘managerialism’ (Garland 1995, 2001) and actuarialism (Feeley and Simon, 1992). According to these positions, the contemporary prison is no longer overly concerned with the prisoner and his or her transformation and rehabilitation but the management of multiple prisoners and their endless categorizations (Feeley and Simon, 1992). To bridge with ‘reflexive’ turn of Giddens, Beck, and Lash (1994), framing the prison as one of the multiple ‘reflexive institutions of modernity’, it becomes clear that “new criminal knowledge [production] aims at *rationalizing* the operation of systems that manage criminals, not dealing with criminality” (Feeley and Simon, 1992: 467, emphasis added). The move from treating criminality to treating crime, or as Castel (1991) notes, dangerousness to risk, presupposes that crime is “approached as a normal and socialized risk and as a technical problem” (Slingeneyer, 2007). This framework has led some scholars to suggest that we are witnessing the shift towards a post-disciplinary era (Castel, 1991; Lianos, 2003, 2012), while others have remained suspicious of this shift (see O’Malley, 1999, 2001; Hutchinson, 2010; Rigakos and Hadden, 2001). These debates have caused some friction, particularly in critical criminological circles, notably influencing and shaping much of the theory framing the ‘disciplinary/post disciplinary’

approach to punishment analysis in the 21st Century. Below, I apply CSC's 'healing' framework to some of the more relevant contributions emerging from this fruitful debate.

The Post-Disciplinary Prison?

Chantraine (2006) has offered a thesis on what he calls the "post-disciplinary prison". Positioning himself alongside O'Malley (1999) and Hannah-Moffat (2005), Chantraine (2006) suggests that some of the predictions made by studies claiming penal ruptures and societal movements towards actuarialism, (notably Bauman, 2000; Feeley and Simon, 1992; Garland, 2001) may have been "greatly overestimated" (Chantraine, 2006: 56; also see Rigakos and Hadden, 2001). Offering a more nuanced approach to analysing penal shifts, Chantraine's (2006) directs his analysis at the pragmatics, or what Hannah-Moffat (1999) has called the 'micropolitics' of the prison. Below I take a closer look at Chantraine's contribution to the debate on penal and criminological shifts.

Chantraine (2006) posits that theorists following the 'new penology' have forced a blind eye to the pragmatics of penitentiary operations and, as a consequence, limited their analysis by focusing too narrowly on the technological developments of actuarial management practices and penal technologies. It is important to note here that Chantraine, rather than rejecting the 'new penology' thesis completely, is adding a dimension of micro politics of (sovereign) power that is inherent to the institution over its prisoners. The prison, according to Chantraine, is a site of sovereign power. It is perhaps one of the last sites where sovereign power remains 'unmasked,' if you will. Subjects within the prison are at the disposal of an immediate form of violence from the prison ranging from solitary confinement, use of force, to the removal of 'privileges'. For Chantraine, discipline is still very much a part of the prison apparatus; it is simply

conceptualized as one mode among others within the prison. In this sense, Foucault's notion of sovereignty-discipline-governmentality are actively engaging all subjects within the prison, working in concert.

In his study on the post-disciplinary prison, Chantraine gives the example of prison reactions and changes to political action stemming from prisoner rights movements such as hunger strikes. He notes that while the prison will eventually respond to disturbances within the prison, it is not necessarily due to the internal pressure from the prisoners reforming for change but an external, democratic pressure. Chantraine (2006) suggests that any type of penal shift in policy in response to external pressure on the prison would ultimately result in a strategy to protect the sovereign power of the prison and any change would be a way for the prison "to integrate, domesticate, and survive democratic activit[ies] of contention", or basically the recurring nightmare of penal reformists (Chantraine, 2006: 61). Moreover, he notes:

"[the] emergence of the post-disciplinary model thus correlates with a movement of opening up, of a complexification of social life and the relative multiplication of carceral actors on the carceral scene through which the administration had to loosen its grip while ensuring a relative control over its intervention" (Chantraine, 2006: 61).

I am cautious to throw-out a disciplined baby out with its bathwater, that is, analysing penal fluctuations as shifts from a disciplinary to a 'post-disciplinary' penal era. Foucault (2003) reminds us that "[disciplinary] power is one that possesses within itself the principles of transformation and innovation" (52), and while the notion of a 'post-disciplinary' might have been externally introduced to the penal system by way of a democratic 'public' pressure from activists and reformers, according to Foucault's logic, the prison remains a recycled product of the continuity of punishment and reform.

Thus, while scholars of the ‘new penology’ have made some important theoretical advances in observing the growth of modern instrumental criminology and penal flux, that is, the rise of actuarial justice, responsibility, and technocratic governance of criminality, their narrow methodology prevents their analysis to tying *new* ruptures to genealogical lines of the past (c.f.: Rigakos and Hadden, 2001; Sim, 2009). In other words, their approach appears too narrowly focused on ruptures advocating nostalgia for ‘old ways of punishing’ or the ‘disciplinary era’ (Carrier, 2010; Loader and Sparks, 2004) or further, refusing to view the fluid nature of punishment. Approaching CSC’s ‘Aboriginal Correctional’ programme and the ‘healing lodge’ as a *new* prison would simplify an otherwise more complex institution that requires a more nuanced approach to grasp the subtleties of the heterogeneous nature of correctionalism and reform.

The Persistence of Discipline?

Analysing the relations of power involved with the imprisonment of Indigenous people, critical scholars must reckon with the persistent historical gaze of the prison to capture the spectres of colonial violence linked with the correctionalist power/knowledge historically applied to Indigenous people of Canada.

Sim (2009) has offered his critical vision of contemporary penological analyses in the late 20th century suggesting that while certain scholars claim an ‘epochal discontinuity’ with rehabilitation models and a rupture of punitiveness (e.g.: Garland, Feeley, Simon, Chartrand, Young, and others), they have, by default, appropriated a “rose tinted” vision to rehabilitation and “penal modernism” (Loader and Sparks, 2004:14-15 cited in Sim (2009). The conceptual consequences of the ‘new punitiveness’ thesis has been highlighted by Carrier (2010) suggesting that,

“the limits of proclaiming the death of the disciplinary era notably show themselves in the rehabilitation discourse that envelops exploitation in the carceral context and provides a central piece of its legitimation (CORCAN, 2007; see also Cullen, Gendreau, 2001). In posing a shift from a logic of normalizing to incapacitation, the thesis certainly amounts to a grossly monolithic analysis of the social uses of punishment, in a way reminiscent of the - also quite quickly popular - thesis of the new penology (Feeley, Simon, 1992)” (Carrier, 2010: para 43).

Indeed, the ‘new penology’ thesis has been highly contested within some academic spheres of critical sociology and criminology (Carrier, 2010; Chantraine, 2006; Cheliotis, 2006; Hannah-Moffat, 1999, 2001, 2005; Hannah-Moffat and Maurutto, 2006; Rigakos and Hadden, 2001) as an underestimated, reductive, and ‘critically timid’ approach to analyzing transformations of penal discourses. Notably, Hannah-Moffat (1999) has observed in women’s penal regimes what she calls a “hybrid moral/actuarial penalty,” whereby certain “holistic approaches to corrections [develop] techniques to manage an individual’s moral character” which is “not inclined to be concerned not with the whole person but instead a specific category risky behaviour” (42). Thus, a certain “moral regulation” is bonded to “actuarialism” when categories of risk are stretched to include moral elements (Hannah-Moffat, 1999: 82).

Years later, Hannah-Moffat (2005) strengthened her analytical position on the use of actuarial risk tools by uncovering that penal institutions have not completely relied on objective (static) and totalizing risk measuring tools in penal practice. Rather, there are various stages during risk calculation and prison operations of practitioner judgment, observation, and examinations (Foucault, 1977; Hannah-Moffat, 1999). In the same vein, Mathiesen (1990) notes, “the decision-making system of the prison is to large extent *discretionary*. The rules which the prison has to abide by are to significant degree *elastic*” (135, emphasis added). This notion of ‘elasticity’ is very useful to describe the way in

which penal policy (and risk logic) stretches to accommodate ‘expert medico-legal opinion’ within the penal sphere (see Foucault, 2003: 42).

Canadian ‘correctional’ approaches to risk and prisoner management have been observed as mobilizing hybrid methods of risk/need, moralism/actuarialism, and discipline/managerialism that are interchangeable and fluid concepts to fit the subject of intervention and the political narrative of neoliberalism (Hannah-Moffat, 1999; O’Malley, 1999). At a distance, Chantraine (2006) echoes these claims by arguing for a closer observation of the ‘operational practices’ of the prison in the context of the ‘new penology.’ Finally, Hannah-Moffat (2005) has shown that contemporary risk/need technologies have produced “risk knowledges [that] are fluid and flexible and capable of supporting a range of culturally contingent penal strategies” (29). With these positions in mind, with particular emphasis to the latter, a brief but close look at CSC’s use of risk management within Indigenous incarceration will create space for further critique.

The following are two sections of separate penal policy governing ‘operational practice’ that illustrates Hannah-Moffat’s notion of risk/need hybridization and the further coupling of healing, colonial history, and ‘criminal’ risk. CSC’s (2007) Commissioner’s Directive on *Correctional Planning and Criminal Profile* mandates:

“Holistic Healing is very important for Aboriginal people. Healing occurs within four dimensions: spiritual, emotional, mental and physical. Using the Elder’s assessment, discuss the offender’s understanding of how and where he or she is in relation to the four aspects of traditional healing, and how this may mitigate and assist in the management of risk in the institutional and community setting” (1).

Currently, while staff are directed to assess the mitigation of risk they are reminded through CSC’s (2008) Commissioner’s Directive on *Aboriginal Corrections* that, “All CSC staff will consider an Aboriginal offender’s social history when making decisions in

accordance with the Gladue principles” (6). Here, the guidelines for penal staff mandate that risk be calculated according to not only the ‘Healing Plan,’ but furthermore in conjunction with ‘paying particular attention’ to the circumstances of the “Aboriginal social history” of the offender. The term ‘Aboriginal social history,’ at times abbreviated as “ASH” to add a dramatic tying of symbolism, is used by CSC as a blanket term for an ‘all-in-one,’ user friendly, definition of the social impacts of colonialism, intergenerational impacts of the effects of residential school, and community dislocation, among others.

Perhaps most unsettling is CSC’s (2008) functional definition of Aboriginal social history¹⁸:

“[Aboriginal social history] appl[ies] only to Aboriginal offenders and not to non-Aboriginal offenders who choose to follow the Aboriginal way of life behind bars. They identify important attributes that must be examined when assessing the needs of Aboriginal offenders” (6).

What we can take from CSC’s definition of Aboriginal social history in the context of operationalizing ‘correctional’ treatments is evidence of a radicalization of the actuarial risk model in ways that appears to contradict its very logic (see: O’Malley, 1999; Martel, Brassard, and Jaccoud, 2011). The “objective”, homogenizing force of actuarial risk mutates to “incorporate an assortment of logics and frameworks” (Maurutto and Hannah-Moffat, 2006: 439). Thus, the Aboriginal risk management model presents a logic of risk/need that has completely cannibalized its own discursive knowledge of its subjects (Indigenous colonial history) and regurgitated this knowledge as objects of risk and criminogenic need applied to the body of the prisoner. Indeed, the absorption and

¹⁸ Refer to Annex A for a copy of the *Concepts and Definition* from CD 702 on Aboriginal Corrections detailing the “non-exhaustive” list of possible factors of need that could require mitigation of risk according to the prisoner.

appropriation of discourse and history is nothing new to risk thinking nor is it a challenge to contemporary penal logic. If anything, the incorporation of ‘Aboriginality’ into the risk model in CSC further shows how actuarial models intensify and historically persist in contemporary institutions as show through the work of Rigakos and Hadden (2001).

Martel, Brassard, and Jaccoud (2011), have criticized the integration of Indigenous concepts and symbolism in the current penological risk-based corrections, suggesting that even though “Aboriginal ancestry is not seen as a cause of criminal behaviour per se,” the incorporation of Aboriginal social history has extended the reach of “risk assessment of Aboriginal offenders whereby one’s social positioning comes to be taken as a risk marker (Schawalbe *et al.*, 2006 cited in original text)” (Martel, Brassard, and Jaccoud, 2011: 240). Just as one is ‘at risk’ of ‘criminality’ for being an ‘Aboriginal person,’ one is (paradoxically) at risk for ‘criminality’ for not being a suitable ‘Aboriginal,’ ‘Aboriginality’ becomes both the object of ‘criminality’ and normalcy.¹⁹

Postcolonial scholar Agozino (2003) has compared the rise of ‘correctional’ positivistic diagnoses, such as risk logic, likening them to “an old version of the old Enlightenment ideology that science has the answers for increased human happiness which is found in biological, psychological and conservative sociological positivism” (63). In the following chapters , I will attempt to map how criminology’s ‘holy trinity’ of disciplinary branches - law, sociology, psychology/psychiatry - remains the driving force of social intervention and control within contemporary Canadian penology amid certain tensions with Indigenous healing practices.

¹⁹ Instances of paradoxical penal logic have been illustrated elsewhere in Hayman’s (2006) work on Canadian prisons for women as well as Pavlich’s (2005) critical reading of restorative justice approaches.

For the past two decades, positivist science branching from criminology's 'holy trinity' have produced endless quantitative and qualitative diagnoses on 'criminality' specific to Aboriginality. These totalizing diagnoses (analyzed at length in later chapters) have discursively ordered a typology of 'criminality' that locates itself on the body of the 'Aboriginal offender' that presumes an abnormality based on cultural deficiencies. On the other hand however, the same positivist logic has championed the efficient use of culture, tradition and spirituality as a method to normalize criminalized Indigenous people.

Mimicry and (Colonial) Penal Power

“...colonial mimicry is the desire for a reformed, recognizable Other, as a subject of a difference that is almost the same, but not quite. Which is to say, that the discourse of mimicry is constructed around an ambivalence; in order to be effective, mimicry must continually produce its slippage, its excess, its difference” (Bhabha, 1994: 122)

While criminology is just beginning to address larger questions of crimes against humanity, genocides, and other multinational, transnational crimes, the question of colonialism, assimilation, cultural diaspora has largely been coupled under the scholarship of *postcolonialism*. While this remains a rich and fertile intellectual field, the cross-pollination of postcolonial scholarship in Canadian critical criminology has remained limited. Thus, there remains a need to bridge both fields; this is especially relevant for an analysis of Indigenous imprisonment. Incorporating postcolonial concepts and sensibilities will allow to move beyond the boundaries of 'Anglo Saxon' sociologies and 'imperial reasoning' of social sciences and further gaze beyond colonial walls to capture the broader socio-historical trajectories at play (Bourdieu and Wacquant, 1999; Carrier, 2010).

Perhaps the most contentious facet of CSC's approach to the imprisonment of Indigenous people is the large-scale incorporation and adoption of Indigenous knowledge, particularly knowledge relating to tradition, culture, healing and other symbols of 'Aboriginality.' As will be further detailed in later chapters, CSC has maintained that an 'Aboriginal correctional' model must foremost be tied to certain principles of 'tradition', 'culture', spirituality' (CSC, 2008). While CSC stops at giving a diagnostic definition of 'tradition' and culture', the broader tying of spirituality (or a representation of it) and correctionalism is painstakingly clear in penal policy governing Indigenous prisoners. For example, according to principle 15 of the Commissioner's Directive on 'Aboriginal Corrections,' "CSC is committed to providing Aboriginal offenders with a holistic approach to further develop *their* understanding of traditional Aboriginal spirituality" (CSC, 2008: 5, emphasis added). Notably here the onus for spiritualization of 'Aboriginal offenders' rests on the responsibility of the prisoner to learn, develop and participate in 'spiritual' practice. Incorporating some key criticism of the prison's implementation of tradition and culture within penal practices, this section of the chapter will engage with a post-colonial lens in attempts to clarify concepts such as 'Aboriginality' culture, and 'tradition'.

Surprisingly, much contemporary sociological (and criminological) work done on the Imprisonment of Indigenous people in Canada do not mobilize the rich theoretical background that post-colonial scholarship can provide. Post-colonial perspectives used in the study of criminology and prisons allows for an expansion of disciplinary boundaries through a reflexive conceptualization of colonial power relations (Cunnen, 2011). The post-colonial lens applied to discourse reveals otherwise hidden layers of structural

dominance. The ‘insidious nature’, to quote Fanon, of colonial power reveals itself through not only in texts and literature, but also through method and positivist science. Agozino (2003) indicates that “positivism wrongly assume[s] that empiricism is acceptable as scientific method” (21). Thus, anything outside of the imperialist gaze, is not measurable, and not considered relevant. Agozino (2003) suggests things such as surplus labour and “race-class-gender relations are ruled out of the picture” (21). Criminology is indeed guilty of this methodological flaw, however, I am more concerned about what criminology makes visible than what it doesn’t see. According to CSC’s research mantra, criminological research conducted for Canadian corrections are “evidence-based” and only focus efforts to curb law-breaking in society through what they deem “works” in penal treatment (Bonta and Andrews, 2007: 1). This is indeed concerning considering Indigenous healing models are now considered as part of the “what *really* works™” penal rationality for Indigenous prisoner management at CSC. If then we accept that colonial power has some force within CSC, mobilizing the post-colonial lens is an essential tool for the deconstruction of penal discourse and more so for examining the brand of ‘criminology’ the deploy: a discipline born out of imperialist logic and Darwin’s wet dream²⁰.

Key notions from Bhabha’s (1994) work, *The Location of Culture*, will be identified and expanded upon to provide a theoretical frame that will bridge the notion of

²⁰ In Charles Darwin’s (1871) work, *The Decent of Man and Selection in Relation to Sex*, under the section on “Natural Selection Affecting Civilised Nations”, Darwin reveals his imperial desire for a superior human species: “With savages, the weak in body or mind are soon eliminated; and those that survive commonly exhibit a vigorous state of health. We civilized men, on the other hand, do our utmost to check the process of elimination; we build asylums for the imbecile, the maimed, and the sick; we institute poor-laws; and our medical men exert their utmost skill to save the life of every one to the last moment. [...] Thus the weak members of civilized societies propagate their kind. No one who has attended to the breeding of domestic animals will doubt that this must be highly injurious to the race of man” (161-162).

disciplinary persistence with the undercurrents of colonial power relations that play a significant role in the imprisonment and correction of Indigenous prisoners.

In *The Location of Culture*, Bhabha (1994) presents his readers with a postmodern approach to post-colonial analysis and brings an important theoretical pillar for this thesis. For him, the goal is to reveal the paradoxical language of colonial discourse that produces an economy of power and knowledge, along with the subjugation of the colonized. Bhabha introduces the notion of ambivalence, borrowed from psychoanalytics, to describe a “continual fluctuation between wanting one thing and wanting its opposite” (Ashcroft, Griffiths, and Tiffin, 2000: 12). Bhabha (1994) adopts this term to describe the ways in which colonial discourse can be interrupted by a negotiation of authority to “disrupt its assumption of monolithic power” due to the sacrificing of compromise in cultural forms by the colonizer (Ashcroft, Griffiths, and Tiffin, 2000: 14).

Bhabha (1994) has also provided a useful concept called ‘mimicry.’ Mimicry is a result of the pressure of colonial discourse on colonized subjects to “‘mimic’ the colonizer, by adopting the colonizer’s cultural habits, assumptions, institutions and values” (Ashcroft, Griffiths, and Tiffin, 2000: 139). However, ‘mimicry’ is never a complete reproduction of colonial forms as to keep the Other ‘at a distance’ –“always the same but not quite” – paradoxically, mimicry of colonial habits reveals a disconcerted “uncertainty” or ‘ambivalence’ in colonial control (Bhabha, 1994:86). Applying Bhabha’s (1994) postcolonial theoretical framework in the context of correctionalism and ‘Aboriginality’ does need readjusting. I propose inverting Bhabha’s notion of mimicry and applying it to the penal institution. That is, rather than a mimicry of the colonizer by the colonized, I suggest that the colonizer (prison) mimics the colonized (prisoner) in a

re-appropriated ‘truthful’ self (Aboriginality). Thus, *institutional mimicry* negotiates the image of the ‘reformed recognizable Other,’ producing a ‘technology of truth,’ or subjectivity, through the ambivalent relationship between the colonized and the colonizer (Bhabha, 1994; Foucault, 1978). Pushing this framework a bit further, we could also suggest that institutional mimicry presents a ‘reflexive moment’ that lies not far from Giddens’s (1991) “institutional reflexivity”²¹, which also compliments a theory of risk practice in colonial institutions (20).

The intersection of disciplinary and colonial power is observable in the micro-political negotiations between Aboriginal/prisoner, prisoner/prison, and colonizer/colonized. Furthermore, as I will demonstrate in subsequent chapters, the prison’s ability to mobilize a reformed and ‘positive’ narrative of colonial history through the mimicry and mobilization of ‘Aboriginality’ as a fluid object of therapeutic penal knowledge is indicative of an intensification and continuation of colonial penal power and perhaps even how the prison in the 21st century also “emerges as one of the most elusive and effective strategies of colonial power and knowledge” (Bhabha, 1994: 122).

As I show in my analysis, CSC’s ‘Aboriginal Corrections’ programme has integrated elements of sociocultural history within the prisoner treatment plan. This effectively amounts to a rearticulation of colonial history by the colonizer, onto the body of the colonized. This rearranging and ‘universalization’ of history is nothing new to the

²¹ As part of Giddens’s (1991) work on post-traditional societies in late-modernity, he defines ‘institutional reflexivity’ as “the regularised use of knowledge about circumstances of social life as a constitutive element in its organization and transformation” (20). Notably, Applying an element of existentialism to institutions of modernity, Giddens’s theory of reflexivity is useful for identifying the way in which CSC can produce knowledge and communicate certain ‘truths’ about its colonial past (as an active engine of the Canadian colonial project) through systemic transformations such as the incorporation of the image of ‘Aboriginality.’

‘imperialist reasoning’²² of colonial institutions. Andersen (1999) has commented on the governance of Indigenous people through a hegemonic image of Aboriginality and “pre-contact” historical ideal-types as tools of legal recourse to a softer-punishment (Andersen, 1999: 310). An example of this is notably the largest overt piece of legislation governing Indigenous bodies and space, the *Indian Act*.

Framing ‘Aboriginality’ (encompassing its various representational forms in tradition, culture, and spiritual healing) as an *object* of knowledge that is (re)produced by positivist criminology through various technologies of normalization and discipline (penal programs, evaluations, normalizing judgments) allows for a conceptual grasping of the ‘micro-politics’ of government stemming from the various interweaving of modes of power such as disciplinary, pastoralism, sovereign, and colonial (Hannah-Moffat, 1999, 2001). Borrowing from Martel and Brassard’s (2008) observations, evidence of the prison’s colonial mimicry and re-appropriation of Aboriginality is seen in CSC’s *In Search of Your Warrior* program’s discourse:

“Aboriginal prisoners are ‘reminded of their identity [and made] aware that they have a culture [. . .] a heritage’ by learning ‘all over again about their own culture, [and] going back to their spiritual roots’ in order to ‘get back in touch with their real selves’ (Amellal, 2005: 6 in Martel and Brassard, 2008: 344) .

Discursively placing itself as the site of cultural reclamation, the prison’s mimicry of Indigenous cultural teachings reveal its colonial ethos. This expression of colonial power/knowledge extends the panoptic reach of the prison far beyond any temporal or spatial boundaries it might have over the prisoner’s body, due to its objective of building and shaping culture, restoring tradition, and refashioning an otherwise broken spirit.

²² See Bourdieu & Wacquant (1999).

‘Aboriginality’ is presented as simultaneously an *object* of knowledge and the *subject* of therapy, one that is produced and reproduced by the penal regime through various technologies of normalization and discipline (‘correctional’ programs, risk assessments, institutional mimicry).

Extending Martel and Brassard’s (2008) analysis, Martel, Brassard, and Jaccoud (2011) observe the prison’s application of ‘Aboriginality’ as a process of “ontological mutation” where the ‘criminal Aboriginal’ is paradoxically constructed as a signifier of ‘risk’ and ‘responsibility’ in Aboriginalized risk-management practices (247). As mentioned previously, the notion of shifting prisoner subjectivity has gained much momentum in broader critical scholarship (see: Donohue and Moore, 2009) notably through Hannah-Moffat’s (2005) highly influential conceptual framework of ‘transformative risk subject’. Placing Bhabha (1994) not far from the former, mimicry too suggests a similar fluid-like characteristic. For example, he notes the “menace of [colonial] mimicry is its double vision which in disclosing the ambivalence of colonial discourse also disrupts its authority. And it is a double vision that is a result of what [is] described as *partial representation/recognition* of the colonial object” (126, emphasis added).

Analyzing the *mobility* of ‘Aboriginality’ (cultural ontology) within penal discourse as a ‘fluid,’ (Donohue and Moore, 2009), ‘transformative’ (Hannah-Moffatt, 2005), ‘mutative’ (Martel, Brassard, and Jaccoud, 2011) object/subject demonstrates at once the ‘volatile and contradictory logic’ (O’Malley, 1999) and the ‘governing paradoxes’²³ (Pavlich, 2004) of penal regimes. Perhaps more importantly however, it is

²³ On this note see George Pavlich’s (2005) work on the ‘Governing Paradoxes of Restorative Justice’.

indicative of the persistence and ‘interconnectedness’ of disciplinary and colonial power/knowledges (Foucault, 1977; Hannah Moffat, 1999, 2001; also see Bhabha, 1994).

The prison’s enthusiasm of (re)traditionalizing Indigenous people is nothing new to Canadian colonial institutions. For the past two centuries Indigenous people have been subjugated through a colonial coercion of detraditionalization and ‘civilizing process,’ notably through the *Indian Act* and various carceral environments such as residential schools and reserves. What is presently significant, however, is a reflexive revisiting of this history through a penal rationality that adopts techniques of discipline, risk logic, and cultural mimicry. If the prison remains a location of cultural interpretation and tradition in the early 21st century for Indigenous people as it did in the 19th century²⁴, perhaps we have reason to suggest that colonial power has a much larger presence in contemporary social life.

Capturing the Persistence of Discipline

Opening this chapter with certain epistemological contentions surrounding the situation of penological change and historical flux was necessary to not only locate the topic of contradictory and paradoxical reform (specifically, the integration of Indigenous healing models as ‘correctional’ therapy) in Canadian prisons, but also to further comment on the

²⁴ Early Canadian Penitentiary reports from the late 19th century illustrate an interest from Christian pastors to engage with Indigenous prisoners differently from non-Indigenous prisoners. Notably, the recognition of difference in ethnicity and the political climate (1880 Metis prairie revolution) caused an immediate need for the Canadian state to pacify captive Indigenous prisoners and modify behaviours through pastoral counseling. Throughout these reports, there are particular emphases on introducing “eager” Indigenous people to the “principles of the Christian life” though a “labour” they are “familiar with” so that they can return to their communities and bring pastoral teachings with them to teach the masses. These modes of pastoral governance, as Foucault has shown throughout his oeuvre of work, are recursive in history as they are in the present.

state of the ‘post-disciplinary’ lens that has proliferated throughout much of the critical criminological analysis surrounding prison spaces.

A theme of this chapter is introducing a sociological sensibility to colonial undercurrents of modern penal technologies. In an effort to capture broader power/knowledges that are at play within the penal adoption of ‘Aboriginality’ as corrective therapy, one must resist to view penal fluctuations in terms of ‘epochal shifts’ (e.g.: ‘new penology’, ‘post-disciplinary’), but situate the conditions that made the rationalization of ‘*correcting*’ Indigenous prisoners through ‘Aboriginality’ possible (Foucault, 1970). Following Rigakos and Hadden (2001) and subsequently Sim (2009), the analysis of punishment should be placed on analyzing punishment through historical *continuities* and politics of *contestations*, and while discontinuities do exist, and must be reckoned with, social scientists, especially those that consider themselves *Foucauldian* – or historians for that matter – must avoid the desire to claim ruptures or ‘epochal’ shifts at every ripple of change in penal practice. Indeed, it is these very ripples that cause theorists to at once claim a historic break with ‘liberal pasts’ and mount debates against the perceived punitive futures, colonizing the penal field with totalizing analyses (Carrier, 2010).

Continuing in the spirit of extending the sociological gaze to the *longue durée*, I propose re-framing the prison in terms of its ethos, that is, its political and colonial position over a broader theoretical and methodological trajectory. This approach is to invoke a certain sensibility of the interaction between the overlapping boundaries in structure, history, and power. To further observe the nuances within the ‘layers of

periodizations' that can lead to uncovering some of the more forgotten (and troubling) 'specters' of punishment, correctionalism, and colonialism (Hogeveen, 2011).

Approaching punishment as a fluid object of *intensification*, the prison appears less an institution of rapid change, flux, and progression, but rather it is a place of stagnancy with some movement. Critical scholars must avoid what Loader and Sparks (2004) call 'rose tinted' versions of history when approaching apparently new modes of penal technologies. Penal theorists must situate their sociological gaze in the *longue durée* without discrimination to the present. In other words, critical epistemologies surrounding penal history not must not fall trap to totalizing debates that mount to what Carrier (2010) suggests is a 'critical pretention' of the,

“will to express the need to rehabilitate by force criminalized individuals, which in turn contributes to reinforcing the naturalization of the penal sanction while renewing mainstream criminology's legitimacy even though mainstream criminology stands accused of being quite instrumental in the coming of the punitive era” (Carrier, 2010: para 48).

In opposition to those suggesting that the 'new penology' has brought upon a distinctively 'post-disciplinary' era (see: Slingeneyer, 2009) this thesis sympathizes with Foucault's classic critique of historical continuities and penal recursivities, and further observes the prison as a continued, institutionalized control project for the molding and shaping of bodies and minds. As a larger project of colonialism, this becomes especially evident in the imprisonment of Indigenous people over time. Following the appreciation for the 'heterogeneous nature' of the penal field (Carrier, 2010), the polymorphous agency of correctionalist and actuarialist technologies (Hannah-Moffat 2004; Marutto and Hannah-Moffat, 2005); and the 'braided nature' of correctionalist and reformist discourse (Hutchingson, 2010; Vaughan, 2000), I propose that sociological sensibilities

must direct their gaze towards broader epistemological and methodological trajectories, beyond (post)modernist accounts, all while maintaining a sensibility and appreciation for socio-historical and micropolitical relations that undoubtedly stimulate and perhaps sway fluctuations in penal practice.

The next chapter will introduce the methodological approach used to complete this thesis and further unpack certain methodological issues, notably that of discourse analysis and Foucault's promise of archeology in examinations of discourse and power/knowledge.

CHAPTER TWO:
METHODOLOGICAL APPROACH

The previous chapter outlined the theoretical framework and the key research questions guiding my study. In this chapter, I introduce the methodological framework that will guide my analysis to respond to these research questions in the following chapter. The research method applied throughout my work is largely influenced by the early work of Foucault's (1970, 1972) discourse analysis. Following Foucault as a methodological framework, I employ both Andersen's (2003) and Carabine's (2001) strategies as possible methodological 'paths' of discourse interpretation.

In this chapter, I explain key areas of discourse analysis methodology that are used throughout the research to form a discursive analytical strategy. This approach concerns three main areas: discourse, archaeology, and genealogy. I begin with defining key terms and concepts used within this chapter and throughout the thesis. Secondly, I introduce Foucault's (1972) archaeology/genealogy analytical approach in concert with other scholars that have used his analytical methodology to formulate their own discursive analytical strategies. Finally, I propose a clear research design outlining a strategy to analyse 'discourse-as-data' (Carabine, 2001).

This study is concerned with analysing and 'unpacking' the recent changes in penal policy and practice governing Indigenous prisoners and attempts to reveal the governing rationalities that influence them currently in Canadian federal penitentiaries. In doing so, I approached my study through a critical engagement with discourses arising from a collection of official government documents, legislation, research, and other

materials pertaining to the imprisonment of Indigenous people. Prior to detailing the material analysed in my study I will first introduce the reader to the topic of discourse analysis and key concepts used throughout my study.

Discourse Analysis

What is Discourse?

Giving a working definition of discourse analysis, it is necessary to first define what we mean by *discourse*. My definition of discourse stems from Foucault's (1972) work in *Archaeology of Knowledge*, wherein he identifies discourses as the "general domain of all statements, sometimes as an individualized group of statements, and sometimes as a regulated practice that accounts for a number of statements" (Foucault, 1972: 8). According to Foucault, there exist three concepts that provide the framework for discourse analysis: i) statement; ii) discourse; and iii) discursive formation (Andersen, 2003).

The statement, according to Foucault, is the smallest unit of a discourse; it is considered as the "function of existence that enables groups of signs to exist" (Andersen, 2003: viii). Therefore, when looking at a dispersion of statements (utterances, signs, symbols) that refer to an object, be it a positive or negative referent, we can identify a 'moment of existence' of particular "system of relations" or a *regularity* of statements that constitute a discourse (Foucault, 1972: 107; 1996: 311). Thus, *discourse* is the term given to the final form of these enunciated statements. Expanding this notion, Foucault (1972) suggests:

"Whenever one can describe, between a number of statements, such a system of dispersion, whenever, between objects, types of statements, concepts, or thematic choices, one can define a regularity, we will say, for

the sake of convenience, that we are dealing with a discursive formation” (38).

Central to Foucauldian discourse analysis, and my study’s object of analysis, is identifying and distinguishing the *discursive formations* within selected texts. Discursive formations, according to Foucault (1972), are the collection of enunciated statements or utterances that are discovered by the analyst through the process of studying the regularities of statements and discourses. This process of discovery or uncovering regularities is known as *archaeology*. The discursive formation does not differ much from discourse in that it is a collected “system of dispersion for statements,” or an organized body of discourse (Andersen, 2003: vi). Foucault refers to a “field of objects” that allows for analysis to locate, through archaeology, discursive regularities and formations (Foucault, 1972: 106).

What is Archaeology and Genealogy Discourse Analysis?

Foucault’s methodology of discourse analysis can be understood through two interdependent ‘tools’ of analysis: archaeology and genealogy. Broadly, both approaches are used to observe and identify the formation and transformation of discourse. Archaeology is used to make the distinctions between statements, discourse, and discursive formations. Archaeology asks, “why did this and not another statement occur in its place?” (Andersen, 2003: 31). Archaeology is also concerned with the regularity or dispersion, or both, of statements that articulate groupings, orders, and objects constituted by discursive formations.

While archaeology generally observes the difference between the regularity/dispersion of statements, we can understand genealogy as concerned with the difference of continuity/discontinuity throughout discourses (Andersen, 2003). Indeed,

both archaeology and genealogy are not far from each other and at times have been used interchangeably by some social scientists, causing some confusion in sociological research. My goal is to clarify the differences between both approaches that prove to be inextricably linked in their methodological application. Foucault (1980) has offered some clarification on the topic noting, ‘archaeology’ as the ‘appropriate’ analytical strategy to observe what he calls “local discursivities”, and “genealogy would be the tactics whereby, on the basis of the descriptions of these local discursivities, the subjected knowledges which were thus released would be brought into play” (85). Thus, if approaching the condition of possibility for the rise of healing as ‘correctional’ therapy within penal institutions, we would first look at how statements/utterances/communications sprouting from and between prison policy (law) and research (science) form a certain interdependent relationship through constructing their objects, subjects, truths, operations, and their authorities to ‘speak’ about these elements. It is perhaps Hacking (2002) who best summarizes the relation between archaeology and genealogy in the following quote:

“Foucault does not aim at such a history of who said what and why, but a story about the *web of specific sentences* that were uttered, and a theory, called archaeology, of what made it possible for those sentences to be uttered (largely regardless of who uttered them)” (77, emphasis added).

Thus, genealogy is to ‘make sense’ of the ‘web’ of statements collected through archaeological analysis. In this light, it is appropriate to think of archaeology as the ‘tool’ of genealogical methodology and furthermore situate genealogy as a lens to propel archaeology into the past to capture broader socio-historical contexts of discourse and objects.

For Andersen (2003), Foucault's genealogy entails "three critical forms of application":

- 1) "Reality-destructive use" which "oppose[s] the historical motif recollection-recognition [and...] challenges the way the present recognizes itself in historical texts" notably here accepting the continuity and persistence of control practices and logics embedded in our socio-historical psyches;
- 2) "Identity-destructive use" which "oppose[s] the historical motif continuity-tradition [...] and [challenges] the humanist complacency of the present", which forces discourse analysis to appreciate the dissipation and 'intensification' of power rather than its rebirth;
- 3) "Truth-destructive use" which "opposes the historical motif of knowledge." This aspect of genealogy critiques the conditions of society that is responsible for creating the possibility to speak of certain truths (Andersen, 2003: 19).

In its most rudimentary form, genealogy is about "tracing the history of the development of knowledges and their power effects so as to reveal something about the nature of power/knowledges in modern society" (Carabine, 2001: 277). Furthermore, it projects into the present how "discourses are practised, operationalized and supported institutionally, professionally, socially, legally, and economically" (Carabine, 2001: 276). Thus, the purpose of genealogy is to speak of a 'history of the present' and to observe the conditions of the past that can account for certain modes of rationalities the present. These modes of rationalities have powerful effects in society ranging from the establishment of governmental apparatuses, to new power/knowledge relations that constitute new subjects of dominations. "Genealogy," writes Foucault, "...seeks to re-establish the various systems of subjection: not the anticipatory power of meaning, but the hazardous play of domination" (Foucault, 1998: 376).

Applying the analytical strategy of archaeology to identify the *dispersion* of discourse and truths surrounding the ‘Aboriginal offender,’ I am able to link this discourse with broader continuities of penal truths that signify moments, or ruptures, of penal power intensification in contemporary Canadian federal prisons. Notably here, one can locate Foucault’s (1998: 373) notion of the *entstehung* (the ‘moment of uprising’).

Research Design: Discursive Analytical Strategy

Following Graham (2005), I do not intend to mobilize Foucauldian discourse analysis as sort of methodological ‘cook-book’ followed by an analytical checklist orthodoxy, but rather to mobilize Foucault’s methods through a “respectful conversation” by keeping archaeology and genealogy within reach as a methodological platform to build new departures of discursive investigation (6). I share similar anxieties with scholars that flirt with a poststructuralist or postmodern framework that tend to be interpreted by some as following an “anything goes” playfulness or a certain “methodological anarchy” (see: Thomas, 1997: 85). Indeed, due to Foucault’s notorious vagueness and resistance to label his approach to history and discourse analysis as a ‘method’, these critiques are perhaps well warranted. However, as will be demonstrated, through a combination of discursive analytical strategies crafted by sociologists following in Foucault’s footprints (notably Andersen, 2003 and Carabine, 2001), I have attempted to build a methodological framework that balances the ‘playful’ and ‘systematized’ approach to qualitative sociological research. That being said, I confess that I do sympathize with a framework that allows for certain methodological flexibility.

The methodological approach undertaken in my study aligns closely with Andersen’s (2003) notion of ‘analytical strategy’, which suggests,

“a second-order strategy for the observation of ‘how’ the social emerges in observations (or enunciations and articulations). The elaboration of an analytical strategy involves shaping a specific gaze that allows the environment to appear as consisting of the observations of other people or systems” (vi).

Following the notion of ‘analytical strategy,’ I position my line of inquiry towards actively “questioning presuppositions” and “de-ontologising” positivism’s objects of study (Andersen, 2003: xii). This notably involves, as Andersen (2003) suggests, an epistemologically-orientated “observation of observations as observations” (xiii) or as Foucault would suggest, a “discourse about discourse” (xvi). Positioning my analysis in this light avoids certain epistemological reductions and ‘*a priori*’ reduction of historical events or assumptions about truths surrounding penal regimes and discourses.

I have also mobilized elements from Carabine’s (2001) *Guide to doing Foucauldian genealogical discourse analysis* (detailed below) as a broad structure to support my analytical strategy as a methodological framework. The reason why I chose Carabine’s (2001) model is due to her structured application of Foucauldian discourse analysis that in turn provides me with an accessible, pragmatic framework to facilitate the interpretation and organization of my identified discursive formations. That being said, due to the prescriptive nature of Carabine’s (2001) *guide* I have opted to modify it in conjunction with Andersen’s (2003) analytical strategy. This combination of Andersen (2003) alongside Carabine (2001) introduces a degree of methodological flexibility to mobilize both archaeology and genealogy throughout my analysis of discourse.

Data Collection: Assembling the Archive

In my study, I sought to analyse the discourses stemming from CSC policy and positivist criminological research. The materials gathered for my analysis were generally accessed

through public domains such as the CSC website, academic journals, and other non-governmental resource databases.

As noted above, identifying a body of statements is not always explicit due to the shifting and ‘polymorphous’ nature of discourse (see Foucault, 1972). Determining the body of dispersed statements for my analysis, and ultimately isolating the penal discourses for analysis, involved a process of compiling, sorting, and organizing an archive from a comprehensive body of literature surrounding Indigenous imprisonment. As Foucault reminds us, “one ought to read everything, study everything. In other words, one must have at one’s disposal the general archive of a period at a given moment” (Foucault, 1998: 263). This is echoed in Carabine’s (2001) *guide*, where she recommends that multiple readings and “re-readings” of material will allow the analyst to “get a sense” of the overall message of the reading and locate where their interest enters the conversations through the “identification themes, categories, and objects of discourse” (282). My interest is with the way in which CSC policy and criminological knowledge ‘speaks’ to the governance of Indigenous prisoners.

The materials selected for my archive were organized into two wide-ranging and open categories: i) Research, and ii) Policy (otherwise understood as criminological *knowledge* and ‘correctional’ *practice*). I recognized early on in my study that there exists a plethora of governmental and scientific publications that ‘speak’ to the topic of Indigenous imprisonment; the majority of these surrounded the topics of causes and consequences of Indigenous mass incarceration in Canadian prisons and causes of Indigenous ‘criminality’. Given the constraints and focus of this study, I chose to direct my analytical efforts towards penal policy and criminological research that specifically

‘speaks’ to the management, confinement, and profiling of Indigenous prisoners beginning at 1989 to 2013. Below I explain the rationale for choosing this particular timeframe.

In 1989, the first Task Force on Aboriginal Peoples in Federal Corrections (TFAPFC) was conducted. The scope of the TFAPFC (1989) findings concluded with 61 recommendations effecting change in policy, structure, programs and other areas in CSC. The TFAPFC signified the first concerted effort by the Canadian government to attempt to intervene on the rising Indigenous population with federal prisons. Following the TFAPFC (1989), we can trace a series of research, sentencing laws, and penal policy initiatives enacted in between 1989-2013, that highlight and reiterate the ‘urgent need’ to address, accommodate, and treat the issue of Indigenous mass incarceration. This same period of time saw a growth and accumulation of positivist-based criminological research surrounding strategies of Indigenous imprisonment, Indigenous prisoner treatment, and theories of Indigenous specific law-breaking. For the sake of clarity, I have included a list in *Appendix B* of some of the significant legislation, policy introductions, and major research projects during this 1989-2013 period that has produced such knowledge and ‘speaks’ to the governance of Indigenous prisoners.

Given the scope of a master’s thesis, it was not possible to account for every possible statement or publication surrounding the governance of Indigenous prisoners within penal policy and law, or criminological research. Therefore, when selecting documents I isolated those that, I felt, provided an overall assessment of application of the key themes found in my initial analysis of scientific research, notably that of the *pathology, needs, and healing* of the ‘Aboriginal offender.’

Data Source: Building the Archive

The acquired data was organized under two categories: i) *research/knowledge* and ii) *CSC policy and legislation*. Under the research/knowledge category I compiled research reports released or referenced by CSC's Research Branch and publications from other fields of criminological research surrounding 'criminogenic' factors that characterize 'Aboriginal criminality' and delinquency. I selected CSC Research Branch publications alongside external Canadian criminological research for two reasons. First, while CSC's Research Branch has an extensive library of Canadian criminological-based research publications, the range and breadth of work concerning 'Aboriginal Corrections' is limited to the penal site. Typically, Research Branch publications cover topics that have direct policy implications or affect 'correctional' treatment targets (e.g.: risk/need factors). My objective throughout the research/knowledge category of my analysis was to grapple with the overall positivity of discourse; the unified discursive growth and specialization towards the solidification of a criminological artefact: which is the object of Indigenous-based deviancy. This is what Foucault (1972) calls grasping the "general project of a science" (126). This requires stepping out of the corpus of 'correctional-based' research and placing it *interdiscursively* among a larger body of research and literature (e.g.: the medical field, the sociological field, the psychology field) to identify *what is* being said and *what is not* said within the space of communication.

Secondly, by 'placing' the Research Branch's oeuvre within a broader discursive framework of analysis, I am able to identify how certain diagnoses and truths are produced in, for example, the biological field and interdiscursively communicated through the criminological gaze. One example would be how diagnosed anatomical

pathologies such as foetal alcohol spectrum disorder (FASD), become coded as ‘criminogenic’ through the discursive tying²⁵ of the symptoms associated with FASD .

While these research documents are chosen from multiple semantic fields of knowledge and speak differently of Aboriginal ‘criminality’, they all related to my object of research in the way that they formed an “ensemble of statements” that constituted meaning surrounding ‘Aboriginality’, ‘criminality,’ and how to rid the latter from the former (Foucault, 1996: 312).

My archive consists of a collection of legislation, policy introductions, and major research projects between 1989-2013 concerning the governance of Indigenous prisoners. These documents can be found listed in *Appendix B*. All of the listed publications within this appendix were examined and analysed throughout the Part One of Chapter 3. For Part Two, I have identified four policy-related documents published by CSC that ‘speak’ to the governance of Indigenous prisoners and formed the core of my analysis of penal policy and law:

- I) Strategic Plan for Aboriginal Corrections: Innovation, Learning & Adjustment (2005);
- II) Commissionaires Directive 702: Aboriginal Offenders (2008);
- III) Commissionaires Directive 705-6: Correctional Planning and Criminal Profile (2007);
- IV) Commissionaires Directive 705-7: Security Classification and Penitentiary Placement (2010).

Together, both the above listed policy documents and the works listed in *Appendix B* form the total empirical corpus (archive) of my discourse analysis.

²⁵ Perhaps a more interesting example would be to observe how both healing and correctionalism are used polemically through intradiscursive communications within correctional discourse to create the image of a site of contestation. However, when both healing and correctionalism are placed within a broader field of discourse, both techniques of discipline come less and less differentiated through their means of therapy and more indistinguishable from one another on the basis as a normalizing force.

Method of Analysis

As indicated, I have organized my data sources in two categories: research/knowledge and policy/legislation. Once these categories were defined, I found it useful to structure my methodological approach in two waves of analysis²⁶;

- 1) Analyse and identify the dispersion of regularities within criminological research that produces discursive formations (knowledge) surrounding Indigenous imprisonment (e.g.: discursive objects, subjects, truths);
- 2) Analyse the way in which penal policy assembles and orders certain criminological knowledge into discursive practices that produces or reproduces power/knowledge relations with penal discourse.

In approaching penal discourse through two waves of analysis, I was able to observe the discursive bridging of knowledge and practice, or how the ‘constitutive power of discourse’ between criminological knowledge and penal policy assembles and orders their objects of intervention (Gubrium and Holstein, 1997: 117). The overall goal was to locate ‘interdiscursive competitions’ within criminological knowledge’s formations of statements, objects, concepts, subjects, strategies vis-à-vis ‘correctional’ *practice*, and illustrate how policy becomes “vehicle for linking substantive meaning to experience” (Gubrium and Holstein, 1997: 117, see also Foucault, 1991: 58).

Analysis

Once I completed the two waves of analysis, I identified two sets of discourse stemming from positivist criminological research/knowledge and penal policy/legislation that ‘speak’ to a) the ‘Aboriginal offender’ and b) the treatment of the ‘Aboriginal offender’

²⁶ Here, I draw on Gubrium and Holstein (1997) notion of ‘analytic bracketing’ in their chapter on ‘Analytic Choices.’

as my objects of inquiry. From there, I organize two categories that assist me to categorize my empirical findings.

For the sake of clarity, I have provided an analytical grid below to demonstrate how I approached the identified discursive formations pertaining to my study. Both columns represent two categories of analysis, I) penal policy and II) criminological research, dividing the discursive praxis and knowledge relating to both the Aboriginal offender and their treatment.

Criminological Research/Knowledge	CSC Policy/Legislation
- How does research formulate the object of Indigenous-based deviancy?	- 'How does law constitute the 'Aboriginal offender'?
- How is pathology tied to criminalized deviancy within Indigenous prisoners	- How does CSC constitute the Aboriginal offender?
- How does research constitute criminalized deviancy in the Indigenous body, psyche, and social?	- How does law communicate the image of the Aboriginal offender to policy?
- How does research constitute ' the Aboriginal offender' vis-à-vis the non-Aboriginal offender?	- How are images/representations of Indigenous culture, tradition, and sociohistory communicated through penal discourse and coded?
How research integrate the image of social history within subjectivity of the 'Aboriginal Offender'?	- How is healing deployed as a penal technology?

Keeping in mind that the nature of discourse is 'polyvalent,' that is, its multiple capacities to build, construct, and disperse knowledge (Foucault, 1977), this analytical grid must not be taken as a static alignment of questions or identifiers, but as a strategy for opening up discursive space to reveal "new possibilities" of new discursive formations with new possibilities of objects, truths, and practices that stem from them (Foucault, 1972: 67). One example of this is leaving my data set identified above open-ended. I did not restrict my analysis to specific research within CSC but forced my

analysis to gaze beyond CSC funded documents into the “general horizon” of broader disturbances within the field of knowledges concerning Aboriginal Corrections (Foucault, 1972: 131).

CHAPTER THREE:
THE ENGINES OF ABORIGINAL CORRECTIONS

In the following chapter I analyse empirical findings that support my thesis surrounding the rise of ‘Aboriginal Corrections’ and a healing discourse in contemporary penal practices governing Indigenous prisoners in Canada. As mentioned in previous chapters, my goal is to observe how positivist criminology has shaped an understanding of the ‘Aboriginal offender’ and the penal rationality governing Indigenous prisoners in federal penitentiaries. This rationality, as I will attempt to demonstrate below, locates itself through a tension between positivist criminology and ‘correctionalist’ rationality. Throughout my analysis I organized empirical data into two categories: knowledge and policy formation. Within the first section, I gathered criminological research produced, funded, or cross-referenced by CSC’s *Research Branch*. This section can be considered as a set of scientific discourses that shapes the object of Indigenous-based deviancy. In the second section, I organized key penal policy documents that ‘speak’ to the management and treatment of Indigenous prisoners in Canada, this section can be considered as discourse that shapes the ‘Aboriginal offender’.

This approach has allowed me to observe how positivist criminology has attributed meaning to causal factors of criminalized deviancy specific to Indigenous populations and analyse how these causal factors are ‘given life’ through penal policy interventions. In concluding this study I show how CSC’s ‘Aboriginal Corrections’ programme for the imprisoned Indigenous illustrates new disciplinary program born out of old penal epistemologies.

Scope of Analysis

As noted above, part of this project was to highlight the rise in positivist-based research surrounding the diagnoses and treatment of ‘Aboriginal criminality’ and analyse the effect that these criminological truths have on the prison and penal policy. Narrowing down and identifying a corpus of literature on the subject of ‘Aboriginal offending’ required a bracketed reading of penal policy as practice and criminological research as knowledge. Indeed, it was not possible to account for *all* texts surrounding the aetiology of ‘criminality’ and scientific claims to traits of deviant behaviour in Indigenous people. If however, we approach deviancy as the product of symptoms associated with particular fields of knowledges that constitute contemporary ‘criminology’ or penology for that matter, we can isolate three axiomatic principles that “discursively produce the object [of] criminalized deviancy” (Carrier, 2006: p. 3). This results in three areas where criminalized deviancy is produced through interacting fields of knowledge production surrounding pathologized deviancy, they are: i) sociopathologized deviancy; ii) psychopathologized deviancy; and, iii) biopathologized deviancy. Likewise, policies governing Indigenous prisoners are not limited to CSC authored documents; many policy-based documents that speak to Indigenous prisoners come from various governmental agencies such as Health Canada, Aboriginal Affairs and Northern Development, the Department of Justice Canada, and so on. Isolating policy arising solely from CSC utterances permits my research to identify the areas of cross-fertilization between criminological positivism and penal practice.

Borrowing from Carrier’s (2006) work on discursive formations of criminalized deviancy in academia, my analysis makes use of his ‘conceptual tools and

epistemological investigations’ to examine the ‘social effects’ of the pathological gaze and subsequent policy adaptations. Approaching positivist criminological discourse by way of second order observation (Andersen, 2003), I frame each discursive formation as an engine of knowledge. These engines work interdependently to construct the function of CSC’s apparatus of Aboriginal Corrections notably offering a different (positivist) function to an overall pathologizing gaze of truth production surrounding the Aboriginal offender (Foucault, 1977). This chapter will invite readers to observe CSC’s inner workings of penal rationality concerning Canadian Indigenous criminalization and imprisonment and attempt to braid these modes of knowledges with ‘new’ policies that govern the correction, confinement, and healing of Indigenous prisoners in Canadian penitentiaries.

As I have previously suggested, CSC’s Aboriginal Corrections is a product of multiple scientific (social, legal, political, psychological, medical) knowledges working interdependently, constructing, building, and reshaping Indigenous penalty in Canada. It is by locating and analysing these systems of power/knowledges that allows us to view how certain truths on the location of deviancy and “‘criminality’” attach themselves to the body of the Indigenous prisoner. As Foucault (1980), reminds us “it’s not a matter of emancipating truth from every system of power... but of detaching the power of truth from its forms of hegemony, social, economic and cultural, within which it operates at the present time” (Foucault, 1980: 133). In this chapter I attempt to deconstruct and analyze these scientific knowledges that establish multiple and contesting epistemologies of Aboriginal ‘criminality’ and their social effects on contemporary penal practice.

PART I:
PATHOLOGY AND THE SYMPTOMATOLOGIZING GAZE OF
CRIMINOLOGICAL KNOWLEDGE

“...prison has succeeded extremely well in producing delinquency, a specific type, a politically or economically less dangerous – and, on occasion, usable – form of illegality; in producing delinquents, in an apparently marginal, but in fact centrally supervised milieu; in producing the delinquent as a pathologized subject. The success of the prison, in the struggles around the law and illegalities, has been to specify a ‘delinquency’” (Foucault, 1977: 277).

The prevalent epistemology guiding CSC research and policy is considered as ‘evidence-based’ or ‘what *really* works’ in ‘correctional’ practice (Bonta and Andrews, 2007; Cullen and Gendreau, 2000). Over the past decades, scientific advancements have enabled criminological practitioners to specialize and “fine-tune” risk assessment methods to increase behavioural predictability and shape interventions to fit the so-called “criminogenic needs” of their subject of intervention (Bonta and Andrews, 2007: 1). Actuarial tools prepared to measure and target pathological traits of prisoners play a vital role in the diagnosis, measurement, and treatment of ‘criminality’. Setting aside a critique of actuarialism in Aboriginal Corrections for the time being (as it will be observed further below), I wish to concentrate efforts to unpacking the pathological perspective of criminological positivism that forms the bedrock of contemporary penal praxis in Canada.

Pathological theorizing of deviancy is suggested by Pfohl (1994) to rest on three conceptual components: *Deteminism*: whereby “deviance is transformed from a moral choice into a dependent variable,” the pathologist’s gaze is preoccupied with the “deviant actor and the factors which cause deviant behaviour” (106). *Positivism*: assumes that the

cause(s) of deviance can be made visible or “known through the canons of positivistic science,” only when the ‘deviant’ is placed under examination through the ‘sciences of man’ can we learn (and engineer) their condition (Foucault, 1966, 1977; Pfohl, 1994: 106). *Image of Organismic Infection*, or illness: Pathologists “link society to the human body” where deviancy is interpreted as a sickness or disease and thus curable or at the very least manageable with appropriate remedies (Pfohl, 1994: 107). The pathological perspective lends to the creation of deviant subjectivities in that following certain symptoms of abnormality constructs a profile to be codified, measured, and examined (Foucault, 1977). Viewing transgressive acts as pathological (e.g.: ‘crime as illness’ or the ‘criminal as sick’) evokes responses to treat and prevent pathology (as crime causation) through various antidotes and cures, and observational measurement.

Perhaps central to Pfohl’s (1994) understanding of pathological theorizing in criminology is the production of criminological symptomatology used to diagnose criminalized deviancy. In other words, criminological pathology rests on a medical model of symptomatology that observes and attempts to locate criminalized deviancy on the body of man, society, or psyche (Carrier, 2006; Foucault, 2003; Moore, 2007). Symptomatology serves to make objective diagnoses and provide ‘raw data’ to signalling presence of pathology via the observation of symptoms. Symptoms are then ordered according to the specific criminal pathogen (whether it be a product of anatomy, society, or the psyche), which then offers a plan for treatment of the diagnosed pathology. Ultimately, a *symptomatology of deviance* becomes the new register, for which Aboriginalized deviancy is discussed through pathologies found by mobilizing biology, sociology, and psychology.

A noted, the pathological perspective in criminology has always been concerned with the location, explanation, and aetiology of deviancy. Its application to law breaking in Indigenous communities today is certainly no different. The discursive assembling of the 'Aboriginal offender' in positivist criminology generally asks the *What?*, *Who?*, and *Why?* reasons of deviancy. Questions such as: *Who* are Aboriginal offenders and *what* are the *different* motivations for offences committed by Indigenous people vs. non-Indigenous people? Positivist criminologists attempt to point to the *different* social, psychological, and possible biological predispositions within Indigenous people that explain higher rates of 'criminality' and incarceration. These lines of inquiry amount to an epistemology were "deviance is taken as a given" ascribed through *meaning* and reinforced through viewing and locating "normative transgression[s] as a symptom of abnormality which can be objectivized" (Carrier, 2006: p.25).

Following this framework, I approach the first set of research stemming from CSC and Public Safety Canada (PSC) exploring the discursive formations ordered through their symptomatic utterances (Carrier, 2006; Foucault, 1972). For the past two decades, positivist science branching from criminology's interdisciplinary framework (medicine, sociology, psychiatry/psychology, law) has produced endless diagnoses of abnormalities and criminalities specific to Aboriginality. These totalizing diagnoses have ordered a typology of 'criminality' that locates itself in three ways: 1) *Sociologically* – in the social network of the Aboriginal offender; 2) *Psychologically* – in the psyche of the 'Aboriginal offender'; and, 3) *Biologically* - in body of the 'Aboriginal offender'. These diagnoses are based on the observation of symptoms via scientific observation but above all they are based on the notion of *difference* in cultural distinction (see Bhabha, 1994;

Derrida, 1982). This is to say, cultural difference has become the common denominator for establishing specificity in discourses of criminalized deviancy and the pathological. The notion of *difference*, as will be observed in the second part of this chapter, becomes the signal for attaching meaning to the object of deviancy within the Indigenous prisoner through supporting diagnoses by criminological knowledge.

Below, I present three orderings of the symptomatology of criminalized deviancy found within the discourse of criminological research produced, funded, or referenced by CSC's *Research Branch*. As indicated, it was not possible within the scope of this research to capture *all* utterances that speak to the assembling of the 'Aboriginal offender' and their specific symptom of deviancy. With assistance of Carrier's (2006) model on the 'symptomatology of difference', I have organized according to scientific utterances that speak to CSC's (and more broadly, criminology's) claimed location of object deviancy within Indigenous people and communities. These areas of pathologization are notably discursive sites of power/knowledge that shape the object of the Indigenous-based deviancy and carry the body of the Indigenous prisoner through various modes of intervention, treatment, control, and surveillance (Foucault, 1977; 1980).

Sociopathologized Deviance

Sociopathologized deviance discourses are formed by the sociological reaction to "various kinds of injustices" in society that lead to a conceptualization of deviance as a result social stratification or inequality (Carrier, 2006: para. 14). This conception of a structural or stratified version of society tends to conceive of normative transgression (e.g.: law breaking, deviancy, abnormal behaviour) as reaction against or a result of

‘vertical’ social control and power imbalances that favours typically one social group over another. This perspective shares classical Marxist and Durkheimian sensibilities and has developed to view social groups such as Indigenous (and other non-Western types) as objects of surplus labour reserves or disenfranchised sub-societies simply by nature of their social positioning as colonized people. This approach pretends to the conception of the ‘sick society’ (Rimke, 2010: 79), where social ills are a result of groups not being able to cope or effectively socialize vis-a-vis modern social institutions²⁷. Thus, when attempting to locate the object of criminalized deviancy, sociopathologists will momentarily peripheralize medical claims to individual criminogenic factors (such as mental illness, biological abnormalities), and ascribe to a conceptualization of deviancy as a product of external pressure from structures such as the economy, the state, politics, institutions, power structures, which are taken as primary producers of criminal or ‘at risk’ social bodies.

To reiterate, the object of criminogenic deviancy within the sociopathological discursive formation moves from individual to the society. In this light, deviancy is the product of the environment, social structures and typically is defined by the individual’s inability to reach or engage in normative social life. Much of the work in the field of criminology within in this discursive formation relies on positivist sociology that deduces criminalized deviancy by idealizing to a ‘normatively united society’ and a ‘moral universality,’ eventually reconfirming the ontological value of ‘criminality’ as a result of social group’s inability to ‘keeping up with the Joneses’ (Carrier, 2006; Pfohl, 1994).

²⁷ While there are many sociologies that favour such a view, the more seminal ones stem from Hirschi’s (1969) work on social bond theory and perhaps more broadly Mertonian sociology on anomie, disorganization, and delinquency.

This approach to locating the object of deviancy within Indigenous people has been perhaps the most attractive perspective to for sociologically-inclined criminologists to ascribe their criminological programme in support of CSC's Aboriginal Corrections. Perhaps most indicative of the 'sociological' influence can be seen with the integration of a social learning theory into the cognitive behavioural approach to penal treatment. Bonta and Andrews (2010) indicate that in large, contemporary 'correctional intervention' of Indigenous people are based on the General Personality and Cognitive Social Learning (GPCSL) model. This model binds both "distal and biosocial factors such as neighbourhood and race/ethnicity along with more proximate variables that influence the probability of criminal behaviour" (Gutierrez *et al.*, 2013: 58).²⁸ Moreover, 'Aboriginal social history' is becoming a considerable object of criminogenic risk assessment and evaluation. Thus, in adopting a penal philosophy that allows for an interdisciplinary lens to locate the object of criminalized deviancy; history and community alongside the subject, can be examined as crime causing agents in under the scrutiny of normative symptomatology.

Sick Communities and Sick Histories

As noted above, utterances stemming from penal research that rely on sociopathological epistemologies to explain Indigenous-based 'criminality' tend to mobilize history as explanatory factors of deviancy within Indigenous communities. Certain criminologists suggest that that historical colonial policies and experiences of colonialism are causation

²⁸ Bonta & Andrews (2006) model of the "Central Eight" risk factors for criminal behavior include: 1) Anti-social Attitudes; 2) Anti-social Peers; 3) Anti-social personality; 4) History of Anti-Social Behavior; 5) Family / Marital Factors; 6) Lack of Achievement in Education / Employment; 7) Lack of Pro-social Leisure Activities; 8) Substance Abuse.

to ‘criminal behaviour’ within some Indigenous groups (Bonta, LaPrairie, and Wallace-Capretta, 1997; Dickson-Gilmore and LaPrairie, 2005; Kunis and Varis, 2009; LaPrairie 1996, 2002; Waldram, 1992, 1997, 2013a, 2013b; Yuen, 2011). These authors collectively agree that the historical ramifications or social consequences of Canadian colonial policies directed towards Indigenous groups have produced criminogenic environments within their communities. As a result, their theories lead to the widely accepted assumption that those living within such areas have been victimized and are somehow more ‘at-risk’ of deviance than other non-Indigenous social groups. Moreover, some have suggested that if more crime prevention projects are placed at the community-level, the cause for crime within Indigenous populations can be known, treated, and eliminated. Certain examples of Indigenous based-crime prevention projects include: restorative justice and ‘community capacity building’ programs (Gilmore and LaPrairie, 2010; Kelly and Caputo, 2010; Waldram, 2013a); longitudinal epidemiological research and alcohol awareness programs (BC Office of the Provincial Health Officer, 2013, Raphael, 2006); community-state run healing centres (Waldram, 1997; 2012 Yuen, 2011); and, ‘culturally-relevant’ criminal risk mitigation strategies and tools (Bonta, LaPrairie, and Wallace-Capretta, 1997; Gutierrez et al., 2013). These methods of conceptualizing object deviancy all rely on normative judgements about what constitutes a ‘healthy community’ and further assume that criminalized deviancy can be ‘uprooted’ at its core of delinquency. The search for sociopathologized deviancy not only evaluates Indigenous communities on the basis of a normative moral stance, but also obfuscates the growing carceral tentacles of surveillance and discipline.

The notion of a ‘sick community’ stems from the analysis that Indigenous people’s experiences of colonization and its resulting social ramifications have contributed either indirectly or directly to their deviancy. Some criminologists have further suggested that the loss of cultural identity caused by colonialism has contributed to a poor socialization amongst family, peers, and community thus increase in law breaking behaviour. Heckburt and Turkington’s (2001) qualitative study on the factors associated with ‘successful reintegration of Aboriginal offenders’ concludes with noting that “Aboriginal offenders need not only specific programs, but also need to be taught their culture because most have never had the opportunity prior to entering the penal system. Most [research participants interviewed] had no self-respect...” (52). So, not only is law-breaking conceptualized as a result of poor cultural development within Indigenous societies, but it is further assumed that if Indigenous communities were more ‘cultured’ they would have more ‘self-respect’ and thus not deviate from what constitutes normative social behaviour within a said community.

Value-laden conclusions in sociocriminological research focused on Indigenous communities tend to be a result of assumptions that poor connections to broader social institutions or a notion of ‘disconnect’ with traditional social bonds are causal agents for criminalized deviancy. These approaches attempt to emancipate Indigenous communities by seeking out ‘root-causes’ of what they see as criminalized deviancy as a result of social injustices. Echoing this position is Dickson-Gilmore and LaPrairie’s (2005) research on root-causes of high Indigenous incarceration, they note:

“Decades of welfarism have undermined the family as a central social institution, while dysfunctional influences, such as high unemployment and alcohol abuse, which result in high levels of family violence, feotal alcohol syndrome, and associated problems, have diminished community

solidarity and the ability of existing social and cultural institutions to counter these influences through methods of informal social control” (Dickson-Gilmoure and LaPrairie, 2005: 204).

There are two interesting areas in the above quote I would like to briefly observe. First, we can note the heavy influence of Hirschi’s (1969) thesis of social bond. These authors conceptualize object deviance on a basis of unsuccessful attachment or investment in communal values; particularly on notions culture, spirituality, behaviour, and social institutions. By positioning Indigenous communities in a state of anomie, the conceptual lens of sociopathologized deviance often “lead academics... to try to empirically demonstrate that religiosity is inversely proportional to deviance” thus diagnosing criminalized deviance as a result of unsuccessful normative societal integration (Hirschi and Stark, 1969 in Carrier, 2006: para. 15).

Secondly, this quote illustrates how biological pathology (FASD) becomes embedded among other socio-pathologies in an effort to link the anatomical-pathology with the socio-pathology. This is to say that inadequate social bonds to the informal institutions of social control leads to bodily ailments such as FASD, which according to criminology, typically lead to deviance. This epistemological circumvention of biological determinants into the social determinants of deviancy is quite remarkable considering that FASD, in this context, is taken as a given. Biological determinants of crime will be observed later in this chapter.

To summarize, utterances within the discursive formation of sociopathologized deviancy of Indigenous populations remain focused on the historical ramifications or social consequences of Canadian colonial policies as causal factors for a variety of illnesses, social anomie, and criminalized deviancy. As a result, sociologically informed debates

locating deviancy tend to observe Indigenous people as the object of a social group that lacks social mobility, the ability to bond, and produce acceptable norms. This results in a normative moral stance that conceptualizes Indigenous people as a criminalized underclass without the means to effectively succeed in modernity, thus warranting intervention and control.

Pyschopathologized Deviance

The second discursive formation of ‘correctional’ symptomatology of difference involves the scientific localization of deviance within the psyche. This is certainly the most obvious discursive formation that can be identified in contemporary Canadian (and American) penal practice. In North America, contemporary positivist criminology think of cognitive-behavioural approaches to ‘correctional’ therapy as the most “effective way to teach people new behaviours regardless of the type of behaviour” (Bonta and Andrews 2007: 5). It is no surprise then to see this model permeate throughout both the ‘intervention’ stage of penal custody (e.g.: programming), and the processes of risk assessment, thought measurement, and judgment of one’s interpretation of reality (CSC, 2008).

Foucault has shown us that the birth of modern psychiatry, the aetiology of madness legitimized itself through the epistemological linking with ‘anatomical-pathological’ (biopathologized) knowledge (Foucault, 1964, 2006). This link with medicine and physiological discourse served as a “materialised guarantee of psychiatric practice” (Foucault, 2006: 133). One example Foucault gives of this is the early practice of post-mortem examination of bodies of the sick and the ‘mad’ and diagnosing lesions in the brain as explanatory factors of abnormal behaviour. Another example used by

Foucault, and perhaps most useful for our project, is the utility of heredity in diagnosing mental illness as a “way of giving body to the illness” when anatomical “illness cannot be situated” (271). This is notably the “pathological material substratum” that psy-sciences anchored its authority to diagnose medical illness (Foucault, 2006: 189, 271). Following this line of thought, I observe how mental illness has become tied to deviancy through the mobilization of Indigenous-based experience trauma of colonialism.

Colonial Trauma and the Aboriginal Offender

Observing utterances of psychopathology attributed to the ‘Aboriginal offender’, we note that diagnoses of mental disorder are generally made in relation to his or her past experiences of colonial harms. That is, an individual’s past and present social positioning as a determinant for sick or healthy mental status. Similar to the sociopathological discursive formation, the psychopathological approach peripheralizes external factors such as social structure and notions of ‘community’ to locate deviancy as a product of individuals’ own internal factors. These often include diagnoses of historical ‘intergenerational trauma’ caused by familial experiences of colonial harms such as residential school, sixties scoop, reservation containment, and so on, as dictated by law (CSC, 2005; R. v. Gladue, [1999] 1 SCR 688). The underlying assumption made within these claims is that centuries of colonial victimization (regardless of personal experience) have isolated Indigenous people within a mental state of trauma (Waldram, 2013a). Criminology will then go on to prove that this specific type of trauma caused by the reality of colonialism can offer explanations to ‘increased’ criminalized deviancy among Indigenous populations. The diagnosis of diseases that relate to trauma such as post

traumatic stress disorder are indeed one disease that remains the only disorder differentially attributed to the Indigenous condition as a result of colonial history.

There are many topics at play here: the constitution of history, the coding of history as traumatic, and the medical analysis of memories as criminogenic. Remaining within the realm of the psychopathologized discursive formation, I will briefly observe the attachment of colonial trauma to the Indigenous body within psycho-criminological diagnoses as explanatory factors for law-breaking.

The psychologization of trauma has been documented extensively by some of Ian Hacking's (1998, 2002) earlier work where he suggests the birth of a "new moral being" through the creation of traumatic memories (Hacking, 2002: 19). For example, within total institutions such as the prison or hospital, a "traumatic childhood is used to explain or excuse a later antisocial person, who may also be diagnosed with, for example, 'antisocial personality disorder'" (Hacking, 2002: 20). Following Hacking, I propose that the integration of colonial trauma narratives by criminological theory (and penal policy) has effectively 'rewritten' history for Indigenous prisoners that have categorized them as victims and constituted trauma as pathological.

Framing traumatic experience as pathological, Aboriginal offenders are forced to carry the burden of pathology *inherited* by means of their relation to their Indigenous culture or cultural experience of social hardship (whether they have experienced colonial harms or not). This notion of passing down traumatic pathology via inheritance takes shape in what many in the realm of 'Indigenous mental health' have coined 'intergenerational impacts' of colonialism. I further suggest that the medicalization of

trauma, and the subsequent criminalization of colonial trauma, views trauma as not only as an illness of heredity but also acted up as a contagion.

The solidification of trauma as a contagion can be observed through its discursive framing as an ‘intergenerational’ impact of colonial harm. The Aboriginal Healing Foundation (AHF) suggests that,

“Intergenerational or multi-generational trauma happens when the effects of trauma are not resolved in one generation. When trauma is ignored and there is no support for dealing with it, the trauma will be passed from one generation to the next. What we learn to see as ‘normal’, when we are children, we pass on to our own children. Children who learn that physical and sexual abuse is ‘normal’, and who have never dealt with the feelings that come from this, may inflict physical abuse and sexual abuse on their own children. The unhealthy ways of behaving that people use to protect themselves can be passed on to children, without them even knowing they are doing so” (Wesley-Esquimaux and Smolewski, 2004: A5).

Indeed, the ‘passing down’ of trauma or traumatic memories as causal factors to explain deviancy permits criminology a viable and historically supported truth to ‘unhealthy ways of behaving’. Here, the location of object deviancy is found within the subconscious of the psyche and transmitted through *traumatic memories*. And, according to mental health experts, if experiences of colonialism and residential school experiences can be transmitted ‘intergenerationally’, it can be reseeded within the psyche of younger generations. The discursive framing of ‘bad memories’ suggests that they are infectious unless treated or healed.

Heredity by way of ‘intergenerational impacts’ in the construction of the ‘Aboriginal offender’ subject plays a large part in all three elements in the symptomatology of difference of the deviancy in Indigenous people. The more obvious example, observed below, is seen within the transmission (or production) of biological disorders through mother-child transmission (such as instances of foetal alcohol spectrum

disorder), however, perhaps an even more precarious constitution of deviancy occurs through the transmission of mental disorder via past sociohistorical experiences of Indigenous people when perceived as a whole homogenous group.

In the past decade, research directed on examining the psychological effects of past colonial-assimilation programs such as residential school on Indigenous people have offered a variety of possible explanations for the poor socioeconomic environment, higher rate of violence, and illicit substance use. One area that the study of colonial trauma and Indigenous people has quickly gained momentum is within criminological research. Perhaps the most evident legitimating factor of trauma as a ‘disease’ is the disciplinary institutionalization of victimology studies within criminology’s disciplinary field. Advocates in this field will suggest a focus on restoring harm to victims of trauma caused by crime (Harris, 1992). Harm restoration strategies within criminological discourses focused on the governance of Indigenous prisoners tend to mobilize traditional Indigenous healing concepts as a means to ‘heal history’. Moreover, they are also used as a mode of ‘correctional’ therapy to cure the psyche of the ‘Aboriginal offender’ who is as result of their traumatic past a dually identified as a victim and offender.

The identification and (re)appropriation of memories provide a site for the psy-sciences to diagnose pathology within the body of the ‘Aboriginal offender’. As we noted through Hacking (2002), the narrative of trauma and the use of traumatic memories “create a new moral being” within therapeutic practice (19). Indeed, the mobilization of past realities and rewritten onto the body of the condemned through the criminological gaze is indicative of the mutability of criminological rationality. Accepting the notion that the criminological assumption frames historical traumas of colonialism as causal

factors criminalized deviancy within the ‘Aboriginal offender’, we begin to see that diagnoses of colonial harm are *a priori* assumptions of deviancy within Indigenous people. The re-articulation of historical realities applied to the body of the prisoner is one way criminology (and penal authorities) intensify penal force by making “reality function as power” in the governance of Indigenous prisoners (Foucault, 2006: 189).

Biopathologized Deviance

Moving now to perhaps the more elusive engine of Aboriginal corrections, I turn to the last discursive formation in the symptomatologizing gaze in criminological positivism: biology. Put simply, biology in criminology – biocriminology, asserts that the element of criminalized deviancy can be located within the body of the individual. The determinant factor in evaluating levels of deviancy must be a measurable abnormality (or anomaly) in the physiology of the subject. Perhaps the most infamous example of this science is found within Lombroso’s (1876) *Uomo Delinquente* and his followers in the mid to late 19th century.

Without rehashing old debates surrounding Lombroso’s rise and demise in modern criminology, contemporary positivist and critical criminologies’ general assumption suggest biology alone as a scientific indicator of deviancy has been discredited in favour for more sophisticated and sociological and psychological explanations. What is however interesting, is the rise of biological explanations of deviancy through its epistemological circumvention through other disciplines such as sociology combining both disciplines for a more ‘holistic approach’ to diagnosing ‘criminality’. This offshoot of biocriminology suggests a *biosocial* criminology that looks

at the 'social determinants' of health and biological predispositions of crime causation factors (Beaver, 2009; Raphael, 2006; Walsh and Ellis, 2003; Walsh and Beaver, 2009).

My goal in this section is to briefly identify utterances within positivist criminology that links 'criminality' to biological markers within the anatomy of the 'Aboriginal offender'. As will be illustrated, there is a general tendency in contemporary positivistic criminology to circumvent biological determinants of 'criminality' via the pathologies of the social or psyche (e.g.: biological abnormalities within the Aboriginal offender tied to behavioural problems is concluded as result of their predisposition to a perilous socio-economic space/environment). This conceptual habitus of positivist criminologists is evident in the field of criminology where most of the works searching for causal factors of 'criminality' done in the last century suggest, "positivistic empirical analyses usually conclude that biology is not the sole determinant of deviance" (Carrier, 2006: para. 9). Rather, biological abnormalities in the anatomy of the deviant are conceived as precursors to possibilities of latent criminal behaviour brought about by environmental or psychological issues

One area that biological determinism is laying conceptual roots in the criminological field focusing on deviancy and Indigenous people is through the linking of Foetal Alcohol Spectrum Disorder (FASD) with deviancy and further collapsing both the disorder and deviancy into a symptom of Indigenous-specific 'criminality'. FASD has been studied extensively both as a social and psychological disorder by criminologists and medical scientists alike. Criminologists Dickson-Gilmour and LaPrairie (2005) claim that FASD is "likely to lie at or near the roots of the 'criminality' of approximately 70

percent of the prison population” (141). Following this logic, CSC researchers Boland, Duwyn, and Serin (2000) speculate the following,

“Given that Aboriginal offenders are considerably over- represented in the federal justice system, the question arises as to whether one of the contributing factors is the high rate of FAS / FAE experienced by our [sic] Aboriginal population” (18).

Placing aside any obvious critique of paternalistic narrative in the above quote for the moment, we can note that while the scientific links between both FASD and the Indigenous prisoner are explicitly made (as of 2013 CSC does not have any quantitative data on prevalence of FASD diagnoses among Indigenous prisoners), the *identity* of FASD is applied only speculatively. Even in the realm of speculation, however, it is uttered through the vessel of truth (positivism), offering these criminologists authority to diagnose possibilities of illness.

Critical scholars such as Rose (2000) and Hacking (1998, 2002) have examined the social construction and the psychologicalization of biological spectrum disorders (such as FASD and trauma) suggesting that the social effects of the diagnoses of bodily illnesses leads to the labelling and acceptance of pathological identities²⁹. While these authors offer insight to the interdiscursive function of psychopathologization of deviance and illness, they miss the more obvious tying of criminal pathology to the *bios*: the isolation of object deviancy and its localization within the anatomy of their subject. This is notably important for reasons, 1) to illustrate that biology is still commonly being used as an authoritative science to give truth to ontologized deviancy; and, 2) if we accept that the lingering presence of biology in the diagnosing of deviancy within criminological knowledge, then we must assume that it functions according to an atavistic rationality.

²⁹ See here Hacking’s thesis on *The Looping Effect* and Rose’s thesis on *circuits of control*.

Atavism, applied to different cultural groups, claims normative standards of ‘knowing’ the Other through biological aetiology. This rationality not only sets the conceptual stage for Darwinian conception of race but also further assumes to know that the *true* location of deviancy is within the body.

As will be observed below, the issue of FASD and Indigenous people is polarizing leading to debates that are highly contentious. This is not only due to politicization Indigenous health issues and bodies, but also due to the epistemological angst of some criminologists that anchor biological precursors to explain law-breaking within Indigenous communities and individuals.

Foetal Alcohol Spectrum Disorder and Aboriginal Offender

FASD is one of the most, if not the only, widely cited and used examples of *bodily illness* within penal research attributed to ‘criminality’ and treatment targets for Indigenous prisoners. Numerous policy reports and criminological research in the recent years have indicated to a higher rate of FASD among Indigenous prisoners (Dickson-Gilmoure and LaPrairie, 2005). This is notably problematic as the deterministic logic of biology becomes clouded within the different lenses of the symptomologizing approach to criminalized deviancy. The OCI has notably considered FASD as a “significant mental health factor disproportionately affecting Aboriginal offenders for at least a decade” (Mann, 2010: 19). This report urges CSC to develop new technologies and assessment scales to know, measure, and treat FASD among Indigenous prisoner and that be ‘appropriate’ for the unique needs of the Aboriginal offender (Mann, 2010). With more calls to develop actuarial tool *specific* to the Aboriginal offender’s ‘unique’ profile, the link between FASD and Indigenous deviancy will only grow stronger.

The racialization of FASD as an ‘Indigenous problem’ has been noted by some critical scholars to be fuelled by quantitative and qualitative data collected through branches of the penal system, health agencies, and the psy-sciences, ultimately narrowing their scientific gaze on Indigenous communities (see Dej, 2011; Tait, 2003, 2007). These disciplines have been noted to approach FASD as an isolated pathology specific to Indigenous communities and provide “value-laden knowledges used to produce disagonse[s]” and treatments that target and control FASD-afflicted individuals (Dej, 2011: 138). Tait (2007) has further suggested that much of research conducted by health organizations linking FASD to Indigenous communities has been not only burdened with methodological errors, but also has been used as a governing tool to “homogenize Aboriginal peoples and simplify complex social problems” (Dej, 2011: 138). Positioning Indigenous people as marginalized social groups, Dej (2011) suggests that the production of FASD diagnoses has reframed Indigenous people as “deviant biopsychological subjects” and thus resulting in pathology that has warranted penal system intervention (138). This is partially due to popular scientific claims stemming from biosocial criminological research linking law-breaking behaviour with individuals suspected of prenatal exposure to alcohol, notably research on Indigenous people in Canada³⁰. What is indeed concerning about this link is the obvious biological determination or isolation of

³⁰ Other more populist claims, such as those made by Widdowson and Howard (2008) have attributed FASD as not only the cause of ‘criminality’ in Indigenous populations, but further the underlying cause to most social ills affecting Indigenous communities. According to their research, the lack of FASD diagnoses and attention in recent research surrounding Aboriginal health and child welfare is harming Indigenous communities as it continues a community cycle of “alcoholism, social dysfunction, and illiteracy” (Widdowson & Howard, 2008: 164). Finally, the authors suggest that the lack of external intervention approaches for FASD in Indigenous communities have caused an assumption “not based on any understanding of the current reality of children’s lives in aboriginal communities” (Widdowson & Howard, 2008: 164).

deviancy through FASD diagnoses. Moreover, if criminology (and other positivist sciences) suggests that we are to assume that FASD places individuals as ‘at-risk’ for deviancy and Indigenous people are more ‘at-risk’ of FASD, are we not to assume that Indigenous people are more ‘at-risk’ of deviancy via illness? This underlying assumption, while not explicitly stated, becomes more obvious when approaching how FASD is discursively framed in penological research.

One area where the biopathological reductive logic is used in locating the object of deviancy through FASD diagnoses is seen through penal narratives guiding prison workers to engage in the normative observation and evaluation of facial characteristics of prisoners and victims of ‘crime’. Governmental agencies that work with CSC such as the Department of Justice Canada (DJC) most recently published in a study directed towards prison workers working with FASD-afflicted individuals note that when diagnosing FASD, health care professionals and workers should look for the certain ‘obvious’ characteristics. In the DJC report, the authors note the following physical characteristics of individuals with FASD:

- pre and/or post natal growth retardation;
- short palpebral fissures (short horizontal eye length);
- thin flat upper lip; and a
- flattened midface.

(Fraser and McDonald, 2009: 7).

Tait (2007) notes in her study that that phenotypical markers for FASD, once used as the benchmark for identifying and diagnosing FASD, were remarkably similar North American Indigenous features further driving the over-diagnoses of FASD in Indigenous communities. I must note at this point that my objective with this example is not to compare supposed characteristics between Indigenous people and FASD subjects.

Rather, I wish to illustrate how medical knowledge intersects with criminology to identify phenotypical marker as symptoms to diagnose diseases that have been linked (by criminology) to deviant and law-breaking behaviour. In mobilizing a biologically inclined approach to explaining deviancy, certain authors suggest that diagnoses of FASD can be attained through the measuring of skulls and normative judgement of facial features. Moreover, when observing quantitative data compiled by CSC and governmental health affiliates (e.g.: Health Canada), the discursive tethering of ‘Aboriginal offender’ and the ‘FASD patient’ becomes more obvious as we look closer at discourse stemming from CSC policy reports that take form of governmental panel reviews of CSC penal policy. For instance, in 2007, the CSC Review Panel from the DJC indicated that,

“Many Aboriginal offenders arrive in federal penitentiaries with significant mental health problems. The Panel recognizes that particular attention must be given to offenders, particularly Aboriginal offenders, with mental health disorder caused by the effects of Fetal Alcohol Spectrum Disorder (FASD)” (Sampson et al., 2007: 90).

According to CSC and DJC, not only do Indigenous prisoners arrive to the Canadian federal prison system with mental health problems, their illnesses are further compounded with diagnoses of FASD. The biological anchoring of mental illness through FASD diagnoses propels the individual to be labeled as not only an ‘Aboriginal offender’ but a person with mental illness, FASD, personality disorders, and so on. Penologists and psychologists often note that co-morbidity of illnesses leading to increased risks of deviant behaviour is more common among Indigenous prisoners than any other category of prisoner within the Canadian federal penitentiaries (Mann, 2010; OCI, 2012; Bonta, LaPrairie, and Wallace-Capretta, 1996; Rugge, 2006). The widely

accepted narrative of the ‘sick’, ‘traumatized’, FASD-afflicted ‘Aboriginal offender’ is often seen in the discourses of penological research focusing on ‘correctional’ intervention and risk control of Indigenous prisoners. In their research on client responsiveness to treatment, Harris and colleagues (2011) note,

“The responsivity principle requires that accommodations be made to present treatment materials in a way that is understandable and culturally relevant to the participant. For first Nation, Metis, and Inuit offenders, this could include consultations with Elders, taking into account special responsivity factors such as the increased incidence of *Foetal Alcohol Spectrum Disorders*... and generally placing greater emphasis upon group adhesion and traditional values (Harris *et al.*, 2011: 20, emphasis added).

Above is one example of how penal practitioners and researchers tend to attach pathology to deviancy via the diagnoses of physical and psychological symptoms supposedly causing deviant behaviour. However, similar to other discursive formations of Aboriginal Corrections’ engines, utterances within the biopathologized symptomatology of deviance sometimes cross-fertilize sociological explanations of crime. This form of biopathological gazing tends to circumvent biological understandings of crime causation through a sociological lens to understand under what context or what environment gives rise certain diagnoses. One example of this is within criminological research tying the illness of FASD as an outcome of trauma or societal dysfunction.

Epistemological circumvention of biopathologization via the social examining aetiology of law-breaking among Indigenous prisoners can generally be observed in criminological discourse that is attempting to understand the root-causes of incarceration through Mertonian strain theory. By anchoring the vessel of object deviancy on the sociological grounds of a racist, classist, or unegalitarian society by virtue of one’s social positioning, biological deficiencies (in this case the prevalence of FASD) are seen as a

result of inept social bonds or a result of social marginalization. For example, Bracken's (2008) work on "Canada's Aboriginal People, Fetal Alcohol Syndrome and the Criminal Justice System" observes the links between FASD and the social positioning of Indigenous people as a cause for mass incarceration.

"the high incarceration rate of Aboriginal people which many see as an outcome of colonialism, combined with common stereotypes of the "drunken Indian" may lead one to assume that FASD is a major contributing factor to Aboriginal peoples' over-involvement with the criminal justice system. What is really the issue at hand is the relationship between FASD and incarceration of Aboriginal people, not as an indicator of the connection between alcoholism addiction and Aboriginals, but rather as a sign that incarceration of Aboriginal people is connected to discrimination, and broader health and social development issues (the outcome of colonialism) and which may also include FASD" (Bracken, 2008: 21).

Here, the rationalization of FASD is seen as a symptom of the 'sick community' afflicted by the societal impacts of colonialism (as seen in the sociopathologized deviance discursive formation). Community is discursively framed to have given cause to the anatomical-pathogen that is said to cause law-breaking behaviour. This approach further extends the biopathological lens to encompass not only physical bodies but also entire social bodies. Framing FASD as a community problem suggest that the FASD individual is predisposed to illness due to her environmental circumstances and further carries the notion of responsibility over onto the community. Here we can note how competing discourses of biopathologization and sociopathologization may collapse into a unified biosocial rationality to produce broader truths on Indigenous-based deviancy and law-breaking and offer new sites of power for biologically-based criminology.

The location of biopathologized deviancy is indeed an ominous force in criminological knowledge governing 'Aboriginal corrections'. As illustrated above, the

return of biological determinism in contemporary criminology presents itself as a multidisciplinary force guiding contemporary social, and psychological theories of ‘crime’ causation and deviancy. Be that as it may, the mere presence of biosocial theories of ‘crime’ causation in research on Indigenous law-breaking and the governance of ‘Aboriginal offenders’ presents an “unreflexive Lombrosian project” (Carrier and Walby, forthcoming).

The Product of Symptomatology: Cultural Other/Difference

Following the above orderings of utterances of positivist criminology, it becomes more evident that the product of deviance symptomatology is based on logic of difference between the pathological and the normal. In the case of ‘Aboriginal Corrections’, it is the ‘Aboriginal offender’ and the ‘non-Aboriginal offender’. While scientific advancements in the past few decades have certainly complexified the methods used to attain diagnoses surrounding the ‘Aboriginal criminal,’ they have also homogenized the cultural heterogeneity amongst Indigenous nations across Canada through a rationality of *governance through difference*. Postcolonial criminologist Biko Agozino has compared the logic of “Western” criminology to “a version of the old Enlightenment ideology that science has the answers found in biological, psychological and conservative sociological positivism” (Agozino, 2003: 63). While some might consider this a radical stance to suggest throughout 150 years of scientific development in the ‘sciences of man’, criminology’s umbilical cord still attaches itself to the placenta of positivistic determinism; let us consider for a moment the bulk of ‘criminological work’ done in the realm of criminalized deviancy and Indigenous people. Positivist-based criminological research generally concludes that in the modern world, Indigenous people are by their

very nature of being pathologically differentiated from others, they are *at risk* of ‘criminality’. Whether it is a condition of their social, psychological, or ethnic (biological) background, most criminological research has determined that criminalized Indigenous people are generally at an “elevated risk for re-offending” (Yassine and Bonta, 2009: 440), have higher reconviction rates than non-Indigenous prisoners (Bonta, Rugge, and Dauvergne, 2003), and the cause(s) of criminal behaviour within Indigenous prisoners can be treated and determined through actuarial-based assessments³¹ and evaluations of their similarities and dissimilarities of non-Indigenous transgressors (Gutierrez *et al.*, 2013). Moreover, the trend in criminological academia to explore cultural differences of law-breakers is deeply rooted in its history as a discipline. As I noted above, diagnoses of criminalized deviancy through symptomatology are not so much indicative of resurgence of the old biological roots of criminology, but an intensification (and pluralisation) of its disciplinary apparatus that (re)produces new technologies to govern and subjugate the Aboriginal offender.

The will to *know* the ‘Other’ prisoner through various interdependent scientific knowledges have lead to criminological truths that have constituted Indigenous prisoners as subjects that are problematic, pathological, and require curing. Often times academics studying their ‘Aboriginal offenders’ will confess to their imperialist limitations of knowing the Other but will engage others in their field to pursue the object of culture as criminogenic:

³¹ Notwithstanding Hannah-Moffat’s (1999) important study on the homogenizing effect of risk-based actuarial models in the hybridization of risk/need evaluations. Furthering Hannah-Moffat’s thesis’s application to Indigenous prisoner penal governance is Jaccoud *et. al.*’s (2011) study on the instability of purported ‘static risk factors’ in the Level of Service Inventory Revised risk scale. Their observations identify that the use of ‘Aboriginality’ and Indigenous symbols in contemporary correctional risk assessment vis-à-vis widely used criminogenic risk factors takes on a fluid character to bind with correctionalist discourse when suitable to fit the model of evaluation.

“Aboriginal offenders represent a culturally distinct segment of the Canadian population and yet, there has been no systematic exploration of the possible culturally-specific risk factors. Correctional researchers are encouraged to undertake research in the area to improve our understanding of risk factors relevant to Aboriginal offenders.” (Guterrez, et al., 2013: 97)

While these criminological certainties lead to a totalizing diagnosis of what is and what is not constitutive of a symptom of the Aboriginalized deviancy (or who is and who is not an Aboriginal offender for that matter) there is a more nuanced narrative assisting the constitution of the Aboriginal offender. This is the narrative that Indigenous populations are inherently *more* at risk or *more* deviant than non-Indigenous populations due to their different innate sociohistorical experiences as victims of colonial harms or as children of families that have experienced colonial harms (see: LaPrairie, 1996; Waldram, 1997). Utterances that stem from the constitutive loci of the pathological gaze tend to sympathize with the modern condition of the Indigenous that signal to a pretension that the object deviancy can, and will, be located. That is to say, the object deviancy will be located by forensic examination of typical criminogenic traits of so-called ‘criminals’, but also by engaging with a comprehension of the historical circumstances of cultural disruption of colonialism and the resulting social ills stemming from it. This logic is rationalized by circumventing positivist scientific reasoning through the sociopathological lens (as demonstrated with FASD). The scientific deduction of ‘Aboriginal social history’ or colonialism as cause of criminalized deviancy is perhaps the strongest chain that links the production of the ‘Aboriginal offender’ and his cluster of symptoms of deviancy. In other words: Indigenous prisoners, by their very nature as ‘Indigenous’, constitute an identity different from the normal archetype of the ‘non-

Aboriginal offender'. This identity is given meaning through its moment of isolation by the constitution *difference* from the standard deviation of deviant subjects.

The differential isolation of the 'Aboriginal offender' through the pathological gaze of criminology amounts to an imperialist logic that stems from the curiosity and fascination to *know* and pacify the Other by placing it in a space of meaning (Bhabha, 1994). This space of meaning, described by Bhabha as a 'third space', is a location of interpretation placing the contents of the Other (culture, meaning, Aboriginality) in constant deferral, where even the 'moment of difference' is deferred, thus rendering meaning in a state of ambivalence (Bhabha: 1994: 51; Derrida, 1982). Indeed, we have shifted gears slightly in this section of the chapter from the rationality of positivism to the constitution of (cultural) difference in criminological knowledge. I will further clarify below how difference plays a part in symptomatology of deviancy in criminology.

According to Derrida, the 'moment of *différance*' suggests a *deferral of meaning* where meaning of objects/subjects/things can never be fully acquired as they are placed in a space of interpretation through a temporary deferral to signs, images, representations – what Derrida calls '*Signifiers*'. Thus, the object/subject/thing – the '*Signified*', can never be acquired, it can only be interpreted through language in which different words or meanings are deferred to define and identify it. This is important for post-colonial scholarship as *meaning* (e.g.: the meaning of culture) becomes unstable, dynamic, and never static. *Meaning*, as Bhabha (1994) would go on suggest, is ambivalent. Bhabha's would further posit that culture is only represented or signified through the Signifier of cultural difference, thus it is complicit in its shaping and moulding through (colonial) discourse. Following this position, notions of cultural purity, authenticity, or claims to

fully knowing the causes of deviancy and knowing the ‘social history of an Aboriginal offender’ are untenable. *Knowing* is always limited to the particular site of utterances, that is the space of interpretation, trapped in representations of images, signs, and artefacts of history and social experiences.

As Carrier (2006) suggests, “whether we are in biological, psychological or sociological realms, the object deviance is formed in the very act of seeking the pathology which would have caused it, simply because *difference* is established by pathologization” (para. 23, emphasis added). This ‘moment’ of difference is observed when tying specific pathologies to the deferred meaning of the ‘Aboriginal condition’. This not only establishes momentary truth(s) about the ‘Aboriginal offender’ as authored by science, but also further allows for pathological determinism to render any opposing interpretation of normative transgression null or ambivalent because the *true* cause for Indigenous-based deviancy is *due to the fact* that the ‘Aboriginal offender’ carries the meaning for deviancy within her body, her psyche, and her people. The meaning of ‘offending’ or ‘deviancy’ is located within the space of cultural difference, which creates the conditions of possibilities whereby (criminological) knowledge ties pathology to the difference of the Indigenous, in this case the ‘Aboriginal offender’ (Bhabha, 1994; Foucault, 1970).

The relationship between medicine and ‘crime’ are deeply rooted in scientific criminological thought and method. The pathological perspective of ‘crime’ is indeed one that forms itself on the bedrock of medicine and pure sciences. And, unlike its ubiquitous acceptance in 19th century criminology, biological explanations of ‘crime’ have become

more elusive than its counter parts in the 21st century and given the backdoor entry to conceptualizations of deviancy.

Above, I have shown how contemporary criminological knowledge on the ‘Aboriginal offender’ operates on pathologizing the bios, mind, and society of Indigenous people. More importantly, I think, is the epistemological circumvention of biological determinism through sociological or psychological reasoning. This circumvention of biology through the ‘sciences of man’ represents not only perhaps a seeded anxiety among contemporary criminologists living in the shadow of their great grandfather Lombroso, but indicative of an *intensification* and *continuity* of the political and philosophical Western ideology rooted criminological knowledge’s obsession with their ‘ideal criminal.’ In this case, it pretends to an ambivalent subject of the ‘Aboriginal offender’ produced through the symptomatology of *difference* that can be dissected and reassembled through examination, intervention, and criminological knowledge.

I shift my focus only slightly now to the institutional economy of prison discourse and CSC’s ‘Aboriginal corrections’ programme. I will observe how knowledge on cultural difference and notions of ‘Aboriginality’ come to fruition and fermentation within the locus of penal praxis.

PART II:
PENAL POLICY FORMATION AND HEALING OF THE ‘ABORIGINAL
OFFENDER’

“The problem we have, in essence, is that Aboriginal offenders and non-Aboriginal offenders who come into the federal system are not equal to begin with. We apply actuarial assessment tools not on the basis of race, but on the basis of individual risk. Because of that difference in actuarial findings—and a history of violent offences and a criminal background are very important indicators—the tools will give you the results you get.”³²

The above quote was taken from a presentation to the Government of Canada’s Standing Committee on Aboriginal Affairs and Northern Development on the state of Aboriginal programs at the Aboriginal Initiatives Directorate at CSC in 2007. This quote is to illustrate that political discourse surrounding public understandings of Indigenous imprisonment tend to normalize notions of distinction and cultural *difference* between Aboriginal and non-Aboriginal prisoners.

As previously demonstrated, positivist criminological knowledge shapes the object/subject of intervention on a symptomatology of *difference*, or scientifically deduced set of possible characteristics or conditions that are understood as the producers of deviancy. Observing this line thought through the three discursive formations of bio-soci-psych pathologization, we are able to identify how object of deviancy is deferred to through various bodies in scientific knowledge. Notably here we locate what is commonly understood as a ‘criminal profile’. Constructing profiles in criminological research and penal practice is certainly nothing new. As we have seen through Foucault (1977) and others, the profile of the condemned has provided interventionists at once

³² 2005-2007 Senior Deputy Commissioner for Correctional Service Canada, Don Demers.

their subject of treatment and object of diagnoses as well as served them with their *raison d'être*. Alongside the non-Aboriginal offender, the Aboriginal offender presents him/herself with a different set of characteristics that defer to a *new* disciplinary profile. The profile for the new and different offender presents clinicians with new opportunities to explain for law breaking, new locations of deviancy and different remedies for curing new found 'criminality'; as Rimke (2010) suggests "a new social group and scientific identity to fear and govern" (82) by expanding the conditions of possibilities of which they are defined science.

Pathologizing aspects of the body, psyche, and social through pathology is one way science lends its expertise in the control and classification of Indigenous people and prisoners. Penal policy has sought to legitimize its application of penal practice through this knowledge and constructing the profile of the 'Aboriginal offender' as their treatment object: a profile that is separate and distinct from the general population and warrants a separate and distinct intervention. While CSC separates 'women offenders' and 'sex offenders', 'Aboriginal offenders' too find their location in a specific category aside from what is commonly known as 'mainstream corrections' (see: CSC, 2005). These specific categories are commonly referred to within CSC as 'offenders with special needs,' generally calls for a tailored intervention to address needs outside of the main areas of intervention³³. Central to this rationalization of 'offender with special needs' is the

³³ The large pool of literature surrounding risk and need in correctional therapy general consider *Risk* principles as 'static risk factors' which include certain characteristics of the offender that cannot be changed through treatment such as criminal history and age; *Need* principles otherwise known as 'dynamic risk factors' attempt to capture certain factors in the offender's life that can change overtime such as employment, associates, substance use, and family relations (Andrews and Bonta, 2007).

(dis)placement of *difference* onto the site of Aboriginality as observed through Derrida and Bhabha.

In the following, I explore CSC policy documents that pertain to the treatment and management of Indigenous prisoners. As indicated, I approach penal policy as the way in which the prison interprets positivist criminological and penological theory and deploys this knowledge as technologies of therapy, notably through ‘correctional practice’ and policy. In other words, I attempt show how CSC has anchored a certain type of therapy – notably *healing* – based on positivist knowledge and a logic of difference.

These documents have been selected among a large body of penal policy reports and directives that ‘speak’ to the imprisonment and healing of Indigenous prisoners. Throughout my analysis I observed the way in which penal policy assembled and ordered criminological knowledge of the Aboriginal offender into discursive practices that (re)produces power/knowledge relations through penal/healing discourses. The documents above ‘speak’ directly to the *difference* of the ‘Aboriginal offender’ and ‘non-Aboriginal offender’ profile, and further advocate (at least narratively) a distinct mode of governance through *different* ‘correctional’ treatment. Central to my analysis is not so much the means but the mode of penal governance of Indigenous prisoners.

This section of my analysis is organized into three sections that address the following questions: 1) How is the Aboriginal offender, along with their identified specific pathologies, discursively evaluated and constituted through penal policy and law? 2) How is Aboriginality (sociohistories and culture) coded/actuarialized in a ‘functional’ penal programme that is undeniably concerned with risk mitigation,

rehabilitation, and social control? And, finally, 3) How is healing deployed as an instrument of ‘correctional’ therapy?

The Constitution of the ‘Aboriginal Offender’ and Pathology in Law and Penal Policy

As noted, a large growth in criminological research has been committed to differentiating (and isolating) the ‘Aboriginal offender’ from the non-Aboriginal ‘offender’. While criminological research through the pathologizing gaze has tied illness directly to the body of the ‘Aboriginal offender’ (whether it be biologically, psychologically, or sociologically) the law has also committed to the distinction and differential treatment on Indigenous prisoners through the ‘Aboriginal offender’ profile.

R. v. Gladue and ‘Aboriginal Social History’

Perhaps the most significant legal differentiation between Aboriginal and non-Aboriginal ‘offender’ typology in the past two decades can be observed in the *R. v. Gladue* Supreme Court of Canada (SCC) ruling. While certainly not the only SCC ruling that produces a politics of *difference* in the situation of Aboriginal and non-Aboriginal ‘offenders’, is indeed the most recent and relevant guiding legislation that provides description of the possibilities of explanatory factors for Indigenous based law-breaking. As will be observed later, *R. v. Gladue* has become the grounding rationale for CSC’s large scale incorporation of understandings ‘root-causes’ of Indigenous law-breaking of and notions of ‘Aboriginality’ into CSC’s ‘Aboriginal Corrections’ programme

Introduced in 1999, The *Gladue* decision³⁴ was brought about to clarify an earlier piece of legislation concerning sentencing provisions for individuals of Indigenous ancestry brought before the court on criminal convictions. Section 718. 2 (e) indicates to judges to consider,

“all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the *circumstances of aboriginal offenders*.” (emphasis added)

Throughout the *R. v. Gladue* ruling, the majority decision judges Cory and Iacobucci J.J. extended the criminal court’s understanding of ‘circumstances of Aboriginal offenders’ to include two categories of factors to take into account when considering the sentencing of Indigenous people in court criminal proceedings, they are: “a) The unique systemic or background factors which have played a part in bringing the particular aboriginal offender before the courts;” and “b) The types of sentencing procedures and sanctions which may be appropriate in the circumstance for the offender because of his or her particular aboriginal heritage or connection” (*R. v. Gladue*, [1999] 1 SCR 688: 66).

The SCC further gives context to these criteria by noting that “low incomes, high unemployment, lack of opportunities and options, lack or irrelevance of education, substance abuse, loneliness, and community fragmentation” as some of the symptoms that are indicative of colonial victimization (*R. v. Gladue*, [1999] 1 SCR 688: 67). The court further notes that as a result of colonialism by the Canadian state, Indigenous people are more often “victims of systemic and direct discrimination, many suffer the legacy of dislocation, and many are substantially affected by poor social and economic conditions” (*R. v. Gladue*, [1999] 1 SCR 688: 67).

³⁴ The reader is invited to review the *R. v. Gladue* case for further information and context surrounding decision and outcomes.

Offering perhaps the first legal definition of what it means to be an Indigenous person that has offended against the law, *Gladue* has become the cornerstone reference for most ‘Aboriginal justice’ policy programs in Canada. This case is particularly significant for CSC as it signifies the legitimization of differential ‘correctional’ treatment for Indigenous people sentenced to institutional captivity as well as a new perspective on the aetiology of the ‘Aboriginal offender’. Without giving the reader an exhaustive background of the court rulings or legal debates following *Gladue* as there exists an abundance of literature on the subject, I turn my focus to lesser areas of scrutiny; the incorporation of *Gladue* into CSC’s Aboriginal ‘correctional’ programme.

The legal considerations outlined through *Gladue* were implemented into penal programs for Indigenous prisoners following the 1999 SCC decision. Within CSC, *Gladue* considerations have become adopted under the umbrella term ‘Aboriginal social history’. While their documents and policy reports are not clear as to when the term ‘Aboriginal social history’ was officially implemented into the organization’s language at the institutional level, the most clear indication of use is in penal policy Commissioner’s Directive³⁵ (CD) 702: Aboriginal Offenders. According to CSC, *Aboriginal social history* is defined as the following:³⁶

“the various circumstances that have affected the lives of most Aboriginal people. Considering these circumstances may result in alternate options or solutions and applies only to Aboriginal offenders (not to non-Aboriginal offenders who choose to follow the Aboriginal way of life). These circumstances include the following (note that this is not an exhaustive list):

³⁵ Commissioner Directives are standing operational practices and policy directives for all CSC institutions, staff, prisoners, and stakeholders to refer to during correctional practice. All CSC Commissioner Directives are publically available online at <http://www.csc-scc.gc.ca/policy-and-legislation/005006-0001-eng.shtml>.

³⁶ See also Annex A for excerpt of CD 702.

- effects of the residential school system;
- sixties scoop into the adoption system;
- effects of the dislocation and dispossession of Inuit people;
- family or community history of suicide;
- family or community history of substance abuse;
- family or community history of victimization;
- family or community fragmentation;
- level or lack of formal education;
- level of connectivity with family/community;
- experience in the child welfare system;
- experience with poverty; and
- loss of or struggle with cultural/spiritual identity”

(CSC, 2008: Annex B).

The integration of *Gladue* as ‘Aboriginal social history’ into CSC policy opens up a new level of understanding surrounding the aetiology of the Aboriginal offender. This new level of understanding, the *knowing* of the ‘Aboriginal offender’ through the incorporation of traumatic historical events and ‘cultural/spiritual’ background is not only localized to CSC policy. The OCI has also recognized that,

“the offending circumstances of Aboriginal offenders are often related to substance abuse, inter-generational abuse and residential schools, low levels of education, employment and income, substandard housing and health care, among other factors. Aboriginal offenders tend to be younger; to be more likely to have served previous youth and/or adult sentences; to be incarcerated more often for a violent offence; to have higher risk ratings; to have higher need ratings; to be more inclined to have gang affiliations; and to have more health problems, including Fetal Alcohol Spectrum Disorder (FASD) and mental health issues” (Mann, 2010: 4).

As elements of past Canadian colonial events become blended with pathologies consistent with criminogenic risk factors, CSC policy constitutes a new subject of penal intervention, one that is from a *different* past from her counterparts. This new profile binds itself to the subjectivity of the Indigenous prisoner (as Aboriginal offender) throughout most of his or her incarceration. According to CSC (2008), “staff must

consider an Aboriginal offender's social history when making decisions in accordance with the *Gladue* principles" (6). Aboriginal social history, as CSC understands it, "appl[ies] only to Aboriginal offenders and not to non-Aboriginal offenders who choose to follow the Aboriginal way of life. They identify important attributes that must be examined when assessing the *needs* of Aboriginal offenders" (CSC, 2008: 6). So, while 'Aboriginal social history' is used as a guide for penal programmes to isolate and contextualize the *needs* of subjectivity of the prisoner, it simultaneously offers a representation of history and culture that attempts to give reasoning for the criminalized deviancy of the Indigenous prisoner.

Categorizations of criminogenic need and risk have been shown to bind into interchangeable concepts in penal practice and carry a normative moral component (Hannah-Moffat 1999, 2005). In this light, history and culture in Aboriginal Corrections are incorporated as *need* but simultaneously rearticulated as causal factors of crime (risk). Complex sociohistorical events such as colonial assimilation projects and culture become constituted as objects first through *Gladue* principles, but further *itemized* as criminogenic symptoms through 'Aboriginal social history'. This essentially creates an analytical grid (penal technology) for prisoner discipline. This area will be discussed further below.

The Actuarialization of Colonial History and Indigenous Culture in Penal Policy

As previously noted, the Indigenous prisoner as 'Aboriginal offender' represents a new object of study for criminological knowledge and a new subject of governance through penal policy and law. In Chapter 2, I focused briefly on the fluidity of penal discourse and its ability to perpetually mutate and shape its language to fit its object/subject of

intervention and broader discourses of liberal penal reform (Chantraine and Mary, 2006; Cohen, 1985; Hannah-Moffat, 1999, 2001, 2005; Hutchingson, 2010; Maurutto and Hannah-Moffat, 2006). The re-articulation of history and culture in penal policy is one symptom of CSC's discursive mutability. Hannah-Moffat and O'Malley (2007) note, "race and gender are complex social constructs that cannot simply be reduced to binary variables and tested for significance (predictive validity and reliability) in risk instruments" (cited in Hannah Moffat, 2012: 17; also see Chan and Rigakos, 2002). Therefore, incorporating historical colonial *événements* and cultural symbolism into the carceral language allows CSC to not only apply *their* version of colonial history and Indigenous culture (e.g.: simplified versions of genocide or the image of the dysfunctional Indigenous as a result of victimization), but also serves as a way to pathologize and 'actuarialize' complex social phenomena and history into simplified 'correctional' categories. This of course serves as important classification tools for the governance (and self-governance), discipline, and therapy of Indigenous prisoners.

Below are two brief examples of current CSC policy that attempt to actuarialize 'Aboriginal social history'. The first policy directive is on the use of colonial history indicators of risk (pathology) as security classification for prisoners, and the second presents a directive that mobilizes elements of Indigenous culture as for the purpose of programming assessment.

Actuarialization of Pathological History

An example of the immersion of history can be found in the "Content Guidelines for Security Classification and Penitentiary Placement Report" for CSC policy, *CD 705-7: Security Classification and Penitentiary Placement*. The directives for guidelines for the

classification of prisoners dictate that when CSC staff are assessing Indigenous prisoners they must “be sensitive to the spirit and intent of the Gladue decision” when making decisions regarding the classification guidelines. (CSC, 2010: 11). Within these content guidelines, prison staff are required to assess the factors that CSC considers to affect inmate dangerousness. If a prisoner is deemed through penal evaluation as being more ‘risky’ or more ‘criminal’ they receive a higher security classification and are sent to a more secure prison facility.

Figure 2.

<p>PUBLIC SAFETY RISK</p>	<p>Provide an analysis of the offender’s public safety risk, using the following information:</p> <ul style="list-style-type: none"> • any known violent community incidents; • the offender’s social and criminal history, including a dangerous offender designation under the <i>Criminal Code</i>, and, where applicable, young offender history; • in the case of Aboriginal Social History (applies to Aboriginal offenders by birth right), consider the following: <ul style="list-style-type: none"> ➤ effects of residential school system (offender as survivor or intergenerational effects from family’s historical experiences); ➤ family or community history of suicide; ➤ family or community history of substance abuse; ➤ family or community history of victimization; ➤ family or community fragmentation; ➤ level of lack of formal education; ➤ level of connectivity of family/community; ➤ experience in child welfare system; ➤ experience with poverty; ➤ loss of or struggle with cultural/spiritual identity; ➤ exposure or membership in street gangs; • number of previous convictions and whether violence was involved; • severity of current offence – whether weapons were involved and whether serious harm occurred to the victim; • evidence of spousal abuse; • level of dynamic factors or areas of need identified in the Correctional Plan, sources of offender’s criminality; • Correctional Plan motivation; • successful ETA, UTA or work releases; • psychological concerns (mental illness); • age at review; • detention referral; • alcohol and drug use and the drug and alcohol rating; • stability prior to current incarceration;
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	<ul style="list-style-type: none"> • previous periods of parole or statutory release; • whether the offender is eligible for Accelerated Parole Review; • notoriety likely to invoke a negative reaction from the public, victim(s) or police and/or to receive significant media coverage (sensational crime, major sexual or drug offence, terrorism, affiliation with organized crime, etc.). Note: In order for notoriety to be a relevant factor, it must be demonstrated that it will have an impact on an offender's reintegration potential by increasing the risk to re-offend, or the likelihood that he or she could pose a threat to the safety of any person or the security of a penitentiary; • psychological concerns, based on the results of psychological or psychiatric assessments, or other information, including the existence of any mental illness or disorders; • whether any information exists to indicate that the offender is likely to commit a serious offence if released prior to warrant expiry; • whether the offender is being considered as potential candidate for detention.
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Under the category titled “Public Safety Risk”, the responsible prison staff is required to “provide an analysis of the offender’s public safety risk” (CSC, 2007: Annex E, 2). Among a long list of criminogenic risks and needs such as ‘violent community incidents’, ‘mental health concerns,’ ‘substance abuse,’ ‘motivation,’ and so on; ‘Aboriginal Social History’ is positioned third on the list (CSC, 2007: Annex E, 2). The integration of elements of colonial *événements* within the context of criminal risk/need model is not only indicative of a myopic and reductive vision of Indigenous history and experiences of harm as set out in law (R. v. Gladue), but when translated into penal policy and the risk logic they are reduced to criminogenic items. This binding of criminogenic need and risk has been well documented by Hannah-Moffat’s multiple critiques and theses on risk/need hybridization in penal practice. In the context of Indigenous prisoners, the risk/need binding the integration of social-history as a benchmark for criminal risk is of course paradoxical; on one hand it is mobilized by penal discourse as an area of *need* for ‘effective’ penal treatment (the cure), on the other,

when put into practice, the incorporation of history as explanatory factors of crime are easily reconfigured as causal agents (the pathogen).

While the discursive incorporation of ‘Aboriginal social history’ into the penal security and classification paradigm has further aggravated the brand of the ‘problematic Aboriginal offender’, the reality of this policy has led to the over classification and ‘over-representation’ of Indigenous prisoners in maximum-security prisons across Canada (Mann, 2010; OCI 2012). The over-securitization of Indigenous prisoners has been a long held critique among Indigenous reformist organizations, penal abolitionists, and most recently the OCI. These criticisms are of course founded on an urgency to cascade Indigenous prisoners down to less secure, less restrictive, and more holistic and ‘Aboriginal’ style prisons such as CSC’s healing lodges. Indeed, a paradoxical stance for those advocating the abolition of prisons.

Actuarialization of Culture

Another example of disciplinary integration of ‘Aboriginal social history’ can be seen in CSC’s CD 705-6: *Correctional Planning and Criminal Profile*. In this policy directive, ‘Aboriginal social history’ takes the shape of an examination of a prisoner’s competency in *his or her own* cultural knowledge. According to CSC, CD 705-6’s objectives are to “ensure public safety by developing criminal profiles and Correctional Plans that will increase offenders’ potential for successful reintegration into their communities.” (CSC, 2007: 1). Thus, the purpose of this policy is to *know* the prisoner through the profile but also *teach* the prisoner to know himself. The assumption that ‘Aboriginal social history’ reveals not only the source of deviancy but also the cure for it positions culture as the vehicle for accessing truths about the subject needed for ‘correctional’ change. According

to CD 705-6, cultural examination of Indigenous prisoners can be found within the Dynamic Factor Identification and Analysis Revised (DFIA-R) checklist.

The location of culture within the DFIA-R assessment finds itself underneath the responsibility section of the inmate assessment. To illustrate the specificities of which cultural elements are incorporated and actuarialized, I have included the complete section for the reader to review:

Figure 3.

RESPONSIVITY	INTERVIEW PROMPT	HELP MESSAGES
Expresses interest in strengthening culture?	Do you participate in Aboriginal cultural or spiritual activities? If yes, could you tell me a little bit about them and what they mean to you? How often do you take part in these activities? When was the last time you did so? Do you wish you could become more involved in these activities?	Rate YES if the (Aboriginal) offender does not engage in any of the following activities and expresses a desire to become more active in his/her culture: speaks native language, expresses a strong desire to remain connected to Aboriginal culture or participate in traditional dancing, storytelling, traditional healing, language training, hunting/fishing/trapping. First Nations specific activities include: circles, medicine bundles, drumming, pow-wows/feasts, sweat lodges, smudges, food, dress, music, craft, pipe ceremonies, and/or vision quests. Métis specific activities include: Sask weaving, bead making, jigging, and fiddling. Inuit specific activities include: Throat singing, country food feasts, drum dancing and carving.

(CSC, 2012: Annex E)

‘Correctional responsivity’ is a term coined by researchers Andrews and Bonta to assist interventionists identify factors that are (theoretically) linked to the individual’s ability to respond to ‘correctional’ intervention treatment. According to Andrews and Bonta (2007), responsivity factor is theorized to “maximize the offender’s ability to learn from a rehabilitative intervention by providing cognitive behavioural treatment and tailoring the intervention to the learning style, motivation, abilities and strengths of the offender” (1). From this perspective, the inclusion of ‘cultural activities’ within the DFIA-R not only links elements of culture as a of deviancy therapy (e.g.: the pathogen) but further inextricably links Indigenous cultural practice as the correctional answer for the salvation of ‘Aboriginal offenders’.

Observing the actuarialization of history and culture within two separate policies provides the reader with a general understanding of the discursive embeddedness of ‘Aboriginal social history’ within correctional practice. Furthermore, observing the embedding of ‘Aboriginal social history’ within the above two policies through discourse analysis allows us see that both examples mobilize history and culture simultaneously as ‘criminogenic’ and curative agent in the assessment and treatment of Indigenous prisoners within CSC. It is however important to note that ‘Aboriginal social history’ permeates throughout the entire network of CSC, “at every step during the administration of the sentence” of Indigenous prisoners (CSC, 2006: 9).

Some critical research has come about in the last few years on the integration of Aboriginality, healing models, and social history in correctional therapy. For example, Martel and colleagues (2011) have suggest that even though “Aboriginal ancestry is not seen as a cause of criminal behaviour per se,” the incorporation of Aboriginal social

history, has extended the reach of “risk assessment of Aboriginal offenders whereby one’s social positioning comes to be taken as a risk marker” (Martel et al., 2011: 240; Schawalbe *et al.*, 2006). Indeed, this has notably been demonstrated through looking at CD 705-6 and 705-7. That being said, while I certainly agree with Martel *et al.*’s (2011) position, I would further posit that the totalizing diagnoses of positivist criminological knowledge has completely fastened deviancy on the anatomy, social, and psyche of the Aboriginal offender, inextricably linking Indigenous culture and the sociohistory of Indigenousness with ‘criminality’.

Penal Absorption and Regurgitation

It is obvious that the result of the integration of ‘Aboriginal social history’ within the penal policy has become, like much of reformist attempts, cannibalized and regurgitated by penal language. While the integration of Indigenous ‘needs’ may have began as an attempt to circumvent the imperialist reach of the colonial prison and provide some form of autonomy to Indigenous prisoners, we are reminded by Foucault and Cohen, that the prison has always found the answers to its own problems within its own endurance and persistence through history.

The coding of history and culture within CSC policy serves, I think, two important purposes for the function of Aboriginal Corrections. First, it provides positivist criminology and the penal apparatus with a new object/subject of intervention: the ‘Aboriginal offender.’ Positivist criminology has indeed fostered the ontological tree of knowledge surrounding the symptoms of what makes up the object of ‘Aboriginal deviancy’; however, the institutionalization of this knowledge within the prison has led birth to the ‘Aboriginal offender’ subject.

Secondly, on a broader institutional level, the integration of Indigenous culture and the actuarialization of ‘Aboriginal social history’ in penal policy signify to a type of prison absorption that is all too familiar with penal reformists. For years, Indigenous activists have attempted to stimulate change within penal policies to respond to a growing population of Indigenous people behind bars. This is widely noted throughout the literature. Various attempts by grass-roots organizations involved in several projects in cooperation with the Canadian government, have advocated for a policy shift towards a more ‘Aboriginal vision’ of corrections (Hannah-Moffat, 2001; Hayman, 2006).

Over 25 years ago, Nielsen’s (1990) observation of the social positioning of Indigenous prisoners within the prison lead to her concluding that Indigenous prisoners present a challenge to the “social relations of production” within the normative framework of the criminal justice system (111). She further suggested that a shift in late 1980s demonstrated a push towards an unsettling and reorganization of the penal system around “problematic inmates” (Nielsen, 1990: 112). It is important to recognise that this ‘shift’ is still ongoing today. As of 2008, CSC is mandated to maintain “enhanced capacities to provide effective interventions for First Nations, Métis and Inuit offenders” as their priority (CSC, 2011). So, while multiple governmental interventions from ‘Task Forces’ to ‘Royal Commissions’ to ‘Special Reports’ on Indigenous mass incarceration pile up over the past three decades, the problem of Indigenous incarceration has always been framed as an ‘urgent’ one and being addressed through policy and institutional restructuring. I do not deny the fact that the prison has indeed changed many of its policies to accommodate the rising Indigenous prisoner population. The institutionalization of healing and CSC healing lodges are material sites of this change. I

do however question the legitimacy of this change and if it is possible to produce such a site through prison tinkering.

I also question if the institutionalization of ‘Aboriginal social history’ reflects an effort to give agency to Indigenous prisoners or is governing strategy that preserves old models of correctionalism within the prison. Chantraine (2006) would suggest the rise of new penal discourses would amount to small shift in practice to survive an era of “democratic contention” surrounding the ‘over-representation’ of Indigenous prisoners (60). On one hand, ‘Aboriginal social history’ serves to silence reformers pressuring governments for democratic change,³⁷ all the meanwhile the incarcerated Indigenous population remains at high but a relatively stable rate³⁸.

On the other hand, by absorbing new cultural and historical knowledge on the Indigenous prisoner surrounding, the prison is able to redeploy new technologies of healing which obfuscates their disciplinary intent. This leads to a governing mentality that is still very much concerned with disciplining bodies, minds, and souls but also one that is concerned with knowing the Other before he can know himself. Amid these positions, I am more sympathetic to the critical assertion lead by Chantraine that the change in discourse represents a technique of penal survival and continuity.

³⁷ In a similar vein, Carlen (2002) introduces the notion of “carceral clawback” which suggest a process that “powered by common-sense ideologies of optimistic campaigner” and “the prisons’ continuing need for legitimacy” (221).

³⁸ There is limited research on longitudinal studies of Indigenous prisoner population growth in Canada. This literature is limited to a report released by Melchers and Roberts (2003). Overall, the prisoner population with Canadian penitentiaries has been documented in many reports and task forces within and external to CSC and Public Safety Canada. One interesting area that remains untouched is the observation of the long-term contention and reports dating from the Laing Report in 1967 to most recently by the OCI in 2013. All indicating an imminent crisis with rising Indigenous population.

Healing as the Means of ‘Corrective’ Training

This brings me the final area of analysis: healing as the normalizing force within CSC’s Aboriginal Corrections program. As noted above, the prison has a remarkable ability to integrate and absorb reformists’ discourses and subvert and redistribute them into ‘correctional’ practices that fit overarching penal goals and political ideologies (Cohen, 1985). This is particularly the case for those advocating for the integration of more Indigenous healing practices within CSC’s ‘correctional’ programme. According to Hayman (2006), the result of the TFFSW lead to Indigenous activists participating with a disciplinary regime that not only absorbed and reconfigured their competing discourses and challenges to the penal regime, but also lead to a net widening of social control which “may [have] compromise[d] the very cultural values they hoped would lead to the healing of federally sentenced Aboriginal women” (Hayman, 2006: 249). As a result, discourses of ‘empowerment’ became coupled with penal targets and produced a disciplinary program through images of femininity and motherhood (Hannah-Moffat, 2000; 2001). I posit that the rise of ‘healing’ should be viewed in a similar way.

Following Foucault’s (1977) analysis of disciplinary power, I examine the rise of the ‘healing discourse’ under the three classic instruments of disciplinary power: i) *hierarchical observation*; ii) *normalizing judgement*; and, iii) *examination*. I hope that applying moments of healing through this lens will illustrate how the power of the norm conducts and commodifies ‘healing’ in ‘Aboriginal Corrections’. Following this, I discuss briefly how analysing the ‘correctional’ specialization and ‘scientification’ of healing through both criminology and penal policy can lead to framing it as a technology

of discipline and treat it “as one practice among others” within the science of imprisonment (Foucault, 1972:186).

Hierarchical Observation

One material site of CSC’s integration of healing within Aboriginal Corrections programme is the establishment of prisons for Indigenous inmates, or *healing lodges*³⁹. According to CSC, the purpose of a Healing Lodge is “to provide a healing community that utilizes a culturally-based holistic healing process which contributes directly to the safe and effective reintegration of Aboriginal offenders” (12). Healing lodges are considered ‘minimum security’ facilities by CSC, thus any prisoner that is considered for placement within the healing lodges are assessed according “to their risk to public safety” (CSC, 2013).

Architecturally, the Healing Lodge varies from typical community housing dwellings, to more complex architectures that radically rearrange the spatial geography on which the healing lodge is developed. An example of radical rearrangement can be seen with the Pê Sâkâstêw Centre located in Hobbema, Alberta which will be observed briefly below.

The design of Pê Sâkâstêw Centre is noted to be a “reflection of Aboriginal culture and traditional living space”, this is noted to produce a “relaxed and open environment” that “allows [prisoners] to let their guard down and encourages them to discuss their problems and open themselves to being healed” (Trevethan, et al., 2007: 14, 57).

³⁹ There are currently 8 CSC-run healing lodges throughout Canada governed under s.81 of the CCRA. Four are said to be completely run by CSC and the other four are noted to be “community run”.

Figure 4.



“Pê Sâkâstêw Centre” (Trevethan et al, 2007: 14)

Indeed, the entire geography of Pê Sâkâstêw Centre is based on the Medicine Wheel found at the center of the site. This is supposed to provide for powerful symbolism for the incoming prisoners to remind them that they are not in a typical prison but a *different*, Indigenous-based prison. Moreover, the usage of the term “prison” in language becomes colonized by “healing lodge/center/village”; likewise, overt demonstrations of security such as fencing, prison cells and panoptic architecture are reduced to open and ‘dynamic’ security measures (Trevethan et al, 2007).

The question then is how does the gaze of disciplinary power penetrate the ‘healing’ and ‘holistic’ approaches to ‘correctional’ therapy. The answer is found within the question, as the effectiveness of the correctional gaze locates itself not upon explicit and overt displays of securitization and control, but *within* the modes of implicit surveillance. This includes everyday observation of healing practices within the prison: Is the prisoner attending the mandated sweatlodge ceremony today? Does the prisoner require intervention due to poor participation in healing circles? Is the prisoner behaving

like a ‘normal’ incarcerate of the Healing Lodge? Can the Healing Lodge adapt to stimulate more healing through its architecture? Proposing such questions lead closer to capturing a technology of disciplinary surveillance through the vehicle of Indigenous healing.

Foucault’s (1977), notion of hierarchical observation is based on an ‘integrated’ surveillance model. It is a model that makes it possible to make *everything visible, all the time*. Hierarchical observation is “not possessed as a thing, or transferred as a property; [but] functions like a piece of machinery... it is the apparatus as whole that produces ‘power’ and distributes individuals in this permanent and continuous field” (Foucault, 1977: 177). This ‘continuous field’ is crafted by the perpetual and calculative gazing of the prison. To relate to prior arguments, if the objective of the prison is to perhaps survive the ‘moments of democratic contention’ during penal reform, the production of healing lodges is a product of making healing visible to the penal gaze thus intensifying its disciplinary grasp of the objects and subjects within its field.

To briefly summarize, the prison must make healing visible. It must embed its own logic of surveillance through the healing model by making the healing of Indigenous prisoners visible to not only the public, but to the prisoners that are themselves being governed through the healing discourse. By making *everything* visible, CSC has expanded its gaze to a penal observatory for the cultural training and healing of the Indigenous body.

Normalized Judgement

How do we begin to understand the application of healing as a normalizing force within CSC? To begin to answer this question we must first look what the intent of healing is

meant to address within the broader prison population. According to penal and criminological discourse, the integration of healing is intended to respond to the growing heterogeneous Indigenous population within CSC. The constitution of difference between ‘Aboriginal offender’ *needs* vis-à-vis non-Aboriginal offender *needs* gave birth to new ‘correctional’ therapy that has offered an alternative for newly defined prisoners. Normalized judgment through healing stems from this logic of difference and is coerced through the image of the ‘Aboriginal offender’. I will expand on this further below.

At the center of the incorporation of healing within ‘Aboriginal corrections’ is the large-scale incorporation of notions of Indigenous ‘culture’ and ‘spirituality’. As we have seen above with the actuarialization of Indigenous culture and social history, the power of the norm within CSC’s disciplinary apparatus has produced a standardized ‘Aboriginal archetype’ that has been mobilized and circulated through the actuarial logic of risk/need and in penal discourse. This hegemonic object of ‘Aboriginality’ is also mobilized, albeit with some modification, throughout criminological knowledge.

Without offering a summary of the above section on actuarialization of ‘Aboriginal social history’, the most significant exposé of normalized judgment can be seen, I think, throughout the entire process of Indigenous imprisonment. This is because not only is the Indigenous prisoner subjected to the disciplinary regime of the prison, he is also forced to maintain an active interest in cultivating a traditional ‘Aboriginalized self’ through *healing* according to the *Continuum of Care*. This identity is further measured according to penal policy and curated by experts that claim know the true characteristics of ‘Aboriginality’, these experts include elders, Aboriginal Liaison

Officers, anthropologists, psychologists, and perhaps any other ‘correctional’ practitioner working with Indigenous prisoners.

During the Indigenous prisoner’s process throughout the *Continuum of Care*, the ability to function and heal in a normal and ‘Aboriginal’ way becomes the overarching goal for Indigenous prisoners attempting to progress through their custodial sentence to reach eventual release. Examinations through ‘Correctional Healing Plans’ demarcate certain milestones for the ‘Aboriginal offender’ (CSC, 2008). While Healing Plans offer a typical example of instruments of disciplinary examinations, the normative evaluation of successful healing and crafting of a ‘Aboriginal’ subjectivity is perhaps best viewed throughout the parole process.

The Parole Board of Canada (2013) allows for “elder-assisted hearings” specifically for Indigenous prisoners or to “those who have demonstrated a meaningful commitment to an Aboriginal way of life”. This suggests that elders are permitted to provide an Indigenous perspective to board members making decisions to grant parole to certain Indigenous prisoners. The perspective offered are generally surrounding healing milestones achieved throughout the prisoner’s sentence, or alternatively they may offer advise surrounding areas of cultural deficiency. As the PBC notes,

“The Elder contributes to the Board members’ awareness of the offender’s understanding of traditions and spirituality and his/her progress toward healing and rehabilitation. The Elder may be an advisor to the Board during the deliberation stage of the hearing and may provide insight and comment on cultural and spiritual issues” (PBC, 2013: 5).

The expert knowledge of the elder within the review board offers other ‘correctional’ experts testimony to the subject’s normalcy within the context of ‘Aboriginal tradition’. Indigenous experts’ ‘insights’ on cultural and spiritual matters become the measurement

of valid membership among the normalized and healed ‘Aboriginal offenders’. This process of mobilizing culture as truth in certain arenas and criminogenic in others has been observed as an “ontological mutation” by Martel and her colleagues⁴⁰ (2008; 2011), however, it is the power of the norm that dictates the way in which culture will be mutated. If the Indigenous prisoner is not healed normally, he will be culturally deficient, thus a “public safety risk” according to CD 705-6 and punished. If however, the Indigenous prisoner has healed normally, he will assume a normative, safe, and acceptably *different* but homogenous subjectivity as a traditionalized ‘Aboriginal offender’.

The power of the norm “compares, differentiates, hierarchizes, homogenizes, [and] excludes” (Foucault, 1977: 184). Normative judgement selects and differentiates those that are fitted for healing in ‘Aboriginal Corrections – those that are commit to the ‘Aboriginal way of life’ and further punishes those that do not conform (as the PBC suggests “committed”) to such a programme by revoking or denying status.

The Examination

To illustrate Foucault’s (1977) notion of the *examination* in CSC’s application of healing, I turn to observing areas where Indigenous prisoners are evaluated and classified by both penal practitioners and CSC policy through the vehicle of ‘healing’. According to Foucault (1977), the examination is “at the centre of the procedures that constitute the individual as effect and object of power, as effect of object of knowledge” (192).

⁴⁰ On the topic of ontologized ‘Aboriginality’ Martel and Brassard note that Aboriginal identity in the prison “is constructed wholesale, as a single, all encompassing object in which traditional – and susceptibility stigmatized – identity markers of Aboriginal cultures... occupy a sizable portion. Aboriginal programmes, the, confer a certain traditionalism to a homogenous Aboriginality promoted by the prison’s practitioners” (Martel & Brassard, 2008: 344)

According to CSC, Indigenous prisoners that choose to follow a ‘traditional Healing Journey’⁴¹ are required by policy to maintain close contact with their spiritual advisors, elders, parole officers, and psychologists to document their progress throughout their sentence. The measure of progress used to document and evaluate the prisoner’s performance and progress throughout their mandated healing is seen through the implementation of evaluatory CSC ‘Healing Plans’:

Figure 5.

<p>CONTENT GUIDELINES – HEALING PLAN</p> <p>The following content guidelines are a suggestion only, to assist the Elders in providing the information.</p> <p>TYPE OF OMS REPORT: Integrated into Correctional Plan and Correctional Plan Progress Report</p> <p>Elder name Using the Elder’s Review, outline the plans for each component over a specified period of time. (e.g. until the change of season, next parole decision date or transfer to lower security).</p> <p>1. Physical Aspect What ceremonies/teachings/activities will he or she partake in to address the physical aspects outlined in the Elder Review?</p> <p>2. Emotional Aspect What ceremonies/teachings/activities will he or she partake in to address the emotional aspects outlined in the Elder Review?</p> <p>3. Spiritual Aspect What ceremonies/teachings/activities will he or she partake in to address the spiritual aspects outlined in the Elder Review?</p> <p>4. Mental Aspect What ceremonies/teachings/activities will he or she partake in to address the mental aspects outlined in the Elder Review?</p>
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⁴¹ CSC as defines the ‘Healing Journey’ (otherwise known as a prison sentence) as: “a traditional Aboriginal healing process based on culture and beliefs, which encompasses a life-long spiritual, emotional and/or psychological journey whereby one strives to be in harmony with all living things on Mother Earth. The telling of stories, sharing of traditional teachings and participation in sacred ceremonies serve to assist the individual in following the Red Road to healing. When one lives and walks the Red Road, one is seen and deemed to be whole in body, mind, spirit, emotions and behavior” (CSC, 2008: Annex A).

CSC 'Healing Plans' are organized through the four sections of the Medicine Wheel (physical, emotional, spiritual, mental), this is meant to define individual areas of interventional treatment (healing) targets. As we can note in the above example, the documentation of Aboriginalized forms of intervention targets serve as a "type of OMS report". OMS (Offender Management System) is an archival information database that is used to classify *all* information about *every* individual that has ever received a federal sentence in Canada. This is a significant component for the disciplinary function of the Healing Plan because it is with this linking of the Healing Plan to the OMS through the vehicle of healing which reveals the Healing Plan as a technology of discipline and normalization.

Foucault (1977) notes that the examination combines both surveillance and normalizing judgment to assure the "disciplinary functions of distribution and classification... [into] a modality of power for which individual difference is relevant" (192). The 'Healing Plans' are intended to represent a space in the correctional planning for prisoners for the "special attention...to the particular circumstances and background of offenders" (CSC, 2008: C1). In doing so the examination of 'correctional progress' is performed through the analytical grid of the Medicine Wheel (which symbolizes Aboriginal health and healing). Once documented, information surrounding the prisoners' progress is uploaded to the OMS - a database which serves as a site of classification, categorization, and surveillance.

In closing, the integration of Indigenous concepts such as healing, holism, tradition, materializes as a different technique and language of discipline; one that revolves around a healing discourse that is produced by the prison and as a result

inextricably links this mode of cultural healing to penalty (Hayman, 2006). The process of disciplined healing posits that instruments of normalization, surveillance, individualization persist and intensify through the 'scientificity' of healing when applied through penal practice. In this light it is healing that is the new technology of the old disciplinary regime.

CONCLUSION

This project was initially conceived during my tenure as a student contractor for CSC within the Reintegration Programs Division. My duties included completing various literature reviews on Indigenous healing models and emerging theories of cognitive-behavioural intervention for prisoners and assisting with the development of Aboriginal ‘correctional program manuals’. For the most part, developing Aboriginal ‘correctional’ programs manuals generally consisted of modifying CSC’s “mainstream correctional programs” (non-Aboriginal programs) by adding and editing in certain Indigenous ‘healing’ practices that are deemed by science to be effective treatment for targeting Indigenous-based ‘criminality’. The modification of programs, and manuals for program facilitators, would prove to be a balancing act⁴² between selectively choosing certain Indigenous models among a vast body of literature to fit within CSC’s overarching penal goals.

Over the course of my work, I became curious about the limitations and boundaries of Indigenous healing models vis-à-vis Canadian correctionalism and positivist criminological knowledge. Questions that I would often ask while working

⁴² To provide some context to this ‘balancing act’: I recall once being tasked to prepare a “quick facts sheet” for the CSC website on the topic of ‘Aboriginal Correctional Programs’. I began my assignment with a simple outline of *how* and *why* CSC’s Aboriginal correctional programs differ from “mainstream” correctional programs. Emphasizing “healing” and “restorative justice” as the central elements that make Aboriginal correctional programs unique. Once completed, I approached my manager for feedback wherein I was directed to revisit the document and “include the Medicine Wheel and bring in more symbols to represent the First Nations and Inuit”. Somewhat discomfited with the directive from my manager, I proceeded to transplant images of inuksuks and feathers found arbitrarily through Google Images. Once finalized to my manager’s taste, the document was then pushed along to the Director for final approval and dissemination. Unsurprisingly, the sheet was returned with one area for review. I had figured that the Director would certainly not approve of such effortless ‘Aboriginalization’ of a public document. Indeed, the area for review was directed at the Aboriginal symbols used; they were “overlapping with CSC’s coat-of-arms.” With a click of a mouse, I shifted the Medicine Wheel 5cm to the left.

were: at what point does ‘correctionalism’ overtake the healing model or vice versa? What are some of the underlying Truths of Indigenous law-breaking that have led to the integration of healing within CSC’s Aboriginal Corrections programme? Does the integration of Indigenous healing models contest the disciplinary framework of the prison, or is it a product of it? These questions would eventually lead me to seriously examine if perhaps the ‘Aboriginal vision’ of corrections was really actually a penal vision of ‘Aboriginality’.

Approaching the space of punishment as a site of endurance and continuity (Sim, 2009; Foucault, 1997), my thesis has attempted to present an argument against overstated critical criminological theories of historical penal rupture and post-disciplinary renaissance (Castel, 1991; Garland, 2001; Feeley and Simon, 1992) by showing rise of healing as evidence of the persistence of discipline. On this note, I have shown that the recent expansion of the ‘Aboriginal Corrections’ programme at CSC illustrates, as Cohen (1985) suggests, the ‘flexibility’ of disciplinary power to funnel reformist discourse and further rearticulate this discourse as a penal framework to deploy and mobilize new technologies of intervention. These technologies stem from reconfigured ‘correctional’ programs, policies, and prisons (healing lodges) all geared towards the ‘healing’ or normalization of Indigenous prisoners. Indeed, actuarialism and ‘risk thinking’ also plays a large role in the normalization process, however this role is certainly not as automated as theorists of the *new penology* would like it to be. The discursive interplay of *healing* demonstrates this. The mode of actuarialism employed through Aboriginal Corrections is evidently one that is deeply rooted in the colonial discourse surrounding the imprisonment of Indigenous people. On this note, Rigakos and Hadden (2001) are useful

for conceptualizing risk calculus as a “political project” in grasping the continuity of contemporary Canadian colonial projects such as imprisonment (whether it be in healing lodges or penitentiaries).

It is no secret that the mass-incarceration of Indigenous prisoners has caused penal restructuring on a massive scale. As Neilson (1990) observed over 20 years ago, “Native inmates have gone from being insignificant entities within the system to being a group needing enumeration, investigation, service – all as means of control” (117). The isolation of Indigenous prisoners as the object of difference causing penal restructuring is indeed central to the rationality that locates healing as the appropriate penal technology for the normalization and *knowing* of the Indigenous prisoner.

Mobilizing at times a post-colonial lens borrowed from Bhabha’s (1994) work, notably the notion of ‘cultural difference’, allowed my research to view how criminological knowledge and research conceptualizes Indigenous law-breaking and constitutes cultural forms of pathology through the *logic of difference*. Moreover, this theoretical approach provided a level of manoeuvrability when unpacking scientific discourses such as those found within biosocial theories of crime. In doing so I was able to deconstruct and reveal their historical link to imperialistic logic of the “need for positivism to improve the human condition” (Agozino, 2003: 21).

This logic of conceptualizing Indigenous prisoners as *different* subjects and “in need of healing” are not, I think, signs of discontinuity of ‘correctionalism’. Rather, they appear to be symptoms of a much larger, enduring penal rationality of penal governance. For example, penal discourse stemming from pastoral observations from the late 19th century illustrate an approach that coincides with framing the Indigenous prisoner as one

that breaks the law *differently* than non-Indigenous prisoners thereby constituting them as *different* and more so in *need* of the “benefits” that “civilizing” offer⁴³. Indeed, differentiating prisoners according to a risk logic is nothing new to penal rationality, however what is perhaps curious is the isolation and Othering of Indigenous prisoners as *unique*.

Future Research

One area that was considered as a possible object of analysis when planning my thesis was a problematization of CSC Healing Lodges. In the preliminary stages of my research, I quickly realized that this thesis could not effectively capture the Healing Lodge in its entirety without first identifying the underlying discourses and relations of power and knowledge that gave birth to it. Following the latter, I decided to concentrate efforts on analysing discourses of healing rather than the spaces they colonize. An analysis of CSC Healing Lodges could open new areas of opportunity to engage with the space of healing as a constitutive force in ‘correctional’ therapy. This could notably open new avenues to inquire about spatial practices within panoptic realms and further problematize the boundaries and penetrations of the disciplinary gaze. The work by Chantraine, notably his

⁴³ Manitoba Penitentiary Catholic Chaplin, “G. Cloutier” writes, “The good conduct of these Indians during their stay in the institution goes to show that their offence was rather an act of bravado than a maliciously planned robbery. They were invariably docile and well disposed. They were eager to learn the principles of a Christian life, and as far as it was possible, I grounded them thoroughly in the lessons I strove to impress on their minds. They understood that the whites were not their enemies; they understood that in every society there are men who rule, and others who are ruled; that if the law is not to remain a dead letter, it must be upheld; that respect for the law is to their own advantage, and its violators be punished. They understood all their in a general way; but their convictions were shaken when they were told that their punishment was for their own good. I am convinced, Sir, that their stay at the institution will have been a real benefit to them. They have learned the trades, and have been occupied at manual labour and now that they are enjoying freedom on their reservation they will, I trust, continue to work, and thus help on the civilization of their own people.” G. Clotier, Catholic Chaplain for the Manitoba Penitentiary, 1884.

notion on the *post-disciplinary prison*, is particularly interesting and could add value to such an approach to a spatial analysis of the Healing Lodge.

The coupling of sovereignty and colonialism within penal rationality and discourse is certainly apparent in certain contexts of Indigenous imprisonment. One clear example can be seen when one is ‘forced’ to comply with the alternative penal-track, the *Contiuum of Care*, and heal through, as Bhabha (1994) suggest, ‘mimicked images of the Other’ and representations of Indigenous symbolism. That being said, I am not convinced that it is so much ‘sovereignty’ than discipline that plays this role. Indeed, the prison serves as a site of ‘complete control,’ but it does so by governing through normalization and subjectification. If healing through mimicry were a mode of normalization then it would suggest that the power coupling rests with colonial and disciplinary forms. This area certainly requires more analysis. While I am of the view that colonial and sovereign power both have moments in the governing of Indigenous prisoners, I am anxious to totally reconcile them. More attention needs to be given to the location and permutations of sovereignty within the governance of Indigenous prisoners.

Another promising field of study is the metatheoretical benefit the postcolonial lens brings to criminological and sociological analysis of penology and the prison. Postcolonialism offers a promising theoretical ground for new directions and opportunities for scholars that are looking to do counter-colonial research while tracing the moralizing enterprise of Indigenous imprisonment. Mobilizing post-colonial approaches allows ‘making visible’ the taken for granted truths in contemporary society and revealing possible imperialistic undercurrents, such as the influences of biological determinism in contemporary theories of Indigenous crime control.

Finally, one important area that would benefit of further research is capturing the voices of the prisoners undergoing the healing process of CSC's 'Aboriginal Corrections'. Much of the discourse mobilized by CSC and criminological research suggests a 'holistic', 'spiritual', and 'transformative' approach to corrections. Prisoners, themselves would have much to offer on the boundaries and perhaps the limitations of these narratives. Approaching prisoner discourse in this way would question the legitimacy of the healing paradigm in Canadian corrections and confirm if prisoners are as CSC suggest 'open to heal' (CSC, 2006). Research proceeding with such an analysis should also attempt to capture how prisoners negotiate the multiple subjectivities applied by positivism and 'Aboriginal Corrections'.

In closing, it is important to remember the broader social effects at play when approaching research on captive subjects. When working within the confines of the university, a library, café, or CSC cubicle, it is easy to neglect the fact that social life goes on and at any given moment, Indigenous prisoners are being incarcerated at a rate that is 10 times greater than non-Indigenous prisoners (OCI, 2012). This steadily increasing rate of incarceration not only represents a society of captives, but also a society under a continued acculturation process through historical techniques of normalization. Scholars and penal administrators must come to terms with the fact that the prison for Indigenous people is now the new site for cultural reclamation, even if it is met with ambivalence.

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- Widdowson, F., & Howard, A. (2008). *Disrobing the Aboriginal industry: The deception behind indigenous cultural preservation*. Montreal: McGill-Queen's University Press.
- Yuen, F. (2011). "I've never been so free in all my life": Healing through Aboriginal ceremonies in prison. *Leisure/Loisir*, 35 (2): 97-113.

APPENDIX A



Correctional Service
Canada

Service correctionnel
Canada

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CONCEPTS AND DEFINITIONS

Aboriginal social history: the Gladue principles (see definition below) are referred to as Aboriginal social history. These principles apply only to Aboriginal offenders and not to non-Aboriginal offenders who choose to follow the Aboriginal way of life. They identify important attributes that must be examined when assessing the needs of Aboriginal offenders. These concepts can include the following (note that this is not an exhaustive list):

- effects of the residential school system (see definitions)
- sixties scoop (see definitions) into the adoption system
- effects of the dislocation and dispossession of Inuit people
- family or community history of suicide
- family or community history of substance abuse
- family or community history of victimization
- family or community fragmentation
- level or lack of formal education
- level of connectivity with family/community
- experience in the child welfare system
- experience with poverty
- loss of or struggle with cultural/spiritual identity
- exposure or membership to street gangs/Aboriginal gangs/criminal organizations.

Ceremonial and cultural sites: may include but are not limited to:

- Aulāsımavvik (Inuit – being on the land)
- Big House
- Healing Lodges
- Long House
- Natural creeks and rivers
- Sacred Mountain
- Smoke House
- Sod House
- Sundance Lodges
- Sweat Lodges
- Teaching Lodges
- Tupiq (skin tent).

Country food: more than just a tradition for Inuit, it is the embodiment of the connection Inuit have to the land and its bounty. It is also a connection to the traditions of Inuit ancestors. Feasts are a celebration of Inuit values: cooperation, sharing and spirituality. Country food is a part of the Inuit identity and a dietary requirement of the Inuit people. It is all harvested wildlife and comprised primarily of seal, whale, caribou and arctic char.

APPENDIX B

List of significant legislation, policy introductions, and major research projects between 1989-2013 analysed throughout *Chapter 3, Part I: Pathology and the Symptomatology of Gaze of Criminological Knowledge*.

YEAR	STUDY/POLICY DOCUMENT/REPORT
1989	Canada (1988). <i>Task force on Aboriginal peoples in federal corrections</i> . Ottawa, Ministry of the Solicitor General.
1990	Sinclair, C. M. (1990). Aboriginal peoples, justice and the law, in R. Gosse, J. Youngblood Henderson and R. Carter (eds), <i>Continuing Poundmaker & Riel's quest: Presentations made at a conference on Aboriginal peoples and justice</i> , Purish Publishing: Saskatoon, SK.
1992	Bonta, J., Lipinski, S., & Martin, M. (1992). The characteristics of aboriginal recidivists. <i>Canadian Journal of Criminology</i> , 34, 517-522. <i>Canadian Correctional Release Act</i> (1992), Department of Justice Canada. Ottawa: Canada.
1993	CSC (1993). <i>The healing lodge – Final operating plan</i> . Ottawa, Canada.
1996	Canada (1996). Royal commission Aboriginal peoples, <i>Report on the Royal commission Aboriginal peoples</i> . LaPrairie, C. (1996). <i>Examining Aboriginal Corrections in Canada. Aboriginal Peoples Collection</i> . Department of Justice Canada, Ottawa: Canada
1997	Bonta, J., LaPrairie, C., & Wallace-Capretta, S. (1997). Risk prediction and re-offending: Aboriginal and non-aboriginal offenders. <i>Canadian Journal of Criminology</i> , 39, 127. Waldram JB. 1997. <i>The way of the pipe: Aboriginal spirituality and symbolic healing in Canadian prisons</i> . Peterborough, On: Broadview Press.
1999	LaPrairie, C. (1999) "The impact of Aboriginal justice research on policy: A marginal past and an Even more uncertain future." <i>Canadian Journal of Criminology</i> . 249-60.
2000	Boland, F., Duwyn, M., & Serin, R. (2000). Fetal alcohol syndrome: Understanding its impact. In <i>Forum on Corrections Research</i> . 12(1), 16-18.
2001	Heckbert, D., & Turkington, D. (2001). <i>Turning points: A study of the factors related to the successful reintegration of Aboriginal offenders</i> . Research Report R-112. Ottawa, ON: Research Branch, Correctional Service Canada.
2002	LaPrairie, Carol. "Aboriginal over-representation in the criminal justice system: A tale of nine cities." <i>Canadian Journal of Criminology</i> . (2002): 181-208. Trevethan, S. Crutcher, N., Moore, J.P., and Mileto, J. (2007). <i>Pe Sakastew Centre: An In-depth examination of a healing lodge for federally incarcerated offenders</i> . Research Branch, Ottawa: Correctional Service Canada.

2003	<p>Bonta, J. L., Rugge, T., Dauvergne, M., & Cormier, R. B. (2003). The reconviction rate of federal offenders. Solicitor General Canada, Ottawa: On.</p> <p>Roberts, J. V., & Melchers, R. (2003). The incarceration of aboriginal offenders: Trends from 1978 to 2001. <i>Canadian Journal of Criminology and Criminal Justice</i>, 45(2), 211-242.</p> <p>Tait, C. (2003). Fetal alcohol syndrome among Aboriginal peoples in Canada: A Review and analysis of the intergenerational links to residential schools. Ottawa: Aboriginal Healing Foundation.</p>
2004	<p>Wesley-Esquimaux, C.C. & Smolewski, M. (2004). <i>Historic trauma and Aboriginal healing</i>. Aboriginal Healing Foundation.</p>
2005	<p>Dickson-Gilmore, E. J., & La Prairie, C. (2005). <i>Will the circle be unbroken?: aboriginal communities, restorative justice, and the challenges of conflict and change</i>. University of Toronto Press.</p>
2006	<p>CSC (2006). <i>Strategic Plan for Aboriginal Corrections: Innovation, Learning & Adjustment, 2006-07 to 2010-11</i>. Ottawa, On: Government of Canada.</p> <p>Raphael, D. (2006). Social determinants of health: present status, unanswered questions, and future directions. <i>International Journal of Health Services</i>, 36(4), 651-677.</p>
2007	<p>Bonta, J., & Andrews, D. A. (2007). Risk-need-responsivity model for offender assessment and rehabilitation. <i>Rehabilitation</i>, 6.</p> <p>CSC (2007). <i>Commissioner's Directive 705-6: Correctional Planning and Criminal Profile.</i>, Ottawa, On: Correctional Service Canada.</p> <p>Department of Justice Canada (2007). <i>A Roadmap to Strengthening Public Safety: Report of the Correctional Service of Canada Review Panel</i>. Ottawa: Minister of Public Works and Government Services Canada.</p> <p>Tait, C. (2007). Disruptions in nature, disruptions in society: Indigenous peoples of Canada and the 'making' of fetal alcohol syndrome. Pp. 196–218 in L. Kirmayer and G. Valaskakis, (eds.), <i>The Mental Health of Canadian Aboriginal Peoples: Transformations of Identity and Community</i>. Vancouver: University of British Columbia Press.</p>
2008	<p>Bracken, D. C. (2008). Canada's Aboriginal people, fetal alcohol syndrome & the criminal justice system. <i>British Journal of Community Justice</i>, 6(3), 21-33.</p> <p>CSC (2008). <i>Commissioner's Directive 702: Aboriginal Corrections</i>, Ottawa, On: Correctional Service Canada.</p> <p>Widdowson, F., & Howard, A. (2008). <i>Disrobing the Aboriginal industry: The deception behind indigenous cultural preservation</i>. Montreal: McGill-Queen's University Press.</p>
2009	<p>Fraser, C., & McDonald, S. (2009). <i>Identifying the Issues: Victim Services' Experiences Working with Victims with Fetal Alcohol Spectrum Disorder</i>. Department of Justice Canada.</p>
2010	<p>Andrews, D. A., & Bonta, J. (2010). Rehabilitating criminal justice policy and practice. <i>Psychology, Public Policy, and Law</i>, 16(1), 39.</p> <p>Kelly, K., & Caputo, T. (2010). <i>Community level factors and youth gangs in</i></p>

	<p><i>First Nations communities in British Columbia</i>. Ottawa: Centre for Initiatives on Children, Youth, and Community, Carleton University.</p> <p>Mann, M. (2010). <i>Good intentions, disappointing results: A progress report on federal Aboriginal corrections</i>, Ottawa: The Office of the Correctional Investigator.</p>
2011	<p>CSC (2011). Correctional Service Canada 2010-11 Report on Plans and Priorities, Ottawa, On: Correctional Service Canada.</p> <p>Harris, A. J. R., Cousineau, C., Pagé, C. A., Sonnichsen, P., & Varrette, S. (2011). <i>Recidivism Risk Assessment for Aboriginal Males: A Short Review of the Scientific Literature</i>. Research Report R-239. Ottawa: Correctional Service Canada.</p> <p>Yuen, F. (2011). "I've never been so free in all my life": Healing through Aboriginal ceremonies in prison. <i>Leisure/Loisir</i>, 35 (2): 97-113.</p>
2012	<p>Office of the Correctional Investigator. (2012). <i>Spirit matters: Aboriginal people and the Corrections and Conditional Release Act</i>. Ottawa: On. Retrieved from http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20121022-eng.aspx</p> <p>Statistics Canada. (2012). <i>Adult correctional statistics</i>. Ottawa, On: Retrieved from http://www.statcan.gc.ca/pub/85-002-x/2012001/article/11715-eng.pdf</p>
2013	<p>BC Office of the Provincial Health Officer. (2013). <i>Health, crime, and doing time: Potential impacts of the safe streets and communities act (former Bill C-10) on the health and well-being of Aboriginal people in BC</i>. Victoria: Author. Retrieved April 3, 2013, from http://www.health.gov.bc.ca/pho/pdf/health-crime-2013.pdf</p> <p>Gutierrez, L., Wilson, H. A., Ruge, T., & Bonta, J. (2013). The Prediction of Recidivism with Aboriginal Offenders: A Theoretically Informed Meta-Analysis 1. <i>Canadian Journal of Criminology and Criminal Justice/La Revue canadienne de criminologie et de justice pénale</i>, 55(1), 55-99.</p>