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The Elimination of the Other – Penalizing Indigenous Willfulness

Abstract

Since its inception in the Western world, the prison has proven ineffective in its pronounced goal to reduce crime. Its basic deficiencies have been documented between 1820 and 1845, commented on by Michel Foucault and, ever since, restated with changing foci. Intersectionality and Critical Race Studies have added an analysis of the reasons for mass and hyper-incarceration of racialized groups. Here, these approaches are being linked with Indigenous critique which exceeds concerns of over-representation of marginalized groups and challenges the very legitimacy of the prison system. Understanding Indigeneity as an axis of discrimination offers productive correctives for critical prison studies through the degree to which Indigenous subjects are being controlled and contained. Incarceration, I argue here, is an extended form of Indigenous femicide and elimination of Indigenous willfulness for the completion of the settler project. I suggest including the aspect of willfulness as a category in intersectional studies of multiple discrimination. The ambition of this argument lies in theorizing, understanding and interrupting incarceration.

Résumé

Depuis son instauration dans le monde occidentale, le prison s'est prouvé inefficace dans son objectif de réduire la criminalité. Ses lacunes principales ont été documentées entre 1820 et 1845, commentées par Michel Foucault et, depuis, réaffirmées d'angles différents. Les études de l'intersectionnalité et les études critiques de race ont rajouté une analyse des raisons de l'incarcération de masse des groupes racialisés. Cet article fait le lien entre ces approches et la critique autochtone ce qui dépasse le problème de la sur-représentation des groupes marginalisés pour contester la légitimité même du système carcéral. La compréhension de l'appartenance autochtone comme axe de discrimination offre des correctifs productifs pour les études critiques du prison par le degré de contrôle et de détention des sujets autochtones. L'incarcération, je proclame ici, est une forme extensive du féminicide autochtone et de l'élimination de l'intentionnalité (willfulness) autochtone pour la complétion du projet colonisateur. Je propose d'inclure l'aspect de l'intentionnalité comme catégorie dans les études intersectionnelles de dis-

crimination multiple. L'ambition de cet argument se situe dans la théorisation, la compréhension et l'interruption de l'incarcération.

1. The Elimination of the 'Other'¹

For the past thirty years the number of First Nations' inmates in Canadian prisons has risen annually (The Correctional Investigator of Canada 2017, 50). Indigenous people are vulnerable to incarceration and, worse, to death in custody. The neglect of state institutions to provide needed care to inmates has been characterized by Sherene Razack (2015, 112f.), an expert on racial violence, as "killing indifference." The extension of criminal jurisdiction has long been central to the subjugation, displacement, and elimination of Indigenous polities. As interventions in Indigenous studies have demonstrated, the Western carceral system (re-)colonizes in a classical sense, upholding state violence and racialized hierarchy (Ross 1998; Monture-Angus 2011; Nichols 2014; Dhillon 2015; Razack 2015). Through an analysis of Canadian incarceration reports for the years 2016 to 2018, I will engage Indigenous prison critique with Michel Foucault's (1991) fundamental prison critique and, in a second step, link them to advances put forth in Critical Race and intersectional studies. By combining these critical approaches to think through carceral power, this paper intends to lay out a foundation for theorizing and interrupting (Indigenous) imprisonment and death in custody. This is based on my hypothesis that Indigenous people are particularly affected by incarceration because of their specific oppression as 'other' and willful.

The state manages 'disorderly populations' through criminalized capture and isolation. The prison forms a place and technique of disciplining and – in cases of persistent willfulness and insubordination – of elimination. The term 'elimination' is here used quite literally in its deadly connotation since criminal justice not only often causes civil death,² often inmates also die in prison. In his 1991 book *Discipline and*

1 Over the past years, I had opportunities to discuss thoughts on incarceration, intersectionality, and willfulness in different contexts. Constructive comments at these conferences helped to restructure the ideas: *The Art of Resistance and Resurgence* (American Indian Workshop, London, 2017), *Prejudice and Expertise – Discrimination in the West, 1850-2000* (University of Warwick, 2018), and *Intersectionality: Theories, Policies, Practices* (Gesellschaft für Kanada-Studien, 2019). For stimulating comments, I am especially thankful to Claudia Brunner, Magdalena Freuden-schuss, Asher Goldstein, Nkiruka Ngozi Eziakor, and the blind peer reviewers. A German version of this text with a feminist focus will be published in 2020 in the book *Intersektionale und post-kolonial-feministische Perspektiven als Mittel politikwissenschaftlicher Macht- und Herrschaftskritik* edited by Heike Mauer and Johanna Leinius.

2 In many democracies inmates' voting rights are seized. Critical Race scholars have described how the seizure of the right to vote for felonies after incarceration in the US has particularly affected communities of people of color (Richman 2018: 491). In Canada, however, all prisoners

Punish – The Birth of the Prison, Foucault found that violence and killing is bound up with penal practice; an element that justice tolerates, despite difficulties in accounting for it (9). According to Foucault, since the birth of the prison, sentencing and penal practice are no longer consequences of legal theory, but results of political anatomy (28). This political anatomy, in a first step, defines the “normal” and differentiates it from the “abnormal,” “villain,” “madman,” or “monster” (101, 184). Those deviating from the norm are criminalized, punished, (re)educated, and – should all of this be in vain – eliminated. The offender becomes the common enemy, opposed by society in his/her entirety – “he is nothing less than a traitor, a ‘monster.’ How could society not have an absolute right over him? How could it not demand, quite simply, his elimination?” (90). Canadian annual penal statistics attest to the common recurrences and stable rates of deaths of Indigenous inmates in custody.

Foucault’s critique of the prison system had already been formulated in the years from 1820 to 1845. It proceeds as follows: prisons do not lower crime rates; on the contrary, they cause recidivism and produce milieus of delinquency; the conditions to which inmates are released cause recidivism; and incarceration affects the relatives³ negatively, producing new poverty-related delinquency (265ff.). Since 1820, countless prison reports repeat these raised objections – in the following, simply termed ‘Foucauldian primary prison critique’ – with different foci and for different contexts. However, all reforms have failed to transform inmates to ‘orderly’ members of society.

Although the prison failed to diminish delinquency, it was and is absolutely successful when understood as a governance function aiming at homogenizing behavior (183). In what Foucault termed the “carceral archipelago” and the “great carceral continuum” (297, 303) the fields of medicine, psychology, education, welfare and ‘social work’⁴ take over the functions of surveilling, punishing, and correcting ‘abnormal’ behavior. These mechanisms of normalization and disciplining are central to the disciplinary society (301) and serve to construct the ‘criminal’ as embodied before, and even outside, the crime (252). By around 1840, inmates had already been analyzed from biographic and ethnographic perspectives; criminals were identified as a separate species and as inherently criminal (253, 258). At the same time, white settlers and white anthropologists defined the Native as ‘abnormal’ and applied quite similar disciplining mechanisms to ‘civilize the savage.’ This paper develops the argument that Indigenous people – stigmatized as uncivilized, criminal, vagabond, wild, savage, thief, cannibal, or willful (Miheisuh 2015; Pöhl 2018) – are at higher risk of experiencing disciplinary violence.

Today, these practices of labelling, discriminating, and excluding all who diverge

are entitled to vote, and the Canada Elections Act contains various provisions to facilitate the franchise of prisoners.

3 This text is inspired and informed by own experiences in institutions of the disciplinary society (orphanage, foster care), by secondary prisonization, and the death of close relatives in prison.

4 Social work in quotation marks as in the original (Foucault 1991: 304, 306).

from the norm is called 'othering' and will be the topic of the subsequent part. Here, I want to establish that the early sources Foucault quoted already stated that it is the 'other' who is most targeted by the police, ends up in custody, and might not survive incarceration. Foucault confirmed the existence of class justice and the criminalization of the poor, orphans, homeless, and mentally ill who lack the opportunity to avoid imprisonment (1991,101, 61).

An aspect that had not been touched upon by Foucault is the prison system's racialized and gendered violence. Especially in the US-American context, engagements with racist mass incarceration and state-sanctioned reinvention of slavery (Wacquant 2002; Alexander 2011), murderous police violence (Zimring 2017), the so-called 'prison industrial complex' (Davis 2003; Wilson Gilmore 2009), and ethnic-based discriminatory persecutions (Aviram 2018) have inspired and provoked extensive and differentiated analyses of the carceral system. Critical Race scholars have highlighted racist disparities in the US justice system; the implicit racial bias operating on each of its levels is regarded as the overwhelming reason for hyper-enforcement of criminal laws on non-white people (Benders 2018). As a result, many Black US Americans do not live in a society with prisons but in a "prison society" (Wacquant 2002, 60). What Foucault (1991, 270, 301) described as the carceral system is termed "prison nation" by the Black scholar Beth Richie (2012, 3). The conception of a prison nation reflects the increased criminalization of disenfranchised communities of color, the undermining of civil and human rights of marginalized groups, and aggressive law enforcement strategies for norm-violating behavior. The term refers to the strategic use of the power of law, public policy, and institutional practices to advance hegemonic values and to overpower efforts that challenge the status-quo. Threatening hegemony is always a willful act and, as this article argues, punishing willfulness is a central feature of the disciplinary society.

Another aspect not included in the Foucauldian primary prison critique is a recognition of gendered violence. Gender is an important construct to be analyzed for the complex ways it is associated with criminalization and incarceration that are not always visible at first sight. Most empirical studies on incarceration from Critical Race and intersectionality approaches focus on boys or men of color. For example, it is reported that in Canada, the probability of young Indigenous men going to prison is four times higher than graduating from high school (Razack 2015, 209). Yet, women of color are the fastest growing group in US prisons (Annamma 2018, 308) as are Indigenous women in Canadian prisons (Correctional Investigator of Canada 2017, 59). Hence, analyzing reports of incarcerated Indigenous women in Canada against the background of prison critique promises insights into the elimination of the 'other' through criminalized capture.

By disregarding racialized and gendered systemic violence, Foucault also did not foresee the overlapping and intersecting forms of multiple discrimination that in effect compose the prison population in Canada and other Western democracies. In general, the starting point of prison critique is the problem of over-representation

of members of marginalized groups in prisons. The conclusions tend to repeat Foucault's primary critique. Remarkably, most Critical Race Theory and intersectional approaches do not question the system *per se* (Benders 2018; Richman 2018). Angela Davis (2003) and Ruth Wilson Gilmore (2009) are among the few abolitionists. Reformist approaches reinforce a violent system that is fundamentally asymmetrical in its re-production of the disciplinary society and, thus, blocks abolitionist attempts to recognize the need for a (re-)thinking of conflict transformation systems open to restorative justice agendas. Reversing this asymmetry requires elucidating the initial causes of differential criminality and differential criminalization: poverty, deprivation, institutional racism, white supremacy as well as a lack of empathy for the 'other' (Aviram 2018, 338). It requires addressing the underlying causes of criminalization and imprisonment: the de-humanization of those diverging from the norm.

The majority of Critical Race literature on incarceration is based on the intersectionality approach developed by the Black lawyer Kimberlé Crenshaw. Crenshaw (1991, 1245) focussed on race and gender but also mentioned that "the concept could and should be expanded." With this text, I want to partake in this project of expanding the intersectionality concept to add the category of *willfulness* as a determining factor for vulnerability. Intersectionality offers a productive perspective and method of conceptualizing the relation between systems of oppression that construct 'other' identities in order to uphold systems of power and privilege. I use intersectionality to examine the ways in which interlocking mechanisms of 'othering,' oppression, racism, and criminalization work to multiply marginalize Indigenous women into criminalization, incarceration, and elimination. One central aspect appears to be their entrapment as *willful*; this will be discussed in the subsequent part.

2. The Elimination of the Willful

In the US, numerous executions of People of Color by the hands of police officers in public have gained notoriety (Zimring 2017). Less attention is being paid when death occurs in prison. Sandra Bland is a prominent example of death in custody; her death occurred in 2015 during the height of the *Black Lives Matter* movement. The Black activist was stopped by traffic police and arrested after being perceived as too willful during a verbal exchange. Shortly after, she was found dead in her cell. Even though the state carries the legal responsibility for the well-being of inmates, it does not take responsibility nor account for so-called 'suicides.' Hitherto, the relatives of Sandra Bland demand an investigation into the causes of this 'suicide' under state supervision, control, and care. It is assumed that in cases of 'suicide' in prison inmates freely choose to die. However, I argue that within the 'total institution' (Goffmann 1973) of the prison, inside a surveilling, coercive, and violent racial re-

gime, there cannot be entirely voluntary, un-coerced self-killing.⁵ These killings are tolerated because the victims are the ‘others,’ the willful, those who are not “eminently grievable” (Butler 2009, 24). Willful people are not only targeted, marginalized, and discriminated against in the larger carceral system but also within penal institutions. Willful inmates who do not subordinate themselves to the required discipline are placed into solitary confinement, a place designed and meant to break the will. Foucault (1991, 289) quoted the *Phalange* which stated in 1837: “The social order dominated by the fatality of its repressive principle continues to kill through the executioner or through the prisons those whose nature robustness rejects or disdains its prescriptions.” Women of color and Indigenous women are often perceived as robust and willful. Therefore, to include the aspect of willfulness as a separate category into the intersectional study of multiple discrimination in the context of criminal justice reveals a specificity of their axes of domination.

Sara Ahmed (2014), in her book *Willful Subjects*, describes the deadly aspect in European social disciplinary traditions. By reviewing popular literature, she points out how the disciplinary society normalizes obedience as virtue and disdains willfulness as problematic and destructive (63). Interpreting the grim tales of the Grimm brothers, she finds that eliminating willfulness does not only mean to eliminate independence from the general will but also to destroy even the memory of an independent will (65). This is supposed to help children and spare them trouble since the only time in the referenced tale the child is at peace is when it is dead (71). Ahmed explains how mentioning and challenging injustice is seen as a symptom of willfulness and that, therefore, all who wish to be regarded as civilized and educated, distance themselves from any sign of willfulness (90). “It is ‘the others’ who are willful and capricious” (95). Even the suspicion of willfulness could deny one the opportunity to be heard (94).

Ahmed does under no circumstances distance herself from the ‘other,’ on the contrary: she wants to activate and animate the *feminist killjoys* to be willful, to leave traces and to use the disturbing facets of willfulness in a creative manner. She insists on the transformative power of willfulness, although she is aware that willfulness is often criminalized and interpreted as an orientation towards a crime (2014, 135). I only partly approve of Ahmed’s instigating because crossing the fine line between willfulness and refusal without being harmed is a privilege which is not available to all.⁶ As intersectional studies have documented, multiply discriminated subjects acting resistant and willful are risking their lives; too many do not survive acts of resistance. Ahmed knows Audre Lorde’s quote in her book *The Black Unicorn*, in which she states that *some* were never meant to survive (1978, 32). Incarcerated

5 The author is currently working on a text dealing specifically with the phenomenon of lack of accountability for death by so-called ‘suicide’ in prison.

6 Several activists and activist academicians call for radical actions while enjoying the privilege of having access to settler society’s institutions (i.e. through their white, middle-class mothers or jobs) – institutions that tend to harm and kill ‘others.’

Indigenous women belong to these *some*. Their survival is regarded as willful, as a threat to the settler nation's sovereignty (Simpson 2014).

Since the beginning of colonization on the American continents, laws have been formulated and implemented in a way to weaken First Nations communities. Since then, Indigenous peoples have been subjected to extremely violent normalizing and disciplining practices. All institutions of the disciplinary society – the military, the school, the hospital, the psychiatric asylum, the church – collaborated to subordinate and eliminate Indigenous life, cultural practices, traditions, languages, and knowledge systems. Still today, Native peoples are continuously subjected to surveilling, disciplining, and exterminating practices (Monture-Angus 2011; Nichols 2014; Dhillon 2015; Razack 2015; Simpson 2018). Incarceration, as I argue here, is an extended form of eliminating Indigenous willfulness. Penalizing willfulness by itself is an aspect of settler governance mechanisms; those unwilling to conform to established norms are, from the settler perspective, seen as willful and a threat to hegemonic values, hence, deserving of punishment. For problematizing and overcoming containment, linking the Foucauldian primary prison critique with Indigenous perspectives promises a productive angle. The subsequent part will clarify the connection between the practices for 'civilizing' and 'normalizing' Indigenous communities on the one hand and the disciplining functions of the carceral system of the Canadian settler state on the other.

3. The Elimination of the Native

From an intersectional perspective it is obvious that willful or 'other' constructed subjects are vulnerable to marginalization, discrimination, and elimination. The extension of the criminal justice system has played a central role in the subordination, removal, and extermination of Indigenous polities. Interventions in Indigenous Studies have shown how the Western prison system (re-)colonizes in a classical sense. Patricia Monture-Angus stresses that the Canadian justice system neither represents nor respects Indigenous people (2011, 244). She interprets this as another means of "oppression of First Nations People under a system of law to which we have never consented" (2000, 57). Politics around the prison system are formulated in a way that perpetuates institutionalized violence and racist hierarchies. Members of First Nations possess their own inherent rights based on their own justice and value systems; a situation which bears potential of constant conflict with Canadian policing. However, the Native was represented as a potential criminal in need of disciplining; the legacies of this 'othering' affect First Nations people today (Ross 1998). Nickita Longman, communications coordinator at the Indigenous student Center of the University of Manitoba, commented in July 2019 through social media that Indigenous death will always be associated with criminality. She mentions as examples Colten Boushie, who was framed as a thief (though nothing was officially stolen) when he was murdered, Tina Fontaine, whose toxicology report was made public and used against her in the media and in the courtroom (despite being un-

der state care and guardianship) when she was murdered, and Nadine Maschiskinic, who was assumed a sex worker and whose death was not reported to the police for 60 hours. First Nations people who are already constructed as sick, criminal, and members of a dying race are afforded neither care nor grief. Where does this indifference towards the death of the 'other' with whom one seemingly has nothing in common derive (Mbembe 2014, 331)?

After the publication of *Settler Colonialism and the Elimination of the Native* by the comparative historian Patrick Wolfe (2006), the aspect of elimination moved into the foreground in the academic discourse on Indigenous incarceration. In the following, I will first depict insights gained in Indigenous Studies based on Wolfe that reveal the ongoing genocidal structure of Canadian society. Secondly, I will describe the specifics of Indigenous femicide and summarize current literature on Indigenous incarceration in order to suggest combining both strands of research with the Foucauldian primary prison critique. This could be productively applied to understand the continuous elimination of the 'other' through containment in order to formulate a more radical prison critique. Wolfe describes the nature of settler colonialism as an ongoing structure, not an event. The existence of the settler nation is only possible through the elimination of the Indigenous, and this pertains to the individual physical presence as well as to its political forms, governance systems, and land rights. Land is the essential and indispensable element of the settler project. Continuous expropriation of Indigenous land and resources as well as mass incarceration are tools to separate First Nations people from their land. Wolfe explains the existence of contemporary settler colonialism with the "logic of elimination" which wants to contain, control, and regulate all that is Indigenous (2006, 387). According to Wolfe, the logic of elimination is enforced through strategies of settler colonialism which include the breaking down of Native title, Native citizenship, child abduction, religious conversion, and resocialization in total institutions (388). The specific ways in which the elimination of the 'other' occurs varies in terms of the target group, its methods and according to the historical moment.

One of the specifics of incarcerating members of First Nations is that their 'othering' is not only based on phenotype, ethnicity, gender, poverty, or disability. Critical Race Studies tend to submerge Indigenous positions under the People of Color term. However, Indigenous people(s) enjoy an extra-constitutional status resulting from bilateral international treaties; hence, their status is of political and not ethnic nature (Wilkins 2002, 59). Through this history, they can offer specific experiences and arguments relating to the carceral continuum within settler nations in the Americas that are grounded in Native sovereignty. The strongest embodiment of Native sovereignty is through Indigenous women leaders. Hence, Indigenous women are disproportionately targeted and affected by incarceration.

Kahnawake anthropologist Audra Simpson talks about conflicting "multiple sovereignties" (2018, 74) to describe the Indigenous femicide in the Canadian settler state. An important step towards the legalization of femicide was taken in 1876 with

the change from matriarchal/matrilineal to patriarchal/patrilineal governance through the introduction and implementation of the Indian Act in Indigenous territories (Simpson 2016). In her book *Mohawk Interruptus: Political Life Across the Borders of Settler States*, Simpson (2014, 156) explains how the body of Indigenous girls and women has historically been depicted as less valuable and, simultaneously, as threat. Indigenous women represent land, reproduction, and relationship, as well as, even more importantly, a different form of governance which does not follow Victorian rules of descent. Simpson follows Wolfe (2006) in the argument that Indigenous presence recalls the incomplete settler project, and that elimination and judicial confinement of First Nations requires new techniques (Simpson 2018, 80). She argues that missing and murdered Indigenous women⁷ have not simply 'disappeared' but that Canadian governance is guilty of Indigenous femicide in order to secure its sovereignty (Simpson 2016). Indigenous survival, in particular that of Indigenous women who have been characterized as 'disorderly' subjects, is, according to Simpson, understood by the Canadian state as resistant and willful (2016).

Jaskiran Dhillon (2015) does not investigate incarceration but, instead, its preliminary stage, namely the way the Canadian police practices of racial profiling discriminate and criminalize Indigenous women and girls. She highlights cases of police violence documented by the NGOs Justice for Girls and Native Women's Organization of Canada. Questioning the violence committed by state organizations at the expense of Indigenous girls offers narratives that profoundly destabilize the hubristic portrayal of Canada as a humanitarian nation cleansed of all crimes against humanity committed under imperial colonial rule (3). Dhillon traces how violent, abusive, exploitative, and extractive encounters between Indigenous girls and the police represent characteristics closely linked to land appropriation (4). Dhillon follows Simpson in interpreting the continued settler mentality and settler politics as the principal cause of the reality of missing and murdered Indigenous women and girls in Canada (2015).

The Canadian political scientist Robert Nichols (2014) argues that although incarcerated members of First Nations share some experiences with racialized groups, Indigeneity offers a broader foundation for a normative critique of the prison system. Indigenous critique is a political critique that exceeds socio-economic explanations and questions the bio-political categorization of racialized groups. Even more importantly in the present context, it interrogates the ideological differentiation between the war logic and social pacification on which the expansion of the carceral system is based. Hence, Nichols argues, Indigeneity locates Critical Prison Studies within a greater horizon of settler colonialism and territorial sovereignty since it offers normative foundations for formulating a more general critique of these pro-

7 The final report of the National Inquiry into missing and murdered Indigenous women and girls with the title *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* was published in 2019: <http://www.mmiwg-ffada.ca/final-report>.

cesses (437). Nichols maintains that the focus on overrepresentation of racialized groups among the prison population makes it appear as if the prison system is part of an ahistorical mechanism of state violence and hence, obscures the connection between incarceration, state formation, and (contested) territorial sovereignty (444). However, according to Nichols, the expansion of the carceral system in North America is inherently linked with the history of settler colonialism (454f.).

This link is also established in Sherene Razack's (2015) book *Dying from Improvement: Inquest and Inquiries into Indigenous Deaths in Custody*, in which she analyzes narratives of Indigenous death within Canadian prisons. She finds that patterns of death in custody involve a repeated failure to care, a systematic indifference and neglect, and sometimes outright murder. Indigenous people with addiction or psychological problems tend to get in conflict with the criminal justice system more often and stand a lesser chance to survive such encounters (117, 134). Personnel working in the justice system describe deceased Indigenous inmates as "vanishing Indians," who are unable to exist in modernity. Individual physical weaknesses or inappropriate behavior (i.e. alcoholism) are named as causes of death while structural reasons like racism or colonialism are consequently concealed (80, 163). The prison administration does not acknowledge any mistakes on its part, instead claiming to have taken on the difficult task "to save" these people (79). This narrative serves the legitimization of continued dispossession. Further, Razack argues, it helps support the Canadian settlers' narrative of the passive 'disappearance' of First Nations people in two ways: they obscure the guilt of genocide, and, simultaneously, imagine their own superiority (5).

The prison critique of these three (as well as other) authors presented here is maintained without recourse to the Foucauldian primary prison critique. A cross-reading of Foucault (1991) reveals that elimination has since its inception been an essential part of the prison and the carceral system and that multiply marginalized subjects tend to be more vulnerable to imprisonment. Indigenous inmates are multiply exposed to the murderous system: as Indigenous, as poor, as criminalized, as gendered, as a political threat, and as willful. "Aboriginal people are the most vulnerable of the vulnerable" (Razack 2015, 35). Ironically, Natives are 'othered' and criminalized on their own land on which effective forms of restorative justice without recourse to isolation existed and continue to exist. Therefore, an analysis of incarceration from an Indigenous perspective – and especially from the experiences of Indigenous women – is particularly fruitful because Indigenous people(s) have deep experience of being constructed as the 'other.' While other marginalized groups may experience dehumanization – notably other racialized groups, poor people, and people with disabilities –, the violence that is meted out to Indigenous people in settler societies is a paradigmatic and foundational violence. Indigenous people(s) have been *othered* in multiple ways, their discrimination is based on several intersecting categories which expose them to ongoing genocide. Minding this

extreme form of structural and institutionalized violence helps us to see more clearly the power and indifference at work in other liberal democracies' carceral systems.

Further, the Indigenous prison critique offers in its conflict transformation mechanisms – restoring relationships – a conception of women that allows thinking about alternatives to imprisonment and overcoming incarceration. In the following, I will draw from two reports of the Office of the Correctional Investigator of Canada for the years 2016 to 2018 in order to determine what has changed about incarceration practices since the Foucauldian primary critique – and what remains the same.

4. The Elimination of the 'Othered,' Willful Native Inmate

The data from the reports of the Office of the Correctional Investigator of Canada for the years 2016 to 2018 are read here against the background of the theoretical assumptions presented above. My hypotheses propose that, firstly, not much has been added to the main findings and objections formulated since the Foucauldian primary prison critique in the middle of the 19th century and that, secondly, Indigenous people are particularly affected by incarceration due to their specific subjectification as 'other' and willful. Within the settler state, both the carceral continuum as well as the administration of First Nations have the essential element of elimination in common. That is why I suggest that the extinction of the willful Native through incarceration serves as a logical instrument in the continuous settling of Indigenous land.

During the decade between March 2009 and March 2018 the Indigenous prison population has increased by 42.8 percent while the ratio of the Indigenous population in relation to the general Canadian population has increased by only 1 percent. On March 31, 2018, Indigenous inmates accounted for 28 percent of all inmates while they represent only 4.3 percent of the Canadian general population (The Correctional Investigator of Canada 2018, 61). The numbers in the report come as no surprise; they are a continuation of a penal praxis as it has been handled since 1820. The name 'correction' itself testifies to the continued desire of educating and transforming the sentenced persons. These reports state that there remains a "significant, seemingly intractable, performance gap" (The Correctional Investigator of Canada 2017, 50) in administering Indigenous versus non-Indigenous inmates. Members of First Nations are overrepresented in prison, are more often subjected to use of force interventions, are more often moved to high security units, more often victims of self-harm, are being released later, and tend to return to prison sooner and more often.

The last two annual reports of the Correctional Investigator contain all essential aspects of the Foucauldian primary prison critique. Recidivism remains a common phenomenon; 10.5 percent of Indigenous inmates return to prison within two years after their release; this rate is nearly twice the national average (The Correctional Investigator of Canada 2018, 62). Further, it holds true for Canada of the 21st century as it did for France in the 19th century that those who are more likely to be en-

tangled in the justice system do not understand it well; wealthier people, especially those located at the intersection of several privileged subject positions, can more easily avoid imprisonment. Members of more vulnerable groups tend to lack a clear understanding of the justice system; this creates “barriers to innocence” and results in longer sentences (Annamma 2018, 54). According to the report, Indigenous inmates, on average, spend five months in prison before they can start the correctional programming; this is much longer than non-Native inmates wait for their program to start. Parole requests filed by Indigenous inmates are less likely to be granted than if requested by non-Indigenous inmates. Only 12 percent of Indigenous inmates prepare for a parole hearing when they are eligible. An overwhelming 83 percent of First Nations inmates postponed their parole hearings (2017, 48). Also, the release practices critiqued in the Foucauldian primary prison critique have not been *corrected* in today’s penal system in Canada. Of those released on statute, 79 percent were released into the community directly from a maximum or medium security institution, without benefit of a graduated and structured return to the community (2017). With such a status quo, high rates of recidivism are inevitable.

For Indigenous women, the incarceration rates have risen more drastically. Over the past decade, their number in federal custody has increased by 60 percent, from 168 in March 2009 to 270 in March 2018. Currently, 40 percent of all imprisoned women in Canada are Indigenous (The Correctional Investigator of Canada 2018, 61). I present these numbers from the Correctional Investigator Canada reports to demonstrate how Indigenous femicide in Canada (Simpson 2016) is exercised through incarceration. Indigenous women make up half of the maximum-security population and are more routinely placed in high- or maximum-security units – even though they “were not posing an imminent threat or risk of harm” (The Correctional Investigator of Canada 2018, 37), which is usually the justifying reason for placing inmates in solitary confinement. The rate of imprisoned Indigenous women placed into solitary confinement has increased significantly. The Correctional Investigator concludes: “the year-to-year increase in the over-representation of Indigenous people in Canadian jails and prisons is among this country’s most pressing social justice and human rights issues” (The Correctional Investigator of Canada 2017, 6).

The 2016-2017 report includes interviews with incarcerated women who state that they turned suicidal while kept in solitary confinement/segregation units (2017, 63). It is well-documented that isolation triggers or worsens psychological problems; cases of self-harming and ‘suicides’ are common. In the years 2016-2017, two ‘suicides’ by women occurred in the secure unit (62). I would like to dedicate a distinct section to solitary confinement – or, in the Canadian carceral terminology, ‘separation’ – since the separation unit makes up a prison within the prison – or isolation within isolation. This practice is the total opposite of Indigenous conflict transformation which is based on restoring relationships.

The practice of isolation in separation units is an important indicator for the argument I have formulated regarding the elimination of the 'other' through imprisonment as a continual praxis since the birth of the prison. The 'other,' the 'resistant,' the 'willful' are being criminalized and locked up. In cases of insubordination they are further punished, isolated, separated, and exterminated. In March 2017, 414 Canadian inmates were placed in separation units, of which 151 (36.5 percent) were Indigenous (The Correctional Investigator of Canada 2017, 41). Since the abolition of death penalty and torture, solitary confinement remains the harshest form of punishment in Canadian prisons.⁸

What does the report suggest for improving detention conditions of Indigenous people? Still today, there are no demands for fundamental changes and the suggested reforms remain cosmetic in nature: inmates should be corrected through educational measures under the supervision of trained personnel and experienced administrators. The report suggests preparing personnel better to deal with the *unique* needs of Indigenous inmates (2017, 49; Dhillon 2015, 5). Interventions regarded as "effective, culturally appropriate" for better reintegration include measures to improve the relationship of prison administration to Indigenous communities on surrounding reserves and to offer healing lodges operated by these communities (CSC 2017, 1). However, the community approach cannot be very effective when working with communities on reserves when, as is the case here, the released Indigenous inmates come from the cities and are returning to these urban areas (The Correctional Investigator of Canada 2017, 50).

Regarding attempts to integrate Indigenous approaches in penal programs, Patricia Monture-Angus (2000, 56) has remarked that healing lodges cannot hide the fact that the institution remains within the legal and bureaucratic Canadian prison system. Further, the responsibility for the well-being of the Indigenous inmate is transferred to the Indigenous community operating the healing lodges. In so doing, the *white* institution escapes its responsibility. And even though these approaches have been used for a long time, Indigenous people are continuously placed into solitary confinement, are still being isolated, and left to die.

The practice of solitary confinement has long been criticized, especially due to the often-occurring cases of self-harming and 'suicides' (Guenther 2013). I argue here that the over-representation of Indigenous people among the prison population in general, and among female inmates in particular, must be understood as effectively excluding and eliminating Native lives and sovereignties.

5. Conclusion

The state administers 'disorderly populations' through arrest and isolation. Although it has been well-known for a long time that the prison system does not

8 While many practices occurring in solitary confinement have been criticized and outlawed as torture, the practice of separating and isolating inmates continues.

lower crime rates – on the contrary, it increases them – liberal democracies do not attempt to dismantle the carceral system; they actually expand it. Through a reconstruction of the Foucauldian primary prison critique I have shown that analyses from the 19th century have already included asymmetric class relations, but not the categories of gender and race. Drawing on Foucault and the prison critique formulated in Critical Race and Indigenous Studies, I have shown how the elimination of the 'other' continues to represent an essential element of the carceral continuum. Intertwining these perspectives opens an investigation into the historic justifications and normative foundations of the construction of the 'other' (i.e. criminal, enemy, vagabond, savage, Indigenous), which play a central role in understanding the acceptance of elimination through incarceration. This text is an attempt to expand approaches from Critical Race and Intersectionality Studies by including the Indigenous prison critique which questions the very existence of the carceral system. Indigeneity as an axis of discrimination offers robust and productive arguments for Critical Prison Studies, because the resources applied to control Indigenous subjects allows a clearer view of the deadly practices within the prison archipelago. Indigeneity can also offer alternative responses as conflicts have been transformed and resolved without containment and killing through restoring relationships before the arrival of European settlers in the Americas. The essential aspects of community, belonging, and relationship are central for conflict transformation and also for Indigeneity in general. Building and restoring relationships, community and commonality are necessary in order to overcome 'othering' processes and the subsequent incarceration which might end deadly for the most marginalized. Understanding others as community members and people worthy of relationships can help to emancipate oneself from being used to the death of the 'other' with whom one seemingly has nothing in common (Mbembe 2014, 331).

Critical Prison Studies use different approaches that so far have failed to offer a convincing critique that makes the prison obsolete. Prison critique formulated in postcolonial and Critical Race Studies can benefit from Indigenous perspectives and its normative critique and, if incorporated, might be able to avoid the tendency to ignore Indigenous presence. Indigenous perspectives on incarceration identify gaps in intersectional and Critical Race analyses regarding imprisonment and, through the specifics of the elimination of Native willfulness through incarceration, contribute productively to close these gaps. Especially analyses regarding Indigenous femicide will help Critical Prison Studies to develop legal theories and practices that operate without killing.

References

- Ahmed, Sara, 2014, *Willful Subjects*. Durham and London: Duke University Press.
- Alexander, Michelle, 2011, *The New Jim Crow: Mass Incarceration in the Age of Color Blindness*. New York: New Press.
- Aviram, Hadar, 2018, "Why are Racial Minorities Overrepresented in the Prison Population? A Systemic Institutional Inquiry", in: Erin Brigham and Connor Kimberly Rae (eds.), *Today I Gave Myself Permission to Dream: Race and Incarceration in America*. University of San Francisco Press, 165-338 (locs eBook).
- Benders, Alison, 2018, "Reconstructing the Moral Claim of Racially Unjust Mass Incarceration", in: Erin Brigham and Connor Kimberly Rae (eds.), *Today I Gave Myself Permission to Dream: Race and Incarceration in America*. University of San Francisco Press, 512-649 (locs eBook).
- Butler, Judith, 2009, *Frames of War: When is Life Grievable?* New York: Verso.
- Crenshaw, Kimberlé, 1991, "Mapping the Margins. Intersectionality, Identity Politics and Violence against Women of Color", in: *Stanford Law Review* 46.6, 1241-1299.
- CSC. Correctional Service of Canada, 2018, *Response to the 44th Annual Report of the Correctional Investigator 2016-2017*. Correctional Service of Canada.
- Davis, Angela Y., 2003, *Are Prisons Obsolete?* New York: Seven Stories Press.
- Dhillon, Jaskiran, 2015, "Indigenous Girls and the Violence of Settler Colonial Policing", in: *Decolonizing: Indigeneity, Education & Society* 4.2, 1-31.
- Foucault, Michel, 1991 [1975], *Discipline and Punish: The Birth of the Prison*. London: Penguin Books.
- Goffmann, Erving, 1973, *Über die soziale Situation psychiatrischer Patienten und anderer Insassen*. Frankfurt/Main: Suhrkamp.
- Guenther, Lisa, 2013, *Solitary Confinement*. Minneapolis: University of Minnesota Press.
- Lorde, Audre, 1978, *The Black Unicorn*. New York: W.W. Norton.
- Mbembe, Achille, 2014, *Kritik der schwarzen Vernunft*. Berlin: Suhrkamp.
- Mihesuah, Devon A., 2015, *American Indians: Stereotypes and Realities*. Atlanta, GA: Clarity Press.
- Monture-Angus, Patricia, 2011, "The Need for Radical Change in the Canadian Criminal Justice System: Applying a Human Rights Framework", in: David Long and Olive Patricia Dickason (eds.), *Visions of the Heart: Canadian Aboriginal Issues*. Don Mills, ON: Oxford University Press, 238-257.
- , 2000, "Aboriginal Women and Correctional Practice: Reflections on the Task Force on Federally Sentenced Women", in: Kelly Hannah-Moffat and Margaret Shaw (eds.), *An Ideal Prison? Critical Essays on Women's Imprisonment in Canada*. Halifax, NS: Fernwood Publishing, 52-60.
- Nichols, Robert, 2014, "The Colonialism of Incarceration", in: *Radical Philosophy Review* 17.2, 435-455. DOI: 10.5840/radphilrev201491622
- Pöhl, Friedrich, 2018, *Das Problem des Anderen am Beispiel des Kannibalismus- und Rassendiskurses von der Antike bis in die Neuzeit*. (PhD dissertation) Innsbruck University.
- Razack, Sherene H., 2015, *Dying from Improvement: Inquest and Inquiries into Indigenous Deaths in Custody*. Toronto: University Press.
- Richie, Beth E., 2012, *Arrested Justice: Black Women, Violence, and America's Prison Nation*. New York University Press.
- Richman, Kimberly, 2018, "Where You Can't Be Colorblind: Race, Incarceration, and Reentry", in: Erin Brigham and Connor Kimberly Rae (eds.), *Today I Gave Myself Permission to Dream: Race and Incarceration in America*. University of San Francisco Press, 345-506 (locs eBook).
- Ross, Luana, 1998, *Inventing the Savage: The Social Construction of Native American Criminality*. Austin: University of Texas Press.
- Simpson, Audra, 2014, *Mohawk Interruptus. Political Life Across the Borders of Settler States*. Durham and London: Duke University Press.
- , 2016, "The State is a Man: Theresa Spence, Loretta Saunders and the Gender of Settler Sovereignty", in: *Theory & Event* 19.4. Internet: <https://muse.jhu.edu/article/633280>

- , 2018, "Sovereignty, Sympathy, and Indigeneity", in: Carole Anne McGranaghan and John Collins (eds.), *Ethnographies of U.S. Empire*. Durham: Duke University Press, 72-89.
- The Correctional Investigator of Canada, 2017, *Annual Report 2016-2017*. Office of the Correctional Investigator. Ottawa, Ontario.
- , 2018, *Annual Report 2017-2018*. Office of the Correctional Investigator. Ottawa, Ontario.
- Wacquant, Loïc, 2002, "From Slavery to Mass Incarceration: Rethinking the 'Race Question' in the US", in: *New Left Review* 13, 41-60.
- Wilkins, David E., 2002, *American Indian Politics and the American Political System*. Lanham, MD: Rowman & Littlefield Publishers.
- Wilson Gilmore, Ruth, 2009, "Race Prisons and War: Scenes from the History of US Violence", in: *Socialist Register* 45, 73-87.
- Wolfe, Patrick, 2006, "Settler Colonialism and the Elimination of the Native", in: *Journal of Genocide Research* 8.4, 387-409.
- Zimring, Franklin, 2017, *When Police Kill*. Boston: Harvard University Press.