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(Un)Becoming the Offender: Marginality in Punishment Processes, "Offender" as Permanent Identity

ABSTRACT

This article chronicles the invisible crisis in the Canadian criminal justice system that has come to rely upon critically marginalized populations in the composition of who is punished, and who is deemed punishable. Drawing on auto-ethnography, intersectionality and discourse analysis, and case studies, this article makes visible this process, from suspicion to parole, the filters which move people with more privilege away from an increasingly permanent offender identity and move people with more marginality towards it. These filters are termed "intersectional filtering points": their disparate impact emphasized to illustrate how disadvantaged people become offenders. Fundamental neoliberal logics show how this crisis persists invisibly: marginalized people who become offenders are, therefore, seen as archetypal risk groups whose characters require regulating, undermining the widely held notion of a criminal justice system which impartially responds to illegal acts.

KEYWORDS: offender, discourse, social-disadvantage, crime, carceral

RÉSUMÉ

Cet article raconte la crise invisible de la façon dont le système de justice pénale canadien en est venu à s'appuyer sur des populations gravement marginalisées dans la composition de qui est puni et qui est jugé punissable. S'appuyant sur l'auto-ethnographie, l'intersectionnalité et l'analyse du discours, les études de cas montrent comment, de la suspicion à la libération conditionnelle, il existe des filtres qui éloignent les personnes plus privilégiées d'une identité de délinquant de plus en plus permanente et y déplacent des personnes plus marginalisées. Ces filtres sont considérés comme des «points de filtrage intersectionnels» : leur impact disparate est souligné pour illustrer comment les personnes défavorisées deviennent des délinquants. Les logiques néolibérales sous-jacentes montrent comment cette crise persiste de manière invisible : les personnes marginalisées qui deviennent des délinquants sont considérées comme des groupes à risque archétypaux dont les caractères nécessitent des notions réglementées et largement répandues d'un système de justice pénale qui répond de manière impartiale aux actes illégaux.

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There is a crisis in Canada that flows from a measurable manufacturing process which filters specific peoples into membership within a subordinated, socially excluded identity: the "offender". Offender has become more than a temporary location for criminalized peoples. This is evident in the language shift itself from inmate to offender (see Bill C-10 2012). Where Canada's previous usage of the term "inmate" implied the location of a person, "offender" implies an offensive character, an ongoing state of offending. This article explores the wider context of this implication, specifically *who* it is that comprises the offender population in Canada, what being convicted of an offence represents and entails, and what practices and factors move individuals into or away from the emergent offender identity.

For the majority of us within this identity, it was marginality, in cumulative and critical amounts that determined our becoming offenders. And similarly, so does privilege excuse others from it. The determination of crime and the application of punishment are relative to social location. Some people commit crimes and are immediately excused from even the perception of being criminal, long before courts are involved. Other people are sent to prison for identical actions. More still—and herein lies the crisis—are cast as offenders and all the punishment being an offender entails because of who they are, and their place on the social ladder. In order to outline exactly how penal practices and ideology culminate in an offender construction process reliant upon the marginal, this article will emphasize the points within this process where social factors matter most, exploring how these points are used to filter people into or away from becoming "offenders," For the purposes of this article, these points are termed *intersectional filtering points* (IFPs).

The first part of this article begins by unpacking myth about prisons and penality. This is followed by a Foucauldian analysis that challenges flaws in carceral logics. Part two introduces the intersectional analysis of the "offender" construction process through an IFP framework. IFPs, marked by their shared function of being discriminatory pathways, are then explored through the inclusion of relevant case studies in an effort to both humanize and highlight the effects of deep systemic prejudices perpetuating Canadian punishment systems. Part three offers a critique of the "individual choice" model of crime, the neoliberal discourses which support it, and their effect on the increasing permanence of offender identity. The fourth and final part briefly considers resistance to these processes, and the unrealistic requirements to "un-become" the offender.

Through this examination, I strive to build upon McCulloch and Scranton's (2009) analysis of the violence inherent to penal practices. Further, I seek to enhance what has officially been described as an area not explored sufficiently in research:

> Little Canadian research has systematically explored the treatment of visible minorities within the criminal justice system and even less so on their experiences in correctional facilities, primarily because of the lack of or limited access to data. The principal Canadian study in this field, conducted by The Commission on Systemic Racism in the Ontario Criminal Justice System, examined the extent to which criminal justice practices, procedures and policies in the police, courts and correctional institutions in Ontario reflected systemic racism. Overall, the Commission found evidence of systemic racism within each of the components of the criminal justice system and made a number of recommendations to improve its accountability. Specifically, with respect to correctional institutions, the Commission found evidence of pervasive racial hostility and intolerance within prison environments, racial segregation of inmates within and among prisons and racial inequality in regards to the delivery of institutional services. While this study is now dated and was conducted in provincial institutions in only one province, it provides important contextual information, both from a qualitative and quantitative perspective, on the experiences of Black inmates and visible minorities more generally, within the Canadian criminal justice system. (Office of the Correctional Investigator 2013)

Unpacking Stigma and Myth

I know because I am here. It is the simplest way to state how 11 years of lived experience within judicial and penal systems have informed my analysis. I am imprisoned within the Canadian federal prison system, a system that has become "a defining feature of liberal democracies." (McCulloch and Scranton 2009, 15). Despite the centrality of prisons to society, prison practices remain shrouded by mystery and misinformation.

Especially since the rise of neoliberalism, the public have been imbued with stories about how corrections have been soft on crime, and how people in prison are dangerous offenders who need to be kept away from communities for as long as possible, if not permanently (Duguid 2000). Media stories and popular television narratives describe a juxtaposed reality, a *prison world removed* from society (yet ever threatening to it) where no undeserving citizen would ever enter. It is a world where control and suffering merge into a deplorable, albeit subjective, set of conditions much too confusing and unpleasant for many to become knowledgeable about, if they need not.

If we accept the prison as a world removed that exists to respond to crime, we implicitly accept dehumanizing practices and conditions inherent within them. Deplorable conditions are sometimes called for, and sometimes advocated against, in the public sphere. Either way, these conditions are fundamentally accepted. Debunking the separation myth is a first step toward an accurate penal analysis. From my standpoint, these are institutions of self-fulfilling prophesy; prisons

themselves not only being a form of violence (in that they create and perpetuate harm and suffering, and in the act itself of caging human beings) but are only components of a broader exploitive economy which manufactures "offender" others and then responds to them in increasingly intrusive, complex and mobile ways. This economy is vital to the sustenance of much Canadian societal function, herein referred to as penality.

For the purposes of this article, penality is conceptually separated from the prison industrial complex (PIC), although it encompasses much of the same logics. Applied in the Foucauldian sense, penality describes the complex carceral *culture* within the network economy of institutions, technologies, professions, ideologies, practices and norms who flourish upon the back of society's most 'undesirable' people (Davis 2003; Foucault 1977).

In *Are Prisons Obselete?* Angela Davis describes the PIC as an "attendant drive to fill… [prisons] with human bodies…driven by ideologies of racism and the pursuit of profit" (Davis 2003, 83). While not focused on the profit of prisons, this article rests upon the carceral logics Davis emphasises, aptly summarized in Allspach (2010, 706).

> Davis treats the prison as an ideological space of larger capitalist economic developments and persistent forms of racism within which 'undesirables are deposited, relieving us of the responsibility of thinking about the real issues afflicting those communities from which prisoners are drawn in disproportionate numbers. (Allspach 2010, 706; see Davis 2003, 16)

One purpose for a distinct analysis focused on Canadian prisoning is that it tends to be misunderstood as being more legitimate, fair, or rehabilitative when compared to the US prison system; unfortunately, it is often simultaneously assumed that in Canada, the prison population is resultantly more legitimately deserving of punishment.

It is impossible to imagine, without being in the criminal justice system, the incredibly subjective nature of punishment experience. Indeed, I have witnessed both fairness and exploitation, both corruption and compassion, both kindness and cruelty, both purpose and purposelessness. The only truth absolute seems to be that who you are matters deeply when in conflict with the law. The tragedy inherent to this truth is that the less one has, the worse one usually has it. Correctional Investigator, Ivan Zinger writes that Canadian prisons have much injustice within them, having a "culture of indifference or impunity," and where "personal safety and human dignity did not matter." He notes that "outdoor segregation 'yards' [are] actually cages, easily mistaken for a dog run or kennel" (Zinger 2017, 3–4). Thus, though Canadian penality may not be as overtly problematic as the PIC, offender construction processes which result in disadvantaged people being incarcerated more, for longer periods of time, within dehumanizing penitentiary settings which carry cultures of impunity, is not of lesser concern.

A Foucauldian Lens: The Abundance of Irreconcilable Flaws within Penal Logic

Michel Foucault's assessment of the relationship between discourse and power is central to unpacking offender construction as it exists in Canada. Foucauldian discourse analysis makes visible how language is used and how narratives are contrived and delivered as discourse for the purpose of governance over certain groups in society. Applied to the Canadian criminal justice system, unpacking discourse can illustrate that we mask *who* we prison behind ideas of *why* we prison. Notable examples include "tough-on-crime" narratives, which call for punitive responses to crime through the imposition of long sentences and harsh living conditions, as a necessary response to a crime pandemic threatening society. This power-perpetuating discourse focuses on fear and, in practice, has been blended with a "rehabilitation" discourse (the medical model), which calls for "damaged offenders" to be fixed by correctional experts (Duguid 2000, 20-44). Both narratives are posed as competitors to one another in shaping penality, yet they are one and the same, equally propelling carceral hegemony forward. Interestingly, both punitive and rehabilitative discourses gain strength through the assumption that crime is an individual choice/action.

Foucault's illustration of how the loss of liberty was legitimized initially for its potential to be the egalitarian punishment is also salient (Foucault 1977). Where monetary fines would disproportionately affect the poor, time was positioned as the one currency that could be applied against all equally. Yet, if doing time is disproportionately applied against marginal communities, the premise upon which imprisonment can be a fair or egalitarian sentence must be strongly questioned. Foucault did just this, theorizing that prisons manufacture "delinquents" (Foucault 1977, 266) from populations who are "among the bottom rank of the social order" (Foucault 1977, 275). That prisons produce offenders only appears as a contradiction but is actually the driving purpose of the carceral system (Foucault 1977, 304). Manufactured offender populations are placed into a carceral archipelago which (re)produces offenders, encourages recidivism, and sustains a diffuse field of expert authorities (Foucault 1977, 271-301). Moving beyond individual offenders, the carceral creates criminalized "offender" communities. "The prison indirectly produces delinquents by throwing the inmate's family into destitution" (Foucault 1977, 266–67).

There are myriad logical flaws in how we understand and "do prison" (see Comack et al. 2013). "Crime," for example, is detached from prisons. The two overlap but are not mutually required. "To understand the social meaning of prison today" writes Davis (2003, 85), "punishment has to be conceptually severed from its seemingly indissoluble link with crime."

There are some people in prisons who have committed: the typifying acts that come to mind when prisons are imagined. However, such acts represent the minority of

crimes. Homicide, attempted homicide, robbery, sexual assault and related charges account for only 3.3% of all crimes. Within this figure, homicide accounts for 0.08% (Canada 2020, 22). This small percentage of serious crime tend to make invisible all the needlessly criminalized people, and over-criminalized people. 3.3% of all crimes have provoked sweeping legal changes, and have been continually relied upon to normalize and legitimize *all* carceral practice. Yet just as many people have done horrible things and are never imprisoned, there are too many people in prison who have not committed any terrible act. 76.44% of all crimes are related to drugs (11.14%), administration of justice orders such as probation and parole breaches (22.79%), property crime (23.67%), and traffic violations (13.43%) (Canada 2020, 22). Overall, incarceration has become more related to the perception of criminality than to the nature of a crime itself. Criminality is determined initially by multiple, marginalizing social factors, then reconstituted through cycles of reincarceration via revocation of parole or probation.

Between 2011 and 2014, at the height of the Harper era's "tough on crime" reform, women were sent back into prison from conditional release for breaching conditions centred on regulating intimate details of their lives, details far outside of the realm of what most would consider legitimate in a parole condition. Legitimized under logics of risk management, many, especially Senator Kim Pate and Dr Shoshana Pollack, have criticized these practices as prejudicially determining risky behaviour. (see Office of the Correctional Investigator, 2013; Pate 2002; Pollack 2010).

In one case, I witnessed a woman returned to prison after she became pregnant. She was held to a parole condition routine at that time for female parolees to report all sexual encounters and male relationships to their parole officers. She had her baby in jail, handcuffed to a hospital bed, followed by months of pumping out breast milk to be sent to her infant in the community. She was reincarcerated only by her offender status, hers being one example of the 22.79% (Canada 2020, 22) of people who are incarcerated for breaches of community supervision orders.

Conceptualizing the distance between crime and punishment adds to an accurate penal analysis. Not only does what constitute crime vary across time and place, but all crime is determined by human beings, and thus subject to our limitations and biases. Indeed, there are differences between who is perceived as having committed a crime, as being criminal, and as having made a mistake. This is the measurement of criminality. While crime is an act that the law makes punishable, criminality is the extent to which individuals are perceived as being capable of being criminal, and the extent to which individuals are excused or forgiven from crimes and, more importantly, from the application of punishment.

What results is the creation of the permanent "offender," and "offender" communities who are relied upon to act as more than just people who are punishable; they are relied on to *be offenders*. The availability of a *type of people* who offend has become salient to criminal justice and penal institutions, who draw people with cumulative

and critical amounts of marginal social factors into a potential pool of criminality, where they are then deemed punishable, filtered into prisons and, increasingly, into regulated, surveilled, controlled communities as offenders. The pool is constructed through IFPs such as:

- Suspicion
- Arrest
- Bail
- Trial
- Sentencing
- Intake in prison
- Parole
- Neighbourhoods that are criminalized or privileged

Intersectional Filtering Points

The preceding list marks the major exits and entrances of offender identity. At these IFPs, how much privilege or disadvantage a person has determines whether or not they are deemed *punishable*. The impact of identity at IFPs is seldom recognized in assessments of the structure and efficacy of Canada's criminal justice system. Yet all IFPs share the same function: they apply punishment processes more to marginalized people and less to privileged people. The point of making visible this systemic reliance on marginalized peoples is to provide logic, substance, and context to understanding prison populations as representing the most vulnerable in society. It provides a framework that can be applied and a context that can be understood more wholly than can the available statistics about over-representations of certain within prisons.

Becoming the Offender: "A Critical Accumulation of Negative Factors"

The theory of intersectionality was introduced by Kimberlie Williams Crenshaw in 1989. It insists that we must recognize the complexities of social conditions, experiences, and stigmas which affect people as a result of overlapping, multiple social factors. (Collins and Bilge 2016). Specifically exploring the impact of race, sex, age, ability, and gender and sexual expression/identity, etc., on an individual's social position and overall treatment, intersectionality provides a compelling framework that highlights evidence of the exploitative nature of penality, demonstrating that prisons do not function primarily for the safety of society, but that crimes are both determined and punished disparately and discriminatorily in ways that, as Foucault (1977) argues, sustain the disciplinary society. Supporting this analysis, ample quantitative evidence connects marginality to criminalization:

- "Between 2005 and 2015, the Black inmate population grew by 69%. The federal incarceration rate for Black [people] is three times their representation rate in general society" (Office of the Correctional Investigator 2015, 1)

- "As a group, Black inmates continue to have poorer outcomes on many important correctional indicators. In 2016/17, Black inmates were more likely to classified as maximum security (nearly one-fifth compared to 14% of the total inmate population), and are over-represented in admissions to segregation (Black inmates represented 10.5% of admissions to segregation)." (Office of the Correctional Investigator 2017, 56)
- "One in four people in prison are over 50". (Office of the Correctional Investigator 2015, 1)
- The social-economic status of the federal prison population is low. (indicated by substandard housing, low employment rates, low educational achievement and low-income status). (Office of the Correctional Investigator 2015, 1).
- "Over 60% of the overall inmate population has a formal education of grade 8 or less." (Office of the Correctional Investigators 2015, 1)
- "In 2011, 22% of imprisoned men in Ontario were homeless before incarceration and 32% became homeless post0incarceration." (Stapleton, Pooran and Doucet 2011, 6)
- "In the ten-year period between 2007/08 and 2016/17, the number of federally sentenced women inmates increased by 29.7%" (535 in 2007/08 to 694 in 2016/17). (Office of the Correctional Investigator 2017, 48)
- "In their lifetime, the vast majority of federally sentenced women experience symptoms consistent with a psychiatric disorder. Approximately half of all federally sentenced women have an active psychotropic prescription." (Office of the Correctional Investigator 2017, 62)
- "Close to 70% of federally sentenced women report histories of sexual abuse and 86% have been physically abused at some point in their life." (Office of the Correctional Investigator 2015, 3)
- "80% of male offenders struggle with addiction or substance abuse" (Office of the Correctional Investigator 2015, 1)
- "Between 2007 and 2016, while the overall federal prison population increased by less than 5%, the Indigenous prison population increased by 39%." (Office of the Correctional Investigator 2017, 48)
- "While Indigenous people make up less than 5% of the Canadian population, Indigenous people now represent over 30% of the total federal inmate population" (Office of the Correctional Investigator 2020, 20). In 2017, 37.6% of the federal women inmate population is Indigenous," (Office of the Correctional Investigator 2017, 48) but the 2019 Corrections and Conditional Release Statistical Overview indicates that the number is much higher, 41.5%, when both federal and provincial incarceration is considered. (Public Safety Canada 2020).
- "Indigenous women represent 41.5% of all women behind bars, but they make up 50% of the federal maximum-security population" (Office of the Correctional Investigator 2017, 59).
- "Two of the largest penitentiaries in Canada (also two of the three oldest and arcane)—Saskatchewan Penitentiary (1911) and Stony Mountain Institution (1877)—are located in the Prairies region. Both institutions happen to house

majority populations of Indigenous people. The antiquated conditions of confinement that prevail in these two institutions are not conducive to modern and humane correctional practice" (Office of the Correctional Investigator 2020, 39)

These figures are emblematic of the impact of privilege and marginality upon judicial and penal outcomes; they illustrate that in the eyes of the law, *who* is suspect deeply matters.

Case Study: Shay

Shay has been in and out of institutions since he was 13 years old. In prison in Ontario, Shay and I were both members of a collective that trains potential professors for a postsecondary program called Walls to Bridges, which creates university classes comprised equally of imprisoned students and students from the community who study together in prison environments. At an annual Walls to Bridges Training Institute session, Shay was explaining to one of the professors the experience that started what became over 20 years of prisoning. Shay had been adopted and placed in an extremely abusive environment. By thirteen, was living on the street. One day, at Canada's Wonderland, Shay was caught stealing from a gift shop. The police were called, and they determined, based on his perceived unstable life, that formal charges were warranted. A judge sentenced Shay to six months in a juvenile prison, citing homelessness as a factor in the sentence length.

The professor, whom Shay shared this story with, had tears in her eyes. She shared with Shay, as they both later shared with the whole group, the irony of who is punishable. For this person, too, who was the same age and had also been caught at Wonderland when she was thirteen, during the same summer, for the same crime – shoplifting. This woman was at Wonderland with her parents. When the police came, it was agreed that the parents should simply remove her from the park, and she went home that day with no significant interaction with penality, except for the experience of being perceived by the police as not being capable of committing a crime, but instead, of having made a mistake. She went on to become a professor at a distinguished university. From juvenile prison, Shay found community among people committing petty crimes. Shay was never free for more than a few months at a time for the next 20 years.

Mistake is the term commonly used to excuse people with cumulative and critical amounts of privileges from systems of punishment, while character is the word used to imprison people without that same privilege. Shay's example is not unique but is, rather, representative of intersectional bias determining every aspect of penality.

Zinger (2017, 6) illustrates how Canada imprisons not the "most bad," but the most vulnerable:

> One can imagine the sense of futility and despair such environments and
> conditions of confinement elicit from people who are often mentally unwell,

or whose lives have been touched or marked by some combination of alcohol or drug addiction, family dysfunction, discrimination, poverty, childhood violence, abuse or trauma. Elevated rates of prison self-injury and suicide, high prevalence of mental illness and premature natural mortality behind bars speak to the unremittingly high costs of imprisonment for some of Canada's more vulnerable populations.

Stephen Duguid in *Can Prisons Work?* (Duguid 2000, 85) writes that "most descriptions of prisoner populations begin with the deficits along with background specifics that indicate a critical accumulation of negative factors." I borrow this concept as it succinctly explains how it is, through many overlapping marginal factors (in cumulative and critical amounts) that offenders are produced: "offender" is a status measurably achieved or avoided by one's place within society.

Case Study: Just How Disproportionately Do We Punish the Marginal in Canada?

In 2013, then Toronto mayor, Rob Ford became entangled in a very public crack-cocaine scandal. Video footage was leaked to media depicting Ford using the drug in a local Somalian-Canadian community. Ford was never charged and never arrested. Conversely, from Ford's actions, one already stigmatized, poverty-stricken community was raided by the police. Individuals were arrested in the highly publicized raid dubbed *Project Traveller* by the Toronto Police Department (Russell 2014). One of the young women arrested was recently released from the Grand Valley Institution for Women. She was sentenced to 6 years, though the longest sentence resulting from the raid was 12 years (personal communications, 2017). In prison, she and I lived in the same unit for almost 2 years. I never tired of learning about her story, and on countless occasions we reveled at the unjustness of 1 rich white man smoking crack and almost 50 Black people going to prison for it.

Because her community already suffered from high crime rates, and because it is a racialized community, they were perceived criminally. The mayor's actions were repeatedly forgiven in media narratives and in public discourse as symptoms of his stressful life. Her community was declared to be the inherent "problem makers" with whom the mayor, "having troubles" made the "mistake" of becoming involved.

The perception of criminality is reproduced throughout marginalized communities, such as the Somalian-Canadian Toronto community in consideration, as disproportionate numbers of people become categorized as "offenders" from one space, then become criminalized and, often, recriminalized by simply being associates of the offenders in question.

This case study visibilizes how labels of criminality are prejudicially applied to disadvantaged bodies, and removed from privileged bodies. Looking at criminality

as a relative phenomenon in this way refutes the argument that justice is blind and the argument that people in Canada enjoy equality under the law. In this example, the more marginalized a person is, the longer and more severely they will be punished.

This case also illustrates how hierarchy and power are reproduced through identities of privilege being systematically embedded as safeguards from Canada's judicial system. Privilege provides exits from offender identity at all IFPs, often through outright excusal from the perception of criminality.

Another salient IFP is the bail system. Most of the people arrested in this raid were denied pre-trial bail, and this is representative of communities from which the offender pool is generally drawn. Being granted bail is directly related to the availability of assets.

Consequences of bail denial include:

- No access to legal resources;
- No ability to find a good lawyer, and having to rely on the advice of those in prison;
- Retaining counsel who do not have the financial motivation to meaningfully defend a case;
- Being stigmatized by appearing in court incarcerated; and
- Experiencing long terms of imprisonment without having been found guilty of anything.

Many arrested in what they refer to as the Rob Ford raid sat in provincial prison for 2 to 3 years waiting to stand trial. They experienced almost constant lock-downs, sensory deprivation, nutrition deprivation, no meaningful access to their social support and constant pressure to "plead out": an occurrence where people plead guilty out of frustration from being in prison (personal communication, 2017). Pleading allows people to serve far less time than would otherwise be the case if they took their case to trial. Pleading out is the norm, not the exception – and what should be emphasized – many accepting convictions in this manner *become offenders* out of coercion, not guilt. The police maintain a strong presence to date in the Somalian-Canadian Toronto community. The young woman whom I was in prison with was released back into her community, but placed under strict restrictions. She was given a routine parole condition preventing her from any association with any of her co-accused. Imagine. Within her small community, aside from all the obvious barriers associated with exiting prison, she has had to sever ties with nearly 50 people who live in her neighbourhood. Failure to do so, suspicion that she is even indirectly speaking to any of them (many of whom are family and family friends), would result in her being returned to prison. She shared with me how she is one of the lucky ones, noting that many of her friends are still behind prison walls.

Finalizing the Offender as Identity: IFPs and the Application of Punishment

Not only the determination of who is punishable, but the application of punishment is relative to and, in fact, almost dichotomized by identity. Moreover, this is not a new phenomenon. Dating back to 1990, Dorothy Chunn and Robert Menzies (393–394) describe the undertones of intersectional oppression in legal/penal systems:

> Inside the ordering practices of the liberal democratic state, what contributes most to maintaining the capitalist, patriarchal status-quo is not overt oppression of certain groups, but rather the indirect influence of ideologies on decision-makers, including those who enact and administer the law.

They continue to illustrate how more marginality equates to more overt punishments:

> convicted persons who contravene the dictates of familial ideology routinely find themselves subject to intensified regimens of regulation and treatment that recurrently transcend categories of class, gender, and race/ethnicity. At the same time, the "constructed normality" which familial ideology reflects is unremittingly white, patriarchal, and bourgeois. The offenders who are assessed most harshly overall by the criminal justice personnel are the double, triple and multiple failures-the women and men who have not negotiated the class, gender and racial/ethnic "deals" which are characteristic of "normal" people.

In prison IFPs cause disadvantaged people to remain in prison longer and to be held in more restrictive conditions. "Indigenous people in federal custody are released later in their sentence, disproportionately over-represented in segregation placements, use of force interventions, maximum security institutions and self-injurious incidents" (Office of the Correctional Investigator 2017).

The major custodial IFP occurs at intake, (the first three months a person is in prison) and is framed by the CSC as an information collection period to determine which security classification a person will be kept in: minimum (low risk), medium (moderate risk) or maximum (high risk) (CSC CD 705-7, 2018).

Factors such as education, upbringing, sexual history, race, ability and income are posited as either "risk factors" or "protective factors" and are often misconstrued as choices that offenders made. In so doing, marginality is correlated to risk.

Marginalities are tallied within the CSC Custody Rating Scale. Racialized people, people living near or below the poverty line, people from marginalized neighborhoods, homeless people, people with mental illness, addiction and other social differences, and people who have been previously criminalized receive the highest scores. Questions include (CSC CD 705–6, 2018):

- Resides in a high crime area?
- Has many criminal acquaintances?

- Has contact with criminal family members?
- Family members criminally active during childhood?
- Intimate relationship(s) have been problematic?
- Abused during childhood?
- Marketable job skills obtained through format training are limited?
- Has less than grade 10 or equivalent?

Through this filtering process, prisoners who are classified as low risk cascade out of prison quickly and with relative ease. By their privilege, they have convinced the authorities that despite their conviction, they are not in need of a comprehensive assault upon their character. These people move quickly to minimum security buildings, are generally well treated by staff, and usually receive parole.

What is left for those classified as moderate and high risk? They experience more punitive conditions, and for many, the worst of the worst: the deplorable prison conditions within maximum security units and segregation that are rarely identified publicly as components of the Canadian prison system.

Maximum security units are best documented publicly in the Office of the Correctional Investigator's annual reports. In maximum security units, structural deficiencies and sensory deprivation create environments of stress and trauma, to which many respond with violence, self-harm, and defiance. Time is routinely added to people's sentences as result. Mental illness is widespread (Frietas, McAuley & Kish 2016; Sapers 2015, 2016; Zinger 2017).

In women's penitentiaries, the SRS-W 2.0 (Security Reclassification Scale for Women) highlights strong systemic biases that send many vulnerable people into maximum security units. The SRS-W requires a score of at or above 7.80 points to be discretionarily sent to maximum security, and any rating at or above 8.70 automatically classifies someone as maximum. Privileges subtract from the scoring system. A score below 2.35 is required for discretionary classification as minimum security, and 2.65 is the automatic rating:

Possible Value	From	To
Minimum	-10.10	-2.65
Medium	-2.60	+8.65
Maximum	+8.70	+22.40

"Discretionary range" built in for decision-makers (which lowers the max rating):

Medium	Maximum-to-Medium	+8.70	+9.55
Maximum	Medium-to-Maximum	+7.80	+8.65
Minimum	Medium-to-Minimum	-2.60	-2.35
Medium	Minimum-to-Medium	-2.90	-2.65

Consider that within the SRS-W, the measurement of family support is *contact with family*. People whose families may live far or in remote communities, and families who cannot afford to visit or put money onto our phone system are rated as higher risk:

No, very little positive contact with family is to be selected if the offender has little to no positive, regular support from her family.

Yes, regular positive contact with family is to be selected if the offender's family is consistently emotionally supportive and available to her.

Possible Value	Score
No, very little positive contact with family	(+1.00)
Yes, regular positive contact with family	(-0.30)

There is a final list formulated during intake which supposedly measures a person's risk, and this list is combined within a "reintegration potential" rating (CSC CD 705-7, 2018). This list combines something called responsivity (which attempts to measure personality, communication styles, cognitive functioning, and experiences of trauma), level of motivation and level of accountability. As these determinations rely largely on the supposed measurement of personal change, this list is problematic for anyone who does not or cannot adopt the individual choice model of crime and punishment. It reinforces offender construction by punishing those who do not proclaim the required discourse.

Domain Motivation Level

The domain motivation level is assessed for eight need areas: education, employment, marital/family, associates, substance abuse, community functioning, personal/emotional orientation, and attitude, using the following criteria:

1. HIGH

The offender fully recognizes a need requiring intervention and is fully ready to start intervention. He/she has committed to change and may have already started actively engaging in behaviours related to change. While still recognizing external benefits for pursuing intervention (ex, securing early release), he/she is primarily motivated for internal reasons (ex, doing it for himself/herself, "I'm tired of the lifestyle or I want a change").

2. MEDIUM

The offender may not fully accept or recognize need area as deficit but is willing to participate in recommended programs or other interventions. Genuine commitment to change may still be absent. While the offender may commit to intervention, he/she may only be doing so for external reasons (ex, to secure early release or be transferred to a low security institution).

3. LOW

The offender would benefit from motivational interviewing prior to programming. There is absolutely no recognition that a need exists in this area. There is no genuine commitment to change. (CSC CD 705–7, 2018)

Correctional Plan: Program Motivation/Progress

(User entered & mandatory)

"This item is intended to allow the user to assess the offender's motivation in programs designated to address criminogenic factors identified in the correctional plan. The user assesses how actively the offender participates in programs. Assessment is based on knowledge of the offender and on file review."

Limited motivation is selected if the offender refuses to participate in programs to address needs outlined in her correctional plan, or if her participation is very sporadic.

Partial motivation is to be selected if the offender participates in programming, with adequate attendance. Homework is at least partially (or sometimes) completed, and she sometimes applies lessons.

Full motivation is to be selected if the offender is actively participating in her correctional plan, completes homework most of the time, and applies her lessons consistently (CSC SRS-W Ver 2.0, 2018)

Possible Value	Score
Limited motivation	(+3.20)
Partial motivation/active	(+0.70)
Full motivation/active	(-2.40)

In concrete ways, marginality is translated into risk, risk into control, and control into punishment. Determining risk based on identity, location, and social history locations, and backgrounds is problematic for the correctional system's mandate of public safety and reintegration. For this process allows people who have been without advantage in life to slip further through the cracks, while simultaneously providing some individuals who did engage in awful behaviours a smooth route back into the Canadian public by way of their circumstances.

The Individual Choice Model of Crime and Punishment: How Discourse Constructs

A stupid despot may constrain his slaves with iron chains; but a true politician binds them even more strongly by the chain of his own ideas; it is at

the stable point of reason that he secures the end of the chain; this link is all the stronger in that we do not know of what it is made and we believe it to be our own work; despair and time eat away at the bonds of iron and steel, but they are powerless against the habitual union of ideas (Servan, cited in Foucault 1977, 102).

The individual choice model of crime and rehabilitation is more than a narrative or discourse. It is penal ideology that has become intimately interwoven with the prevalence of neoliberalism. It is directly responsible for the maintenance of offender as identity, as it disguises and displaces penality's reliance on marginality, and excusal of privilege.

Duguid (2000 75) taps into the cleverness within which the individual choice model was applied to punishment/rehabilitation: "the ball was tossed into the prisoner's court." He writes, after documenting the historic realization in the 1970s and 1980s that prisons were not working, "placing the onus on them to choose and make changes and in the process of course, conveniently absolving the correctional system of any responsibility for the fate of those prisoners who 'chose' not to attempt rehabilitation."

This model positions social-economic and racial iniquity within the heart of correctional decision-making about one's perceived criminality and subsequent ability to return to society while simultaneously denying crime is rooted in social experience. This, the individualization of crime, compounds belief in prisons and allows intersectional filtering to persist unrecognized as a crisis, as it requires (and most often receives) admissions of self-badness from people who did not have the means to excuse themselves from punishment.

The offender is *required* to internalize the narrative that they are inherently flawed and must be ever thankful to CSC for removing them from society to change them into law-abiding citizens. The narrative requirement is the premise upon which much of the psychological violence of incarceration is built upon:

> The victimization of women has become conflated with correctional risk practices as a strategy for regulating women prisoners...within the correctional risk paradigm, women's responses to victimization are not seen as coping strategies but rather as factors needing to be changed in order to reduce their riskiness...Moreover, criminalized women are rewarded for reproducing psychologized victimization narratives about why they have offended in order to provide evidence of a reformed self, no longer incapable of managing the risk they pose to society (Pollack 2013, 106)

Pollack (2013, 105) writes extensively on this topic: "correctional practice is individualistic; the target of reform is the prisoner who must change her/himself cognitively, behaviourally and socially in order to reduce his/her risk of re-offending." Though seemingly innocuous, this statement is embedded with violence. Failure to engage in representations of the individual choice narrative amounts to being

abandoned to the prison system for as long as it can allow, and to being perceived as the worst prisoner of all, the one unwilling to take responsibility.

> People are connected interpersonally and to the wider social structures in which they live. Yet the correctional subject within the evidence-based paradigm is not: s/he is but a criminal, changeable and risky. When evaluating the effects of correctional programs, evidence-based research assesses whether the correctional subject has changed in ways recognizable to positivistic methodologies. Personal change-as measured primarily through recidivism rates and correctional measures of risk-is the only legitimized narrative within this paradigm" (Pollack 2013, 108).

Narratives, Language, Power

> The rigid contours of what can be known about prisoners and prisons ensures that narratives of protest (both about the conditions of incarceration and the social circumstances leading to criminalization) remain submerged within the framework of personal change and culpability. Evidence-based discourses sustain a moral indifference to punishment practices and the violence of imprisonment (Pollack 2013, 108).

We wonder why, in prison, we are called offenders and not *offendeds*. Rather than assuming a convicted person committed a single illegality, offender suggests a state of offending, thus providing a permanent subject. Offender also implies an offensive state; badness within one's character which must be managed. This offender construction presents a significant carceral contradiction. For "acting as the law requires may be morally commendable and it may not. If the purpose of a trial is to determine legal but not moral capability, the purpose of punishment cannot be moral improvement" (Cragg 1990, 35). Yet it is only with harm ongoing and not singular that this false logic within neoliberal penal discourse can be sustained. "The orthodoxy of evidence-based perspectives permeates correctionalist approaches and proclaims one story of who criminalized women are and what they need to stop re-offending." (Pollack 2013, 107)

Some years into my prison sentence I met Tiina Eldridge. Years after that I read the paper, entitled, *Complicity and Redemption: Beyond the Insider/Outsider Research Dichotomy*, which Tiina co-authored after her release. Tiina was unsettled by some aspects of her imprisonment, especially in regard to narratives that she was unintentionally reproducing:

> After interacting with correctional staff in honest and authentic ways, it did not take long to figure out the lens through which I was being (un)seen. In my early interactions with staff, I was aiming to be genuine because I knew that I could benefit from accessing some real help and support. However, when written reports of these interactions were later shared with me, I saw that my honesty was used to construct me as a horrible person-a risk to society. So I quickly learned to craft my words and my interactions with staff

> in ways that I wanted them to be documented: I became the manipulative person they were accusing me of being…I regurgitated my story over and over and molded my life to fit the shape of the correctional discourse to explain how I was broken and a risk to society-but how by accessing prison programs and education-I was being 'fixed' and it would soon be safe to return me to society. During that time, I cannot say that I was really aware of how I was reproducing oppressive practices and discourses; for the most part, I actually believed them (Pollack and Eldridge 2015, 135)

Punitively demanded are proclamations of an illusionary hyper-individualized narrative *of self in relation to crime* in order for one to exit the prison: though not to be stripped of the offender identity. An offender *must* declare that their "very character [is] linked to their criminality" (Duguid 2000, 91), and everyone else must conceptualize them so accordingly. To borrow a Freirean lens, enforcing ideas of self-badness among "offender" populations leads to the conditioning of this population to never fully realize that their criminalization is a constructed source of violence and exploitation (Friere, 2010).

The Rise of the Indeterminate Offender

Foucault emphasizes how incarceration as punishment was legitimate insofar as it carried a "temporal modulation" (Foucault 1977, 107). However, in Canada we accept a high degree of permanence in prisoning. Canada has two categories of federal conviction: determinate and indeterminate. Determinate sentences have end dates, while indeterminate means an individual will remain under the custody of CSC until their death. The 2019 *Corrections and Conditional Release Statistical Overview* reports that 24.3% of all federal prisoners are now serving an indeterminate sentence. Not only do prisons and parole systems have to accommodate this high rate of indeterminate sentencing, but the practice is irreconcilable with the concept of rehabilitation.

Life sentences *do* have "possibility of parole" dates attached, for example, my sentence is life with "the possibility of parole" at 12 years. This clause carries an engrained (and illusionary) sense of temporality: an idea that everyone has a chance, if they come in young enough, to one day be able to leave. Possibility of parole dates for people with indeterminate sentences are mostly coercive tools for regulating behaviour. Many women with me in prison sit 10, 15, even 20 years past their parole eligibility dates. Worse, when people with indeterminate sentences do reach parole age but succumb to disease that affects their ability to "be supervised," they are surrendered to prison.

Case Study: Sonya

Aging and Offender as Permanent Identity

"Old Sonya Learner." I've changed her name, but the pseudonym is representative. I'll never forget watching her from locked inside a cell in max. She found great joy

in stealing my milk, drinking it in front of me as she marched up and down our narrow corridor, covered in her own feces, feces that subsequently covered our walls. She had served over 10 years in prison and then remained successfully on parole for the next 20 years, until her freedom was revoked as she became "unmanageable" (due to deteriorating cognitive ability). She was not senile, and not sane. She moved between both existences, at different times. She cried often, late at night. Women resented her because the guards made us clean up her severe incontinence. One peer, an Indigenous woman given a life sentence as a teenager, was the only one who didn't mind cleaning up after her. The guards would open the steel door, throw a mop in, and leave the young woman to manage. Sonya died in that maximum security prison two months after being denied parole.

It has been argued through much tough on crime rhetoric that "lifers" are mostly in prison for murder convictions and, consequently, "who cares." Applying an understanding of IFPs as directly contributing to criminalization, however, provides a framework to understand that many people are convicted on grounds that have little to do with their guilt.

This, the precise point of making visible offender construction processes: to remove the stigma of deservingness from the punishment of the marginal. Interestingly, this awareness is, in some ways, dated. Dating back to 1990, scholarly work predicted that the legal system would evolve to prejudicially rely on indeterminate sentencing and cautioned that it would be a "source of serious injustice" (Cragg 1990, 135) because of issues in differential sentencing, because the measurement of when an individual is capable of being paroled is subjective, and because life sentences remove the "right and capacity" for individuals to "guide their lives according to values of their own choosing."

(Un)Becoming the Offender

There is a joke inside prison that if parole officers worked on commission, prison doors would close. Most women in prison are aware they do not need to be imprisoned. They are jailed, foremost, as result of circumstances colliding with stigma. By this truth, they resist. Resistance inside is not always overtly declared, but often comes in subtle, covert forms, as, for everyone who delivers the official narrative, there remain more unconvinced that the state has legitimacy to tamper with their characters.

Resistance occurs at sentencing when people refuse to take personal responsibility for situational crime and receive longer prison terms, and during prison programs by people dropping out and being denied parole. There exists a counter narrative, stating: *I am here to do time; you can have my body but not my mind*. Interestingly, resistance is categorically classified as maladaptive, delinquent or consistent with offender anti-social beliefs and behaviour. This classification reinforces permanence in offender status.

One friend was recently released only after 33 years incarcerated, when she had been eligible for parole after 10 years. In her younger days, she resisted vocally. Her conflict with the prison system grew from her being wrongfully convicted with a life sentence at 18 years old and then exposed to a profoundly racist system. She did not successfully achieve parole until it was ordered by the Supreme Court, who decided that the treatment she received as result of being Indigenous was never properly considered according to legislated standards (*Twins v. Canada*, Attorney General, 2016).

Another friend, an Indigenous woman with significant mental health considerations, convicted in her teens, who has since died in a maximum-security cell, resisted in covert, non-apparent ways. She knew that she did not accept her confinement, but did not necessarily have a clear analysis as to why. She was perceived to have significantly problematic behaviour. I believe her behaviour was a situational response to her environment. Her six-year sentence quickly increased to more than 15 years, and she died just 3 months before her scheduled release. She would not and could not make it in a system that required her to proclaim a story neither culturally, factually, psychologically, or emotionally applicable to her (Kish 2016; MacDonald 2016).

Exiting the Offender Identity? Parole as an IFP

The final IFP in offender construction considers the realm of un-becoming the offender: the world of parole (from hearings, to approval/denial, to existing under parole conditions). Beyond the fact that over 24% of the offender population with indefinite sentences will remain parole for the rest of their natural lives (if parole is granted), opportunity is a requirement of success on conditional release. I consistently witness a cycle of individuals being released and readmitted into custody, their chances of exiting the offender identity lessening with each instance. Once cast as an offender, social barriers are ample for parolees. Even back in the community, "offender" status remains imposed on people, and as ripple effect, offender communities are constructed and recriminalization is rampant.

Reduced job availability, reduced wages, reduced social supports, exasperated mental health concerns from terms of imprisonment, criminalized neighbourhoods, untreated addiction and restrictive supervision conditions culminate in people being routinely returned to prison. Just under half of all people are reprised while on some form of parole (including day parole, full parole, and statutory release) which remains the average in recent years, according to the 2018–19 CSC Departmental Plan, Public Safety Canada):

- 2014–2015: 45%
- 2015–2016: 44.4%
- 2016–2017: 42.5%

Within these figures, "Indigenous people are more likely to be returned to prison due to suspension or revocation of parole" (Zinger 2017). Also, "Parole grant rates

are much lower for Indigenous than non-Indigenous offenders: Only 12% of Indigenous offenders had their cases prepared for a parole hearing once they were eligible." (Canada 2016, 48).

Statutory release is one type of conditional release, albeit a controversial one. Statutory release is a mandatory release for everyone with a determinate sentence at two thirds of a prison sentence. In 2015, 70.8% of all releases from federal institutions were at statutory release (Public Safety Canada 2015, 79). I witnessed many people released on statutory release from maximum security units, much worse off than when they came in. Leaving on statutory release from max units means that in most cases, prison doors open without any plans in place for those being released. Releases at statutory release are the most unsuccessful type of conditional release, especially from maximum security (Public Safety Canada 2015), and Indigenous people are disproportionately represented in this issue:

> In 2015-16, most Indigenous offenders were released from custody at their statutory release date, having served two thirds of their sentence. Of those released on statute, 79% were released into the community directly from a maximum or medium security institution, without benefit of a graduated and structured return to the community (Office of the Correctional Investigator 2017, 48)

To understand that Canadian society facilitates the maintenance of biased process which systematically filters pools of marginalized people into the dominant group who are punishable contrasts the widely held misconception that courts are places of equality where everyone who law-breaks meets a "blind" justice. Yet, evidence of prejudice has long been documented. Judicial discretion, for example, has been assessed as a source of injustice based on the prejudicial effect it has upon those with marginal identities and social locations (Cragg 1990).

Certainly, I have not come to this analysis ignoring that many people do at some point exit prison, albeit that increasingly pervasive, invasive, and permanent conditions await them upon release. The manufacturing process is not absolute, nor is it the only criterion in determining who is punishable, nor is it *necessarily* permanent. The danger is that the majority of penal practice is harmful, exploitive, and permanent, and is applied unduly against the critically marginal.

To conclude, I quote a retired correctional employee who became embittered by his career, as is so often the case. He shared with me how genuinely impressed he was "when we succeeded in spite of them". His words represent the violence within this crisis which this article has hopefully highlighted: that becoming an offender requires personal and social failure; it imposes subjugation and disenfranchisement upon many people who do not deserve it. Becoming offenders requires us to be permanently *less than*, which simultaneously maintains that others are permanently *more than* (both in economic and in moral understandings). It is impossible to quantify how many perish because they cannot endure the intensity of conditions over the excessively long periods of time imposed upon them, or how those who

do get out must subsequently manage far more issues than they had coming in. If rehabilitation were at all the goal, *offender as identity* would be its great adversary. Unfortunately, the real requirement I have witnessed in considering the conundrum how to *un-become* an "offender," is, who can *afford* to?

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Notes on the Contributor

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