

## WHEN TWO WORLDS COLLIDE

*Aboriginal Risk Management in Canadian Corrections*

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*In the last two decades, Indigenous lobbies have pointed a harsh finger at the endemic overrepresentation of Indigenous individuals in prisons in Canada and abroad. In reaction to such a condemnatory critique, correctional authorities in Canada have sought to 'aboriginalize' prisons. This paper addresses some of the prison's adaptation schemes to shed light on three contradictory logics of risk-based management: (1) high-risk aboriginal offenders have little access to risk-reducing programmes; (2) aboriginality undergoes an ontological mutation that occurs during the process of risk assessment; and (3) aboriginal correctional staff play a contradictory role in the (re)production of 'aboriginal risk'. To what extent, then, does the aboriginalization of prisons constitute a valuable transformation?*

Keywords: aboriginal, Canada, community, prison, risk, corrections

*Introduction*

There is no longer any shadow of a doubt that colonial policies have had a disastrous bearing on Indigenous<sup>1</sup> communities in every geo-political territory that has grown on imperialist endeavours. Among such impacts, one finds a notable destructuring of the political, economic and cultural foundations of Indigenous communities that has been linked analytically, time and again, to a host of challenging life circumstances such as dispossession from traditional territories, under-employment, wavering family support, social isolation, modest educational assets and unsound residential situation that thread the path to intergenerational trauma, suicides, violence and substance or sexual abuse, to name a few (Royal Commission on Aboriginal Peoples 1996, hereafter RCAP).

In Canada, colonial projects geared towards Indigenous peoples led, notably, to the implementation of residential schools that formed one of several strategies of annihilation of Indigenous cultures under the Indian Act<sup>2</sup> of 1876, which rested upon colonial law and royal Proclamations. The Indian Act made all Indigenous peoples wards of the state and aimed at creating reserved territories under tutelage geared at assimilating Indigenes. For their part, residential schools were used from the late 1800s through to the 1980s (authors differ as to the time period) as a primary tool by government in pursuance of its policy of assimilation (and ultimately enfranchisement) with respect

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<sup>1</sup>Expressions such as 'Native', 'Indian', 'Amérindien' (French form) or 'aboriginal' originate from 'outside-naming' (Chartrand 1991)—a process whereby settler people attach settler (often derogatory) names to describe the descendants of the original inhabitants of what is now Canada. As a constant source of confusion to commentators, labels used in reference to first peoples have garnered valuable discussions (e.g. Paci 2002; Lawrence 2004). While acknowledging the sensitivity of identities to outside manipulations, we adopt the term 'Indigenous' as it appears to be associated with an emerging emancipation of ancient societies from social domination as well as from outside naming (Chartrand 1991). However, the term 'aboriginal' will be used whenever our discussion centres on the outside manipulation of Indigeneity by the state.

<sup>2</sup>Indian Act, R.S.C. 1985, c. I-5.

to Indigenous peoples. These schools imposed conditions of disconnection, degradation and powerlessness on Indigenous children who were confined and taught the 'civilized' ways of whiteman society, thereby leading to cognitive assimilation and slow expurgation of Indigenous cultural and identity markers. The assimilative nature of these schools was said to aim at stifling the 'Indian' out of the children. In turn, they fostered forms of abuse, not only cultural and spiritual, but physical and sexual (Sutherland 2002). From the mid-nineteenth century onwards, colonial domination also led to social relations being progressively spatialized, as many original peoples were increasingly perceived as a 'menace to civility and racial purity' (Mawani 2003: 179). Circumscribed portions of land named 'reserves' abounded in which original peoples were racially segregated and geographically confined. The reserves aimed at neutralizing the material and/or symbolic threat<sup>3</sup> a stigmatized category of original peoples was thought to pose to settler communities. The incarceration of Indigenous peoples in Canada and elsewhere is argued to do the same (Wacquant 2000). Waldram (1997) adds that at the turn of the twentieth century, the Stony Mountain penitentiary located in Manitoba, Canada, detained 'Indians' for engaging in the practice of their spiritual traditions. As a result of these (and other) colonial legacies, Indigenous peoples in several colonial territories tend to have a long and well documented history of social and economic disadvantage. A notable portion of extant literature on Indigenous peoples' socio-economic disadvantages situates them in permanent isolation.<sup>4</sup>

There is also no longer any shadow of a doubt that colonialist countries have used whiteman criminal justice systems as a series of colonial policies and practices that have resulted in delegitimizing First Nations' social institutions, and in eroding Indigenous worldviews. As justice systems are key institutions to teach and enforce a culture's agreed-upon values and mores, they disseminate a particular worldview. Such nearsightedness has nurtured, among other things, a mounting overrepresentation of Indigenous offenders within criminal justice systems throughout the twentieth century. In Canada, the severity of problems faced by Indigenous peoples was brought to the attention of the public and recognized by provincial governments in the Aboriginal Justice Inquiry of Manitoba and the Cawsey Report in Alberta, both in 1991.

At the federal level, such recognition came in 1996 following the Oka crisis,<sup>5</sup> which culminated in the implementation of the Royal Commission on Aboriginal Peoples. More important to our argument, however, is the fact that all three reports concluded that the Canadian criminal justice system had failed Indigenous peoples and that the key indicator of this failure was their steadily increasing overrepresentation in penitentiaries and prisons.

Following such scathing critiques, Canada began to revise legal frameworks and jurisdictional arrangements as well as to implement criminal justice policies and practices geared at taking into account Indigenous issues, cultures and traditions. The

<sup>3</sup>Borrowing from Loïc Wacquant's (2000) argument on the prison as a surrogate ghetto for African-Americans, we argue that Indigenous peoples were thought to pose a material and symbolic threat to settler communities in that they were a dishonoured (conquered) and large minority population thought to need containment to defuse the latent threat of upheaval resulting from their active potential to call into question established socio-political relationships.

<sup>4</sup>The defining expression of oppression for Indigenous peoples in Canada has been the term 'isolation'.

<sup>5</sup>The Oka crisis was a two-month-long land dispute between the Mohawk nation and the town of Oka (Québec, Canada), which resulted in barricades, army deployment and, ultimately, the death of one person. The dispute was the first of a number of well-publicized violent conflicts between First Nations and the Canadian government in the late twentieth century.

Indigenization of criminal justice is a policy that resulted from pressures to promote Indigenous' right to self-governance. The Canadian state responded to such pressures by consulting and integrating Indigenous in state apparatuses. Such Indigenization has meant, for example, the creation of aboriginal policing, the appointment of aboriginal judges and the implementation of aboriginal courts.

Concurrently, Canada intensified the adjustment of its carceral structure to better reflect Indigenous philosophical orientations. Such alterations had been initiated in the 1970s with the influx of community-borne aboriginal liaison officers (Jefferson 1994) and were pursued throughout the 1980s. With its 1985 Commissioner's Directive on 'Religious Services and Programs', Correctional Service Canada (hereafter CSC) began to acknowledge formally the spiritual services that had developed and diversified informally and benevolently in its institutions for the last decade (Solicitor General 1988*b*). The following years witnessed the advent, notably, of Aboriginal Community Liaison Officers and Development Officers to support aboriginal offender reintegration in communities. Within penitentiaries, delivery of culturally appropriate programmes to address behaviours that place aboriginal offenders at risk to reoffend was secured by Aboriginal Correctional Program Officers. First Nations, Métis and Inuit *Elders* also integrated federal corrections to meet the cultural and spiritual needs of aboriginal prisoners. Those wishing to follow a traditional healing path while in prison are now provided with guidance and leadership in correctional planning and intervention by Elders and may be relocated in Pathways Healing Units that provide a traditional environment within correctional institutions. Moreover, Healing Lodges have been erected throughout Canadian soil as either federally owned minimum-security or aboriginal-community facilities that offer culturally appropriate services and programmes in an environment that incorporates aboriginal peoples' values, traditions and beliefs (CSC 2006).

It is well documented, in extant literature, that Canada is a forerunner in the Indigenization of its correctional apparatus (e.g. Nielsen 2003; Brady 1995). One area in which such consideration of Indigenous ancestry has not advanced at quite the same cadence is in the domain of risk management. By addressing some of the prison's adaptation schemes in relation to actuarial and risk-management techniques, this paper sets out to bring attention to three particular contradictory logics of aboriginal risk management in an effort to illuminate whether the aboriginalization of Canadian prisons constitutes a valuable transformation.

The first contradiction discussed in the paper is *process-related* and stresses the ironic exclusion of aboriginal offenders from risk-reducing correctional programming. The second contradiction is *identity-related*. It highlights the singular mutation of the ontological nature of aboriginalness: that is the passage from an aboriginality taken as a risk-enhancing 'factor' to an aboriginality taken as a risk-reducing 'factor'. The final contradictory logic is *agent-related* and questions the role played by aboriginal correctional staff in the (re)production of 'aboriginal risk'. Our discussion of those three logics will follow a brief survey of actuarial justice and risk-based correctional management.

### *Actuarial Justice and Risk Management*

The sub-area of (what came to be known as) risk studies stands out as one of the more prolific areas of scholarly inquiry. Although relatively new, loosely consolidated and still developing, contemporary discourses of crime control, and their attendant penal

shifts, have conferred legitimacy on probabilistic risk calculations and statistical distributions of offenders into aggregate subpopulations based on a series of categorical indicators. This calculability is a crucial component of governmentality as well as of neo-liberalism. In fact, they both have similar foci, namely governing from a distance, calculability and the promotion of self-activating, and individuated subjects. In establishing a network of governmental intelligibility, the exhaustive and meticulous accumulation of data allows the construction of such characters as that of ‘at-risk’ aboriginals.

In criminal justice, risk-management rationalities are converted into multifarious techniques and practices such as public architecture and urban planning for enhanced crime prevention, sexual offender registries, electronic monitoring with satellite-detectable microchips, etc. Two particularly ubiquitous techniques of risk management—which are pivotal to our argument—are the classification and responsabilization of offenders.

In correctional practice, offender classification has evolved over the last 100 years both in its general purposes and in its methods. From a focus on one’s reformability (1930s), classification techniques moved to a focus on public safety (1960s), to risk (1970s) and finally to a renewed interest in treatment and rehabilitation in the 1990s. Since then, actuarial tools have gained further sophistication in that they now attempt to classify offenders not only on the basis of their security risk (static risk factors), but also in relation to their criminogenic needs (dynamic risk factors) in order to allocate offenders to appropriate levels of treatment.

For its part, responsabilization stems from advanced liberal democracies’ recent shifts in strategies of welfare. Under the spur of political interventions promoting the increased play of market forces, actuarial discourses and practices have been used as a technique for downscaling welfare, arguing that individuals (and communities as will be discussed later) should ‘self-help’, be prudent and insure personal and communal protections against hardships such as unemployment, sickness and accidents. Consequently, she who takes command of her own life also must bear the consequences of her bad prudential choices. Both classification and responsabilization techniques come into conjunction in a rather idiosyncratic way when used to classify and responsabilize offenders of Indigenous ancestry. Their concomitant use, as will be discussed below, engenders a few incongruities, to say the least.

#### *A Process-Related Contradictory Logic*

Originally designed in Canada and the United States—and as a powerful demonstration of institutional isomorphism—risk-based management tools are now developing in other Western countries such as Australia and the United Kingdom. In its original design, risk-based offender management was developed and validated, for the most part, on North American and Canadian non-aboriginal psychiatric or general offending populations. Bolstering, then, that it is based on large population samples, risk-based offender management is informed by contemporary theories of risk assessment that argue that risk markers do not vary as a function of gender, ethnicity or geographical location. Risk-assessment instruments are, thus, presumably uniform across offending populations (Quinsey *et al.* 2006) and have universal applicability. This contention of neutrality—legitimized by science—is consistent in light of the fact that the original impetus towards introducing actuarial risk-assessment tools in criminal justice was said to

be the minimization of race and gender-based discrimination as well as other forms of biases induced by discretionary decision making (Cheliotis 2006).

In Canada, correctional organizations have not relied on unadulterated and static actuarial models of risk for offender management (Hannah-Moffat 2005). Rather, they espouse what O'Malley (1996) named a 'mixed model of governance' combining risk, rehabilitation and restorative justice. Specifically, Canada uses actuarial tools that are used to assess security risks concurrently with criminogenic needs<sup>6</sup> that are defined as 'dynamic' factors said to be modifiable by treatment programming (Andrews and Bonta 1998).

Whether it entertains a fixed or static understanding of the subject—like first and second-generation risk assessments did—or that of a 'transformative risk subject' (Hannah-Moffat 2005: 34), risk assessment still presumes two things: (1) that risk markers are uniform across offending populations, and (2) that objective risk assessments are more accurate than subjective ones. However, when it comes to the risk assessment of aboriginal offenders, the undifferentiated application of uniform and objective risk-assessment tools tends to produce a salient adverse effect: that of classifying aboriginals in the high-risk/high-needs category of offenders more frequently than would non-aboriginals.

Be it the result of human agency or of a structural defect in risk-assessment scales—or a mixture of both—risk-based management, thus, engenders a discriminatory effect for aboriginal offenders. We have highlighted above that risk-based correctional management aims at reducing one's risk of reoffending via multifarious strategies, among which treatment programmes addressing one's criminogenic needs have become a prevalent strategy. However, because aboriginal offenders tend to be classified in the higher end of risk-assessment scales, they tend to be more disproportionately found in high-security institutions (Rugge 2006), where, in Canada, correctional programming is scant comparatively to its prevalence in lower-security institutions. In other words, existing data suggest that aboriginal offenders do not fill the criteria set to access correctional programming because they tend to belong to a correctional sub-group defined actuarially as presenting high risks of recidivism. Hence, the current risk-based praxis renders aboriginal offenders' access to correctional programming rather uncertain. High-risk offenders said to need programming the most are actually the ones not accessing risk-reducing programmes as the criteria used to determine access participate, in and of themselves, to the exclusion of aboriginal offenders.

As risk-based correctional management aims at reducing risks of recidivism, it features among what Nikolas Rose (2000) has categorized as strategies seeking to regulate conduct by enmeshing offenders within circuits of social inclusion, principally by way of programming that targets criminogenic needs (needs thought to lead to exclusion in the first place). However, risk management's contended cultural neutrality translates into a praxis that, paradoxically, tends to act upon pathologies by managing a different set of circuits for aboriginal offenders, circuits of exclusion. Here, aboriginals are further *expelled* from spaces of civility and choice rather than being *affiliated* to them as

<sup>6</sup>In this risk-assessment process, the notion of *need* is reconceptualized as a *problem* rather than retaining its original welfare-based meaning as an entitlement (Hannah-Moffat 1999).

originally planned in risk-based correctional management. Hence, this form of management of aboriginals' risks lacks strategic coherence.

*An Identity-Related Contradictory Logic*

A bias frequently highlighted in relation to the adverse effect discussed above concerns the definitional criteria used to circumscribe risk markers that have been developed on the basis of dominant socio-cultural worldviews. Ill-adapted to the historical, socio-economical and cultural specificities of Indigenous peoples, risk markers are based on choices that disadvantage aboriginal offenders. For example, structural markers such as poverty and social markers such as residential instability, family/marital problems, school/employment difficulties, absence of positive leisure or recreational activities as well as substance abuse are melded actuarially with higher risks of (re)offending (Rugge 2006). Since Indigenous communities are generally plagued by poverty, under-education and under-employment, such structural hardships expose these communities to being described as intrinsically criminogenic. Marginalized life circumstances—known to be more prevalent in number and intensity amongst Indigenous peoples—tend to be recuperated within a logic of risk management as the very factors that come to reinforce risk levels and undergird higher risk-assessment scores for aboriginal offenders. In the presence of an equal number of risk markers, the intensity of their marginalization makes aboriginal offenders more likely to score higher on risk assessments than non-aboriginal offenders. As a result, offenders of Indigenous ancestry tend to be overrepresented amidst risk markers said to contribute to criminal behaviour (Hannah-Moffat 2005; Rugge 2006).

Although aboriginal ancestry is not seen as a cause of criminal behaviour per se, the above discussion brings attention to a shift that operates in the risk assessment of aboriginal offenders whereby one's social positioning comes to be taken as a risk marker (Schawlbe *et al.* 2006). Research on aboriginal prisoners suggests that a combination of (criminogenic) needs tends to be more acutely present among them than among non-aboriginal prisoners. Among these needs, one finds substance abuse, lack of a healthy community to which to return, lack of positive role models, need for healing from sexual and physical abuse and lack of education and of vocational skills (Nuffield 1998). In addition, it has been suggested by Rugge (2006) and others that there may be additional culture-specific risk factors that pertain solely to aboriginal offenders such as the lack of aboriginal spiritual and cultural activities in the community, the loss of cultural identity and concomitant loss of socio-cultural confidence as well as the need for group membership. Here, a permanently marginal segment of the population gradually emerges as an irredeemably high-risk segment of the population. Such categorization of aboriginal offenders as criminogenic constitutes a form of structured racialization because it is entrenched within assessment tools themselves that generate systemic policies and practices toward aboriginal offenders (which also tend to confirm the precedence of criminogenic needs). This racialization does not boil down to a single function within a single institution. It is rather the outcome of interactions among institutions that produce a mutual and cumulative institutional racialization of aboriginal offenders.

Although it is the particular social positioning attributed to aboriginals—as citizens in permanent isolation—which is thought to confer a risk for criminality, this risk is

generally redirected towards culture. Although ethnicity or race tend to be considered static factors (i.e. non-changeable factors), their association with one's social positioning facilitates their linkage to risk factors, hereby turning ethnicity—via the notion of culture—into a dynamic factor (i.e. a changeable factor) that one can improve.

In other words, if criminogenic needs are to be addressed by correctional organizations in order to reduce offenders' risk of recidivism and if the lack of cultural (read *traditional*) identity and group membership are seen as dynamic risk factors, then aboriginal offenders' lack of cultural identity and group membership become criminogenic needs to be addressed.

Herein lays the second contradiction of risk-based aboriginal offender management. Upon entry into the criminal justice apparatus, aboriginal offenders, like every other offender, are assessed at various stages of the system either for pre-sentencing or sentencing purposes, or to determine institutional placement, programme needs as well as the threat offenders are deemed to pose to the community. At that particular end of the risk-assessment process, one's aboriginality<sup>7</sup> is taken as a risk marker to be tended to. So far, the Canadian criminal justice apparatus has understood *tending to* aboriginal risk markers as meaning the Indigenization of its policies, programmes and institutions in an effort to provide opportunities to practise and revitalize aboriginal offenders' cultural traditions and customs, thereby allegedly contributing to their successful reintegration into the community (CSC 1995; 2008). In other words, as the outcome of risk assessments frequently points to high overrepresentation and high recidivism rates for aboriginal offenders, culturally sensitive reintegration programming aims at reducing these recidivism rates, hereby also lowering aboriginal overrepresentation. Part of the impetus behind the implementation of such 'culturally appropriate'<sup>8</sup> programmes came from correctional organizations realizing that aboriginal offenders did not participate, complete or benefit from general rehabilitative programmes as much as did non-aboriginal offenders (Nuffield 1998 in Nielsen 2003).

Hence, in the early stages of the risk-assessment process, self-identification as aboriginal is actuarially constructed as a *risk-enhancing* factor, while, at the other end of the same process—at the correctional stage—self-identification as aboriginal is reconstructed rather as a *risk-reducing* factor. Put plainly, self-identifying as being of aboriginal ancestry<sup>9</sup> raises one's objective risk of recidivism; however, following the successful completion of culturally sensitive correctional programming, self-identifying as being of aboriginal ancestry now reduces one's risk of reoffending. At the onset, what constituted a malign impetus to curtail becomes, at the outset, a benign impetus to optimize. What happens between these two junctures of risk assessment?

The thrust of aboriginal lobbies has prompted correctional organizations in Canada and in the United States to incorporate traditional healing practices and cultural values into their correctional programming. One of the presumptions behind such a movement is that cultural wholeness can serve as a preventive or curing agent. The use of culture as a form of healing is in keeping with research findings alleging the loss of

<sup>7</sup>Martel and Brassard (2008) have argued that there exists an authoritative aboriginality—or sense of 'Indianness'—informed by the identity criteria of the Canadian government—under the impetus of aboriginal lobbies. This authoritative aboriginality is taken to be a racialized construction of the otherness of Indigenous peoples.

<sup>8</sup>CSC (1995) *Aboriginal Programming*. Commissioner's Directive no. 702, principle 14.

<sup>9</sup>Includes self-identification as having ancestry and self-identification as some category of aboriginality, as per Census Canada standards.

cultural identity as an aboriginal-specific risk factor. It is also in keeping with the long-standing cultural claims of Indigenous stakeholders<sup>10</sup> that have been based on cultural repossession following the massive colonial dispossession of Indigenous peoples. Several studies have highlighted, in this regard, that countless aboriginal offenders were raised without access to Indigenous languages, cultures, teachings and ceremonies (Heckbert and Turkington 2001; Ellerby and MacPherson 2002).

Consequently, Canadian reintegration programmes essentially aim at ‘reminding’ aboriginal offenders of their cultural heritage in the hope that they will get back in touch with their ‘real selves’ (Amellal 2005: 6). Such reinforcement of aboriginal identity through access to so-called traditional culture and practices was initially disseminated within Indigenous milieux but eventually has been co-opted by the Canadian government. The advent of culturally sensitive programming indisputably has engendered positive outcomes for aboriginal offenders and communities alike. Extant literature abundantly demonstrates the higher participation and completion rates of aboriginal offenders in such programmes (Ellerby and MacPherson 2002; Zellerer 2003), the lower risk of more serious reoffending as well as the greater potential for successful reintegration, post-treatment (Trevethan *et al.* 2005). Undoubtedly, culturally sensitive correctional programming is a significant step towards state recognition of the cultural specificities of corrections’ most overrepresented group in Canada. Without questioning the fundamental need for aboriginal-centred correctional programmes, we want to take the reflection elsewhere, to an analytical space allowing the confrontation of the risk-management logic with itself.

Specifically, we argue that upon entry into prison, aboriginality, once a risk marker, is reconstructed henceforth so that it becomes inoculated with a hegemonic aboriginality conveyed in culturally sensitive correctional programmes. We have argued elsewhere that correctional authorities construct mainstreamed aboriginal identity markers that tend to implicitly make tradition an obligatory reference that is explicitly put forth in correctional programming<sup>11</sup> (Martel and Brassard 2008). Once exposed to such an oversimplified, over-generalized version of aboriginal identity, one’s aboriginality paradoxically becomes a protection marker against the risk of recidivism. To attain such a degree of ‘protection’ against scoring highly on risk-assessment tools, however, offenders must embrace, or at least come into sufficient contact with, traditional aboriginal symbols and identity markers while under correctional care. Here, cultural and identity loss are seen not only as the root problem by aboriginal communities, but they are also at the heart of correctional organizations’ vision of culture as treatment whereby healing is said to begin through cultural education and identity (re)appropriation. Consequently, a quasi-direct connection is presumed between one’s (re) or (dis)covering her aboriginality (as defined by Canadian correctional authorities) and the absence of recidivism. This seeming contradiction brings attention to a singular mutation of

<sup>10</sup>Such as the Congress of Aboriginal Peoples to which several provincial/territorial aboriginal organizations in Canada are affiliated and who chose the Congress to represent them at the federal level.

<sup>11</sup>‘Aboriginal identity is constructed wholesale, as a single, all encompassing object in which traditional—and susceptibly stigmatized—identity markers of Aboriginal cultures (such as sweat lodges, medicine pouches, and sweet grass) occupy a sizable portion. Aboriginal programmes, then, confer a certain traditionalism to a homogeneous Aboriginality promoted by [correctional authorities and practitioners]’ (Martel and Brassard 2008: 344). Such a master narrative renders difficult the legitimation of alternative standpoints towards aboriginal self-identification or those in line with contemporary realities (e.g. increasing urbanization, homelessness).

the ontological nature of aboriginalness. At the onset of risk assessment, being aboriginal is essentially a *status* taken to be a risk-enhancing ‘factor’. However, at the outset of the assessment process, being aboriginal is now, in essence, being an aboriginal *subject*<sup>12</sup> taken to be a risk-reducing ‘factor’. The aboriginal offender, therefore, becomes a transformative risk subject (Hannah-Moffat 2005) ‘subjectable’ to a unidirectional revision of her previous aboriginality (the acculturated high-risk Indian) towards a closer fit with a hegemonic aboriginality (the culturally revitalized low-risk Indian). However, as one aboriginal correctional programme officer underscores, ‘you don’t become Aboriginal, you live it . . . it’s inside you’ (interviewee X).<sup>13</sup> Hence, the change in status is merely ‘virtual’ because aboriginals’ social positioning—as citizens in isolation—did not undergo significant change, since it has not been worked upon. The ‘imagined authenticity’ (Brady 1995: 1487) of this hegemonic aboriginality fashions a legitimately *inclusive* aboriginal identity said to hold the key to rehabilitation from a life of crime. It becomes a conditional ‘switch point’ to be crossed in order to be granted the right to access circuits of freedom (Rose 2000: 326).

More troubling, perhaps, is the fact that this unearthing of one’s aboriginality, via a state co-opted definition of what is and is not aboriginal culture, is coming progressively under the guise of CSC. In actual fact, CSC has secured, since early 2000, progressive powers to accredit all correctional programmes along established, uniform and national standards, notably via its 2003 policy Standards for Correctional Program 726–1 (CSC 2003). Accreditation is now provided to correctional programmes according to a series of government-set criteria. Specifically, accreditation is given to programmes that adopt an empirically based model of change, are skill-oriented, target criminogenic factors, ensure offender responsivity<sup>14</sup> and are integrated into a continuity of care strategy, can attest to the qualifications of programme officers and provide ongoing monitoring and evaluation (CSC 2003: 7). According to this policy, officers delivering the programmes must also undergo training, certification quality review and refresher training. For aboriginal stakeholders, this policy has engendered a notable loss of power and ascendancy over the contents of aboriginal programming as well as over the definition of what aboriginal culture is (or is not). One aboriginal correctional programme officer sums up her view about correctional practices:

It’s non Natives giving programs on how to be a Native . . . showing us how to be a Native. How would they understand those concepts? How do they understand the concepts of coming out of the community, living in an isolated community, and knowing how we are as a people? . . . What we have to do [in aboriginal programmes is] to get around in a circle and say a prayer, and we have to bow our heads. Who said we have to bow our heads? . . . In my opinion, [name of correctional authorities] is trying to look good, to say ‘well, you should be doing like this, this and this’ . . . It’s not another group of people

<sup>12</sup>Status is understood here as meaning the social position, condition or standing of a person relative to that of others in society. In the case of individuals of Indigenous ancestry, it also refers to the legal standing or condition of a person, namely Status Indian. For its part, the term ‘subject’ is understood in a Foucaultian sense, namely as a subject attached to its own identity through consciousness or self-knowledge.

<sup>13</sup>Interview extracts borrowed with permission from a study conducted on spirituality and healing programmes in Canadian prisons (funded by the Social Sciences and Humanities Research Council of Canada).

<sup>14</sup>Correctional research has established that offenders differ significantly, not only in their level of motivation to participate in treatment, but also in terms of their responsivity to various styles or modes of intervention. Hence, to optimize offender responsivity, three components must be considered: (1) matching treatment approach with offender’s learning style, (2) matching offender characteristics with those of the counsellor, and (3) matching the skills of the counsellor with the type of programme conducted (Kennedy 2000).

that's gonna tell us how to be Natives, it's gonna come from us . . . Deciding for us what is right for us? (Interviewee W)

Historically, aboriginal organizations came into federal institutions, often informally, to deliver their own aboriginal cultural activities with their own aboriginal workers, in the absence of governmental review.<sup>15</sup> Alberta's Native Counseling Services and Nechi Institute have been pioneers in this regard in Canada. Subsequently, aboriginal cultural aspects were incorporated into formal correctional programming. Such induced formality is part and parcel of the governmentality ethos around calculability and performance indicators. To further such calculability, CSC policy requires today that all correctional programmes meet their accreditation criteria that include a selection and assessment process for all programme workers, including aboriginal workers and Elders. As a further indication of aboriginal communities' loss of ascendancy in this area—and of the increasingly hierarchical division of labour within criminal justice—CSC has been developing and formalizing, since early 2000, its own in-house programmes for aboriginal offenders. As a result of this formalization of programming, aboriginal staff become progressively confined to the narrow task of providing CSC's own programming. While not optimizing control over the content of their own work and preventing them from gaining a full grasp of the strategies and ultimate goals of the organization, such division of labour also tends to dishearten low-level professionals from contesting the decision making of senior leadership. This shifts further aboriginal communities' genuine contribution to the betterment of their peoples.

Extant literature on risk within Canadian criminal justice has been rather timid on the meshing of risk-based management with the Indigenization of criminal justice policies and practices.<sup>16</sup> Yet, current guidelines for aboriginal correctional programming are explicit in this regard. Several Canadian correctional policies and practices indeed corroborate this integration of culture into risk management, notably in the research produced by correctional organizations:

By providing a culturally appropriate program, CSC seeks to reduce the risk of relapse to substance abuse and re-offending among Aboriginal men in federal custody, in part through improved program completion rates. Aboriginal offenders who complete programming are more likely to be released. (Varis *et al.* 2006: 42)

Silverstein (2005) also contributed additional analyses of this meshing of culture and risk management in his study of the Canadian parole process. While investigating the impact of responsabilization strategies on the dynamics of parole hearings, Silverstein shed light on parole board members' reliance on culture and aboriginality as risk markers whereby aboriginal offenders' adherence to traditional aboriginal ways, while incarcerated,<sup>17</sup> was interpreted, by board members, as a *sine qua non* indicator of reduced risk of recidivism:

Board members shared how important it was for inmates to have the support of Elders at hearings because Elders could confirm whether Aboriginal inmates were following traditional native ways.

<sup>15</sup>Aboriginal Brotherhoods are one of the well-known examples of such broadcasting of cultural activities within prisons.

<sup>16</sup>Australian-based literature on the risk management of aboriginal offenders has engaged more with the analytical quadrangle of high-risk–high-need–culture–treatment as applied to Australian Aborigines (Jones *et al.* 2002; Howells *et al.* 1999).

<sup>17</sup>Several studies have argued that the aboriginal spirituality that has been implemented in Canadian federal correctional institutions stems from Pan-Indianism. On this issue, see Waldram (1997).

Elders expressed the view that Aboriginal inmates had to be ‘talking the Elders’ and engaged in Aboriginal spirituality to be viewed favourably. Aboriginal inmates confirmed . . . that their best strategy was to participate in native programmes in the institution and then to persuade the Board that they would stay connected with Aboriginal community upon release. (Silverstein 2005: 5)

The integration of this particular vision of culture within risk reduction strategies for aboriginal offenders is problematic, as it carries a predominantly static rather than dynamic understanding of the notion of culture (Brady 1995). Although this notion is notoriously multivalent (theoretically and analytically), culture, here, may be chiefly associated—in its static understanding—with Indigenous traditionalism. In many of its contemporary renditions, culture has become synonymous with tradition, perhaps unintentionally. Such connotations of the past are clearly ingrained in the content of correctional organizations’ aboriginal programming. Literature on such programming has highlighted this obfuscation, by criminal justice agencies, of cultural differences amongst aboriginal offenders. Not only do treatment programmes tend to target aboriginal offenders’ cultural education into one particular culture and history (Zellerer 2003), but authors (e.g. Waldram 1994) have underlined also that many offenders are exposed to this Pan-Indian vision of Indigenous cultures and practices for the first time in their lives, as one aboriginal former prisoner sums up below. This extract is followed by a second one from an aboriginal programme officer who further disavows the apparent meshing of aboriginal culture with ‘folklore’:

[In prison], the cultural programs were basically for the Mohawks, they use more often these ceremonies in Southern [province] and in Southern Canada. Aboriginals from the West also use these ceremonies a lot. They don’t come from here. We never practised them [here]. There was always a smudge ceremony [in prison], it was long and I didn’t like it. [Prisons] also did circles, and you didn’t have a choice [but to participate]. If you left or you arrived late, it was like you broke the circle. It was a question of respect for the circle. I didn’t believe these things. (Interviewee P)

Culture? We have a lot of that in [name of correctional authorities]. They like it; they like to sell culture to the guys [aboriginal offenders]. Healing is quite another thing, but folklore, they are big on that. We had [an Elder] at [region] who was also big on that. I called [name] in [name of aboriginal community] and s/he said [name of Elder] is *not* an Elder. But [name of correctional authorities] made him a regional Elder anyway because he came into the [prisons] with his feathers, a bear’s skin, and mocassins. I said ‘what is that?’ .... Sometimes [name of correctional authorities] tries to standardise other program directives. But you cannot! Aboriginals in [one region] are not like us in [another region]. We don’t have the same ceremonies, we don’t have the same teachings, and we don’t have the same practices. But, they try to say this is how it’s going to be, and it’s going to be like this across [the country]. It does not work this way. (Interviewee Y)

Such institutional conceptualization of the notion of culture obfuscates a growing portion of the literature that asserts the existence of multiple cultures and practices amidst Indigenous nations (Dawson 1994). Implicitly, distinctions are not made between qualitatively different social wholes. Rather, aboriginal culture is taken to be a bounded, unified set of customs, habits, values and beliefs. Here, culture operates as a totalizing idiom, a collective consciousness that tends to stand for all the unique traditions, folkways and forms of life that Indigenous nations embody and enact. Such a *habitus* tends to overstate the force and unity of cultural values, to downplay the extent of local diversification and of intra-cultural

fragmentation and to misrepresent the array of relationships (e.g. embracement, contradiction, contestation) that Indigenous individuals may develop towards an assortment of Indigenous ways of life. Following cultural anthropologist Robert Brightman's critique of the many intellectual problems inherent to the notion of culture, we argue that correctional authorities' conceptualization of aboriginal culture incorporates many of the failing of the term itself, such as 'holism, localism, totalization, coherence, homogeneity, primordialism, idealism, ahistoricism, objectivism, foundationalism, discreteness, and divisive effects' (Brightman 1995: 512). Even cultural anthropologists have long since abandoned the quest for an unadulterated aboriginal culture. Consequently, aboriginal correctional programming tends to envision culture as a rather straightforward *performance*, as an assemblage of fixed and over-determined scripts to be performed to a certain (and objectively verifiable) extent by aboriginal offenders who seek to lower their overall risk level. Such totalizing narratives and practices simply cannot be relied upon as an unproblematic explanatory resource to account for one's high or low risk of recidivism.

### *An Agent-Related Contradictory Logic*

Extant literature on risk-based correctional management of aboriginal offenders sheds compelling light on what we consider to be a third contradiction of risk-based management. Specifically, the participation of aboriginal agents in the Indigenization of criminal justice, as it is done in Canada and elsewhere. Acculturation theories of aboriginal dispossession have undergirded risk-management policies and practices within criminal justice agencies. Apart from actuarial risk assessment and culturally appropriate programming, correctional organizations have relied also on a series of adaptive strategies aimed at making offenders, ordinary citizens and communities actively responsible for the risk management of crime (Garland 2001). Such adaptive strategies originate both from within and outside of the state. As state apparatuses play an important role in the shaping of subjectivities, they tend to devise multiple techniques and calculations of power onto new regulatory terrains existing outside the traditional purview of the formal state, such as communities. However, such programmes do not always originate from within the formal state, but rather from spaces located outside, from various social or interest groups such as the clergy, the medical profession, the psy professions, academia, the feminist or gay movement, unionized workers and aboriginal communities.

In relation to the risk management of aboriginal offenders, specifically, the community has become one new such programmatic locale. Indeed, correctional organizations have adopted predominantly a strategy of responsabilization of aboriginal communities said to be rooted in community and individual empowerment. Arguably, a transformative risk subject can be imagined only through her responsabilization for her own transformation, which, in the case of aboriginal offenders, necessitates the support of Indigenous communities that are generally thought to possess liberating features in contradistinction to the stultifying features of conventional state processes. Appealing to 'partnerships' with communities has become, in recent criminal justice discourses and practices, a dominant form of local governance that has sought the input of the communities themselves, or of their spokespersons:

Aboriginal communities should be utilized for their expertise, in the following ways. Education and cultural understanding is essential, both for conducting risk assessments of Aboriginal offenders and

for those validating and developing risk assessment instruments. Aboriginal communities should be involved in the procedure to determine whether additional cultural-related risk factors exist. The expertise of Aboriginal communities should also be incorporated into the development of appropriate treatment strategies for Aboriginal offenders. Lastly, partnerships between Aboriginal communities and the risk assessment experts, with agreement on a common goal, will certainly facilitate movement towards addressing the issue of risk assessment with Aboriginal offenders in Canada. (Rugge 2006: iv)

Although such callings to community partnerships are witnessed in a variety of domains within the regulation of crime, they have developed, more extensively perhaps, through restorative justice initiatives (Pavlich 2005), and amongst offenders of Indigenous ancestry. Using aboriginal traditional cultural heritage as a platform, Canadian correctional organizations have engaged concurrently in an individual responsabilization strategy (of the aboriginal offender) as well as in a collective responsabilization strategy (of aboriginal communities). This double strategy is clearly evoked in official policy:

The focus for corrections now is looking towards the community and achieving a better balance of offenders in federal institutions and in society. This way, offenders who want to continue their healing journey can find the tools and resources to work with on the outside. The Correctional Service of Canada has greatly benefited from the work of the Elders and Aboriginal people within the walls, who are continuing to make positive changes in corrections. The CSC also recognizes that the strength found within Aboriginal communities is the source and key element for the successful reintegration of Aboriginal offenders. The trend towards Aboriginal peoples developing community corrections models, and working with CSC, is just beginning to gain momentum. Aboriginal communities have now started to come forth with initiatives to take over the care and custody of their peoples and offer services that are more consistent with community-based, culturally-specific methods of healing and balance. Aboriginal communities are indicating that they can do a better job at healing Aboriginal offenders than the prison system will. (CSC 2002)

In Canadian criminal justice, partnerships with aboriginal communities have prompted a range of initiatives such as restorative and participative justice schemes (e.g. sentencing circles, family conferencing), culture-specific institutional programmes, healing lodges for aboriginal prisoners, cultural sensibility sessions for non-aboriginal personnel and community responsabilization strategies in parole hearings. At the heart of such responsabilization of Indigenous communities lay several myths about the community being a zone of ensured healing.

Similarly to one's aboriginalness, we argue that the 'community' also undergoes a mutation of its ontological nature within risk-based aboriginal management. Early in the process of risk assessment, the community is often considered a zone of danger. For example, aboriginal urbanites may tend to be "red-zoned" as urban centres, (as particular forms of community) are considered to breed multiple risks. Indeed, compared to their non-aboriginal neighbours, urban aboriginals have less education, are less likely to have jobs and are more likely to be poor (RCAP 1996). Urban areas are also said to foster aboriginal gangs. In a similar line of thought, and because our geographical imagination is influenced not only by socio-legal constructions of property rights and politics, but also by long-standing ideas about where Indigenous peoples 'belong', it follows that Indigenous peoples were not meant for city life—or that, if they come to the city, they should live like 'ordinary Canadians'. Hence, urban spaces become unhealthy and criminogenic zones for aboriginals. A further example is that of more rural and remote

Indigenous communities that tend to be also zoned as risk-enhancing, as they are plagued with below-standard living conditions. Interestingly, aboriginals' social positioning within Indigenous communities is such that many flee to urban zones in the hope of improved living conditions.

However, at the other end of the risk-assessment process, specifically following cultural revitalization in prison (prison as a zone of healing), the community becomes enshrined with a different spatio-ethical status, that of a zone of ensured healing (as opposed to urban settings where healing may not be guaranteed). From being a no-go zone, the aboriginal community becomes a go-zone. Through a process of negotiation of acceptable spaces and of imposition of geographical rationalities—and under the impetus of neo-liberal narratives of therapy—the aboriginal community becomes perceived as a healthy space, a zone wherein cultural sensibilization and revitalization, initiated in the prison, will be pursued. Here, risk, recidivism and 'healthy' aboriginality are territorialized across a single uniform plane, that of the aboriginal community, wherein each community is to take responsibility for preserving the security of its own members (Rose 2000). The community becomes a secure zone, an antidote to crime, because it is thought that for Indigenous communities 'interested in taking control of their own justice process, "healing is justice", and "justice is healing"' (Andersen 1999: 309).

Pavlich (1996) argues that one of the driving forces of new regulatory programmes (such as the return of aboriginal offenders to aboriginal communities) is that they are predicated on the ideal that aboriginal communities will encourage offenders to emphasize primarily certain aspects of their selves that are congruent with the larger political objectives of the community. Such a tunnelling-down and essentializing of Indigenous issues within the ethical parameters of the *community* obscures the fact that aboriginal communities to which offenders are returning seldom have undergone significant structural changes and that they are still as plagued with challenging life circumstances as they initially were. Following Andersen (1999: 310), such tunnelling-down of issues disguises traditional ideals within an ethos of 'peaceful living' by peaceful subjects without the concurrent implementation of traditional forms of social organization within which they arose originally. In other words, aboriginal 'communities [become] increasingly imbued with an ethical character in which [aboriginal offenders are] understood and acted on as possessing certain ethical bonds of obligation and responsibility to the specific community with which they identify' (Andersen 1999: 311–12). At a very local level, such acquiescence on the part of aboriginal offenders may translate into the more marginalized members of an aboriginal community being forced to yield to the conception of aboriginality sustained by those controlling the reins of power within that community. This brings into the spotlight yet another myth about the community, specifically the myth of equality between all members of an aboriginal community. When aboriginal offenders are marginal members of their own community, they may have little to no place to come to upon prison release and may feel disconnected to the community that has shunned them out.

Furthermore, it is uncertain whether cultural practices are present or promoted in any systematic manner in both aboriginal communities and urban zones. Although aboriginal culture is allowed substantial space within the prison, it may occupy only marginal space within certain aboriginal communities that may be at earlier stages of cultural re-appropriation. Thus, the alliance of individual responsabilization (of the offender) with

the collective logics of community responsabilization tends to conceal the fact that cultural revitalization may not be as pressing in communities living in overcrowded homes with little or no access to clean water, often inadequate health care and disproportionate suicide rates.

At the heart of the responsabilization of aboriginal communities also lays the principle of using aboriginal groups and hiring personnel and resources directly from aboriginal communities, hereby downloading responsibility for criminal wrongdoing onto the aboriginal community itself (Ryan *et al.* 2006). Envisioned as such, Silverstein (2005) suggests that an aboriginal responsabilization strategy may be said to encompass three distinct moments: the identification of an offender's culture (e.g. do you self-identify as aboriginal?), of her cultural commitment (e.g. is your aboriginal culture essential to your life?) and, finally, of cultural community support (e.g. does your community support your return?).<sup>18</sup>

The notion of community support has translated, so far, into initiatives such as the funding of community-based projects to better ensure adequate transition between imprisonment and community reintegration and the hiring (or sub-contracting) of aboriginal personnel as liaison officers, as co-managers of healing lodges or as Elders to provide culturally appropriate programming. Notwithstanding the benefits of such undertakings, which have been evidenced abundantly in extant literature (Jones *et al.* 2002; Zellerer 2003), the use of aboriginal designers, instructors and facilitators of aboriginal programming engenders a situation in which community-based aboriginal agents participate directly in the risk-management logic—a logic that aboriginal community leaders have critiqued for several decades in Canada.<sup>19</sup> Paradoxically, they contribute to the perpetuation of a punitive system that historically has excluded, omitted and denied difference. Our intention here is not to assess the degree of authenticity of their motives. Nor is it to impugn Indigenous peoples' active participation in an oppressive system in order to make it less oppressive for them. Such participation has been claimed for too long and may be said to be part of a much wider political project to increase Indigenous self-governance and enhance community oversight over social disorder. Although we are sympathetic to such a project and to the progressive political and social movement in which Indigenous communities are engaging currently, our intention is to bring awareness to the incongruity raised by aboriginal communities' (and community members') participation in the risk-management schema of correctional organizations.

Scholars, and Indigenous peoples themselves, have voiced similar critiques of this particular context of partnership with, and responsabilization of, Indigenous communities within the broader project of the aboriginalization of the Canadian Criminal justice system. Partnership and responsabilization must be understood, here, in the broader schema of contemporary shifts in political rationalities that are recasting the role of the state into

<sup>18</sup>In criminal justice, leading questions tend to abound amongst staff interactions with offenders. However, it is beyond the scope of this paper to address the practical or symbolic ambition of such questions. Suffice it to say that leading questions play a critical role in developing responsabilization strategies with offenders.

<sup>19</sup>The Stan Daniels Healing Centre is operated and staffed by Native Counseling Services of Alberta (NCSA) and is located in Edmonton, Alberta (Canada). NCSA provides a range of spiritual and correctional programmes to both offenders on conditional release and minimum-security inmates via ss. 81 and 84 of the Corrections and Conditional Release Act through an agreement with the Minister of Public Safety. At Stan Daniels, culture-specific correctional programmes remain under the authority of the white-stream correctional system.

that of a partner, animator and facilitator rather than that of a guarantor and ultimate provider of security (Rose 2000). As welfarism is said to have drained national finances without ever fulfilling promises of a universal security but, on the contrary, inducing dependency in its citizenry, each individual, property owner, corporate firm, neighbourhood and community is now to take responsibility for preserving the security of its own members. This downloading of responsibility onto communities may be said to have served Indigenous interests, to a certain degree, as it provided an opportunity to further the Indigenous self-determination/governance political project.

However, some suggest that, in correctional settings, such initiatives have absorbed Indigenous communities into conventional correctional practices that involve aboriginals in the discriminatory praxis of risk-based management. Using the example of aboriginal healing lodges,<sup>20</sup> Monture-Angus (1999) highlighted that in opposition to original objectives envisioning progressive community control and management of the lodges, their philosophical foundation has shifted towards the Canadian correctional mentality. As federal institutions—including ‘aboriginal’ institutions—are based on the notion of security classification, any development of better risk scales undertaken by correctional organizations will have an impact on the management and operations of the healing lodges as well as on how aboriginal service providers are used. Do these providers internalize, and voluntarily adhere to, socially structured role prescriptions? Or is it that the system employs its coercive powers to threaten with chastisement those who don’t conform to systemic goals?

Along similar lines, Sutherland (2002) argued that this responsabilization of aboriginal communities is deceiving, as it gives the illusion of added powers to aboriginals, and of increased cultural sensibility when, in fact, aboriginals may not be gaining authentic powers through this particular initiative. For example, Canadian governmental processes, such as the aboriginalization of state correctional apparatuses, tend to fragment the collective powers of Indigenous communities by dealing with them on a community-by-community basis. Moreover, not only do efforts to aboriginalize the criminal justice process without revitalizing political structures continue a legacy of assimilation, but such efforts co-opt leaders and community members (who participate in correctional risk management) into becoming ‘agency indians’ for the Canadian state (Alfred 1999: 70). Victor (2001) also raised the possibility that some Indigenous peoples may have internalized the beliefs and ideologies of the colonial state to the point where ‘First Nation leaders are borrowing the structures and ideologies of Euro-Canadian society, and applying them to the development, delivery and maintenance of “aboriginal” programmes and services that are made available to their community members’ (Victor 2001: 9). Such borrowing is akin to the *indirect rule*—a colonial policy practised in large parts of the British Empire during European colonialism.

### *Conclusion*

Correctional managerialism paradoxically extends its reach both horizontally via risk-based criteria and the use of a hegemonic aboriginality, and also vertically reaching well

<sup>20</sup>In 2009, Correctional Service Canada operated or funded aboriginal communities for eight healing lodges across Canada. Healing lodges are said to address culturally specific accommodation needs for aboriginal federal offenders. They are developed and operated in partnership with aboriginal communities.

within Indigenous communities. This paper engaged specifically with the mutual moulding of both correctional praxis and Indigenous communities via a discourse informed by actuarial logic and risk-based management. This is not to say that such shaping is deterministic in that it borrows ineluctably the totalizing tendencies of penal managerialism. Such a deterministic argument would eclipse human actors' reflexive agency as well as their capacity to influence policy debates. Our concern was elsewhere. Specifically, we attempted to address the following question: to what extent does the aboriginalization of Canadian penal institutions constitute a valuable improvement for Indigenous offenders and communities?

There is a strong argument that effective programme referral aimed at enabling offenders to manage criminogenic needs as well as risk of recidivism requires a sizable portion of traditional casework skills on the part of practitioners onto whom actuarially based risk-assessment tools are increasingly parachuted. Without such clinical skills—or under conditions of resource restraint—it is likely that offenders will be allocated to general group programmes without much regard to individual biographies (or collective and historical biographies in the case of aboriginal offenders). In such circumstances, inexperienced or overworked practitioners are then likely to err on the side of overestimation of risk, and to drift towards non-transformative strategies such as maximum-security incarceration. Aboriginal offenders are especially subject to such non-transformative risk management. Such a drift may not be, however, attributable solely to prison management. The courts also fall short on efforts to keep offenders of Indigenous descent out of prison.

Ten years after the Supreme Court of Canada's landmark decision in the *Gladue* case,<sup>21</sup> prison admission data tell a dismal story about the courts' capacity to reduce the overrepresentation of Indigenous peoples in Canadian prisons. In 1999, the *Gladue* decision described the excessive incarceration of aboriginal individuals as a fully fledged crisis. The *Gladue* ruling was to provide great opportunities for empowerment, sovereignty and community building. However, ten years after the landmark ruling, prison statistics still testify to a large overrepresentation of aboriginal peoples amongst prison populations. Specifically, from 1998/99 to 2007/08, the number of aboriginal adults admitted to provincial and territorial custody grew steadily from 13 to 18 per cent. For their part, admission rates to federal custody have remained stable at 18 per cent over the same period (Perreault 2009). In this regard, legal anthropologist Leslie Jane McMillan (Makin 2009) argues that judges seem unable to fathom how aboriginal peoples have been affected by marginalization and by their cultures' depreciation over centuries. She further claims that there is some sort of compassion fatigue within the criminal justice system in general.

Since Kelly Hannah-Moffat's (2005) compelling demonstration that contemporary penal risk management is geared towards the construction of transformative risk subjects, the scholarly community increasingly has adopted the stance that discourses of risk are fluid and flexible in that they mesh with discourses of criminogenic need to support myriad correctional strategies. McNeill *et al.* (2009), for example, have argued that neutral and technical risk-assessment tools are used in conjunction with enduring moral judgments on the part of practitioners to construct a professional opinion about the incorrigibility or redeemability of the offender. With regards to aboriginal offenders,

<sup>21</sup> *R. v. Gladue* [1999] 1 S.C.R. 688.

we have argued that such ‘ethical reconstruction’ (Rose 2000: 336)—and its corollary social reaffiliation—operate essentially via their own aboriginality: reducing one’s ‘aboriginal’ risk by increasing one’s espousal of traditional aboriginal symbols and identity markers. Hence, contrary to arguments about objectivity and race neutrality, actuarially based risk assessments of aboriginal offenders bring aboriginality centre stage. It should not be surprising that aboriginality is ‘fixed’ in such a way, one reason being that Indigenous peoples, in Canada and elsewhere, have a long history of cultural depreciation that renders it more difficult for these groups to consider themselves and their history ‘equal of superior to the history of white Anglo-Saxons’. Similarly to Afro-Americans, aboriginals have been imprisoned as a subordinate caste—a ‘caste of people deemed to be lacking a cultural past and assumed to be incapable of a cultural future’ (Wacquant 2000: 386). Moreover, cultural revitalization being fairly recent, aboriginal communities may not have developed yet sufficient political capital to influence substantially institutional definitions of aboriginality.

Likewise, Indigenous community partnerships with correctional organizations tend to provide few long-term prospects for progressive power transfers from formal criminal justice to Indigenous communities. Partnership in criminal justice is hardly new and it has sprouted as much between the statutory and the voluntary sectors as it has between criminal justice agencies amongst themselves. The current development of new risk-driven kinds of partnership, though, appears to be significantly different from previous ‘modernist’ endeavours. Formerly, the majority of partnerships within Canadian criminal justice developed along referral lines, with one agency referring clients to the next agency. These partnerships were essentially purchaser–provider relationships based on exchanges of goods and services. Progressively, however, what is exchanged is knowledge, not a good or a service. As risk is considered increasingly to be a core business of criminal justice agencies, it follows that risk will become both the rationale and the medium through which partnerships are established. Aboriginal community responsabilization is but one example of this trend. However, rather than contributing its own knowledge base to the multi-agency risk-assessment process, each partner’s role is characterized by knowledge passing through the partner’s agency.

No longer contributing their distinct knowledge base, partners may be left to question whose language, whose criteria and which partner’s risk procedure ought to dictate the identification and classification of offenders. Our discussion concludes that correctional authorities are winning, for the moment, this battle for institutional hegemony. For aboriginal agencies and communities, each stage of the partnership process has meant gradual forfeiture of individual agencies’ independence and governance.

In sum, the contradictions we have attempted to illuminate in the risk assessment of aboriginal offenders suggest that aboriginality is a site of struggle in which social actors compete over, dispute and generate influence and power for social, economic, political and symbolic capital. The paper brings forth the ambivalence of the relationship aboriginal spokespersons and communities have with correctional authorities. It also brings forth the ambivalence of the relationship risk-laden managerial discourses and practices sustain with aboriginality in particular and with race in general.

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