

THERE IS NO RECONCILIATION WITHOUT JUSTICE



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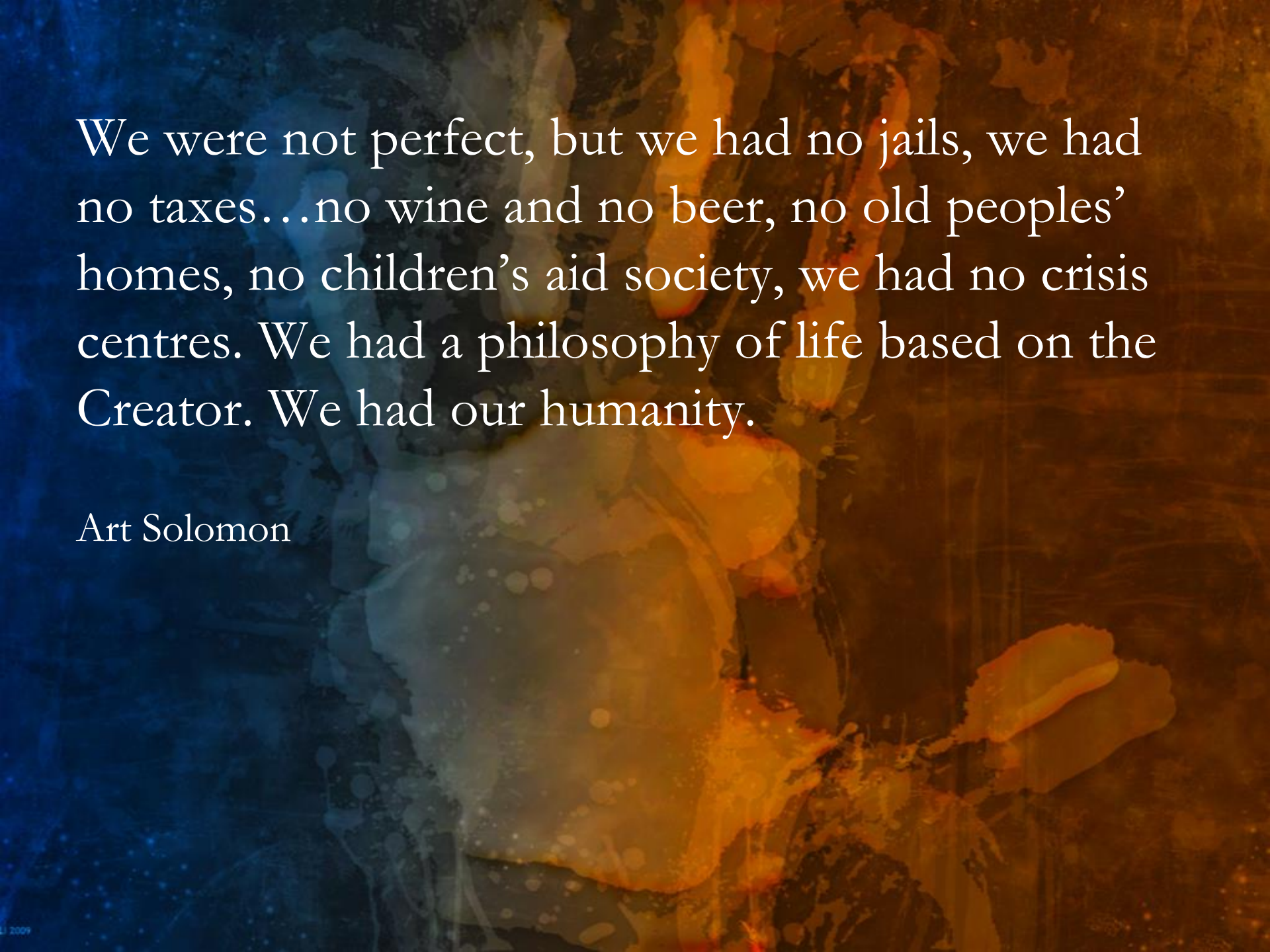
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We were not perfect, but we had no jails, we had no taxes...no wine and no beer, no old peoples' homes, no children's aid society, we had no crisis centres. We had a philosophy of life based on the Creator. We had our humanity.

Art Solomon

Outline

- Overview of the literature
- Understanding modern colonialism
- Trajectory of colonialism in the Canadian penal system, tracing:
 - 1) the emergence of the penitentiary system and its role in establishing the Dominion of Canada;
 - 2) the parallels between the penitentiary and the colonization of Indigenous people;
 - 3) major key colonial and penal events and shifts in the building of the nation; and
 - 4) the convergence between the penitentiary and Indigenous imprisonment into the present.

Canada's prisons are the 'new residential schools'

MacLean's By Nancy Macdonald Feb 18, 2016



<http://www.macleans.ca/news/canada/canadas-prisons-are-the-new-residential-schools/>

Addressing Indigenous Over-Representation

Commissions, studies, reports and recommendations:

- Aboriginal Justice Inquiry, 1991;
- Law Commission of Canada, 1990;
- Canadian Bar Association, Aboriginal Peoples and Criminal Justice, 1991
- The Task Force on the Criminal Justice System and its Impact on the Indian and Métis People of Alberta, 1991;
- Royal Commission on Canada's Aboriginal People, 1996;
- Royal Commission on the Donald Marshall Jr. Prosecution, 1989; inter alia.

Legal initiatives:

- 1996 Sentencing Reform Act, Section 718.2(e)
- R. v. Gladue, 1999
- R. v. Ipeelee, 2012
- Twins v. Canada (Attorney General), 2016
- Section 81 and 84 of the Correctional Conditional Release Act (1992),
- Restorative justice approaches, e.g. Aboriginal court in Toronto, Ontario.

Rates of Incarceration

- From 2005-2015 the Indigenous federal prison population increased by more than 50% compared to a 10% overall population growth during the same period (OCI, 2015).
- Today, Indigenous people make up 26.4% of the total federal prison population with Indigenous women at 37.6% of the federal women prison population (OCI, 2017).
- In the provincial prisons, Indigenous incarceration rates are as high as 80-90% in some regions of Canada (Perreault, 2009).

Federal Imprisonment

According to the Office of the Correctional Investigator (2017):

- Indigenous prisoners are disproportionately over-represented in higher security classifications, segregation placements, use of force interventions, and maximum security institutions – all of which often lead to longer institutional stays.

According to the Auditor General (2016), in 2015-2016

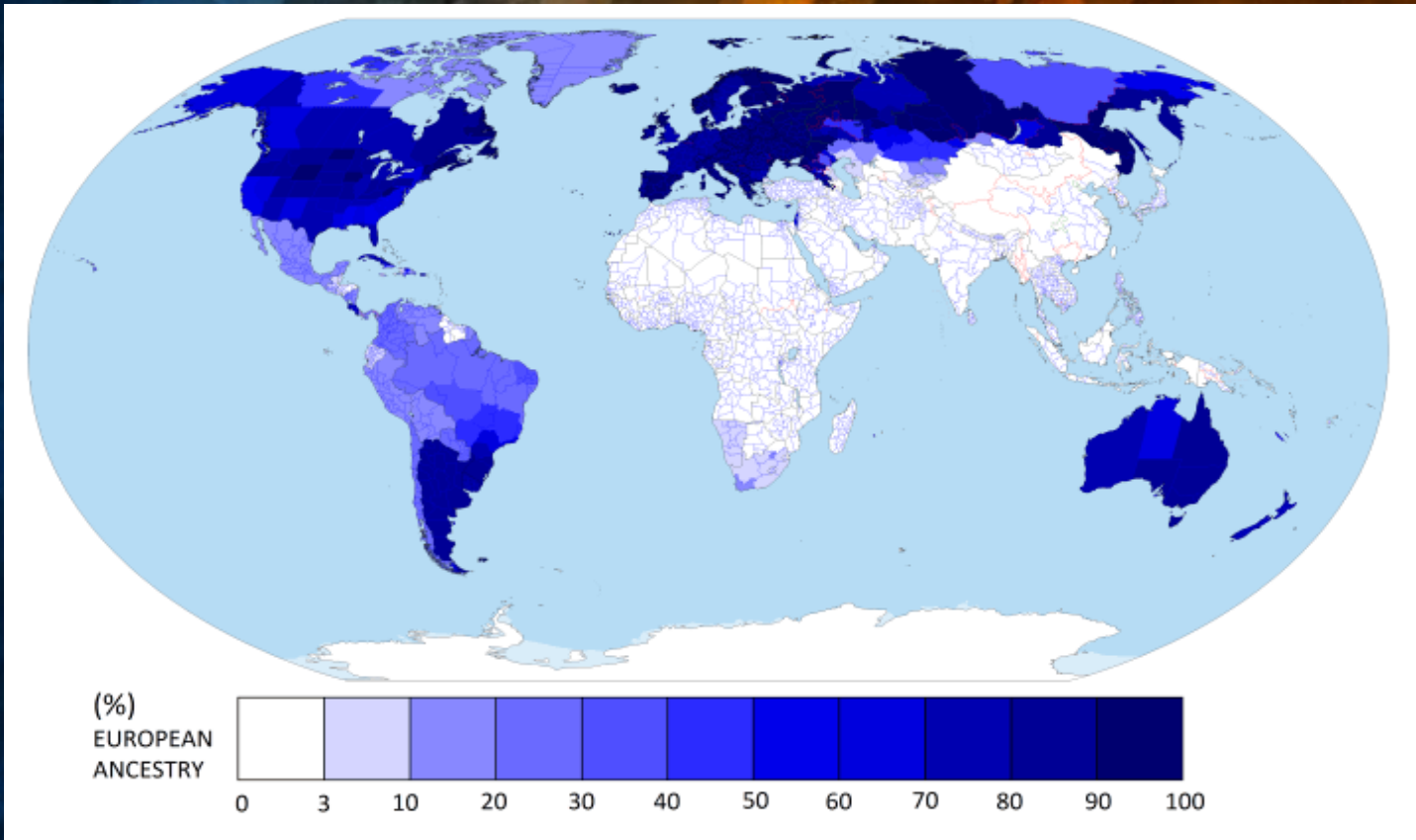
- 79% of Indigenous people on statutory release, were released into the community directly from a maximum or medium security institution
- 12% of Indigenous prisoners had their cases prepared for a parole hearing once they were eligible
- 20% were able to complete their mandatory programs by the time they were first eligible for release
- 83% postponed their parole hearings.
- Fewer Indigenous prisoners are granted full parole by the National Parole Board and if granted some form of release, it is often later in their sentence.

Research Data

Data has been obtained from Library and Archives of Canada and Government of Canada Public Library from 1838 to present:

- Ministry of Justice
- Office of the Solicitor General
- Office of the Correctional Investigator
- Correctional Service of Canada
- Public Safety Canada
- Indigenous and Northern Affairs Canada
- Indigenous Services Canada

European Diaspora



Europeans are the world's largest diaspora, with an estimated population of over 480 million people.

<https://decolonialatlas.wordpress.com/tag/settler-colonialism/>

Early Settlement (1763-1867) & Nation Building (1867-1910)

Security Apparatuses

Year	Systems of Justice	Notes
1729	English common law	criminal statutes introduced into the Dominion of Canada
1849	Brown Commission	Critiques of arbitrary and unjust punishments
1851	Penitentiary Act (Province)	ends visits to Kingston Penitentiary
1867	British North America Act	Constitution - establishes Dominion of Canada ON, QC, NB and NS
1868	Penitentiary Act (Federal)	3 Penitentiaries of the Dominion of Canada, remission of sentence (5 days/month)
1868	Minister of Justice	Administrative justice in Canada, except the provinces
1868	Dominion of Police	Protection of the federal government
1873	North-West Mounted Police	Protection of north west territories after lands purchased from the Hudson's Bay Company
1875	Supreme Court of Canada	General court of appeal for Canada
1886	Prison and Reformatories Act	specified conditions for the maintenance of penitentiaries
1892	Criminal Code of Canada	Government jurisdiction over criminal law in Canada
1899	Ticket of Leave Act	first parole statutes

Open	Closed	Penitentiary
1835	2013	Provincial Penitentiary of the Province of Upper Canada - Kingston Penitentiary
1842	1880	Provincial Penitentiary of the Province of New Brunswick - Saint John Penitentiary
1844	1880	Provincial Penitentiary of the Province of Nova Scotia - Halifax Penitentiary
1865	1877	Rockwood Criminal Lunatic Asylum, Kingston ON (classified provincial, closed 1997)
1873	open	St Vincent de Paul Penitentiary, Laval QC (Laval Institution)
1876	open	Manitoba Penitentiary, Lower Fort Garry MB (Stony Mountain, 1972, Stony Mountain MB)
1878	1980	British Columbia Penitentiary, New Westminster BC
1880	open	Dorchester Penitentiary, Dorchester NB (federal penitentiary program completed)
1906	1920	Alberta Penitentiary, Edmonton AB
1911	open	Saskatchewan Penitentiary, Prince Albert SK

Early Settlement (1763-1867) & Nation Building (1867-1910)

Colonizing Apparatuses

Year	Settler Colonialism	
1763	Royal Proclamation	Acknowledges Indigenous claims to land and will be established through treaties with the state
1831	Residential Schools	Mohawk Indian Residential School
1844	Bagot Commission	recommends the establishment of manual labour schools for Aboriginal children for civilizing effects
1850	Protections of lands Upper Canada	preventing encroachments upon and injury to the lands appropriated to the use of tribes
1857	Gradual Civilization Act	requires all Indian males over 21 (speak, read, and write English/French) to be enfranchised
1869	Enfranchisement Act	enfranchisement and individual land holding, Indian women lost status through marriage to non-Indians
1870	Hudson's Bay	Rupert's Land and the North-West Territories bought from the Hudson's Bay Company
1872	Dominion Lands Act	encourages European settlement in the prairie provinces by giving 160 acres of land to settlers
1876	Indian Act	consolidate existing legislation with more power to Superintendent General of Indian Affairs
1879	Davin Report	recommends industrial schools to reduce the influence of the wigwam and aggressively civilize
1883	Residential Schools	Sir John A. Macdonald authorizes expansion of residential schools in the Canadian West
1884	Indian Act amendments	traditional Indian ceremonies are prohibited, increase Indian agents involvement in band council
1885	Northwest Rebellion	recognition of First Nation and Métis land and treaty rights in Saskatchewan
1885 - 1945	Pass System	unofficial policy requiring passes to leave the reserve
1889	Residential Schools	allegations emerge of physical and sexual abuse at Rupert's Land School in Selkirk, Manitoba
1892	Residential Schools	formal agreement between state and Christian churches to operate residential schools
1893 - 1932	Duncan Campbell Scott	Deputy Superintendent General of the Department of Indian Affairs. "kill the Indian child"
1896	Residential Schools	45 residential-industrial schools are operating with broad occurrences of disease, hunger, and crowding

Height of Assimilation & Segregation (1910-1950)

Security Apparatuses

Year	Systems of Justice	Notes
1918	Penitentiary Act revised	the term convict is replaced by prisoner
1920	Royal Canadian Mounted Police	formed from the Dominion police and Royal North-West Mounted Police
1939	Penitentiary Act revised	

Open	Closed	Penitentiary
1930	open	Collins Bay Institution, Kingston ON
1934	2000	Prison for Women, Kingston ON
1939		Newfoundland Provincial Prison, Saint John's NF

Height of Assimilation & Segregation (1910-1960)

Colonizing Apparatuses

Year	Settler Colonialism	
1906	Indian Advancement Act	Encouraged sale of Indian lands, lands can be removed near towns with more than 8,000 inhabitants
1907	Indian Affairs Medical Inspector	death toll of school children at 15%-24% and 42% in Indigenous homes where sick children were sent
1909	Indian Act amendments	western Indigenous must seek official permission before appearing in traditional costume
1909	Residential Schools	residential school attendance compulsory for children between the ages of 7 and 15
1927	Indian Act amendments	illegal for First Nations to raise money or retain a lawyer to advance land claims
1927	Residential Schools	80 45 residential-industrial schools are operating with over 17,000 children.
1927	Supreme Court of Canada	Inuit are to be “classified” as Indian and governed by the Indian Act
1940	Residential Schools	provincial curriculum for residential schools and to integrate Indigenous students into regular schools

Recognition & Humanitarian Discourses (1950-Present)

Security Apparatuses

Year	Systems of Justice	Notes
1955	Criminal Code revised	defines criminal offences and establishes penalties for violations, e.g., imprisonment, fines, probation
1958	Parole Act	National Parole Board, replaces tickets of leave
1959	RCMP Act	procedures for governance and enables RCMP to undertake provincial and municipal policing duties
1961	Penitentiary Act	headquarters & regionalization of the system, remission and temporary absence transfer of inmates
1966	Solicitor General	administered the prison system, the Royal Canadian Mounted Police, the National Parole Board
1978	Correctional Service Canada	amalgamation of Canadian Penitentiary Service and the National Parole Service
1992	CCRA	Incorporates legal jurisprudence and Charter of Rights and Freedoms

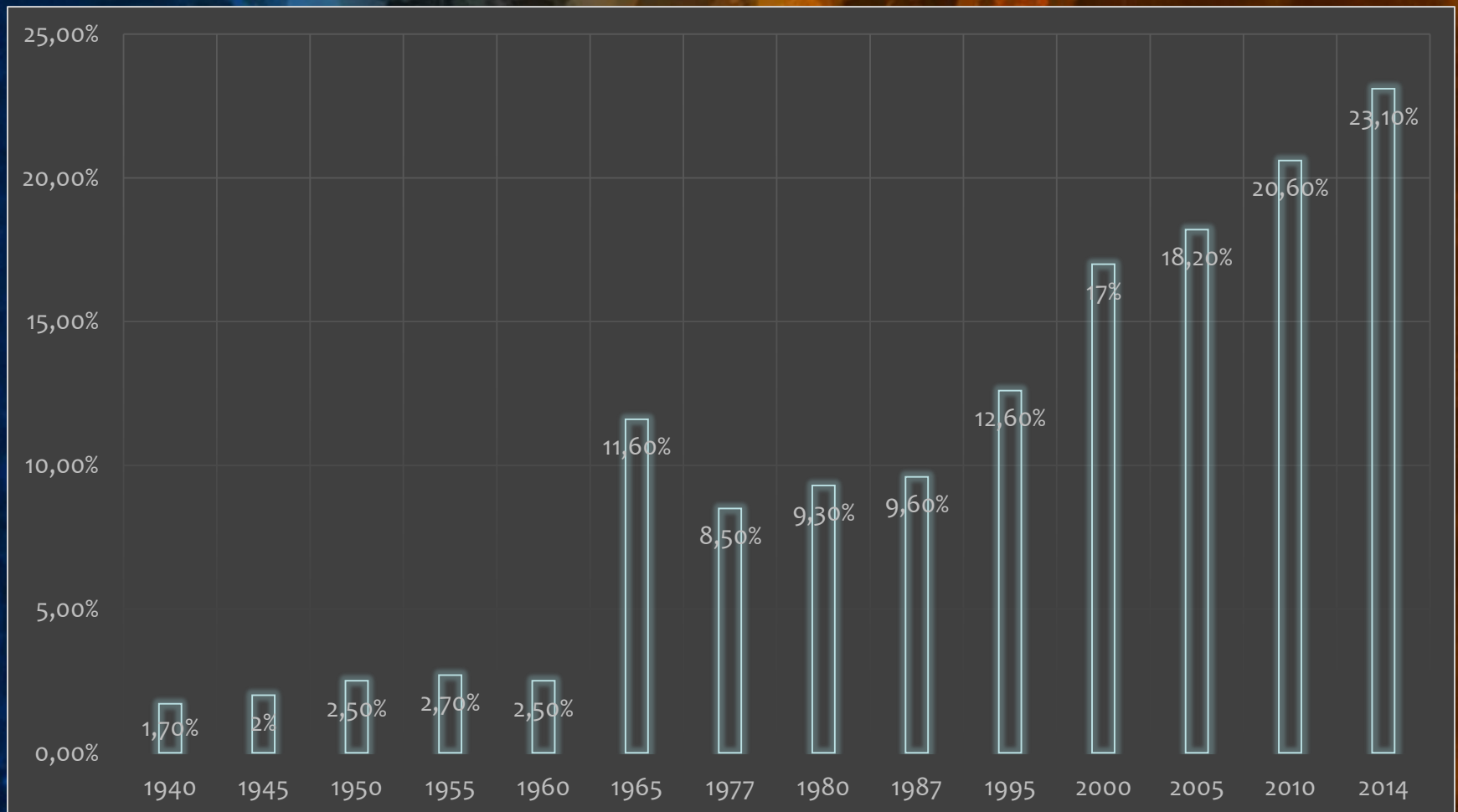
Colonizing Apparatuses

Year	Settler Colonialism	
1950	Indian Act amendments	repeals anti-potlatch provisions and land claims activity, residential schools expanded to Inuit
1951	Indian Act amendments	Women to participate in band democracy, prohibitions on ceremonies removed
1960	Indian Act amendments	First Nations people right to vote in federal elections
1961	Residential Schools	10,000 students are attending 60 residential schools across the country (also have the 60s scoop)
1969	White Paper	proposes dismantling Indian Act and legal distinctions between Indians and Canadians. Withdrawn 1973
1969	Residential Schools	federal government takes over the Residential School System + Indigenous education management
1973	Carter case	Supreme Court held that aboriginal rights to land did exist, citing the 1763 Royal Proclamation.
1977	Berger Inquiry	recommends no gas pipeline be built until land claims are settled acknowledging land rights
1979	Residential Schools	1,200 children are enrolled in 12 residential schools across Canada
1982	Constitution Act	recognizes and affirms the treaties and rights of Indian, Inuit, and Métis peoples of Canada
1986-1994	Residential Schools	disclosures of sexual abuse, beatings, hunger and thirst, bondage, confinement, forced labour
1996	Royal Com. on Aboriginal Peoples	calls for a public inquiry into the effects of residential schools upon generations of First Peoples
1996	Gordon Indian Residential School	The last federally-run residential school in Punnichy, Saskatchewan closes
2006	Residential Schools	Settlement signed for the Residential Schools Class Action Litigation.
2008	Residential Schools	PM Stephen Harper apologizes on behalf of Canada to Survivors of the Residential School System
2008	Bill C3	restores status under the Indian Act to grandchildren of Aboriginal women who lost their status
2010	United Nations	Canada ratifies the United Nations Declaration on the Rights of Indigenous Peoples
2015	TRCC Report	restores status under the Indian Act to grandchildren of Aboriginal women who lost their status

Recognition & Humanitarian Discourses (1950-Present)

Open	Closed	Penitentiary
1952	open	Federal Training Centre, Laval QC
1957	Camps	Joyceville (1957), Gatineau (1969), Beaver, Agassiz, Landry Crossing, Valley Field (1959-1968)
1959	open	William Head Institution, Victoria BC
1959	open	Regional Treatment Centre, Kingston ON
1959	open	Joyceville Institution, Kingston ON
1960	1969	Springfield Minimum Security Institution, Springfield NS
1961	2013	Leclerc Institution, Leclerc QC
1961	open	Beaver Creek Institution, Gravenhurst ON
1962	open	Mountain Institution, Agassiz BC (15 minimum; 4 medium; 7 maximum)
1963	open	Pittsburgh Institution, Kingston ON
1966	open	Matsqui Institution, Abbotsford BC
1966	open	Cowansville Institution, Cowansville QC
1967	open	Springhill Institution, Springhill NS
1967	open	Drumheller Institution, Drumheller AB
1967	open	Warkworth Institution, Campbellford ON
1968	open	Archambault Institution, Sainte-Anne-des-Plaines QC
1971	open	Millhaven Institution, Bath ON
1972	open	Bath Institution, Bath ON
1972	open	Bath Institution, Kingston ON
1972	2013	Regional Treatment Centre, Kingston ON
1973	open	Regional Mental Health Centre, Sainte-Anne-des-Plaines QC
1973	open	Regional Reception Centre, Sainte-Anne-des-Plaines QC
1973	open	Mission Institution, Mission BC
1974	open	Bowden Institution, Innisfail AB
1978	open	Edmonton Institution, Edmonton AB
1978	open	Regional Psychiatric, Saskatoon SKCentre
1978	open	La Macaza Institution, Macaza QC
1979	open	Kent Institution, Agassiz BC
1984	open	Drummond Institution, Drummondville QC
1986	open	Donnacona Institution, Donnacona QC
1987	open	Atlantic Institution, Renous NB
1988	open	Port-Cartier Institution, Port-Cartier QC
1990	2009	Isabel Macneill House for Women (min)
1995	open	Nova Institution for Women, Truro NS
1995	open	Edmonton Institution for Women, Edmonton AB
1995	open	Grande Cache Institution, Grande Cache AB
1995	open	Okimaw Ohci Healing, Maple Creek SKLodge
1997	open	Joliette Institution, Joliette QC
1997	open	Grand Valley Institution for Women, Kitchener ON
1997	open	Pê Sâkâstêw Centre, Maskwacis AB
1998	open	Grierson Centre, Edmonton AB
2001	open	Kwikwêxwelhp Healing Village, Vancouver BC
2001	open	Shepody Healing Centre, Dorchester NB
2002	open	Willow Cree Healing Centre, Duck Lake SK
2004	open	Fraser Valley Institution for Women, Abbotsford BC
2004	open	Pacific Institution/Regional Treatment Centre, Abbotsford BC

Indigenous Incarceration Rates % of Federal Canadian Penitentiaries



Source: Chartrand, Forthcoming

Prison cannot remedy the problem of the poverty of reserves. It cannot deal with immediate or historical memories of the genocide that Europeans worked upon our people. It cannot remedy violence, alcohol abuse, sexual assault during childhood, rape, and other violence...Prison cannot heal the abuse of foster homes, or the indifference and racism of Canada's justice system in its dealings with Aboriginal people.

Fran Sugar and Lana Fox (1990) *Survey of Federally Sentenced Aboriginal Women in the Community*. Ottawa: Task Force on Federally Sentenced Women, p. 4

Solutions

- Front end strategies that are Indigenous led, long term and sustainable;
- Minimize and mitigate the harmful impacts of the prison, e.g. abolishment of segregation; judicial oversight;
- Decarceration strategies and community options.