

UCLA

American Indian Culture and Research Journal

Title

Introduction

Permalink

<https://escholarship.org/uc/item/0zq885d7>

Journal

American Indian Culture and Research Journal , 40(1)

ISSN

0161-6463

Author

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Publication Date

2016

DOI

10.17953/aicrj.40.1.ross

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INTRODUCTION



Settler Colonialism and the Legislating of Criminality

Luana Ross, Guest Editor

The history of the Euro-American criminal justice system and Native people is as complex as it is troubling. The system as it evolved has everything to do with confinement of Native people. We were confined in boarding schools, orphanages, jails, prisons, on reservations, and in institutions like the Hiawatha Insane Asylum for Indians. Of course, early policies of confinement included the use of forts as prisons. The confinement of Natives in forts was the beginning of ledger drawings; therefore, it is appropriate that the cover image of the journal is ledger art by John Pepion, who is a citizen of the Blackfeet Nation. Ledger art is closely connected to incarceration and prisonization; in fact, some of the most well-known ledger art was created by Natives imprisoned at Fort Marion in Florida between 1875 and 1878.¹

When I began my research on imprisoned Natives in the late 1980s, there were few published studies on Native criminality. The continued dearth in literature of Native criminalization and prisonization suggests that future research is needed to fully understand the complexities of the issues, and therein lies the extraordinary value of this special issue. Despite the lack of publications, I discovered that there were many stories in Native families and communities. Family and community stories shape who we are and we count on these stories to get us through tough times. Celebrated storyteller and author Velma Wallis told me that our stories hold things that will help us to survive.²

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STORIES EDUCATE AND EMPOWER

Several authors in this collection remind us of the significance of stories. Stories are an important means of passing on traditions and strengthening communities. Everyone has a story; indeed, stories define us. The stories of our past help us to make meaning of the present and help us to plan for the future. My personal methodology is to interlace stories from my family and community with sociological data and historical accounts because my personal life is interwoven with my professional life. Indeed, my interest in criminality and deviance has much to do with who I am and the community and family in which I was raised. My family and community have been forced to navigate the Euro-American criminal justice system since contact.

I was raised at the Old Agency, across the street from the tribal jail. This tiny, one-room structure was seldom locked. Prisoners were seen walking around the Agency; no one seemed alarmed that they were not secured on a twenty-four hour basis. As a little girl, I regularly ate breakfast—deer meat and hot cakes—with the prisoners at the cook's shack. We listened to the radio, and the prisoners would sing to me.³

Everyone has stories of deviance, defiance, and resistance in our communities. Native criminality and prisonization are important to me personally because of my family history and stories I heard growing up. In the past and present day, I witness stories of parents, uncles, grandparents, nieces, and nephews struggling with the Euro-American criminal justice system.

One of the perils of being a Native researcher is that you will encounter documents of relatives who were confined in punishing institutions, such as boarding schools and prisons. In the Montana Territorial Prison archives, I discovered pictures and descriptions of relatives. This is where I unearthed my uncle, Joseph Marion Deschamps. In 1946, at the age of fifty-eight, my uncle was incarcerated at the Montana State Prison. Despite the fact that he had no previous convictions, he received a four-year sentence for grand larceny. The history of the crime read that he stole a 1941 Chevrolet pickup truck at Polson. He was described as being in good health and “dark complected,” Catholic, with a fifth-grade education whose occupation was farmer/rancher. The longest section on the description sheet noted his “marks and scars”:

[M]ole in center of back. Vaccination. Crooked and scarred left ring finger. Scar left forehead. Scar left hairline. Scar left temple. Scar bridge of nose. Scar left lip and chin. 6” knife scar on neck. 2 broken ribs. MD-DC tattooed on left forearm.⁴
[mugshot here]

My mother said that my uncle did not steal the pickup. His partner did and he was unaware of the theft as they drove the back roads on the reservation near Post Creek. A respected elder from our community recently relayed to a mutual friend that my uncle “was picked up in a car [later clarified as a pickup truck] one night by some friends for a night of partying. He awoke the next morning alone in the car to the tapping on the window by the police. It turns out that the car was stolen. Unwilling to

rat on his friends, he took the rap. This is one of those family legend stories that jibes with the police report exactly.”⁵ My uncle, to my knowledge, was the first person in our family to be incarcerated in a state prison. It is noteworthy that he was imprisoned for a crime he did not commit.

I stumbled across another primary document in the Montana Historical Society archives that detailed alleged police brutality against one of my relatives.⁶ This set of documents, dated 1968, cites a possible violation by a white police officer of the civil rights of six juveniles, all enrolled members of the Confederated Salish and Kootenai Tribes—one would eventually become the chair of our tribe and several are my relatives. The incident occurred on the Flathead Reservation; because the reservation is under Public Law 280, the state has jurisdiction over criminal matters. No one disputes that the officer hit my cousin in the head with a billy club, which caused severe cuts requiring stitches. According to the documents, my cousin got in a few hits of his own and was charged with interfering with an officer, assault on an officer, and possession of liquor. His mother demanded that a formal complaint be filed because of the violence and excessive force used during the arrest. The report stated that the Federal Bureau of Investigation (FBI) declined to investigate this matter because in their opinion there was no violation of anyone’s civil rights and that the officer was acting with necessary force.⁷

Stories of young people being brutalized by local police officers are common. During my youth, many of us were deathly afraid of the white police officers and fearful of a couple of tribal cops, too. One of the town cops regularly turned a dog loose on intoxicated Indians. While I was terrified of this man, a friend confided that she was more afraid of another town cop because he sexually abused young girls. My uncle is not the only relative who was imprisoned, and my cousin is not the sole relative who suffered wounds at the hands of law enforcement. It is common for Native people to have either been incarcerated or to have relatives who have been imprisoned in various institutions. Because we are a colonized people, the experiences of prisonization are, unfortunately, all too familiar. It is important to acknowledge those who were and continue to be imprisoned—they are our loved ones. They are a critical part of our histories and cultures; their stories are vital to who we were and who we are. Moreover, to me as a sociologist their experiences instruct us about societal structures and policies.

HISTORICAL ROOTS OF CONFINEMENT

Authors in this collection understand the significance of our histories and cultures. A thorough understanding of Native criminality requires tracing the evolution of federal policies, the process of being made deviant, and the politics of confinement. I often contemplate the forms and accompanying worldviews of indigenous traditional criminal justice systems. In my opinion, to fully understand notions of deviance and criminality, you must know the stories, histories, cultures, and languages of all indigenous nations located within your boundaries. For instance, I met a Nimiipuu (Nez Perce) woman who told me the word for imprisonment in her language. The

word literally means darkness. It is not a place/location; rather, it is a condition. In Bitterroot Salish the word for jail/prison is *snlcmintn*, a place to be tied up and a location.⁸ According to Francis Auld, the Kootenai word *tinmit* means to throw something inside (in that direction), to throw in jail.⁹ As we continue on our healing journey, knowing our languages and understanding the philosophies will serve us well.

All authors are cognizant that philosophies and conceptual foundations are critical to the untangling of who we are and how we got here. The postcontact history of Native peoples is told capably by many, including historian Roxanne Dunbar-Ortiz. Similar to the authors in this collection, Dunbar-Ortiz employs settler colonialism as the framework for her analysis. Addressing the violence inherent in settler colonialism, she argues, "Settler colonialism, as an institution or system, requires violence or the threat of violence to attain its goals. People do not hand over their land, resources, children, and futures without a fight, and that fight is met with violence."¹⁰ Dunbar-Ortiz is clear when she states that this is a genocidal policy. After all, the goal is to make land available to the settlers and eliminate the indigenous peoples living on the desired land. Incarceration, no matter the form, was a strategy of settler colonialism.¹¹

The politics of confinement includes our histories of violence and injustice. An excellent example is the story of the thirty-eight Dakota who were executed on December 26, 1862 at Mankato, Minnesota.¹² The trials of the Dakota were conducted unfairly in a variety of ways, and this event is known as the largest mass execution in US history. Moreover, this event is also known for its legacy of violence, particularly against Native women. A most profound example of this is revealed in the story of the imprisoned Dakota who were not executed in 1862. Their letters, translated by Clifford Canku who is Dakota and on faculty at North Dakota State University, revealed the following in words so profoundly tragic that I cannot force myself to utter them without weeping:

Guards would rape the women at night near the prison cells. When they [guards] came after the women at night, they [Dakota men] didn't have no recourse but to sing and to let them know "we're leaving you in the presence of God. Because if we were able to help we would have stopped what's going on. But we can't."¹³

Several essays detail various forms of violence waged against Native women, which is so brutal that it is difficult to envision.

Unfortunately, most Native communities have similar stories of executions. I am most familiar with the account from my community in which my uncle, Duncan McDonald, played a pivotal role.¹⁴ Duncan was a mixed blood, born to a Nimiipuu and Mohawk mother and a father from Scotland who worked for the Hudson Bay Company. Duncan's wife, Red Sleep, was Kalispell (Pend d'Oreille) and Nimiipuu and enrolled at Flathead. Duncan, widely known as a cultural broker, was highly respected by Natives and Euro-Americans.¹⁵ Aggression against Natives was widespread and revealed that stories of unspeakable brutality. From my reservation, Flathead, accounts of extreme violence waged against Natives revealed that seldom were Euro-American transgressors punished. Leaders in our communities felt helpless as protectors and at times resorted to vigilante justice.¹⁶ The execution that occurred on Flathead is the

story of four young men who were hanged in 1890—a treacherous year for indigenous people, the same year as the massacre of the Lakota at Wounded Knee—for the killing of two white men.¹⁷ One of the young men, who was related to Duncan’s wife, said he would surrender to no one except my uncle who was a respected and trusted leader in our community. It was reported that Duncan kept hostile non-Indians and Indians calm during this especially troubling time. Duncan escorted Lalasee to jail in Missoula. A reward was offered for the arrest of Lalasee, which Duncan turned down, but noted that he did consider giving it to Lalasee’s children. When the reward was eventually paid in 1895, again Duncan refused the money.¹⁸

The local Jesuit priest, Father Jerome D’Aste, attended the hanging. In his diary he recorded that he heard their confessions, said mass in their cell, and gave them communion before they were led to the scaffolds. D’Aste wrote:

They were tied, legs, ankles, and arms. [*sic*] remained very quiet, their faces covered with a black cap. I was on the platform; at a sign a rope was cut and the four remained hanging by the neck: they were immediately placed in nice coffins with outward box and carried to the station and the same night to Ravalli where a deputation of over 40 Indians were waiting for them.¹⁹

The hanging was described as “public spectacle” and the local newspaper “celebrated it with a special edition.”²⁰ After the hanging, the bodies were taken to the Flathead Reservation for burial. According to D’Aste, Indian Agent Peter Ronan said “that the wish of the Indians to be buried at the Mission is carried out. He says there will be nothing but religious services at the grave, no Indian rites will be observed.” This suppression of Salish and Kootenai cultures by the priest and the Indian agent is part of the process of criminalizing cultures. Indeed, legal agents of control were used to enforce assimilative tactics. For instance, the next entry in D’Aste’s diary reads: “Maj. Ronan called twice to day [*sic*] for the Police [*sic*] stop the Indian dance.”²¹ In another diary entry, D’Aste wrote that the police were on their way to stop the Kootenais from dancing.²² This is a theme—suppression of culture and militaristic social control—that several authors in this collection discuss.

Past events invariably find their way into our modern lives. For instance, in the 1970s I was an undergraduate at the University of Montana. My sociology professor arranged for our class to spend the afternoon discussing pertinent issues with the Missoula County Sheriff. We were instructed to ask the sheriff questions about crime. As the only Native in class, I was expected to ask awkward questions about why so many Natives were in jail and so on. I explained to the professor that I was too anxious to go, let alone question a non-Native sheriff about racism in the criminal justice system. He suggested that he would ask the sensitive questions and emphasized that it was important for me to attend. Our class arrived early and I nervously paced the hallway while we waited for the sheriff. I noticed a display case with an engraved invitation to a hanging in Missoula in 1890. The names of the four young Indian men glared at me—Antley, Pierre Paul, Lala See, and Pascale. There was a picture of the four young Indian men, all from my reservation, next to the invitation of their hanging. I was immediately sickened.

Regrettably, it is not unusual to know stories of family or community members who were killed for hunting “illegally” on our traditional lands. One of the stories from my community involves the killing of four tribal members at Swan Lake in 1908 by a game warden. The massacre ended when a courageous woman, Clarice Paul, killed the game warden. The hunting party was well within the territory according to their treaty rights, and had the required passes to leave the reservation.²³

One function of settler colonialism is controlling the movements of a people, and the US government controlled Native people in a variety of ways in the nineteenth and early twentieth centuries. As a way to monitor travel and encourage confinement, the Bureau of Indian Affairs (BIA) introduced a pass system. This system required permission, a pass, from the Indian agent in order to leave the reservation. Natives were frequently arrested when they did not obey this new system of control, an excellent example of the criminalizing of Native peoples. I recorded elsewhere that the reports from the Indian commissioners discussed the pass system, which was possibly implemented in Montana in 1877, not coincidentally just after the Battle of the Little Big Horn.²⁴ According to the reports, passes were sparsely issued by Indian agents and were restricted to the purpose of visiting sick relatives, seeking employment, or hunting and gathering. It is curious that this system finds its way into the mentality of many local non-Indians on reservations. Many believe that Indians belong in certain places, such as reservations. We are frequently told, as a racial slur, to go back to the reservation.²⁵ This is a dynamic of anti-Indianism and absolutely reflects social control. This kind of anti-Indianism is extremely effective in controlling the movements of Natives. Many are reluctant to go places that are potentially dangerous to them or their family, and are especially wary about bringing children who may be subjected to this form of violence.

Several authors in this collection discuss the role of the Catholic Church and the punitive experiences it inflicted on many Natives. Confinement in Indian boarding schools is another form of incarceration and another method of removal. Native children were removed from their homes and communities and imprisoned in boarding schools. These practices, clearly cultural genocide, were part of federal policies. On my reservation in 1890, the local reservation priest Jerome D’Aste lamented that Salish and Kootenai families were reluctant to send their children to the Ursuline Boarding School. He wrote that Native parents,

through a misplaced natural affection for their children, are still unwilling to send them to school, and prefer to let them grow up ignorant and worthless, than to separate themselves for a time from them. Some of the old people are unable to appreciate the importance and advantages of civilization, while others through a certain antipathy to the white race, which they consider as an invader of their country, despise the ways of the white man.²⁶

Lamenting that not more families send their young to the Mission school, especially the Kootenais, D’Aste recorded in his diary several months later: “But unfortunately we have no means to force the parents to send them, and good many refuse to give,

chiefly their boys, preferring to have them home, growing up ignorant and lazy then [sic] to have them instructed in the ways of the white people.”²⁷

Native cultures were forced underground because many were too frightened to speak their mother tongues or engage in their spiritual ways. The message to Native families was that their ways were deviant; they were *bad Indians*. In fact, leaders of the Hopi Nation were convicted of sedition and imprisoned in 1895 for refusing to send their children to boarding school.²⁸ Moreover, it is recognized by now that many, many children confined in these institutions, were violently victimized by their caretakers.²⁹ No one goes unscathed, and our struggles over the generations have been coined “historical trauma.”³⁰ Several essays directly discuss the disastrous impact of boarding schools.

My mother, who attended the Ursuline Boarding School, often spoke about changes she witnessed during her lifetime and the courage of relatives to withstand the various forms of removal and confinement. She believed that those who survived these traumatic conditions possessed great strength of spirit and did not easily give in to hatred or anger. Regarding these traumatic events my mother said, “This was a time of great change accompanied by grief, sorrow and homesickness that affected whole tribes of people, not just individual families.”³¹ Furthermore, she believed that after contact with Euro-Americans, Natives were purposefully made to feel inferior: “Great efforts were made by government employees and missionaries to teach them the English language creating the idea that their language was inferior. They were encouraged to change their dress. There was a saying when a young adult returned from boarding school and reverted to native dress: *she has gone back to the blanket*.”³² My mother told me that the nuns arranged marriages between young Indian girls and older white men. She added that perhaps the nuns thought they were doing the Indian girls a favor. The essay, “The Violent Legacies of the California Missions: Mapping the Origins of Native Women’s Mass Incarceration,” examines a similar process.

Boarding schools in general were punishing and signs of Indianness were removed. Effectively stripping them of their identities, the children were forced to cut their long hair. Chief Charlo’s people were the last band of Salish to be forced onto the Flathead Reservation in 1891. He reportedly warned the teachers at Ursuline’s that “if the hair of the children was cut, he would at once withdraw them from the school.”³³ The cutting of long hair at Indian boarding schools was boosted by the “short hair” order from the federal government in 1901; all agents of Indian reservations were notified to enforce the order.³⁴ To policy-makers, long hair signified a *primitive* culture, and those who had long hair were seen as *deviant*.

Historic policies leave legacies that affect attitudes today. A former schoolteacher told me about two high school basketball coaches who banned a Native youth from playing because of his long hair. Keep in mind that this is a school on an Indian reservation. The teacher explained to the coaches that having long hair was not unkempt in this Native culture; indeed, he properly wore his hair in two braids. Despite the teacher’s advocacy, the student was not allowed to play ball. He was, however, made to feel ashamed; he was considered deviant and his culture ignored and belittled.

History tells us about the outlawing of Native cultures and the creation of “bad Indians.” Crimes by Natives that resulted in their imprisonment during the late 1800s and early 1900s included vagrancy, stealing horses and cattle (grand larceny) from white men, hunting off reservation, burning jails, practicing their religions, neglecting to send children to school, and leaving the reservation without a pass. Natives have a long and dismal history of negative interaction with the Euro-American legal system. High incarceration rates of Natives must be seen in the context of racist federal policy and an oppressive societal structure. Settler colonialism is a process, and the loss of sovereignty is tied to Native criminality. Indeed, the premise of my book, *Inventing the Savage*, is that Native criminality is tied in historical and complex ways to the loss of sovereignty.

MASS INCARCERATION

The term *mass incarceration* refers not only to the criminal justice system but also to the larger web of laws, rules, policies, and customs that control those labeled criminals both in and out of prison. Once released, former prisoners enter a hidden underworld of legalized discrimination and permanent social exclusion. They are members of America’s new undercaste.³⁵

Distinguished legal scholar Michelle Alexander instructs that those imprisoned are “the one social group in America we have permission to hate.”³⁶ But even after incarcerated individuals are released, the negative effects continue: the lingering stigma of being imprisoned, difficulties finding work, transitioning into families and communities, among other concerns. All authors in this collection recognize over-incarceration as problematic for our communities.

One of the most oppressive institutions in the United States is the criminal justice system, and the disproportionate number of jailed Natives has a deleterious effect on families and communities. We continue to witness a mass incarceration of Natives. For example, from 2002 to 2012 Natives constituted the highest growth rate of all racial/ethnic groups for those sentenced in federal courts.³⁷ The disparities are more clearly visible at the state level.³⁸ It was reported that the incarceration rate of Natives was 38 percent higher than the national rate. According to the US Commission on Civil Rights, the difference is attributed to racial profiling and lack of access to adequate counsel.³⁹ Reviewing incarceration data from 2010 by state reveals that Natives are overrepresented in jails and prisons in which there is a sizable Native population. Note the following (first percent is total of Natives to total state population and the next percent is the number of incarcerated Natives to total prisoner population): Alaska (15%, 38%); Arizona (5%, 10%); Minnesota (1%, 8%); Montana (6%, 22%); North Dakota (5%, 29%); South Dakota (9%, 29%); Wyoming (2.4%, 8.3%).⁴⁰ In 2010, it was reported that Native Hawaiians were approximately 9 percent of Hawaii’s population, but were 40 percent of the prisoner population (not distinguished by gender).⁴¹

When the data is grouped by gender, a more glaring disparity is readily seen. For instance, in South Dakota 8.5 percent of the state population is Native, yet Native men are 23 percent of all inmates and Native women are 35 percent of all inmates.

Alaska is 16 percent Native and 37 percent of the state prison population. In Montana 6.8 percent of all residents are Natives, yet they comprise 19 percent of all incarcerated males and a whopping 36 percent of all female prisoners.⁴² Furthermore, it is vital to address the concerns of transgender, two-spirit, and gender-nonconforming Natives. In a 2011 survey of transgender and gender-nonconforming people, 12 percent of Native transgender and two-spirit participants who had interacted with police reported physical assault, compared to 6 percent of all study participants.⁴³ Thirty percent of Native transgender women reported being sexually assaulted in prison or jail by another inmate or staff member, compared to 19 percent of all transgender women. Physical assault and harassment in prison and jail, denial of health care, disrespectful treatment, and denial of equal service by police are other issues addressed in the National Transgender Discrimination Survey that disproportionately affect Native respondents. Sixteen percent of respondents reported being sent to jail or prison, with African American (47%) and Native (30%) respondents at highest risk for going to jail or prison. Thirteen percent of Native transgender and two-spirit participants reported being arrested or held in a cell strictly due to bias of police officers on the basis of gender identity/expression.⁴⁴

Natives continue to disappear into Euro-American institutions at alarming rates. Witness the front page of my tribal newspaper, “Tribal Defenders: Rate of Native American Incarceration ‘Shocking.’” According to the article, the director of Montana’s American Civil Liberties Union (ACLU) said that although Natives comprise approximately 6 percent of the total state population, Native women are nearly 36 percent of the total female prisoner population and Native men represent 17 percent of the total male prisoner population. Additionally, tribal defender Ann Sherwood reports that “in the tribal prison system, many of the inmates have mental illnesses.” Sherwood adds: “[The offenders] are not violent, but just fail to conform to societal rules.” Regarding our young people, Sherwood states: “Even our youth are facing incarceration—more schools are criminalizing students for the smallest of infractions such as truancy.”⁴⁵

The incarceration rates for Natives, whether adults or juveniles, are dismal. Moreover, racial profiling begins early for Native peoples. Unfortunately, we continue to criminalize mental health problems and addictions. Many times people are coping with traumatic circumstances and toxic situations; many are propelled to self-medicate with alcohol or drugs. Two essays in this collection—“Through His Eyes: Life in the South Dakota State Penitentiary” and “Stories of Transformation: Aboriginal Offenders’ Journey from Prison to the Community”—are especially insightful, presenting information on possible ways to survive incarceration and restorative methods while imprisoned and upon release.

THE CHILDREN ARE OUR FUTURE

“The children are our future” is a phrase that one hears at Native health conferences and during tribal elections. As noted before, Confederated Salish and Kootenai tribal attorney, Ann Sherwood, is extremely disturbed about the criminalizing of our young people. Her concern is reminiscent of a case involving a ten-year-old who

was incarcerated in an adult jail for throwing a desk in a classroom. Remarkably, bail was set at an unreachable half a million dollars, which was ten times higher than the amount set by the county attorney. This child admittedly had behavioral issues, but his grandmother reminded us he was only ten years old and needed loving family support. The financially strapped grandmother felt powerless as she scrambled to find legal help. Creating visibility and expressing outrage, she utilized two forms of media: Facebook and several local newspapers.⁴⁶ After pleading guilty to two counts of disorderly conduct, the child was sentenced to a correctional facility for youth.⁴⁷

Terry Cross, who recently retired as the director of the National Indian Child Welfare Association, provides illuminating information on juvenile justice. One sobering statistic Cross reports is that the suicide rate for Native youth is the highest of any race/ethnicity in the United States. Regarding juvenile justice, Cross writes:

American Indian youth are grossly over-represented in state and federal juvenile justice systems and secure confinement. Incarcerated Indian youth are much more likely to be subjected to the harshest treatment in the most restrictive environments and less likely to have received the help they need from other systems. AI/AN youth are 50% more likely than whites to receive the most punitive measures. Pepper spray, restraint and isolation appear to be grossly and disproportionately applied to Indian youth, who have no recourse, no alternatives and few advocates.⁴⁸

Similar to the case of the ten-year-old and his grandmother, Cross concludes his essay by reminding us that Native youth labeled as delinquent have very few advocates or protection. Indeed, he states that the parents and guardians of these children feel powerless and discriminated against.⁴⁹ The essay, "Locked Up: Fear, Racism, Prison Economics and the Incarceration of Native Youth" provides exceptional insight, and the author is critical of both tribal and nontribal justice systems.

Another problematic area for Native communities, in both urban and reservation areas, is sex trafficking, which is addressed by the essay in this issue entitled "Invisible Victims: American Indian Women and Adolescent Involvement in the Domestic Sex Trade." A recent report, "Sexual Abuse to Prison Pipeline: The Girls' Story," adds more information and credibility to existing data. The report, centered on sex trafficking, found that 80 percent of girls in the juvenile justice system were sexually or physically abused. The report also notes an increase in girls (especially females of color) being sent to juvenile facilities for minor infractions, many of whom have been violently victimized. The report recommends support rather than punishment for these girls.⁵⁰

An enlightening response to this report appeared in *Indian Country Today*. In an article titled, "Sexual Abuse to Prison Pipeline Report: A Native Perspective," journalist Mary Annette Pember begins her essay with this poignant personal story:

I had my first pelvic exam at age 13 in a juvenile detention center. It was a frightening, humiliating experience. There was no mother, auntie or other supportive female present to guide me and explain the procedure. Afterwards, as my fellow inmates and I stood naked in a line to receive uniforms, the nurse told us that the doctor had been especially disgusted by our lack of hygiene. I was a runaway and

had been sleeping rough for several nights. Sexually abused as a youngster, I was acting out. Although it happened more than 40 years ago, the memory can still turn my skin into an uncomfortable prickly garment of shame and anger.⁵¹

Pember states that the findings in the report are not news to Native communities. She recounts stories of interviewing Native girls and young women who self-medicate not only with drugs and alcohol, but also with self-mutilation. Pember furnishes alarming facts about Native girls:

Native American girls are at the highest risk of imprisonment in the U.S. According to the report 179 of every 100,000 Native girls end up in prison. The report also states that girls in the juvenile justice system are disproportionately victims of sexual violence. The 2007 Amnesty International report *Maze of Injustice* found that Native American women and girls are also 2.5 times more likely to be raped or sexually assaulted than any other women in the U.S.⁵²

Pember adds that Native females have the highest rate of poverty and sexual violence in the United States, and many times there is no safe place for the girls.

Celebrated legal scholar Sarah Deer explains that prosecuting sexual assault has been a low priority in Indian country. Pember reports that Deer says,

In many tribal communities, reporting sexual abuse or rape did not result in anything resembling justice. Victims are left to fend for themselves. In trying to cope with trauma, victims may do things that seem counterproductive. Drugs and alcohol may be a young girls [*sic*] effort to self medicate and dull the memories of abuse. Some illegal drugs, for example, can provide temporary relief to someone suffering with flashbacks, panic attacks, and suicidal thoughts. Once a girl is addicted, then she may engage in criminal behavior to satisfy that addiction.⁵³

Additionally, many of these children are victimized in their homes and have no protection or recourse. Undeniably, when kids grow up in toxic environments there are poor outcomes. Traumatic situations further propel children toward punishing institutions. This reality reminds me of this story from an imprisoned Native woman:

This is about a little girl who grew up to be a convict. This is a story about me in many ways and I want to tell it the only way I know how. . . . And one day soon after her father died, her mom started drinking again and would always beat the little girls who only loved her. And soon the beating took a turn for the worse; this little girl was put in a hospital time after time with broken ribs and broken bones in different places, and as she grew older she became to others “that crazy child.” But she only wanted someone to love her for her, and not to beat on her.⁵⁴

Many prisoners fully grasp the relationship between prior violence and incarceration. Several decades ago, Regina Arnold suggested that the process of criminalization begins with gender and class oppression in combination with a correctional system that operates with a blame-the-victim mentality.⁵⁵ Arnold argues further that continued

involvement in crime (from girlhood to adulthood) “is a rational coping strategy, a response to alienation and structural dislocation from the primary socializing institutions of family, education, and work.” Thus, many are tagged as *deviant* as children and *criminal* as adults.⁵⁶

As in the past, today Native people encounter overwhelming odds at every stage of the criminal justice system. It is a cruel fact that Native people are overrepresented in the criminal justice system. High incarceration rates of Natives must be seen in the context of racist, sexist, and classist federal policy and oppressive societal structures. The extraordinarily high incarceration rates of Native women demonstrate clearly that gender, race/ethnicity, class, and nationhood are inextricably linked and need to be examined together. Several essays in this collection argue that an intersectional approach is critical in the examination of Native criminality.⁵⁷

ESSAYS

This special issue is timely because current data indicate that Native peoples in the United States and Canada continue to be over-incarcerated. Writing from a wide variety of disciplines, contributors to this collection examine a broad range of concerns: the many facets of sovereignty, impacts of federal policies and laws, social control, incarceration, significance of culture, and violence.

Historical roots of settler colonialism, punishing federal policies, and gender violence are predominate themes in many essays. For instance, in “The Violent Legacies of the California Missions: Mapping the Origins of Native Women’s Mass Incarceration,” Jackie Teran examines the historical context and colonial legacy of violence against Native women. The author argues that sexual violence against Native women is deeply embedded in California colonial history and in colonial military ventures. Furthermore, Teran’s essay demonstrates the hypocrisies that are rampant in the colonial criminal justice systems. The author brilliantly traces “ongoing structures” of violence, such as missions and prisons, over time and demonstrates that the strategies of violent punishment remain consistent throughout history and institution. The methods and tools of torture and punishment might have changed in shape and technique, but the colonial practices of enslavement, reproductive control, and sexual abuse remain consistent.

The notion that history informs current policies and practices is apparent in the essay, “Reproductive Justice, Sovereignty, and Incarceration: Prison Abolition Politics and California Indians,” by Stephanie Lumsden. The author examines the unexplored area of reproductive justice and incarceration and greatly contributes to the conversation about the sovereignty of Native nations, reproductive justice, and prison abolition politics. Using settler colonialism as a conceptual framework, Lumsden relates the importance of sovereignty in all its complexity, including cultural and individual sovereignty, to reproductive justice for Native people. The author’s focus is on the reproductive concerns of California Natives while critiquing the effects of incarceration on Native communities. Lumsden urges California Indians to express tribal sovereignty through the prison abolition movement.

Fiction is a way for writers and communities to tell stories about painful and difficult issues. The characters in fictional stories humanize those seen as “criminal” or “deviant,” without revealing sensitive information about individuals or specific families. Two essays use the stories of Native authors to explore issues of criminalization, confinement, and gendered violence. “Carceral Power and Indigenous Feminist Resurgence in D’Arcy McNickle’s *The Surrounded* and Janet Campbell Hale’s ‘Claire,’” by Dory Nason, employs an interdisciplinary analysis to explore complicated issues of identity, violence, sovereignty, confinement, and resistance. Using an indigenous feminist perspective, Nason’s analysis highlights the interconnection between criminalization, dispossession, and gendered colonialism.

The essay, “A Constellation of Confinement: *The Jailing of Cecelia Capture* and the Deaths of Sarah Lee Circle Bear and Sandra Bland, 1895–2015,” by Tria Blu Wapka, combines social and literary theory in the examination of confinement, violence, and police brutality. Using the novel by Janet Campbell Hale, the author compares oppression and incarceration in Native communities and African American communities by examining the brutal deaths of two women. Blu Wapka asserts that although the seemingly relentless violence against women of color is horrific, the issue remains invisible due to deep historical roots of oppression. Women of color are a low priority and their lives are not seen as important. The author calls for African American communities and Native communities to join forces in an effort to fight systemic oppression and facilitate change.

The invisibility of Natives, especially those who are brutally victimized, is further explored in the essay “Invisible Victims: American Indian Women and Adolescent Involvement in the Domestic Sex Trade,” by Lena Campagna. The author emphasizes the importance of history as context, and reminds us that Natives were viewed as uncivilized and controlled accordingly. For instance, the stereotype of Native women as “easy squaws” is connected to violence against Native women. Moreover, Campagna discusses the sheer power and influence of a rape culture that sends the message that violence against women is not only tolerated but accepted. While it is critical to acknowledge that sex trafficking is a problem, jurisdictional issues slow down the process of justice. Generally, sexual violence remains invisible and continues to be a low priority, although a recent study and several newspaper articles discuss this topic. The author stresses the importance of historical and social factors contributing to the invisibility of Native women and sex trafficking.

In “Locked Up: Fear, Racism, Prison Economics, and the Incarceration of Native Youth,” Addie Rolnick provides valuable information on incarcerated children, who are often characterized as over-criminalized and over-incarcerated. This study examines the time period from 1998 to 2014, during which there were significant shifts in juvenile justice policy. Incarcerating our youth continues, despite evidence that it does not reduce crime and may be harmful. The reasons and solutions are multifaceted, and the author states that tribes need to look carefully at solutions that activate the notion of self-determination. The data reveal, not surprisingly, that incarcerated Native youth are exposed to an extraordinary amount of violence and left traumatized by these

experiences. Rolnick's work greatly enhances the scant work on Native youth who are over-criminalized and over-incarcerated.

"Through His Eyes: Life in the South Dakota State Penitentiary" is coauthored by Melissa Leal and Robert Horse, offering a glimpse inside what Horse calls "the belly of the beast." Leal interviews Horse, who at age thirty-one has been incarcerated for more than half his life. Robert Horse was sixteen years old when he was sentenced to prison. His story is an excellent example of carceral culture, which is greatly difficult to survive. Indeed, prisoners are controlled and punished routinely by prison staff, formal and informal rules, and often other prisoners. This essay is significant because it tells the story of how one Native prisoner in South Dakota works from the inside to ensure that other indigenous prisoners have the ability to practice and learn their culture and traditions, and it contributes to the literature on experiences of incarceration.

Mass incarceration, recidivism, and reentry programs are serious issues and cycling people in and out of prison is not a good for them, their families, or their communities. The sheer number of incarcerated people implies that there are problems transitioning from prison to community. In the essay, "Stories of Transformation: Aboriginal Offenders' Journey from Prison to the Community," Theresa Howell explores factors that help and hinder the transition to a crime-free life after incarceration. Of course, recidivism and reintegration are vital to formulate healing programs for offenders that are based on cultural traditions. The objective of this study, based on the experiences of forty-two Native men, was to gather information that would explain what helped or hindered the transition from prison to community. The emphasis is on restorative plans that focus on Native cultures and traditions.

The magnitude of removal and the loss of sovereignty and identity are clearly illustrated by the essays in this collection. Punishing policies and practices continue, including removing citizens from their families, communities, and nations. Acts of Congress passed to halt punishing policies, such as the Indian Child Welfare Act (1978), are not always supported by the general public or courts of law. For instance, in 2013 there was a media circus, including a segment on the Dr. Phil show, surrounding a case involving a Native child known as "Baby Veronica." This case is examined by Theresa Rocha Beardall's essay, "*Adoptive Couple v. Baby Girl*: Policing Authenticity, Implicit Racial Bias, and Continued Harm to American Indian Families." Rocha Beardall combines American Indian studies, law, and sociology to examine the punitive behavior of law against Indian families in *Adoptive Couple v. Baby Girl*. The author discusses the Indian Child Welfare Act and the Baby Veronica case in the context of social control, identity, and the erosion of tribal sovereignty. Most of the essays focus on criminal law, while this essay is remarkable in its focus on civil cases.

Acknowledgments

This special issue is dedicated to the many Natives, including relatives and friends, who lived the stories we are privileged to tell today. I am encouraged by the emergence of brilliant and compassionate scholars whose work appears in this special issue. I am eternally grateful to three talented scholars from my reservation: two fellow tribal

members, David (Chalk) Courchane and Troy Felsman, and Bob Bigart, who is the librarian emeritus at the D'Arcy McNickle Library (Salish Kootenai College). Your generosity of knowledge is immensely appreciated, and your contributions to our community are truly invaluable. I would like to thank Pamela Grieman for her encouragement and support for helping with this special issue, and the staff of the *American Indian Culture and Research Journal* for editorial assistance. Lemlm̓tš pesya? (Thank you, everyone)!

NOTES

1. For information on ledger drawings, see: Joyce M. Szabo, *Ledger Drawings Book: Imprisoned Art, Complex Patronage* (Santa Fe: SAR Press, 2011); Joyce M. Szabo, *Art from Fort Marion: The Silberman Collection* (Norman: University of Oklahoma Press, 2009).

2. Velma Wallis, personal communication, March 2003.

3. Luana Ross, "Personalizing Methodology: Narratives of Imprisoned Women," in *Reading Native American Women: Critical/Creative Representations*, ed. Inés Hernández-Avila (Lanham, MD: AltaMira Press, 2005), 39–62.

4. *Ibid.*, 59. This is a variation of my uncle's story. Early prisoner descriptions are found at the Territorial Prison Museum, Deer Lodge, Montana (State of Montana, Prison Convict Register, 1878–1977), and the Montana Historical Society Archives, Helena (State of Montana, Descriptive List of the Convict).

5. Troy Felsman, personal communication, August 2015; see also *State v. Deschamps*, 118 Mont. 566 Mont. 1946, casetext.com/case/state-v-deschamps-4.

6. Letters from Bureau of Indian Affairs Area Director Ned Thompson to Attorney General Forrest Anderson, March 12, 1968; Report from Agency Special Officer John Corbett of the Flathead Agency to the Bureau of Indian Affairs, March 1, 1968; Bureau of Indian Affairs, Law and Order, 1968. RS 111, Box 111, Folder 20. Montana Historical Archives, Helena.

7. *Ibid.*

8. Ruth Swaney, personal communication, 2015.

9. Francis Auld, personal communication, 2015.

10. Roxanne Dunbar-Ortiz, *An Indigenous Peoples' History of the United States* (Boston: Beacon Press, 2014), 8.

11. See Luana Ross, *Inventing the Savage: The Social Construction of Native American Criminality* (Austin: University of Texas Press, 1998); Chris Cunneen, "Indigenous Incarceration: The Violence of Colonial Law and Justice," in *The Violence of Incarceration*, ed. Phil Scraton and John McCulloch (London: Routledge Taylor and Francis Group, 2009), 209–24; Robert Nichols, "The Colonialism of Incarceration," *Radical Philosophy Review: The Journal of the Radical Philosophy Association* 17, no. 2 (2014): 444–45, doi: 10.5840/radphilrev201491622, <https://settlercolonialstudies.org/2014/10/08/robert-nichols-on-indigenous-incarceration/>.

12. For more information, see Angela Wilson (Waziyatawin), "Decolonizing the 1862 Death Marches," *American Indian Quarterly* 28, nos. 1–2 (2004): 185–215, doi: 10.1353/aiq.2005.0027; Angela Wilson (Waziyatawin), ed., *In the Footsteps of Our Ancestors: The Dakota Commemorative Marches of the 21st Century* (St. Paul: Living Justice Press, 2006).

13. Janet Youngholm, "Violence and the Dakota War of 1862," in *American Indians and the Civil War*, ed. Robert K. Sutton and John A. Latschar (Washington, DC: The National Park Service, 2013), 46.

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15. Robert Bigart and Joseph McDonald, *Duncan McDonald: Flathead Indian Reservation Leader and Cultural Broker, 1849–1937* (Pablo, MT: Salish Kootenai College Press, 2016).

16. Troy Felsman, personal communication December 22, 2015.

17. David (Chalk) Courchane, "Montana's Flathead Reservations and Its Outlaws, of which four were hanged in Missoula on December 19, 1890," 2014, http://www.oregonpioneers.com/FourHangings_Missoula.pdf.

18. Bigart and McDonald, *Duncan McDonald: Flathead Indian Reservation*, 79

19. Robert J. Bigart, *Zealous in all Virtues: Documents of Worship and Cultural Change, St. Ignatius, Montana, 1890–1894* (Lincoln: University of Nebraska Press, 2007), 73–74.

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21. *Ibid.*, 77.

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23. B. L. Azure, "Swan Valley Massacre, 100th Anniversary Commemorated," *Char-Koosta News*, 2008, http://www.charkoosta.com/2008/2008_10_23/Swan_Valley_Massacre_100th_anniversary.html.

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25. This essay from *Indian Country Today* is only one of many examples of this mentality. Simon Moya-Smith, "Woman Who Agreed Native Americans Should 'Go Back to the Reservation' Elected to School Board," *Indian Country Today Media Network*, <http://indiancountrytodaymedianetwork.com/2015/05/20/woman-who-agreed-native-americans-should-go-back-reservation-elected-school-board-160430>.

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27. *Ibid.*, 35.

28. Wendy Holliday, "Hopi Prisoners on the Rock," National Park Service, <http://www.nps.gov/alca/learn/historyculture/hopi-prisoners-on-the-rock.htm>; and also see Craig Glassner, "From Arizona to Alcatraz: Hopi prisoners on Alcatraz," *Found SF*, http://foundsf.org/index.php?title=from_Arizona_to_Alcatraz:_Hopi_prisoners_on_Alcatraz.

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news/state-and-regional/st-ignatius-boy-admits-outbursts-as-part-of-plea-deal/article_b0b95012-cccc-11e2-b1a9-001a4bcf887a.html.

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