

ARRESTED (IN)JUSTICE

From the streets
to the prison

I am crime. I have known this is my first encounter with the police ... what can I think when police officers pursue me because they see me, when what I have supposedly done is determined by police officers after I've been stopped — what can I think but that they lie in wait, confident that there is a problem with my very existence that will emerge and provide them with what they already know, and that problem ... is that I exist? (Gordon 1997: 21)

WHILE SLAVERY WAS OFFICIALLY ABOLISHED ALMOST two centuries ago, Canada's legacy of exerting control over Black bodies was reconsolidated, perhaps most strongly, in the criminal justice system. Today, law enforcement officials, jails and prisons, as well as the courts and parole boards, play an increasingly significant role in the "managing" of Black populations in Canada that have, as elsewhere, been made disposable. Black people in Canada are subject to invasive police surveillance that makes it difficult to exist in public space. Black folks, as well as being more likely to be stopped and questioned, are more likely than the general population to be charged, severely sentenced and incarcerated in jails or prisons, and are less likely to be granted parole. The economic subordination and abandonment of Black communities has acted in parallel with expanding the scope of racialized surveillance and punishment across the criminal justice system. As well, the policing of Black life, while serving an economic function — that is, the repression of marginalized

populations — also engenders forms of violence that exceed the economic (Wilderson 2010; King 2014). The attribution of danger to Black bodies has been so successful that the policing of Black people extends quickly into bodily harm. To be Black is not only to be targeted for questioning or arrest, it is also to be “proximate to death” (Sharpe 2016: 16) — that is, to live with an accentuated vulnerability to being violently beaten by police or by prison guards, to being placed in long-term solitary confinement for months that a time, or to being killed by the police. In the case of Abdirahman Abdi, to be Black meant not only to be violently assaulted by a law enforcement officer but also to be left, bleeding, for an extended period before emergency services were even contacted (Cole 2016b). Black life has been so effectively stigmatized that even highly spectacular forms of state violence are largely unrecognized as such, and go uncontested by much of mainstream society.

The demonization of Black communities that has been continually reinforced by the criminal justice system has been largely accomplished by age-old associations between Blackness and criminality. While earlier pages explored how this trope dates back centuries, in recent decades, it has been increasingly the case that, to use the words of Angela Y. Davis, “fear of Black *people*, whether economically or sexually grounded, is ... being grounded in a fear of crime” (1998: 65, emphasis added). In the name of public safety, Canada has abandoned ever-increasing rates of Black populations from state protections — and from participation in social, economic and political life — and has undertaken a renewed investment in targeting Black communities, which are widely regarded as “criminal.”

THE RACIALIZATION OF CRIME

Defenders of the status quo have argued that Blacks are not unjustly profiled, policed and incarcerated because of their race, but because they are, in fact, more likely to break the law than whites. With an ahistorical lens, one could look at the enormous racial disparities across the criminal justice system as evidence not of racism, but as proof of the prevalence of Black criminality. In this view, the high rates of Black prisoners are seen as just, if perhaps unfortunate. This seemingly commonsensical understanding of the high rates of Black incarceration dates back four centuries in Canada.

The genealogy of modern incarceration and policing starts in the era of slavery and colonization. Indeed, the slave ships, which embodied captivity at its most extreme, served to foreshadow Black incarceration today (S. Browne 2015; Rodriguez 2007). Racialized surveillance, too, stems from centuries prior.

As explored earlier, public associations between Blackness and crime can be traced back to runaway slave advertisements dating back to the seventeenth century, in which self-liberated Blacks were portrayed as thieves and criminals. All free and enslaved people were subject to the surveillance of a larger white community and law enforcement officials, who together scrutinized the presence of Black bodies in public space as possibly criminal “runaways” (Kitossa 2005; Nelson 2016a, 2016c). After slavery’s abolition, the associations between Blackness and crime served important political, social, economic and cultural functions in maintaining the racial order, and the ongoing surveillance and policing of Blackness — and the corresponding wildly disproportionate arrest and incarceration rates — were quintessential in the late nineteenth and early twentieth centuries in Canada. These associations with Blackness, today, while articulated through a slightly different language (thugs, gangsters or, in Québec, “les yos”), remain markedly unchanged.

The history of racialized surveillance, policing and incarceration in Canada was also profoundly shaped by, and geared toward, the aims of settler colonialism. The imposition of forcing Indigenous persons onto reserves and then, beginning in 1846, residential schools, were the initial modes of confinement levelled at Indigenous persons, confining Indigenous populations onto tiny portions of land and attempting to destroy political sovereignty and traditional relationships to land, to clear the way for settler societies and resource extraction (Hunt 2013). Canada’s first policing body, the North-West Mounted Police (now the Royal Canadian Mounted Police [RCMP]), created in 1873, played an important role in the Canadian government’s arsenal toward quelling Indigenous rebellion and protecting the economic interests of white settlers (Comack 2012). In recent years, though, the criminal justice system, particularly law enforcement, jails and prisons, has become a primary means of settler violence over Indigenous bodies; “criminal control” remains an integral part of conquest (Nichols 2014: 448). Indigenous persons now make up a substantial proportion of those held captive in Canada’s jails and prisons: while representing around 5 percent of Canadian society, they make up almost one-quarter of the current total inmate population Canada-wide (Sapers 2015). This is a rate of incarceration even higher than that of Canada’s Black population. Policing remains a site of colonial dispossession of Indigenous peoples and their resources. This adversarial role was seen as recently as the Oka “crisis” of 1990, and in 2007–2008 in the response to road blockades and land occupations in Tyendinaga Mohawk Territory, where the Ontario Provincial Police deployed hundreds of armed police officers, including snipers. The RCMP continues an

ongoing surveillance of Indigenous land defenders (Amnesty International 2012). This makes clear that policing remains, as well, integral to the project of settler colonialism in Canada. Both historically and in the present, policing Blackness occurs alongside and as a part of the policing of Canada's Indigenous communities.

In the present, fear of Blackness is euphemistically articulated through a fear of crime, and treated as such by the state. The contemporary association between Blackness and crime is frequently reflected in national discourse. In 1990s Ontario, popular associations between Black migrants and crime were commonly made by politicians and the police (Henry 1994). Former mayor of Toronto June Rowlands stated in numerous campaign speeches that Black youth are responsible for the crime rates and commit more crimes than whites. This has also been repeated by senior police officers, including senior police officer Chief McCormack, who stated, "there is a real problem in the Black community" (Henry 1994: 220). This association touches the very fabric of law enforcement. In 2014, a *Journal de Montréal* writer discovered that the course material for the first year of police college in one Montréal institution taught students that Blacks commit more crimes than whites and are more prone to violence, theft and sexual assault (Berthomet 2014). The Canadian population continues to associate race — and Blackness in particular — with criminality (Owusu-Bempah and Wortley 2011). High-profile media outlets and persons in power continue to support this notion. *Globe and Mail* columnist Margaret Wente defended the practice of racially focused policing, arguing that police are correct to assume that "Blacks persons, and particularly Jamaicans, are more prone to criminality" (2002).

Still, policing is presented as a race-neutral practice. To use the words of former Toronto police deputy chief Peter Sloly, police "go where crime occurs. We go where the community calls us to go" (in Mascarenhas 2015). Assertions of racial profiling or systemic racism continue to be vehemently denied by most police leaders (Tanovich 2004). Confronted with data demonstrating enormous disproportions in police stops, president of the Toronto Police Association Mike McCormack nonetheless argued in a *Toronto Star* op-ed that it is "irresponsible" to suggest that race plays a role in policing (McCormack 2015). However, racial profiling has played an important role in creating criminals.

"Crime" itself is not a neutral category. So-called criminal behaviour is widespread, and overall, activities deemed criminal are both common and evenly distributed across race and class (Commission on Systemic Racism in the

Ontario Criminal Justice System 1995, henceforth CSR Report 1995). Almost 40 percent of all youth report having committed an act of violence, selling drugs or destroying property in their lifetime (Public Safety Canada 2012: 4–5), but 40 percent of youth are not in juvenile detention. Most people who commit crimes do not go to jail. It is not, after all, breaking the law which renders one a criminal — it is being caught, arrested and convicted (Davis 2003).

The enormous discretion granted to law enforcement in where to seek out crime and to determine who *seems* suspicious plays a significant role in who becomes a criminal offender. Racial profiling — surveillance or police encounters that occur because of stereotypes regarding race, ethnicity or religion — serves an important role in determining policing practices. The assumption, then, that Black people are likely to be criminals results in more Black people being watched, caught, charged and incarcerated. It is Black people who will be *made* into criminals by the very policing strategies that target them. In other words: “Profiling is a self-fulfilling prophecy. The more that a group is targeted, the greater the likelihood that criminality will be discovered — particularly for those offences that are prevalent in society” (Tanovich 2004: 916). This self-fulfilling prophecy is reflected in a Montréal study that found that over-surveillance, not Black proclivity for crime, is the leading factor in the disproportionate arrest of Black youth. Black youth experienced far more surveillance by police and security guards than white youth, and this over-surveillance may have accounted for almost 60 percent of their over-representation in the criminal justice system. This effect snowballs into further criminalization: “each new arrest contains the risk of a new charge, resulting in a worsening of the criminal record (if the charge is proved) and the probability of a longer sentence and more restrictive conditions than the previous time” (Bernard and McAll 2008: 12 in CDPDJ 2011: 35). The enormous discrepancy of Black youth in jail — a rate four times higher than white youth in Ontario — stands as a testament to the power of profiling to create criminals (Rankin and Winsa 2013). Black people are not “more criminal”; they are placed behind bars for crimes that, had they been white, would have been far more likely to have gone unseen and unpunished.

Racial profiling is also disguised and justified by falsely making crime an issue of immigration. The profiling of Black communities is frequently blamed not on racism, but is instead justified by the assertion that some (Black) *nationalities* are more prone to criminality. Much of the focus of police and commentators in Montréal and Toronto is on Black communities *as migrants* (Mosher 1998: 7–10). One study of police practices found that street gangs were represented

as an immigration issue, and cites an anonymous police officer stating: “Here [in Québec] our kids are born with a hockey puck in their hand, but there [a country of immigrant origin] they come into the world with a grenade in their hands” (Symons 2002: 118; see also Wenté 2002; Charest 2009). Jamaicans and Somalis, too, face enormous scrutiny (Foster 1996; Pratt and Valverde 2002). Statistics released by Public Safety Canada (2012) contradict the association between immigration and criminality; it was found that foreign-born youth had lower rates of so-called “delinquent behaviour” than Canadian-born youth. Despite perceptions buttressed by certain journals and politicians, the immigration-crime relationship is not based on objective proof (Mosher 1998: 10–11). Further, the documented intensive racial profiling and the high levels of Black people incarcerated in provincial jails in Nova Scotia — where the Black population is largely Canadian-born — makes clear that linking (Black) immigrant communities with criminality is a mere smokescreen for anti-Black sentiment.

There do appear to be some racial discrepancies in the committing of particular crimes: white men are more likely to be sex offenders and drug dealers, while Black youth may be over-represented in youth gang membership (despite white youth still being the large majority of gang members) (Owusu-Bempah and Wortley 2014). Regardless of minute differences, it is racially disproportionate policing, rather than racially disproportionate crime, that has resulted in the enormous levels of Black people behind bars in Canada today (Khenti 2014). Indeed, the decisions taken on which crimes to focus on and where to look for them are deeply informed by race (Roberts 1993).

NO FREEDOM TO CIRCULATE: POLICE PROFILING AND THE RESTRICTION OF BLACK MOVEMENT

Profiling is itself a form of violence, because it infringes on Black people’s ability to move freely and without fear in public space. Taken-for-granted associations between Blackness and criminality have granted police largely unchecked authority over Black communities, giving them access to quasi-legal (or illegal) identity checks, searches, seizures and car stops, at a rate unimaginable to most non-racialized Canadians. Black existence in public space is itself seen as criminal and thus subject to scrutiny, surveillance, frequent interruption and police intervention.

In the early 1990s, social anthropologist Frances Henry interviewed 134 Caribbean people living in Toronto and found that every single person interviewed could relate a story of police harassment. Respondents highlighted that

Black Caribbean people were unable to gather in groups without drawing police presence (Henry 1994: 203, 216). Similarly, the 2011 report on racial profiling of youth found that many Black and brown respondents felt that they did not have the right to circulate or socialize in public without being subject to police scrutiny, including having their photos taken by police without explanation (CDPDJ 2011: 25). Black teenagers in Québec reported that they experienced police harassment in metro stations, and were frequently forced to “disperse” once two or more of them were together (CDPDJ 2011: 31). Young Black people in Toronto reported being stopped, documented and then told to leave neighbourhoods in which they did not reside (Rankin and Winsa 2012). A 2003 study of students found that more than one-third of Black students who were not engaged in criminal behaviour had been stopped by police, compared with less than one-tenth (4 percent) of white students; almost a quarter (23 percent) of these Black students had been searched, compared to 5 percent of white students (Wortley and Tanner 2003). While the ability to walk freely in public space is something that is taken for granted by most white Canadians, the same cannot be said for people of African descent.

Being stopped by police, however, often encompasses more than being asked a few questions or being forced to move. The Toronto Police Service has steadily amassed the names, personal information and movements of millions of people using “contact card” stops from largely non-criminal encounters. This practice, known widely as “carding,” has been used to create a massive “known to police” database of the citizenry, which is not subject to outside oversight or any regulation on the purging of information. The *Toronto Star*, by means of Access to Information and Privacy requests, discovered that between 2008 and mid-2011, 1.25 million contact cards were filled out, and nearly one-quarter of those documented were Black. Young Black males in particular were carded at a rate of 3.4 times that of their population in the city, and these rates were even higher for Black people stopped in predominantly white neighbourhoods. Some data appears to suggest that every Black man has been documented in certain neighbourhoods (Rankin and Winsa 2012). Carding was widely defended by the mayor and the police union, but widespread outrage in the Black community led to a reduction in carding by 75 percent in 2013. Despite this reduction in overall documentation, the proportion of Black people who were carded actually *increased* (Rankin and Winsa 2014). The practice is currently being debated but the massive database of Black lives remains in the hands of the Toronto Police Service, despite continued contestation by the Black community.

Similar findings can be seen in Kingston, Halifax and Montréal, where,

instead of carding, the same practice is referred to as “street checks.” A report commissioned by the police chief in Kingston, Ontario, found that people of African descent were three times more likely than whites to be stopped, and that both Black men and Black women faced far higher individual stop rates than white men and women (Wortley and Marshall 2005 in Khenti 2014). Between 2006 and 2016, Black people living in Halifax were stopped by both the Halifax Regional Police and the RCMP for street checks at a rate that was three times higher than the general population (Previl 2017a and 2017b).

Most disturbingly, police profiling often targets Black *youth*, a form of state violence that is particularly chilling. Black youth are, after all, at the intersections of powerlessness: they experience the powerlessness inherent to childhood and adolescence combined with that of being a subordinated racial group. The resources allotted to policing Black and other racialized youth in public spaces has little to do with an existing public danger. In particular, the fears of dangerous young immigrant gangs, perpetuated by the Montréal police, are largely unfounded. In the last twenty years, the Montréal police have repeatedly named racialized youth in street gangs to be a high organizational priority and have allocated their resources accordingly. In 1996, the Montréal police force declared that approximately 1,300 teenagers between the ages of fifteen and nineteen were an organizational priority, and specifically named Jamaican, Haitian, “Asiatic,” Latino and “extreme right” youth as the targets (Symons 2002: 117). Gladys Symons, in conducting twenty-eight interviews with the Service de Police de la Ville de Montréal (SPVM) from 1997 to 1998, found that officers frequently identified the issue of youth and street gangs as a problem stemming from immigration (Symons 2002: 118–119). Yet, the priority is one *chosen* by law enforcement officials, not based on the realities of crimes in Montréal. *Le Devoir* reported in 2010 that the SPVM found that criminal activity by street gangs was only 1.6 percent of reported crime in 2009. When questioned by journalists on why they continued to focus so many resources on fighting this relatively insignificant issue, they stated that it was based on the public *perception* of the prevalence of street gang activity, unfounded though it was (*Le Devoir* 2010 in Bernard and McAll 2010: 13). The assumption that Black youth are dangerous and criminal is indeed the justification for targeting them with highly punitive policing practices.

The Montréal police’s focus on the largely fabricated street gang crisis served as a justification for a massive spike in street checks that had a significant impact on Montréal’s Black communities and Black youth in particular. “Anti-street gang” squads had been deployed between 2001 and 2007, a period that saw

an increase of 60 percent in “random” identity checks on Black communities, purportedly to battle the crisis of youth of colour involved in dangerous gangs (Charest 2009). Included in that growth, the number of “random” stops had particularly militarized Black neighbourhoods: the stops had risen by 91 percent and 126 percent respectively in the largely Black neighbourhoods of St. Michel and Montréal-Nord. Though Black communities were already disproportionately affected by street checks in 2001, in 2006–2007, in some neighbourhoods nearly half (40 percent) of young Black males were stopped and carded compared with just over 5 percent of whites. An average of 721 Black people were stopped per month. The author of the investigation notes that only a minority of these checks could be seen as justified, as a very small minority resulted in arrests and the rest were largely malicious in intent (Charest 2009). Here, the fabricated profile of young Black people as possible dangerous gang members allowed for entire Black neighbourhoods to be militarized by near constant police surveillance. After the 2008 police killing of an unarmed Latino teenager, Fredy Villanueva, and the police shooting of two other teenagers, a small uprising occurred in the neighbourhood. Racialized youth accused the police of extreme levels of harassment and profiling that was impacting their day-to-day lives. Afterward, an internal police study of the SPVM, which was leaked to the newspaper *La Presse*, found that the perceptions of racialized youth were accurate (Charest 2009). Other forms, too, of controlling Black people’s movements are practised by law enforcement. For example, in 2004, the police announced a crackdown on what are called “incivilities,” creating more than two dozen new categories of acts which are said to disturb the peace, including prostitution, spitting, loitering and noise. These have reportedly disproportionately targeted Black, Latino and South Asian youth (Tanovich 2006: 84).

The ongoing scrutiny of Black life practised by law enforcement — and the cataloguing the Black population into massive law enforcement databases — has significant impacts on the psychological well-being of Black communities. It must be seen, and addressed, as a form of state violence. Even profiling that does not result in arrest or violence is itself harmful: the American Psychological Association has found that it can cause post-traumatic stress disorder and other stress-related disorders, as well as alienation (in Ontario Human Rights Commission [OHRC] 2003: 17). These effects touch entire families. One mother cited in the 2003 OHRC report, *Paying the Price: The Human Cost of Racial Profiling*, said, “Now I feel very afraid for my two boys. I’m afraid for them to go out. I can’t sleep when they go out. I’m scared when they go out with Black friends. They’re like a magnet. It’s not fair that four Black kids can’t walk around”

(OHRC 2003: 25). The hostile and scary imposition into of the lives of Black communities is experienced as a form of violence and intimidation, in which the act of leaving one's house is fraught with danger and anxiety for fear of harassment by police (Henry 1994). In particular, young people who are just learning how society functions were found to experience the most harms from racial profiling, harms that often last long into their adulthood (OHRC 2003: 18). Black activists, as well as legal experts such as Justice Harry Laforme and criminologist Akwasi Owusu-Bempah, have compared the concerted surveillance of Black bodies in public spaces to apartheid-era South Africa's pass laws (under which Black movement was subjected to heavy surveillance and Black people could not circulate outside of designated zones) (in Rankin and Winsa 2012). Over-surveillance creates for Black subjects a reality in which merely existing is treated as suspect. This reality is wholly unimaginable to white citizens, who are free from "the feeling of dread" that is inflicted by profiling (Martinot and Sexton 2003: 176). The harm regularly inflicted on communities and especially youth who are subject to constant scrutiny, daily fears of harassment and continual interference in day-to-day life cannot be fully quantified, as the effects of being regularly and systematically dehumanized cannot be captured by statistics. The intensive targeting of Black folks in public space demonstrates a fundamental disregard for the dignity of Black life.

CANADA'S "WAR ON DRUGS": DRUG PROHIBITION, BLACK INCARCERATION

Background

While profiling can be understood as a ritualistic low-level violence inflicted on Black communities, it is the "War on Drugs" that has been instrumental in placing so many Black communities in captivity within jails and prisons today. The profiling and surveillance of Black life, of course, pre-exists and exceeds the War on Drugs. Nonetheless, in the past three decades ideologies and practices of drug law enforcement have consolidated, and have given new breadth and scope toward, the criminalization of Blackness.

As explored in an earlier chapter, since the early twentieth century, the criminalization of drugs was related not to the pharmacological or social harms engendered by drugs, but was a result of anti-Black and anti-Chinese sentiment. The criminalization of drugs was used as a tool in the repression of these communities (Gordon 2006). In line with similar processes in the United States, a new period of moral panic linking danger and drugs to the Black population

took hold in the 1980s, even as the use of marijuana, heroin and cocaine had been lowering at a stable rate since peaking in 1979 (Adlaf, Smart and Canale 1991 in Khenti 2014: 191). Prime Minister Brian Mulroney announced the War on Drugs, following the lead of President Ronald Reagan in the United States. Drugs, it was argued, represented an emergent threat to the security and safety of “the public.” As a result, despite a total void of scientific evidence, the so-called “war” was purportedly waged to combat the harms of illegal substances that were said to be ravaging communities. A “national drug strategy,” made up of legislation between 1988 and 1999, significantly strengthened the power of law enforcement officers to seize the assets of drug offenders, and provided other forms of heightened policing powers (Khenti 2014: 191). Media reports and policing efforts followed suit, and in the coming years, Blackness was baselessly but inextricably linked to dangerous drug crime — both in the public perception and in law enforcement practices (Khenti 2014; Nunn 2002).

This manufactured “crisis” did not emerge out of nowhere. The War on Drugs declared in the 1980s had political utility amid the substantive rollback of state supports and social welfare undertaken by Brian Mulroney. In Canada, like in the United States and the United Kingdom, the past three decades have seen the mobilization of a fear of crime to gain popular support for “law and order” platforms geared toward so-called public safety. This was part of a larger political strategy aimed at making sense of the chaos stemming from the economic and social fallout of colonialism. Amid growing racial and economic disparities, fear-based policies allowed states to exert control over their disenfranchised populations and to quell discontent under the banner of “security.” Indeed, the anti-crime focus of the last several decades has been, in part, a reactionary response to racial and social justice movements (Gordon 2006; Sudbury 2004a; Gilmore 2007; Hall et al. 2013).

In Canada, as elsewhere, racial and wealth disparities had never been passively accepted by Black communities. In the 1960s and 1970s, acclaimed Black activists Rocky Jones and the Black United Front in Halifax played an influential role in challenging the racism that caused Black poverty, displacement and disenfranchisement in Nova Scotia (Rutland *forthcoming*). Discrimination against Black communities in Montréal led to a two-week-long university campus occupation and uprising in 1969 that culminated in the burning of the computer labs of Sir George Williams University in Montréal, and led to a violent police response (Austin 2013). In the 1980s, Haitian taxi drivers took up important and highly visible struggles against racist hiring and pay practices in Montréal (Mills 2016). This Black activism, like elsewhere across the country,

was subject to intensive police surveillance and was seen as a criminal threat to Canada's national security (Austin 2013). Black activists were viewed as a threat — the RCMP, for example, had been spying on Black activists in Halifax throughout the 1960s and 1970s (*Canadian Press* July 20, 1994). One article in the *Toronto Star* wrote of the Sir George Williams student protesters, “you can call 'em militants if you like. In this corner it comes out hoodlums” (1969 in Williams 1971: 119). Wider society, student and labour movements, too, were pushing for economic and social justice. However, in Canada, like in the United States and the United Kingdom, state officials and civil society did not respond to social unrest with state policies aimed at combating racial and gendered inequalities. The conservative push toward “crime prevention” came as a response to civil rights, Black power and other emergent racial and social justice movements as a way to exert control over racialized communities. It was politically useful to mobilize political support by exaggerating the threats posed by “crime” to the safety of the public (Hall et al. 2013; Gilmore 2007; Sudbury 2004a). As such, anti-Blackness — articulated through a focus on Black drug crime — was mobilized as a response to a threat to Canadian society in a time of social unrest, following similar patterns in the United States and the United Kingdom. Following the crises engendered by neoliberalism in the late 1980s, Black people became convenient “folk devils” upon which all of society's fears were scapegoated and projected (Nunn 2002). This was accomplished by means of the War on Drugs.

By the logic of the drug war, drugs were a threat to Canadian society itself. Though drug use had been on the decline since the late 1970s (Khenti 2014), the police, state officials and the media together created a widespread hysteria: drugs, so the newspapers said, were “tear[ing] a gaping hole in the fabric of society” (Kennedy 1989). Yet, instead of massive investment in the needs of society — including social services and addiction support — the communities that were associated with drug crime became the target of widespread hostility and oppression, the enemy of the War on Drugs. The police, supported by the media, associated drugs and violence with the presence of Caribbean communities. One *Toronto Star* article cited former Toronto Police Chief Bill McCormack as saying they specifically targeted drug crimes in Jamaican communities as a grave danger, and decrying “Uzi-toting thugs” who can “use their accents to hide among honest, hard-working people” while “selling the deadly drug that turns children into thieves” (Mascoll 1990). A larger analysis of media responses to the drug war found a repetition of media tropes frantically decrying “murderous posses” of Black Jamaicans selling crack (with the effect of linking Blackness,

poverty and cocaine with Jamaicans in the popular imaginary) (Lawrence and Williams 2006). Though drug use remained relatively static across race and class at comparable rates to the years preceding Mulronev's term, the only success of the War on Drugs was to demonize Black life, massively expand Black incarceration and cause irreparable harm to Black communities.

The expanded powers granted to law enforcement officers by the War on Drugs gave police the arsenal necessary to bring into being the contemporary large-scale incarceration of Black communities (Khenti 2014). Perhaps most notably, Canada created a national law enforcement training program called Operation Pipeline, which arguably cemented the practice of racial profiling by law enforcement officers. Derived from a program of the same name run by the Drug Enforcement Agency in the United States and imported by the RCMP in the late 1980s, Operation Pipeline is a training program geared toward the enforcement of drug laws. It has since been used to train Canada Customs officers, provincial police officers and officers in Montréal, Toronto, Calgary, Winnipeg and Vancouver (Tanovich 2006: 89–92). Training methods analyzed by David Tanovich found that literature emphasized highly racialized “profiles” of likely drug traffickers, and included racial and ethnic characteristics, such as dreadlocks, as a means of singling out criminals and criminal organizations, making specific mention of Caribbean men and women (as well as Chinese people and other racial groups) (92). Law enforcement was now granted an expanded scope in the use of racial profiling as a tool to surveil, search and arrest Black persons, those thought (though not demonstrated) to be most involved in the buying or selling of drugs: “[profiling] ultimately became fixated on race, when authorities began to focus on low-income neighbourhoods that were predominately racialized” (87). While both the American and Canadian programs deny that racial profiling is part of their program, Operation Pipeline is nonetheless widely blamed for institutionalizing racist policing practices as part of the War on Drugs in both nations (Alexander 2012; Tanovich 2006: 91–94). The first report of Criminal Intelligence Service Canada (CISC) — used by law enforcement throughout the country — linked Caribbean and other racialized groups to cocaine sales, and CISC has done so repeatedly in subsequent reports (Tanovich 2006: 93–94). In a much less publicized yet highly prevalent form of racial profiling, Black, particularly Caribbean, women are widely represented as drug couriers in airports (a phenomenon which will be more deeply explored in later pages).

The effects of the drug war were disastrous for Black communities. Though not only Black people were arrested for drug infractions, the increased police

surveillance and repression of Black communities mandated by drug law enforcement had direct impacts on Black incarceration in the period immediately following Mulroney's War on Drugs. In 1995, a large-scale investigation in Ontario documented a massive influx of Black prisoners during the period spanning 1986–1987 to 1992–1993 (CSR Report 1995). By the end of this period, Blacks were incarcerated at a rate five times higher than their white counterparts. Though the CSR Report found that Black and white communities engaged in crime at comparable rates in that same period, this period saw the rate of incarceration of Blacks increase by over 200 percent, compared to white persons, whose rates rose by just over 20 percent (CSR Report 1995: 69). Black women, though arrested in smaller numbers than Black men, were found to face even more disproportionate rates of incarceration than men. By the end of 1993, Black women were incarcerated at a rate of seven times that of white women (iii). Admissions at Vanier Centre for Women increased the rate of admission of Black women by 630 percent, whereas white women's admissions at the same prison went up by 59 percent (75). Drug laws were the main source of the spike in numbers. The number of prison admissions for Black persons for drug trafficking increased by 1 164 percent, compared to an increase of 151 percent for white admissions. The War on Drugs had the effect of caging a previously unimaginable number of Black bodies in Canada, and set the tone for continued public perceptions associating Blackness with criminality.

Drug prohibition today

Although the so-called War on Drugs is often seen as a Conservative policy, the incarceration of Black communities continued to grow, in the background, under Liberal Prime Ministers Jean Chrétien (1993–2003) and Paul Martin (2003–2006) — indeed, the drug war arguably intensified (Gordon 2006). The heavy policing of Black persons, though purportedly practised to combat the leaders of the drug trade, included high rates of arrest and incarceration for petty drug offences. As the focus on drugs increased, so did the levels of Black incarceration. Cannabis-related offences rose 80 percent from 1992 to 2002, mostly for possession, and mostly affecting persons under thirty years old (Gordon 2006: 69). The state investment in the punitive aspect of combating drug crime vastly outweighed the state investment in supporting drug users. In 1992, law enforcement at the federal and provincial levels received \$400 million in funding, while treatment services received \$88 million (Single, Robson, Xie and Rehm 1996 in Khenti 2014: 192). In 1997, the Liberal government increased the power and authority that had previously been delegated to the police in the *Narcotics Control Act*, and replaced it with the *Controlled Drugs*

and Substances Act. This Act allowed police officers a more widespread range of enforcement powers when it came to minor drug cases than those allotted to rape, murder and arson (Gordon 2006: 65). It allowed for “sweeping new police powers of arrest, search and seizure” (Khenti 2014: 191), concretized the maximum penalties for drug related offences and increased the amount of resources for arresting and prosecuting both drug users and drug sellers (Gordon 2006: 65–67). Though the War on Drugs was by this time less publicized, the warfare on those persons profiting the least from the drug trade continued in earnest. Between the early 1990s and 2006, the police-recorded drug crime rate had almost doubled, generally focused on possession and small-time street level dealers (Erickson 1998: 219 in Gordon 2006: 69–70). This continued to correspond to rising Black incarceration rates. By 2003, near the end of two terms of Prime Minister Jean Chretien’s leadership, the federal incarceration rate for Blacks was already significantly higher than their proportion of the Canadian population, and had climbed to a rate of 6.3 percent, with Blacks being approximately 3 percent of the population at that time (Sapers 2013, 2014).

The election of Conservative Prime Minister Stephen Harper (2006–2015) brought back visibility to the drug war. Less visible, though, was the Black prison population’s increase of almost 70 percent under Prime Minister Harper’s reign. Despite relaxing public perceptions on drugs and drug use, the criminalization of drugs was augmented in the framework of a larger “tough on crime” mandate. This era saw a significant investment in building and filling prisons, seemingly at any cost. Prison expansion was given fiscal priority at a time when the government enacted significant austerity measures: social investments were cut across nearly every other sector besides prison and the military, including education, childcare, welfare, pensions, union wages, women’s groups, homelessness prevention programs, HIV and Hepatitis C prevention and treatment, and community support organizations for immigrants and Indigenous peoples. Spending on federal corrections grew more than 70 percent between 2003 and 2013, and prison spending exceeded \$2.75 billion in the peak-spending year of 2013–2014 (including over \$700 million on 2,700 new or retrofitted cells) (Sapers 2015). Most federal funding toward Canada’s National Drug Strategy has been channelled to policing efforts; by 2008, more than three-quarters was allotted to law enforcement, rather than treatment or supports (DeBeck, Wood, Montaner and Kerr 2009 in Khenti 2014: 192).

Harper’s 2010 National Drug Strategy involved an increasingly punitive drug policy. This carceral investment has been highly effective, not in reducing

drug consumption, but in increasing drug-based arrests and creating a massive spike in the arrest and incarceration of Black persons. Between March 2010 and March 2012, the federally incarcerated population grew by nearly 1,000 inmates, which federal corrections investigator Howard Sapers stated is the equivalent of two large, medium-security institutions for males. In this same period, the female prisoner population rose by 20 percent (Sapers 2012). These years saw, too, another spike in the rates of Black women in federal prisons (Sapers 2013). In 2011, more than half of drug arrests (60 percent) involved marijuana, and following that, cocaine. More than three-quarters (76 percent) of those were for possession, but offences for trafficking, production and distribution were also eight times higher than they had been thirty years ago (Statistics Canada 2012 in Mosher and Akins 2015: 338–339). This accelerated with the 2012 passage of legislation requiring mandatory minimum sentences for trafficking marijuana, along with numerous other non-violent crimes. The practice of imposing mandatory minimum sentences has been documented to be ineffective on reducing crime, and very harmful toward incarceration rates of marginalized and racialized communities (Pivot Legal Society 2013).

Disparities are ongoing. In 2016, a judge for the Ontario Superior Court of Justice stated in his ruling on a Black man charged with drug trafficking, “The racial disparities in imprisonment are especially problematic with respect to street level drug dealing” (*R v. Reid* 2016: para 26). The devaluation of Black life in Canadian society has meant that, despite a massive augmentation of Black communities arrested and incarcerated on drug and other charges in the last two decades, it has not been widely represented as a crisis of racial disparity in Canada (despite Black organizing efforts in several Canadian cities). Black youth, men and women were put behind bars at steadily rising rates amid little outcry and with the silent consent of society at large, including government opposition parties, policy makers and much of the media. The massive spike in Black incarceration is a direct result of successive, ideologically driven and racially enforced drug laws.

Beyond incarceration, the enforcement of drug laws has been fatal at times. Fighting drug crime is not referred to as a “war” by metaphor. The buying and selling of drugs is a consensual transaction. It is a crime that must be proactively sought out by police, not a violent emergency requiring heavy intervention. Still, the policing of even low-level marijuana trafficking is highly militaristic, often taking the form of heavily armed interventions by tactical squads and emergency task forces. For example, Bony Jean-Pierre, a forty-seven-year-old Haitian man, was shot in the head with rubber bullets during a small-scale

marijuana bust by the Montréal police tactical squad, and died days later from his injuries (S. Michaud 2016; *CBC News* April 4, 2016). This form of militarized intervention focused on drug crime has led to several deaths of unarmed Black men (for example, Small 2013).

A misleading profile

Law enforcement of the buying and selling of drugs allow for a significant level of discretion in policing, as both buying and selling drugs are consensual activities for which, by and large, no one calls the police (Alexander 2012: 104). To use the words of an Ontario police performance review, the policing of drugs is “enforcement driven” and a “direct reflection of the priority” of police services (Provincial Benchmarking Committee 2001: 3). This means that the intensified focus on drug policing comes not from any community or socially determined need, but from the police or higher political powers. The decision of whom to search, survey and arrest lies entirely in the hands of law enforcement officials (Alexander 2012: 104).

In a society with a centuries-long history of vilifying Black bodies, it is not surprising that policing efforts focus primarily on Black youth. A 2002 study found that 65 percent of Black drug dealers interviewed reported being arrested at least once, compared to only 35 percent of white drug dealers (Tanner and Wortley 2002 in Gordon 2006: 70). A Black teenager in Montréal is seven times more likely to be seen and arrested by the police for smoking cannabis or selling drugs in public than a young white teen, and this difference in arrest is largely attributable to heightened surveillance of Black youth in public space (Bernard and McAll 2010: 8–9). There is a significant focus on policing Black communities for drug crimes, even though Black persons are by no means more likely to use or profit from drugs than white persons (CSR Report 1995).

In the case of drugs, it is increasingly clear that police do *not*, contrary to their claims, “go where the crime goes.” Drug use, as well as the sale of drugs, is in fact more common in white communities (Owusu-Bempah and Wortley 2011). A 2012 survey by the Canadian Alcohol and Drug Use Monitoring Survey (CADMUS), which interviewed 11,090 individuals, found that white youth used more marijuana than Black youth, at a rate of 44.9 percent compared to 38.7 percent, and were nearly three times more likely to use cocaine, at a rate of 5.9 percent versus 2.3 percent of Black youth (CADMUS 2012 in Mosher and Akins 2015: 337). In addition, a study of youth in Toronto found higher rates of marijuana and cocaine use among white students as compared to Black students, and noted that white students were slightly more likely to be selling drugs than their fellow Black students (Toronto Youth Crime Victimization

Survey 2000 in Owusu-Bempah and Wortley 2014). Black youth, then, are far more likely to be arrested and jailed for a crime that is much more prevalent among white youth. Though Black people stand to gain wealth (that is otherwise difficult to access due to their systemic economic marginalization) from participating in illicit economies, the majority of those who make up the profits in the market for illegal drugs are certainly not disenfranchised Black communities (Nunn 2002).

Collateral damage

An enormous amount of human life has been harmed or destroyed by drug prohibition. It could be argued that the loss of life and liberty has been a necessary, if unfortunate, side effect toward the just cause of eliminating the “scourge” of drugs from society. After over one hundred years of vilification, the proposition that drugs are perhaps not a significant source of harm sounds, to some, preposterous and even dangerous. The ideological work of moral reformers and conservative politicians has been well accomplished: drugs are linked not only to race, but to social decline, immorality and degradation as well. Yet, evidence now makes it increasingly obvious that the substantial dangers that have been attributed to illegal drugs are, in fact, the result of drug prohibition (Hart 2013). Indeed, though Black communities have been particularly targeted for incarceration, the harmful effects of the War on Drugs have been felt across society. A high-profile study by the *Lancet* and Johns Hopkins University Commission on Drug Policy and Health examined the scientific evidence on public health issues stemming from drug prohibition in 2016. The study confirmed that it is drug prohibition, not drugs, that has contributed to an enormous loss of life and lack of safety — including lethal violence, criminal networks, the spread of HIV, Hepatitis C and overdose deaths — and has created numerous barriers to health as well as committing human rights violations (Csete et al. 2016). This misattribution of harm extends further: petty theft or violence to pay for drugs is seen as a side effect of a particular substance, rather than an indicator of economic inequality. Middle-class white people, in short, can afford to have drug addictions without needing to resort to theft, as the inflated price of drugs stems from their very illegality. Relatedly, though addiction is commonly associated with the properties of drugs themselves, it has been found to stem not from the properties of “dangerous” substances themselves, but from social isolation, childhood abuse, trauma and/or economic circumstances. People suffering from addiction who have access to financial and familial support, as well as timely treatment, are far less likely to be homeless and destitute (Report of the Global Commission on Drug Policy 2011).

In 2015, the U.N. High Commissioner found that illicit drug use itself was neither a medical condition, nor did it necessarily lead to dependence (in Csete et al. 2016: 1427). Despite widespread and grossly exaggerated messaging by politicians, the church and the media on the horrors resulting from illicit drug use, particularly what are considered “hard” drugs, little pharmacological harm has been documented to accompany the moderate use of illegal drugs. Instead, medical professionals have suggested that treating illicit drugs with the same social policies as tobacco and dangerous foods, in addition to distribution of harm reduction materials, is a far safer, evidence-based approach (Csete et al. 2016: 1427). Out of 246 million persons around the world who used drugs in 2014, only 11 percent experienced problem drug use (U.N. Office on Drugs and Crime 2015 in Csete et al. 2016: 1431). The *Lancet*–Johns Hopkins study found, too, that the application of drug laws in societies with racial bias in policing and arrests leads to social and economic devastation for racialized communities and causes intergenerational effects (Csete et al. 2016).

Just as importantly, the criminalization of drugs is ineffective in reducing drug use or drug availability. Waging a “war” on low-level players, generally focused on poor and vulnerable Black men and women who are almost never the ones making the large-scale profits that come from the drug trade, succeeds in assuring a steady incarceration of Black bodies but accounts for “a negligible impact on the availability of illegal drugs” available on the Canadian market (CSR Report 1995: 156). Over forty years, the American government has spent billions of dollars on anti-drug law enforcement and has seen its incarcerated population grow from 300,000 to over two million people, but the number of drug users has remained relatively stable since 1988 (Alexander 2012; Robinson and Scherlen 2014). Using heavy law enforcement against minor suppliers and couriers to control or stop drug use has consistently been found to be completely ineffective (Csete et al. 2016). Indeed, medical, legal and human rights experts around the world increasingly argue against drug prohibition, instead urging a move toward the gradual decriminalization of non-violent drug crimes and the regulation of illegal drugs, as well as an end to the practice of incarcerating women for drug crimes (Csete et al. 2016). Despite growing global medical consensus on the suffering caused by drug prohibition, those who buy, sell and courier controlled substances continue to be demonized and represented as dangerous to society, regardless of their relative powerlessness in the hierarchy of profits (Lawrence and Williams 2006: 308).

The ineffectiveness of drug prohibition is now widely documented. Yet, the state has long been aware of this and has consistently ignored scientific

evidence. The result of the drug war has not been the protection of society, but the extensive caging of Black communities. Families, communities and lives destroyed or ended is a form of violence that is only beginning to be quantified by international research. Black communities continue to be subjected to the violence of surveillance and arrest, and are still being forced to spend important years of their lives behind bars, separated from family, saddled with criminal records, exposed to trauma and isolation resulting from imprisonment, all for policies that have helped and protected no one inside or outside of the Black community.

Ignorance of this reality on the part of government officials cannot be used as a justification for the continued criminalization of drugs. It is malign negligence, or worse, that enormous amounts of public money continue to be invested in law enforcement, jails and prisons, rather than invested in communities, education, treatment and health services. Decades of state support for drug prohibition in Canada would likely be viewed as “criminal” were it not for an unacknowledged but powerful anti-Blackness, alongside a total disregard that makes the lives of Black, Indigenous, the poor, drug users and/or people with mental health problems expendable. Yet, due to the lack of value for Black lives, restitution for the state violence that is drug prohibition remains unlikely.

THE DESTRUCTION OF BLACK BODIES: POLICE VIOLENCE AND IMPUNITY

The War on Drugs — and the intensified surveillance and profiling that it helped to enable — has wreaked enormous harms on Canada’s Black communities. However, Black communities are not only fearful of being stopped or harassed by the police; Black communities live in a state of heightened anxiety surrounding the possibility of bodily harm in the name of law enforcement. A genuine fear of law enforcement officers exists among many in the Black community, a response that is rational given the circumstances. The research of Frances Henry found that young Black men of any class status routinely show their hands as soon as being approached by the police out of fear of being shot (Henry 1994: 214). “Hands up, don’t shoot” is not only a chant at rallies, but continues to be a mainstay of Black fear-based responses to police interactions. In a society where many white Canadians think of the police as those who protect their security, Black people, quite legitimately, largely fear for their security in any situation that could involve the police. Parents, in particular, have expressed a genuine concern for the physical safety of their loved ones (Wortley 2006).

These fears, unfortunately, are entirely warranted. Police abuse of Black

subjects has been documented by criminologist Scot Wortley's study, which examined 784 incidents of police use of force that were brought to the provincial Special Investigations Unit (SIU) between January 1, 2000, and June 6, 2006. The findings demonstrated that Black populations face a rate of violence by police that is more than five times that of the white population, and were subject to rampant and frequent abuse with little to no access to recourse (Wortley 2006). Though a racial analysis has not been duplicated in the past decade, the number of sexual assault charges reported against police has tripled in the past ten years, the number of investigations of police abuses overall has doubled and, most notably, complaints involving injuries sustained during police interactions have increased fourfold (Gillis 2015a). Yet, despite alarming rates of police abuse and the documented targeting of Black communities, police violence and even killings continue with relatively few consequences for offending officers. The SIU has come under criticism for a lack of independence and for employing ex-police officers to investigate current police officers (Ballingall 2016). Allegations of police impunity are substantiated with hard facts: out of nearly 320 complaints in the year 2013, only four officers were charged (Gillis 2015a). The unit has come under fire for anti-Black and pro-police bias prone to exonerating law enforcement officers. The Toronto City Council, following extensive protests by Black Lives Matter Toronto, voted to review the unit through an anti-racism lens (Gillis 2016a).

The deeply ingrained fear of law enforcement officers is a rational response to the brutal reality that Black lives are taken too often by law enforcement and that these killings go largely unpunished, creating a situation in which Black lives can be taken by police officers with near-total impunity. In Ontario, a shoot-to-kill policy appears to be the driving factor in the policing of the Black community. Black activist Ajamu Nangwaya compiled a list of significant media reports on Black people shot or killed by police in Ontario, some of which are documented below. Lester Donaldson was shot to death in his rooming house in 1988 by a white police officer. The officer was acquitted, though he was later reprimanded for referring to Black persons as "apes" and "niggers" in the context of an internal police investigation (DiManno 2003 in Nangwaya 2011). Michael Wade Lawson, a seventeen-year-old Black man, had his life taken in the same year in Mississauga: he was shot in the back of the head while apparently driving a stolen car. His killers were subsequently acquitted by an all-white jury (Wasun 2008 in Nangwaya 2011). In 1989, Sophia Cook was shot in the back and temporarily paralyzed after missing her bus and riding in the passenger seat of what happened to be a stolen car; though charged, the responsible officer

was acquitted in 1994 (Wasum 2008 in Nangwaya 2011). In 1992, Raymond Lawrence was shot twice in the chest and killed by police officers who claimed he had a knife. Although no fingerprints corroborated this, the officers were exonerated (Maloney 1993 in Nangwaya 2011). Tommy Anthony Barnett, twenty-two years old, was shot to death in 1996 with four bullets fired into his chest by officers who claimed he had been unsheathing a sword (Rowley 1996 in Nangwaya 2011). In 1997, Hugh Dawson was shot nine times from three inches away by Officer Rick Shanks while unarmed, sitting in his car with a seatbelt on (Pron 1999 and Pron and Quinn 1999 in Nangwaya 2011). In 2006, an unarmed fifteen-year-old named Duane Christian was shot and killed with five bullets while driving a stolen van (Nangwaya 2011). More recent known cases involve the shooting of Jermaine Carby in 2014, an incident that arose from a “carding” stop. No charges were laid on police despite documented evidence of police tampering with evidence (including the removal for several hours of the weapon allegedly in Carby’s possession) (Gillis 2015b, 2015c). And yet another incident is that of Kwasi Skene-Peters in 2015, whose case is still under investigation (Wallace 2015). In each of the above cases, officers either faced no charges, or were exonerated of any wrongdoing.

Police killings of Black persons are not found only in Ontario. Following the death of Anthony Griffin, a Black teenager in Montréal who was shot in the back of the head and killed in 1987, it was revealed publicly that the municipal police had been placing photos of Black people over their shooting practice targets (Henry and Tator 2006: 78). The deaths of young Black men at the hands of the police and the clearing of any wrongdoing for police officers forms a pattern in Montréal. Leslie Presley, a twenty-six-year-old Black Jamaican man was killed in 1990 by the Montréal police at a downtown bar (Collectif Opposé à la Brutalité Policière 2007, henceforth COBP 2007). Fitzgerald Forbes, a Black man of Jamaican descent, died at age twenty-two in 1991 of cardio respiratory failure shortly after being arrested in Park Extension. Marcellus Francois, an unarmed twenty-four-year-old Haitian man, was shot to death with an M16 machine gun despite being unarmed and, indeed, not the man sought by police; the officer responsible was cleared of all charges (COBP 2007). In 1993, a forty-three-year-old Jamaican man named Trevor Kelly lost his life by being shot in the back by the Montréal police (COBP 2007). In 2004, Rohan Wilson, a twenty-eight-year-old Black migrant from Saint Vincent and the Grenadines, died in Montréal’s Notre-Dame-de-Grâce borough from what the coroner’s report called an “accidental violent death” caused by alcohol intoxication following a police intervention that involved six officers (COBP 2007; Bergeron

2004). Quilem Registre, a Black Montrealer, sped through a stoplight, crashed into a car and was then tasered six times by the police, dying of organ failure four days later in the hospital (*CBC News* August 29, 2008). In 2014, the police were called on Alain Magloire, a forty-one-year-old Black homeless man in the midst of a mental health crisis, because he was wielding a hammer in distress. He was first hit by a Montréal police squad car, rolled over the hood of the car, and was then shot four times by the Montréal police (*Montreal Gazette* October 17, 2014; Lalonde 2015). Bony Jean-Pierre, discussed earlier in the text, was shot in the head at close range with rubber bullets in a minor marijuana bust in 2016, and died in the hospital days later (S. Michaud 2016). None of these deaths resulted in convictions for the officers involved. Until 2016, the province of Québec had no oversight body in situations of police force; the Montréal police have been historically investigated by the Sûreté du Québec (SQ), the provincial policing body, and vice versa. This has, for years, been denounced by activists and legal experts as clear conflict of interest. Out of nearly five hundred investigations by outside police forces since 1999, only six charges have been levelled at officers (Wilton 2016). The SQ have themselves been accused of widespread racist and gendered violence: more than forty Indigenous women have so far come forward with allegations of sexual assault, abuse and being driven kilometres outside of inhabited areas to be left in the cold (Leavitt 2016). In 2016, after decades of activism as well as pressure in recent years by Black activists and a coalition of family members of those killed by the police, which was formed in 2010, a new, purportedly neutral investigation body was formed called the Bureau des enquêtes indépendantes (BEI). However, far from being independent, fifteen out of the twenty-two members of the BEI are former police employees and the supervisor of investigations, Patrice Abel, is a former investigator employed by the SQ. The group has come under fire for their lack of impartiality from legal activists, the Black community and family members of persons killed (Riga 2016; Maynard 2017). In Montréal, like elsewhere, the destruction of Black bodies and the ending of Black lives occurs all too frequently without consequences for those who are believed by most to be protecting society.

The use of force against Black persons suffering from mental instability or mental illness is of particular concern.¹ Several Black activist organizations have joined forces to call attention to the issue. In a press conference protesting the numerous recent police killings of Black persons suffering from mental distress and disabilities, the African Canadian Legal Clinic's Anthony Morgan told the press, "Racialized minorities, especially black males, are dramatically

overrepresented in incidents of police use of deadly force when confronted with a person in mental distress” (in Gillis 2015d). Research by Canadian sociologists Wendy Chan and Dorothy Chunn confirms that persons with mental health issues are highly vulnerable to violence in the name of law enforcement, particularly if they are racialized (Chan and Chunn 2014). Recent known deaths of Black persons who suffered from mental health issues are recorded, in part, in what follows: Reyal Jardine-Douglas was killed in 2010 and known by police to be suffering from mental distress. O’Brien Christopher-Reid was shot eight times and killed in 2004 amid a mental health crisis, in which witnesses stated that he had a knife but was not moving toward the officers (Grewal 2007). Michael Eligon was shot and killed while leaving a mental health facility in 2012 (Rush 2012). Ian Pryce, a thirty-year-old with schizophrenia, was shot by police in November 2013 while holding a pellet gun (Gillis 2015e). In Montréal in 2014, Alain Magloire, named above, was shot and killed during a mental health crisis. In a highly controversial killing in 2015, Andrew Loku, a Sudanese refugee and father of five living in a building leased by the Canadian Mental Health Association, was killed by the police officers who had been called to assist with his mental health crisis. Loku was holding only a hammer. One of the police officers implicated in the incident attempted to tamper with the videotape of the shooting; it was later found to have gaps in the footage (Nasser 2016). As well, the executive director of the Canadian Mental Health Association, having viewed video footage of the shooting, said the police did not attempt to perform CPR for nearly ten minutes after the shooting (Gillis 2016b). In none of these deaths was the victim armed with a gun, and in each case, the police officers were cleared by SIU investigators (though in the case of Michael Eligon, the Ontario Ombudsman accused the investigators of a pro-police bias) (Nangwaya 2011). Officers were cleared of any wrongdoing in each of the above cases, though relatives and the larger Black community continue to assert the victims would not have been shot to death if they had been white.

It is impossible to know how many more Black people have been killed at the hands of the police across Canada: the information is not released by police, their oversight unions (if they exist) or at the federal level. Ontario’s SIU does not keep race-based statistics, nor does Statistics Canada, the Toronto or Montréal police, Correctional Services or the Ministry of Community Safety (Gillis 2015b). But fears felt by persons of African descent are well justified. Black residents of Ontario are ten times more likely to be shot by the police; they are nearly one-third (27 percent) of all the deaths caused by police force and make up over one-third (34.5 percent) of all deaths caused by police shootings,

despite being only 3.6 percent of the Ontario population (Wortley 2006: 52).

Though police killings, like other forms of systemic racism, are frequently justified by invoking Black criminality and “dangerousness,” this does not stand up to scrutiny. Criminal involvement does not, by any means, provide moral justification for police killings. However, police use of force also does not correlate to rates of Black criminality: while most white persons involved in incidents of police use of force have criminal records, this is not the case for Black Canadians (Wortley 2006: 53). Instead, it is race that impacts police treatment: in one study, it was discovered that when responding to “minor offences,” police drew their weapons during arrest four times more often when arresting Blacks than any other group (Stenning 1994 in Henry and Tator 2006: 74). Black people continue to be killed by police in situations that could have been de-escalated by other means and often due to police interventions that would not even have occurred had they been white. Law enforcement officials, however, do not act in isolation from the rest of the criminal justice system, and anti-Black racism does not stop at the level of the streets but extends through to the courthouse, provincial jails and federal prisons.

FROM THE STREET TO THE COURTHOUSE

Name any essentially similar offence and the case law always seems to find it more serious when a black man commits it. (Toronto-based criminal lawyer Reid Rusonik in Rankin and Winsa 2013)

If systemic racism does not stop at the role of law enforcement officials, neither does the harm inflicted on Black lives. Beyond targeted police profiling and violence, this discrimination continues all the way up the courts. Black-white disparities can be found in pre-trial detention and release conditions, including bail and sentencing. For nearly any crime, not only are people of African descent more likely to be arrested, but they are also much more likely to be detained pre-trial, to have restrictive bail conditions and to receive longer sentencing for the same charge. In the words of Toronto criminal lawyer Reid Rusonik, “Black people go to jail for possessing and selling crack cocaine. White people who sell and use cocaine powder rarely do” (in Rankin and Winsa 2013). Unfortunately, national data is not available, but available studies find the disproportionality in the courts quite dramatic, and not only in terms of disparities surrounding crack and cocaine. In Ontario in 1994, the rate of pre-trial detention for Black people charged with trafficking and importing drugs was twenty-seven times higher than for whites. For drug possession, it was fifteen times higher. Black

persons were also found to be three times more likely than whites accused for the same crime to be refused bail and detained pre-trial (CSR Report 1995: iii–iv). This is corroborated by a 2004 study that found that pre-trial detention was far higher for Black persons, even with all other factors accounted for. The authors noted that this is particularly significant because it is during pre-trial detention that guilty pleas are often coerced, regardless of guilt (Kellough and Wortley 2004). In an analysis of ten thousand arrests for drug possession in Toronto between 1996 and 2001, Black people were almost twice as likely (38 percent) to be taken to the police station for processing than white persons (23 percent) for simple drug possession — and once processed, Black people were two times more likely to be held overnight (Rankin et al. 2002 in Owusu-Bempah and Wortley 2014: 26). In another study in Montréal, it was found that once released pending trials, there were serious disparities in the conditions placed on Black youth versus those of white youth (Bernard and McAll 2008: 12). Black persons released on bail are assigned stricter conditions, such as curfews and mandatory supervision (Kellough and Wortley in Owusu-Bempah and Wortley 2014). At the level of sentencing, white people received far more lenient sentences than Blacks convicted of the same crime, even though whites were far more likely to have a serious criminal record. For drug offences, more than half of Black people found guilty were sentenced to prison, compared to one-third of white people found guilty of a drug offence (CSR Report 1995: vii).

These disparities continue after incarceration. Black prisoners have lower parole grant rates, so are released later in their sentences than other inmates. They also receive fewer temporary absences, and despite being a lower risk of re-offending, are more likely to be held in maximum-security institutions (Sapers 2013 and 2014). Québec’s Commission des droits de la personne et droits de la jeunesse report, conducted fifteen years after the Ontario Commission’s, corroborated that serious disparities continue. The authors found that independent from the profiling practised by law enforcement officers, which feeds the over-judicialization of racialized persons, there are reasons to question the decisions made during every step of the judicial process because they may have discriminatory impacts (in the laying of charges, criminal convictions, sentencing, conditions for release, etc.) (CDPDJ 2011: 36).

It appears that xenophobia may also be a factor, and that discrimination toward Black persons deemed “foreign” may also exist at the level of the courts as well. In one study, references to country of origin, immigration status, years in Canada and “foreignness,” more generally, occurred in a third of non-bail

hearings involving Black accused, and in slightly less than one-third of bail hearings (CSR Report 1995: 224–225). The law is neither colourblind nor neutral; instead, it reflects the hierarchies already found in society. Feminist and anti-racist legal scholarship continues to find that the criminal justice system perpetuates, rather than challenges, racial and gendered stratification (Roberts 1993).

THE VIOLENCE OF CAPTIVITY: BLACK LIFE BEHIND BARS

Incarceration is a form of captivity. Besides murder by police — the destruction of the body and the ending of life — it is the ultimate deprivation of liberty that can be inflicted by the state. Prisons are not only places of profound suffering, but they also make any participation in society’s social, economic and political life impossible. The populations that make up prisons make clear the fault lines of societal devaluation: there are no federal prisons composed mostly of wealthy, able-bodied, cisgender men. As incarcerated populations grow, jails and prisons are increasingly populated with those who have been deemed disposable: Black and Indigenous communities, people with cognitive disabilities and mental health problems and people with drug addictions. Incarceration does not impact all communities equally. For Black and Indigenous communities, incarceration is merely an extension of practices of captivity that date back centuries. This reality has led Nova Scotian poet, activist and academic El Jones to state that Canadian prisons are both “slavery’s afterlife” and “the new residential schools” (Jones 2016).

Today, Canada is in the midst of an explosion of Black incarceration. Between 2005 and 2015, growth in the Black federal prisoner population went up 69 percent — among the highest of any racial group. While Black people make up 3 percent of the population, they are over 9 percent of prisoners in federal corrections facilities (Sapers 2015). Federal prisons are not the only facilities that hold Black communities behind bars at vastly disproportionate rates. Provincial facilities do not publicly publish their race-based statistics (and, indeed, some claim not to collect them), yet from available data the disproportionate jailing of Black populations is equal and often worse at this level. Criminologists Akwasi Owusu-Bempah and Scot Wortley accessed the records of some provincial jails’ race-based data by means of numerous Access to Information and Privacy requests for their 2010–2011 populations. Though each province and territory was contacted, only Ontario, Alberta, Nova Scotia and New Brunswick provided data on Black incarceration rates. Black people made up 3.9 percent of Ontario’s population, yet they made up 17.7 percent of

admissions to Ontario's correctional facilities. In Alberta, they found a ratio of 1.4 percent of the population to 5 percent of admissions, and in New Brunswick a rate of 0.6 to 2.4 (2014: 289). In Nova Scotia in 2014–2015, the Black population was 2 percent of the general population but made up 16 percent of youth jail admissions and 14 percent of adult admissions (Luck 2016). The situation appears to be even more dire in Québec, though no official records have been released. Documentarian Ronald Boisrond stated that, "in the early 80s, there were no Black inmates at the Bordeaux prison. Today, they represent about 40 percent of the population of that prison" (2008 in CDPDJ 2011: 29).

Though nominally intended to be rehabilitative, even a cursory examination of the conditions of Canada's jails and prisons makes clear that the lives of those behind bars are accorded little value and seen, generally, as disposable. Prisons create isolation — parents are separated from their children, and the price of long distance phone calls can be so exorbitant that many prisoners have no contact with the outside world. Further, people who go to jail even for short periods of time often lose their housing and jobs, becoming homeless and destitute once they are released.

Life conditions in provincial jails can only be described as malignly neglectful. Bordeaux jail in Québec, which is noted to have a vastly disproportionate Black population, was found to have horrific and inhumane conditions. It was revealed in 2012 that it was common practice to confine prisoners to their small cells for fourteen hours per day, and that the jail was infested with rats and vermin, among other unhygienic conditions. During summer renovations in one area of the basement, seventy inmates had to share one shower, and others had no shower at all (*Toronto Sun* October 13, 2012). The Ottawa-Carleton Detention Centre has recently been in the media for frequent, unwarranted physical abuse of detainees (*Ottawa Community News* July 25, 2013), and has been accused of housing prisoners in eight-by-ten-foot shower cells on mattresses on the wet floor, and keeping up to one-quarter of its population in solitary confinement (Dimmock 2016).

At the level of federal prisons, conditions continue to decline. The practice of double-bunking, in which two prisoners are placed in a cell made for one, remains endemic in male prisons due to an overcrowding that many critics attribute to Harper's carceral "tough on crime" time in office (Sapers 2012). In Ontario's Grand Valley Institution, where the large majority of federally incarcerated Black women reside (Sapers 2013), prisoners were being held in gymnasiums, with some women being held in an "interview room" that had no running water or toilets (Sapers 2012). As well, Black prisoners face

significant racial discrimination once behind bars. Prisons are permeated with the same anti-Black racism that operates in the so-called “free” world outside. Indeed, the exposure of Black prisoners to racist violence at the hands of prison guards has been documented at least since the mid-1990s. In one government-sponsored report, Black male youth reported that prison guards would watch them shower, comment on their genitals and make highly racial and sexualized comments (Commission on Systemic Racism in the Ontario Criminal Justice System 1994). More recently, Black prisoners have reported experiencing racial discrimination in accessing health services and prison employment” (Sapers 2013). Black prisoners also continue to experience high rates of violence at the hands of prison staff. Black prisoners accounted for almost 15 percent of all reviewed use-of-force incidents in 2014, far above their population of 9 percent, which led the federal correctional investigator to conclude that prison staff’s use of force is racially discriminatory (Sapers 2012 and 2015). While all prisoners are vulnerable to violence behind bars, the markedly high rates of abuse directed at Black prisoners when compared to the general prison population makes it clear that this violence is rooted in anti-Black racism.

Beyond physical violence, Black prisoners are acutely vulnerable to psychological harm with isolation practices known to inflict unnecessary suffering and cause long-lasting harm. Black (and Indigenous) prisoners face particularly high rates of solitary confinement (Sapers 2013). Canada’s use of prolonged solitary confinement, which is regularly imposed on Canadian prisoners for months at a time, has been noted by the World Health Organization to cause or exacerbate health problems and to harm the possibility of rehabilitation (Sapers 2015); it has been compared to torture by the U.N. Human Rights Council and the U.N. Committee Against Torture (Woods 2017). The practice, frequently directed against prisoners with mental health issues, has been called “the most onerous and depriving experience that the state can legally administer in Canada” by Howard Sapers (2015). For people with mental health issues, it has been known to lead to suicide (Woods 2017). Arlene Gallone, a Black woman who was held in solitary confinement in a cell the size of a bathroom stall for a total of nine months in Québec’s federal facility, Joliette Institution for Women, has accused the prison of placing her in solitary confinement for such benign instances as banging too loudly on her door or blocking the toilet (Woods 2017). To use her words, “I felt like an animal ... You do not lock a dog in cage for three months” (*CBC News* January 23, 2017). Gallone is currently undertaking a class action lawsuit against Correctional Service Canada on behalf

of every prisoner in the province who has been held in solitary confinement for more than seventy-two consecutive hours (Woods 2017).

Though incarceration itself is harmful, subjecting Black and Indigenous people, as well as people with mental health issues to solitary confinement — despite all medical and human rights evidence opposing this practice — makes it clear that prison is a site of violence, not one of healing. In the words of Black feminist and prison scholar Julia Sudbury, who has conducted research with Black incarcerated people in Canadian prisons, the very nature of prison life is immobility and fear. She writes that the experience of being imprisoned is to be exposed to authorities that choose to “administer a judicious degree of pain” on captive subjects whose every movement is subject to strict control (2004c: 154).

AGAINST PRISONS

Countries do not use prison as a direct, rational measure to reduce crime. Rather, they choose — through a complex process of ideological, moral, political and juridical negotiation — the level of pain that they are willing to inflict on their citizens. (Christie 1982 in Stevens, Stöver and Brentari 2010: 380)

Caging “undesirables” does not actually create a safer or more peaceful society. In fact, in many cases it makes this goal more difficult to attain by exacerbating, rather than directly addressing, the social, economic and racial inequalities at the root of much of what is called “criminal behaviour.” Race plays an integral role in deciding who will come to be defined as criminal (Roberts 1993), as does class, mental health and addiction: a significant majority of Canada’s incarcerated population is poor and suffering from mental health problems and addiction (Sapers 2015). Still, the underlying principle that prison remains a logical place to house those who defy the Criminal Code remains unquestioned throughout much of society. That some unruly persons must spend significant amounts of their lives behind bars remains common sense, both from those who advocate a “tough on crime” philosophy as well as those pushing for much-needed reforms. The societal investment in incarceration is significant and on the rise. Despite increasingly dire conditions, it costs \$108,376 per year to house a man in prison and nearly twice that for a female inmate, while funding for reintegration and release programs continues to be cut (Sapers 2015). Indeed, prison spending has been a priority in an era otherwise characterized largely by spending cuts; a report by the United States

Solicitor General found that money spent by states to keep prisoners behind bars has risen nearly proportionally to the drop in spending on higher education (Dobbin 1999 in Gendreau, Goggin and Cullen 1999). Numerous studies continue to show that, in terms of deterrence, preventing crime and “recidivism,” prison sentences do not work, and imprisonment does not significantly affect crime rates (Kovandzic and Vieraitis 2006 and Reiner 2000 in Stevens, Stöver and Brentari 2010; Gendreau et al. 1999). The United States Solicitor General’s analysis of fifty studies on 336,052 offenders found that prisons actually slightly increased people’s likelihood to commit crimes when compared to community-based rehabilitation, and noted that “prisons should not be used with the expectation of reducing future criminal activity” (Gendreau, Goggin and Cullen 1999). Given the rising rate of people with mental and cognitive disabilities behind bars, prisons are even less equipped to “rehabilitate” mental illnesses, and are frequently causing people further harm and making societal reintegration even more difficult (Sapers 2015).

Prisons allow society to be relieved of “the responsibility of thinking about the real issues afflicting those communities from which prisoners are drawn in such disproportionate numbers” (Davis 2003: 16). As a settler society, the legitimacy of the Canadian state to incarcerate Indigenous peoples at all has been called into question by Indigenous scholars like Patricia Monture-Angus, as, she argues, it is an imposition upon previously existing Indigenous justice systems (in Nichols 2014). Given the increasingly well-documented failures of a carceral approach to crime, a small but growing movement aimed at prison abolition is advocating less punitive ways to address social ills such as violence and addiction. Instead of investing enormous amounts of public resources toward law enforcement and incarceration, prison abolition advocates aim toward societal transformations that would radically address the roots of social ills, including racial, gender and economic inequalities. Due to limitations of scope I will not re-create their arguments here, but the works of critical thinkers such as Ruth Wilson Gilmore (2007), Joy James (2006), Angela Y. Davis (2003) and Julia Sudbury (2004), as well as larger social movements such as Incite! Women of Colour Against Violence (2006) and the Movement for Black Lives (2016) have made innovative and timely interventions about the importance of prison abolition toward attaining racial, gendered and economic justice. Given the harms that incarceration has inflicted on Black communities, it’s necessary to reimagine what genuine community safety could mean. In a world defined by rampant, growing economic and racial inequality and increasing incarceration rates, it is only by aiming toward transformative

rather than punitive forms of justice that we may begin to imagine a society in which Black communities do not rot away inside juvenile detention centres, jails and prison cells.

CONCLUSION

The agencies that together make up the criminal justice system have been afforded enormous and, in some ways, unparalleled powers to surveil and control Black movement and curtail Black freedom. As fear of Blackness is increasingly articulated as a fear of crime, state powers of criminalization continue to be consolidated and violent technologies of surveillance and punishment continue to have enormous power over the lives of Black folks. The longstanding conflation of Blackness with criminality has not only helped the state devalue Black lives, it has even justified the often-violent deaths of Black community members. Racial profiling and Black incarceration help keep in place a racial hierarchy that has dominated the Canadian landscape for centuries, and Black people with criminal records “are now as systematically excluded from mainstream Canadian life as their early twentieth-century ancestors before them” (Khenti 2014: 194).

This violent imposition upon Black people’s lives has always been contested. Since the 1980s and early 1990s, Black communities across Canada have been highly vocal against the failures of the criminal justice system and the racist intimidation and violence that has been inflicted on Black communities by the police. Toronto’s Black Action Defence Committee (BADC), formed in the wake of the police killing of Michael Wade Lawson and Lester Donaldson, as well as the shooting of Sophia Cook (Hall and Flavelle 1988; English 1994), have demonstrated an uncompromising stance against racist police violence. In the words of co-founder Dudley Laws (speaking to the *Globe and Mail*), “if police officers in Metro Toronto think that they can come into our community and shoot people in questionable circumstances and kill people unnecessarily, and no action will be taken against them, they are totally wrong” (in Wilson 1989). This organizing, though successful in many ways, was met with popular hostility and organizers were treated as enemies of the state — the mother and aunt of Lawson were even placed on a list of suspected “radicals” and subject to police surveillance, along with other members of the BADC (English 1994). Also Known as X (AKAX), who became an active Black political force in 1990s Montréal after the death of Marcellus Francois and amid anti-Black violent attacks on Black Montrealers by white nationalists, also changed the public landscape and created important discussions within Montréal’s Black communities

on the role of policing in their cities (Mugabo 2016). More recently, Black Lives Matter Toronto made international headlines by camping out for two weeks outside of police headquarters to address the death of Andrew Loku and to demand an end to the practice of carding and racial profiling (Black Lives Matter “Demands” n.d.). Further, this activism has begun to challenge more broadly the legitimacy of law enforcement and to push the criminal justice system to disinvest in police and prisons (Khan 2017, n.d.). While racialized policing and punishment has, in many ways, been designed toward maintaining the subjection of Black peoples, the Black response continues to be one of subversion, resilience and refusal. However, despite inspirational and important successes, the climate of anti-Blackness across society and state institutions has remained nearly absolute.

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