

**Authorities on the Subject: Deportation and the
confluence of violence within forensic mental
health and immigration systems**

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Abstract:

The practice of deportation for those identified with “mental illness” in Canada is one unique and telling confluence whereby contemporary conceptions, interpretations, functions of discourse, and technologies of “mental illness”, “criminality”, and “race” can be studied through the shared texts of the mental health, criminal justice, and immigration systems. These systems rely on seemingly separate operations in order to continue common violent projects of segregation, confinement, removal, the application of harm to the physical body and the identification of people as inherently dehumanized.

In this study, contemporary deportation appeal decisions documents, archival documents and secondary deportation appeals data are analyzed drawing on postcolonial theory, Gadamerian philosophy, an attention to confluence and the subjective, objective and symbolic modes of violence via Slavoj Žižek. The analysis imperils the reliance of immigration, criminal justice and mental health systems on constructions of the interdependent identities of the untreatable biomedically mentally ill, and the unrehabilitatable inherently criminal and the undeserving foreign alien Other in order to rationalize deportation. The practices and technologies of evaluation and decision making used by professionals, police, lawyers and experts are questioned for their participation in the perpetuation of historical forms of colonial violence through the enforcement of racial and eugenic policies and laws in Canada.

The historical developments of professional hegemonies, racial and eugenic laws, and direct professional practices at this confluence are interrogated for their complicity in the (re)making of the fantasy of the Canadian public, representing itself as just, fair and supportive while rationalizing violence at legislative, institutional, and professional levels. At the same time, notions of undesirability and exclusion based on race, class, ability, mental category, criminal history, or health status are reinforced. Opportunities for transformation of the identified colonial technologies and processes at the confluence of immigration, mental health and criminal justice systems are proposed through a denial of isolating individualistic identities, an appreciation of the hurtful advancement of colonial tropes and through connection to collective forms of resistance.

Dedication:

For Rowan. May you live in a world where humanity comes first.

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Chapter 1

Outlining the problem: the confluence of mental health, criminal justice and immigration in the authorization of deportation

The complexities of the mental health field are representative of the predicament of our present human condition. This complexity demands an acknowledgment of the historical, social, political, physical, and psychological aspects of people that have been created, inherited, and reproduced. The field also demands a consideration of the effects of these understandings of people as they become embedded in policies, practices, disciplines and the law. An appreciation for this confluence of aspects of the human condition is crucial for an understanding of both the foundations of our wellbeing and the sources of our suffering.

Social workers in the mental health field work in several areas including areas that require multi-disciplinary, multi-sector involvement (CASW, 2011). A recent Canadian study found that social workers “were accessed third most frequently for mental health care” (Towns & Swartz, 2012, p.215). When striving towards social justice in mental health, social workers have historically been allies to justice while also participating in historically driven structures that continue institutionalized forms of injustice (Rossiter, 2005). This unique position demands a consideration of how practices, policies and disciplines can work together to enact violence toward marginalized and oppressed groups.

The practice of deportation for those identified with “mental illness” in Canada is one unique and telling confluence whereby contemporary conceptions, interpretations,

functions of discourse, and technologies of “mental illness”, “criminality”, and “race” can be studied through the shared texts of the mental health, criminal justice, and immigration systems. These systems rely on seemingly separate operations in order to continue common violent projects of segregation, confinement, removal, the application of harm to the physical body and the identification of people as inherently dehumanized.

The decision documents of the Immigration and Refugee Board of Canada provide exemplary records of deportation decisions for people identified with mental illness who have become involved with the criminal justice system. They are the only known public records on deportation in Canada and include the reflex database of the Immigration and Refugee Board and the cases that go on to the Federal Court of Canada (Chan, 2005). This research focuses on an examination of the decision documents from the Immigration and Refugee Board’s Appeal division to answer my research question- How does an understanding of confluence at the site of criminal justice, immigration and mental health systems illuminate the construction, authorization and legitimization of mechanisms of state violence through the example of deportation?

The criminalization and deportation of racialized people identified with mental health issues.

In 2010, two reports were published on the significant problem of deportation for people identified with mental health issues. The Schizophrenia Society of Ontario’s report highlights that the immigration consequences of the criminalization of people identified with mental illness have not been adequately explored in Canada (Schizophrenia Society of Ontario, 2010). The report also advocates for a fair and just process for addressing issues pertaining to criminal justice, immigration and mental

health (Schizophrenia Society of Ontario, 2010). A Human Rights Watch report was published by the American Civil Liberties Union also in 2010. The report “Deportation by Default: Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System” outlines multiple systemic injustices that occur within immigration and criminal justice systems for people identified with mental health issues who are deported from the United States (Human Rights Watch, 2010). The report also advocates for fair processes and condemns the use of extended incarceration. The authors indicate that there is a lack of research in this area and that, “while no exact official figures exist, the percentage of non-citizens in immigration proceedings with a mental disability is estimated to be at least 15 percent of the total immigrant population in detention—in other words, an estimated 57,000 in 2008” (Human Rights Watch, 2010, p.2).

The criminalization of those identified with mental health issues (commonly understood as the disproportional representation of those diagnosed with mental illness in the criminal justice system due to lack of supports associated with deinstitutionalization), has been an ongoing problem in Canada as correctional facilities often have more people identified with mental health issues than the general population (Fazel & Danesh, 2002; Peternelj-Taylor, 2008). A recent study found that people identified with mental health issues are represented three times more in correctional facilities (Olley, Nicholls & Brink, 2009). In a report by the Canadian Mental Health Association, it was noted that “between 2001 and 2002, the number of clients with mental disorders who appeared before the Toronto courts rose from 1800 to 2361- a 31 percent increase. In 2004, 39 percent of these cases involved Class 1 offences [crimes considered the least serious]; 42 percent

Class 2; and 17 percent, Class 3” (Lurie, 2009, p.3). There are enough people identified with mental health issues on any day in Toronto area jails “to fill a psychiatric hospital”, 300-400 people (Lurie, 2009, p.3).

As the Schizophrenia Society of Ontario Report documents, in Canada, there is an over-representation of people of colour in the criminal justice system (Schizophrenia Society of Ontario, 2010). For Canadians of African descent, the rate is three times higher than for white Canadians (Farha, McKay, Neven, & Porter, 2009, cited in Schizophrenia Society of Ontario, 2010). As well, “black males are more likely to be stopped, detained, and imprisoned upon conviction” (Commission on Systemic Racism in the Ontario Criminal Justice System, 1995, cited in Schizophrenia Society of Ontario, 2010). Systemic racism, over-policing, and racial profiling within law enforcement and judicial systems is common among “ethno-racial groups” (Interim Report of the Commission on Systemic Racism in the Ontario Criminal Justice System, 1994; Jiwani, 2002; Ontario Human Rights Commission, 2003; Wortly, 2004, cited in Schizophrenia Society of Ontario, 2010) .

While the Schizophrenia Society of Ontario report was a discussion of deportation, there is no mention of what happens to aboriginal Canadian men. It has been established that this pattern of overrepresentation of racialized groups in correctional facilities in Canada also includes aboriginal men and women (Roberts & Doob, 1997). As Roberts and Doob reported in 1997, Ontario census data revealed a trend in admission rates for black males in Canada to be “6,796 per every 100000 people compared to 1,326 for whites and 3,600 for Aboriginals” (Roberts & Doob, 1997, p.481).

As a very recent report on federally sentenced women with mental health issues in Canada highlighted, “As of August 2010, there were 512 women serving federal sentences in Canada, of these, 34% (174 women) were Aboriginal” (Bingham & Sutton, 2012, p.5). While there is no mention of black women in the report, Raimunda Reece’s 2010 dissertation entitled, *Caged (No)Bodies: Exploring The Racialized And Gendered Politics Of Incarceration Of Black Women In The Canadian Prison System* details that black women in Ontario specifically are admitted to prison at a rate that is 7 times the admittance rate for white women (Reece, 2010). The rates of admissions for black women in Ontario prisons is also increasing (Reece, 2010).

Also, researchers for the Department of Health in England and Wales reviewed Community Treatment Orders in the U.S., Canada, New Zealand, Australia, Israel, and Scotland as part of Department of Health project to review the Mental Health Act. Their international review revealed “that relative to the proportion of the general population comprised by their ethnic group, most ethnic minority groups might be over-represented amongst CTO recipients” (Churchill, R., Owen, G., Singh, S., & Hotopf, M., 2007, p.106).

As Barbara Hudson describes, “the general charges against conventional western criminal justice systems in regard to race and gender are that they fail to protect women and members of minority racial or ethnic groups from harms that they suffer in virtue of their gender and/or race/ethnicity and that they discriminate by over-penalizing offenders to the degree that they are removed from the characteristics of white masculinity”

(Hudson, 2006, p.30). The practice of deportation of racialized minorities identified with mental health issues is dependent on the structures of criminal justice systems.

In 2009, a law student at York University wrote a Major Research Paper entitled, “Sanism and Canadian Immigration System” (Perryman, 2009). In the short paper (26 double spaced pages of written text), Perryman sheds light on *some* of the structural and historical concerns at the intersection of immigration and criminal justice systems for people diagnosed with mental illness in Canada. In her conclusion, Perryman begins to make the connection that, “The link between mental illness and deportation is not unlike the link between visible minorities and offenders and deportation. What is unique is the lack of attention that it receives” (Perryman, 2009, p. 26). Perryman also recognizes that,

the decisions coming out of the Immigration Appeal Division have been disjointed and inconsistent, reflecting the conflict between the historical feelings of those with mental illness and reality. Hence, those with mental illness are faced with a regime, overwhelmed with contradictions and unresolved discrepancies, consistent with Perlin’s sanism² (Perryman, 2009, P 26).

The systems of identification, incarceration, and removal have a long history of discourses embedded in Canadian policies and law that utilize ideas of perceived genetic, racial, gendered and sexual difference to control for “types” of people rather than offering support to these populations (Dowbiggin, 1997; LaViolette, 2004; McLaren, 1990; Menzies, 1998; Chadha, 2008). Since the late 1800s and early 1900s, the deployment of

² “Perlin argues that one of the sanist myths circulating in our society is that if a mentally ill person refuses medication for their illness, that decision becomes an accurate predictor of future violence and the need for hospitalization, or in the context of immigration law, deportation” (Perryman, 2009, P. 15).

dehumanizing discourses (including racial, eugenic, ableist and mentalist discourses³) have been used in Canada, to rationalize deportation, to refuse of entry to Canada and thus to advance colonial nation building within Canada (for aboriginal peoples) while restricting access to social supports (Dowbiggin, 1997, McLaren, 1990; Menzies, 1998; Chadha, 2008; Roman, Brown, Noble, Wainer, & Young, 2009). This thesis exposes the concrete operations of power which enact violence rather than offer support.

As a Canadian crime study of immigration status appeals cases revealed, racialized immigrants were deported more often than immigrants from Anglo-European countries (Chan, 2005). While the time period of analysis is not made explicit in the study report, it appears from the reference section that cases were analyzed from approximately 1995-2001. The top representing countries based on the number of appeal cases were Jamaica, Iran, India, Vietnam, Guyana, and Trinidad (Chan, 2005). The study illustrated that concerns around criminality rationalizes the ongoing regulation and surveillance of immigrants and the threat of deportation ensures their compliance (Chan, 2005).

Robert Menzies details his analysis of “provincial and federal government records and correspondence, institutional documents, print media clippings and patient files” to chronicle “the role of British Columbian provincial authorities and medical practitioners in engineering the deportation of psychiatrically disordered and cognitively disabled immigrants out of the province between Confederation and 1939” (Menzies, 1998, p.

³ I argue in this thesis that these are not separate discourses but have been historically forged together.

135). Menzies argued “that the deportation of 'insane' and other 'undesirable' immigrants was nourished by the flood of nativist, rac(ial)ist, exclusionist, eugenicist, and mental hygienist thinking that dominated British Columbian and Canadian politics and public culture throughout this 'golden age' of deportation” (Menzies, 1998, p. 138).

Jay Dolmage has demonstrated how the rhetorical construction of disability *and* race were developed through the policing and limiting of immigration at Ellis Island from the early twentieth century into the 1920s. Specifically, Dolmage argues that through processes of medical inspections and eugenic selection,

“that Ellis Island, as a rhetorical space, can be seen as a nexus—and a special point of origin—for eugenics and the rhetorical construction of disability and race in the early twentieth century. Importantly, constructions of class, sex, and sexuality were also always part of this racializing and normalizing process” (Dolmage, 2011, p. 28).

From Menzies and Dolmage, the collaboration of medical professionals, immigration regulators, the policing of borders and the use of racial and eugenic technologies (such as identification and medical inspection) are revealed for their common purposes for colonial nation and population building.

Remedies of violence

In the recent past, inequities in mental health services (that fail to serve minorities and marginalized groups) have been addressed as an issue of “cultural competence” or a need for more “evidence-based practice” (Whaley & Davis, 2007; Hernandez, Nesman, Mowery, Acevedo-Polakovich, Callejas, 2009). Researchers have highlighted some of the problems within these solutions including the methodological, epistemological, and political issues that make the project of cultural competence suspect for essentializing

culture and having impractical conceptual understandings (Aisenberg, 2008; Whitley, Rousseau, Carpenter-Song, & Kirmayer, 2011). Without an attention to the embedded Eurocentrism within critical approaches to mental health (which includes a lack of attention to colonization worldwide that relied on technologies of mental hygiene, eugenics, diagnostic categorization and hierarchies of professionalized knowledge), an opportunity to perceive the violence within these solutions and the genealogy of their basis in modernizing, eugenic, racial thinking is confined.

These contemporary solutions leave the systems intact that seek to taxonomize, finalize and encapsulate people into a general type, see them through the lens of difference, develop disciplines, professions and expertise on the “Other” who is always represented in terms of lack. These contemporary solutions also seek to control difference while at the same time working to identify the existence of the Other, the risk of the Other and the threat of the Other, thereby constituting its very representation, and constructing the violent Other through the production of discourse. As highlighted by Gayatri C. Spivak, the experiences of certain groups are often rendered invisible through the historical process of systematic oppression and hegemonic writing of history by social elites (Spivak, 1988). The voices of these subaltern groups are then excluded through discursive practices within institutions, disciplines, and academic knowledge. This research recognizes the violence within these forms of oppression and aims to privilege the subjugated perspectives and experiences of marginalized groups through an acknowledgement of the violence experienced and claims forwarded by psychiatric-consumer-survivors or mad people with particular respect to racialized minority groups.

Some of the most violent forms of injustice are often misrecognized or unrecognized in our current mental health system even though the system itself is the current perpetrator of this violence. Harmful and forced treatments, forced confinement and the disproportionate deportation of racialized minorities who are diagnosed as mentally ill continue to be regular practices of the mental health system in collaboration with the criminal justice, and immigration systems. These systems have inherited a common ancestry that must be considered within the context of the projects and outcomes of colonization in order to be appreciated for their capacity for violence. The legacy of eugenic thinking, racial hierarchy, and colonial forms of violence become apparent when the common civilizing and respectabilizing mission of colonization is brought to the fore for consideration at the mutually constituting space of criminal justice, mental health, and immigration. **In this thesis, I argue that the disavowal of historical and political considerations and the technologies that remove (or appropriate) the voice of the Other within the forensic mental health system renders the violence of these erasures, their effects, and their participation in neo-liberal and colonial projects- invisible.**

Research on race and mental illness appears to imply that “immigrants” and racialized minorities are “more prone” to mental illness and experience more discrimination in terms of access mental health services (Chakraborty & McKenzie, 2002). This occurs due to a tendency in mental health research to reconstitute representations of racialized minorities as distinct from the core of society (Bhui & Sashidharan, 2003). This process can reinforce ideas of racial difference by focusing on

individual psychological differences rather than how power disparities operate (Sashidharan, 1993). A critique of the categorization processes of biomedical diagnosis, the forms of treatment applied, the confluence of mental health, immigration and criminal justice, as well as the historical and political contexts of these issues remain excluded from the research. Experiences of racism are expressed as inequality in access to services, and over representations in the mental health and criminal justice systems are attributed to the racism inherent in the diagnostic process, the racism of mental health institutions, or the results of racialized minorities living in a racist society (Fernando, 2010; Fernando, 2003; Fernando, Ndegwa, & Wilson, 1998; Kaye & Lingah, 2000; Metz1, 2009; Thompson, 2005).

An analysis that pays insufficient attention to the broader social, historical and political contexts of the development of mental health, criminal justice and immigration systems for colonial and imperial projects that were dependent on unjustified relations of recognition precludes an analysis of the use of dehumanizing discourse, the deployment of racial and eugenics ideas, the participation of disciplines and professionals, and the production of totalized ideas of difference within the systems themselves. As Nadia Kanani has highlighted, “there are few studies that consider the intersections between race and madness, and fewer still that locate these intersections within the social and political contexts of colonization” (Kanani, 2011, p.1). **This research will extend these analyses to attend to how mental health, criminal justice and immigration systems participate in the continuation of colonial and imperial projects through the institutional expression of social disrespect (such as dehumanized referents**

including those with racial/eugenic implications). This thesis is a contribution to the history of the present.

Charting the course

In the chapter 2, I outline suggestions for an extension to the contributions made in the critical mental health field. When we take a critical look at the history of biomedical perspectives in mental health (i.e., notables include: Foucault, Laing, Szasz, Basaglia & Ingleby) and the highly influential contributions of those who identify with and/or ally with the psychiatric-survivor, consumer-survivor, ex-patient, or mad movements (such as: Judi Chamberlin, Irit Shimrat, Leonard Roy Frank , Bonnie Burstow, Geoffrey Reaume and Don Weitz) we can appreciate the many exposed epistemological, methodological, and ethical issues that (re)produce violence. What is often left uninterrogated is the reliance on a Eurocentric conceptualization of history within articulations of struggle and when attending to the political and social contexts of critique. The effect of this enduring Eurocentrism is often an inattention to the complicit influences of colonial and imperial projects on the practices and technologies of dehumanization, taxonomization, and the establishment of human hierarchies to rationalize violence through the implementation of racial and eugenic rationale.

With regards to the specific critical mental health literature devoted to racialized groups and the mental health system or the forensic mental health system, disparities and racist practices are often noted. What remains absent is a synthesis of a postcolonial analysis with a critical race perspective (understood as a confluence) that questions the practices, processes and technologies of difference

and violence that become institutionalized in systems *while also* acknowledging the material realities for historically constituted marginalized groups. When synthesized, the potential for transformation becomes apparent within subjugated stories, practice and positions of resistance (i.e. Homi Bhabha’s ideas of hybridity, mimicry and ambivalence⁴).

Rather than turning to the suggestion of developing cultural competence, or excavating indigenous or subjugated knowledges as “alternative treatments” in mental health systems, a synthesis of postcolonial theory and critical race theory permits an appreciation of *cultures* within their historical contexts as *cultures of imperialism* or *cultures of dominance and subjugation* (qua Said, 1994)⁵. This synthesized analysis allows for a refusal to accept solutions such as those that propose that “anti-racist” and “psychotherapy” can be commensurate. In a synthesis or confluence analysis technologies and disciplines such as psychotherapy are held as complicit in the formations and advancement of a normative subject (often centered as a white, Christian, able bodied, minded, heterosexual, cis gendered, male, speaking the King’s English,

⁴ See Homi Bhabha, “Of Mimicry and Man: The Ambivalence of Colonial Discourse,” *October* 28 (Spring 1984): 125-133. Mimicry is explored as a complex representation of the colonizer for multiple purposes including self-preservation of identity. Hybridity is explored in the colonial context for its affront to essentialization and ambivalence is described with respect to the colonizer’s position toward the colonized as a place for disrupting colonial binary relation of subordinate Other and colonizer.

⁵ See Said, E. W. (1994). *Culture and imperialism*. London: Vintage. Edward Said complicated the idea of culture by connecting the idea of its development to its use value in colonial and imperial projects. The idea of culture was often bound to a process of categorization and essentializing that distanced one culture from another within a colonial or imperial project. Cultures are therefore positioned hierarchically in their essentialized encapsulation as dominant, subordinate. Becoming competent with a culture or appropriating cultural practices as “alternative treatments” are then always tied to colonization, imperialism and therefore to the establishment of racial hierarchies as well.

compliant with the law, etc.). The formations of this normative subject were/are of course dependent on identifying himself in relation to the Other, often at work to delineate himself by what he is not, generating an image of the savage, the uncivilized, the mad, and those deserving of violence.

In chapter 3, I overview the contemporary interdependent policies and laws of the mental health system, the criminal justice system and immigration system relied on to accomplish deportation. By examining the Mental Health Act, the Criminal Code of Canada, and the Immigration and Refugee Protection Act, a position of authority is established through the validating commitment of each respective Act to its function within its own specialized boundaries of knowledge and purview. Functionally and practically, they work together through the complexities of the forensic mental health system that is resistant to the voices, interrogations or interpretations of those who are not legal, medical, or immigration authorities.

Chapter 4 seeks to surface a conceptualization of violence capable of engaging with the complexity of historical, contemporary, and seemingly separate issues of violence within the construction, legitimization, and authorization of deportation for those identified with mental health issues in Canada. In order to recognize the historical violence embedded in contemporary practices and technologies or the violence institutionalized within professional discourses, within law, and governing policies, we must see the confluence of violence as an interdependent process. A concern for the violence of abuse, war, sexual violence, collective violence and state violence (referred to as subjective violence by Slavoj Žižek) must also acknowledge the violence that is social,

political, and economic, while appreciating the violence within the institutions and laws that through their contributing professions and knowledge authorities, (re) lay the groundwork for violent means to achieve violent ends (referred to as objective violence by Slavoj Žižek). This must then also consider the everyday practices and technologies that permit violence to continue while resisting inquiry, and transformation (referred to as symbolic violence by Slavoj Žižek). In order to achieve such a conceptualization, I convene contributions from theorists on violence that have attempted to describe the nuances, tensions and complexities of violence.

Through an exploration of various relevant and important theoretical works on violence, I argue that we can appreciate the capacity of Slavoj Žižek's conceptualization of violence (2008) to accommodate the necessary analyses of physical violence, structural violence (including economic relations and social relations) (via Karl Marx, Fredrich Engels, Franz Fanon and others), the day to day forms of violence (as Catharine MacKinnon describes through her examples of Marriage and Rape), epistemic, cognitive and rhetorical forms of violence (described from Mohandas K. Gandhi). We can also appreciate the capacity of Žižek's conceptualization to accommodate recognition of violence as products and processes (Lawrence & Karim, 2007, p.12), as human creations, relations of power (via Michel Foucault), and modes of domination (from Pierre Bourdieu), the cultural and social factors of violence (*qua* Amartya Sen), and the dangers of violent means to achieve unpredictable ends (pace Hannah Arendt). Via Žižek there is also the capacity to include a recognition of the violence resulting from the problem of identity requiring an Other or difference in order to exist (via William E. Connolly).

Chapter 4 also deliberates on oppression analysis. Complex issues relating to oppression are often approached through an intersectional analysis that understands that various forms of oppression are targeted at certain groups by virtue of their identification by race, class, age, ability, gender, sexual orientation, religion, language, etc.. Intersectional approaches often describe one or more “types” of oppression (i.e., racism, heteronormativity, mentalism, ageism et cetera) working interrelatedly or together depending on the identity categories to which a person or group is understood as belonging. Criticisms of this approach have highlighted its lack of attention to hierarchy, to relations of power and the formation of subjectivities, and an overreliance on identities or subjectivities (Carbado, 2013; Nash, 2008; McCall, 2005; Heron, 2005). Some scholars have suggested a systemic analysis that looks at interlocking systems of oppression or a matrix of domination to reveal one historically related system and how they need and secure one another hierarchically (Collins, 1991; Nash, 2008; Heron, 2005; Razack, 1998).

An ongoing problematic within such approaches (here mentioned together only by their common reliance and reproduction of categories of identity/difference or systems of domination/oppression/privilege that are discursively delineated as separate in analyses that perceive them as mutually constituting, interlocking systemically or intersecting individually) is the propensity to rely on predetermined analytical systems of oppression interlocking or aspects of identity intersecting.

This reliance exposes an ongoing tendency to resist transformational analytic perspectives that permit an engagement with social issues without a reliance on systems

or relations or identities of difference that were forged through violent means for colonial and imperial projects. I suggest that it is possible to consider the material effects of segregation, oppression or violence that is targeting delineated groups without requiring the identification technologies of difference (including analytical categories named upon difference i.e. racism, patriarchy, ableism, sexism, classism, heterosexism, ageism), or the (re)establishment of hierarchies to advance a position of social justice or any ethical claims for recognition, redistribution or reconciliation. Although analyses of interlocking systems of oppression are useful, in some instances, a directed analysis toward the processes and technologies of difference rather than a systemic analysis can help **to reveal a project or purpose** that has been overlooked in the analyses of the workings of power or oppression. For example, the project of eugenics, and the systems of sanism and mentalism are often overlooked for their involvement within systemic analyses of oppression. The project of eugenics can never be separated into race, ability, mental illness as they were all products of a project delineating conceptualizations of undesirability based on perceived blood or genetic ranking and classification. There is no system of racism or ableism or mentalism that is ever distinct or separated from this history in order for them to be analytically interlocked for analytical purposes capable of analyzing any neo-eugenic project within colonial enterprise. Mental health, criminal justice and immigration systems have also been historically bound to each other and for this study; an analysis of these interlocking systems is not the focus. In this study, an attention to confluence focuses on the common practices and technologies within these

systems across temporal periods to reveal relations and operations of power and their common project.

An analysis of confluence is offered as a departure from an intersectional or interlocking analysis in that a confluence is never static, no part is completely distinct from another, and there are multiple perspectives from which one can examine or trace the same idea, system, factor or influence. Confluence demands a historical consideration, an appreciation of the temporal. Imagine that no cubes of a matrix, spheres of intersecting difference or systems that interlock can remain static. Imagine that their relations are fluid and therefore time must always be an aspect for consideration. An appreciation of confluence acknowledges that all categories and systems of difference are suspect and focuses or redirects our attention to their common projects as well as their resulting fields of knowledge, practices and technologies. An analysis of confluence also acknowledges identity/difference as complicit within and a product of historically perpetrated violence. When our methodology is commenced with a respect for complexity, we also commence with an appreciation for representations that are historically produced, our own historically influenced interpretations, the functions and powers of discipline specific discourse, the contours of a set of social relations (rather than the relations among different social groups themselves), historically developed systems *and* the technologies that (re)create hierarchical structures, as well as the interdependent set of hegemonic knowledge bases and practices, and governing processes. While the term confluence has been used as a guiding concept to study complex issues elsewhere (Joe, 2000; Rix, 2000; Sung, Mellow & Mahoney, 2010; Press

&Tanur, 1991; Dickerson, 2008; Phillips, Leathers & Erkanli, 2009), the above metaphor tracing the operations of power across temporal periods, within social relations, discourses, through the establishment of hierarchies and hegemonies and governing processes to reveal a project is my own contribution.

In Chapter 5, we look specifically at the colonial practice and technologies of violence and difference at work at the confluence of mental health, criminal justice and immigrations systems. Here the intricate technologies and processes required for Orientalism are recognized as dividing practices and gendered discourses (re)deployed at the confluence of immigration, criminal justice and mental health systems. Also, the colonial practices and violence of erasure (the elimination of voice or aspects relevant to any consideration of a person including their histories, and circumstances), of appropriation (of acts of resistance as “evidence” used for the constructing of identities worthy of violence, and for the rationalization of positions that legitimize violence) and the processes of dehumanization are explored for their use value in colonial and imperial projects. The establishment and implementation of professional hierarchies and disciplinary hegemonies at the confluence of immigration, criminal justice and mental health are interrogated for their imbrication with and reflection of the establishment, and reproduction of human hierarchies and hegemonies of knowledge and authority. These practices, policies and technologies are also challenged for their complicity in the remaking of North-South divisions, their participation in the reinforcement of ideas of nationalism and the utilization of moral and ethical arguments for the justification of atrocities.

In Chapter 6, I describe the methods used in this study and argue for the necessity of a *post-colonial analysis of confluence*. This research aims to explore the confluence of discourses and practices in the mental health, criminal justice and immigration systems in Canada that have contributed to how deportation (understood as a mechanism of state violence) is framed (constructed) by colonial, racial and eugenic discourses/practices. In order to explore how violence as described by Žižek operates, a post-colonial theoretical approach drawing on theories of violence and an understanding of confluence, will be relied upon.

From this vantage point, I also describe this study's focus on historical continuities by attending to the temporal (that which is dynamic and changing and that which is continuous yet carried through time). I outline what is drawn on (partially) from Foucaudian genealogical analysis and how this method departs from this. I also describe how the methods used in this study attend to material continuities (how projects of nation building relied/rely on eugenic and racial knowledge formations and disciplinary processes and laws) through an attention to processes that discursively frame people to construct, legitimize and authorize violence. By acknowledging that all our interpretive and discursive structures are subject to historical influence, it is also pertinent that we also disclose the *horizon* of these interpretations. As Hans-Georg Gadamer made very clear in his magnum opus, *Truth and Method*, every person has a historically effected consciousness making claims to objective knowledge impossible. Through our concurrence with this position, we can appreciate that all vantage points are partial, contingent, and subject to representation and interpretation. The horizon of interpretation

in this study is committedly focused with an attention to the levels of analyses and contribution provided post-colonial theory.

The method of a post-colonial analysis of confluence is described in application to the contemporary decision documents of the appeals division of the Immigration and Refugee Board of Canada, both contemporary and archival policies and laws, as well as archival correspondence relating to mental health, criminal justice and immigration practices that support deportation for those identified with mental health issues, non-Canadian citizens and involved with the criminal justice systems.

In chapter 7, archival documents including professional, administrative, and government correspondence resurface the practices of relying on racial and eugenic rationale to control for “undesireables” within Canadian practices, policies and law. Archival documents pertaining to the historical use of prison gaols for the detention of undesirables by the Department and Immigration and Colonization (1919), the practice of deportation of “hoboes”, “tramps”, and “undesireable aliens” (1915), and the designation of Ontario hospitals for the insane as immigration stations (1927) depict the continuation of processes of colonial nation building at the confluence of criminal justice, immigration and mental health systems. These examples illustrate the not-so peculiar practices at the confluence of immigration, mental health, and criminal justice systems that permit the use of violence through the selective referencing of law and authoritative texts, the exclusion and denial of racial and eugenic rationale (when not provided for in law), and the portrayal of abuses of power and authority as provided for within the discretionary authoritative powers of the state. Also exposed is the practice of delineating an idea of a

Canadian identity, one forged upon a devaluation of those whose characteristics are encapsulated as inferior, costly, threatening, or undeserving. While these archival examples provide a unique perspective at this confluence, they also provide an opportunity for inquiry into the practices of figures of authority, a perspective focused on the violence of professionals, organizations, and governmental structures. While individually they contribute an analysis of individual actors and decision makers, together they demonstrate the cooperation and interplay of criminal justice, immigration and mental health systems for common imperial and colonial projects.

Chapter 8 details the cases and case data from the appeals division of the Immigration and Refugee board and cases that go on to the Federal Court of Canada analyzed in this study. These documents are the only known public records on deportation and were retrieved from the Canadian Legal Information Institute database and the Federal Court decision database. These cases provide both a representation of the technologies, practices and laws at work at the confluence of mental health, immigration and criminal justice systems specific to deportation in Canada while also depicting unique and powerful act of resistance to systems of dehumanization, identification, incarceration and removal in Canada. The analysis of the descriptive data for the 75 cases matching the criteria (those appeal cases for deportation for those identified with mental health issues) from 2001-2011 (the most complete and recent years for analysis at the commencement of this study), reveals the disturbing prioritization of racialized countries for deportation. This descriptive data had yet to be analyzed or shared prior to this study. The length of time people who were fashioned for deportation lived in Canada was

seldom a decision impacting factor. Also, access to psychiatric treatment was rarely an outstanding issue for the people in these cases as most had several years of affiliation with biomedical psychiatric treatment prior to their index offences. The ideas of fair procedures or due process are also held suspect when we see that an overwhelming majority of cases result in decisions for either deportation or the imposition of heavy restrictions, confinement, forced treatment and reporting requirements. In order to facilitate the reading of these complex cases, I provide in this section an overview of the Immigration and Refugee Board and the Appeals Division with respect to deportation decisions.

In Chapter 9, I offer an analysis of a representative selection of contemporary decision documents of deportation appeals cases from the Immigration and Refugee board. The post-colonial analysis of confluence exposes the ongoing reliance on notions of the biologically inferior or *untreatable*, the *unrehabilitatable* criminal, and the *undeserving alien*. These themes reproduce a focus on the individual in biomedical terms that redirect responsibility solely toward the individual, a notion of inherent criminality, dehumanized and deserving of punishment, and a reproduction of the Other represented in terms of lack, who is not “one of us” or deserving of our support or care.

The analysis also reveals the necessity of the mental health system, the criminal justice system and the immigration system to present as independent, objective and judicious institutional process while clandestinely acting in concert to resist appeals for adequate care, safety or a consideration of external factors. This nuanced interdependency uncovers the confluence of violence, identity/difference and systems of

oppression as contemporary manifestations of the legacy of colonial and imperial professionals of authority, the establishment and use of disciplinary hegemonies, and the discretionary manipulation of law to construct a dehumanized subject worthy of legitimized violence or expulsion. The end result is the continuation of violent racial and eugenic systems, technologies and practices of population control and nation building, (re)producing ideas of the savage, mad, uncivilized Other and the pristine, civil, self.

In the concluding chapter, we examine the implications of deeply hurtful and intergenerational forms of racialized and eugenic violence within professional practice, disciplines, policies, law, and within the operations and technologies of contemporary institutions. The use figurative language to represent contemporarily accepted forms of biologically inferiority, inherent unrehabilitatable criminality, or to identify someone as an undeserving alien are no less violent than literal deployments of these meanings as their (re)produced outcomes are the same: a denial of care, responsibility, and humanity. In this study we will see the use of very particular colonial tropes for the constructing of identities of dehumanized difference and the reliance on racial and eugenic rationale to provide the authority for and legitimization of violence. These deeply historical interdependent processes revealed at the confluence of mental health, criminal justice, and immigration systems may have us question our conceptions of progress or advancement, of anti-oppressive or anti-racist proposals for their complicity in the continuation of the production of ordered subjects, a reliance on old colonial machinery, and the (re)positioning of authority and legitimacy through violence and difference.

Chapter 2

An Addition to Critical Mental Health literature:

The field of critical mental health has a wide array of historical and contemporary contributors that is ever expanding. Although there are a great number of commonly appreciated fundamental epistemological contradictions, the Eurocentrism within critical mental health often results in the marginalization of attention to colonization and race. When appreciated, this level of critique has the potential to share a dynamic historical critique that will be incommensurable with technologies and practices that seek to maintain their hegemony by appropriating the discourse of resistance into traditional biomedical, individualized models of surveillance, and exclusion.

In this chapter, I offer suggestions for an extension to the contributions made in the critical mental health field. When examining the critical history of biomedical perspectives in mental health including the contributions of Foucault, Laing, Szasz, Basaglia & Ingleby, as well as the highly influential contributions of those who identify with and/or ally with the psychiatric-survivor, consumer-survivor, ex-patient, or mad movements (such as: Judi Chamberlin, Irit Shimrat, Leonard Roy Frank, Bonnie Burstow, Geoffrey Reaume and Don Weitz) one can appreciate the many exposed epistemological, methodological, and ethical issues that (re)produce violence. I challenge the tendency within critical mental health literature to rely on a Eurocentric conceptualization of history within articulations of struggle and when attending to the political and social contexts of critique, is challenged for its preclusion of a historical attention to colonization. The effect of this enduring Eurocentrism is often an inattention

to the complicit influences of colonial and imperial projects on the practices and technologies of dehumanization, taxonomization, and the establishment of human hierarchies to rationalize violence through the implementation of racial and eugenic rationale.

A note on terminology: The mad, madness and sanism

For people who have experienced the psychiatric system, the terms, “consumer” and “survivor,” often joined, as in consumer/survivor, and become among the more well-known forms of self-definition. “Consumer,” is a term that implies choice and autonomy in treatment, “an early demand of antipsychiatry activists, but with a significant difference—people who identify as consumers want to work for reforms from within psychiatry and accept the medical model of mental illness” (Reaume, 2002). The term psychiatric- survivor was initially identified with an antipsychiatry perspective, rejecting the concept of mental illness and wanting to replace psychiatry with survivor-run alternatives in the community (Reaume, 2002).

The term *mad* has been used “as a generic name for the whole range of people thought to be in some way, more or less, abnormal in ideas or behaviour” (Porter, 1987, p.6). *Mad* is used when referring to the experiences and plight of peoples deemed mad throughout history. The concept of mental illness, psychiatric disturbance, or insanity often apply to more recent societal constructs or differences in behaviour or ideas. As Roy Porter describes, “Madness may be as old as mankind (sic). Archaeologists have unearthed skulls dated back to at least 5000 b.c. which have been trephined or trepanned—small round holes have been bored in them with flint tools. The subject was

probably thought to be possessed by devils which the holes would allow to escape”
(Porter, 2002, p. 10).

In *Madness and Civilization*, Michel Foucault outlines the historical and cultural developments that constructed *mad* people as a threat to the civilized and their need to be confined for moral and economic reasons (Foucault, 1965). According to Foucault’s historical analysis, madness was at one time a liberated existence, free from the technologies of identification that reify difference and justify confinement (Foucault, 1965). Dale Peterson, Roy Porter, and others have used the term when referring to histories of madness from the perspectives of *mad* peoples who have historically been deemed *mad* (Beresford, 2000; Peterson, 1982; Porter, 1987; Reaume, 2006). The use of the term *mad* has been reclaimed to acknowledge the experiences and voices of mad people without invoking (thereby resisting) the contemporary and often anachronistic psychiatric diagnoses such as schizophrenia, bipolar disorder, et cetera. The use of the term also acknowledges those who have experienced being deemed *mad*, confined, exiled by the violence of difference and goes beyond the confines of defining mad people solely in terms of their relationship to psychiatry, i.e., patient, ex-patient, consumer, survivor etc.

The field(s) of professional social work and social work education have been criticized for their complicity with the medical model thereby participating in *sanism* (the “systematic subjugation of people who have received ‘mental health’ diagnoses or treatment”). (Poole, Jivraj, Arslanian, Bellows, Chiasson, Hakimy, Pasini, & Reid, 2012, p.20). Social work’s participation in “sanist aggressions, such as pathologizing, labeling,

exclusion, and dismissal have become a ‘normal’ part of professional practice and education” (Poole et al, 2012, p.20).

Fundamental epistemological contradictions

The biomedical model of psychiatry can be said to adhere to a positivist epistemological approach to knowledge. Modern Western Philosophy credits philosophers of the *enlightenment* era in Europe during the middle ages such as Descartes (1596-1650), and Immanuel Kant (1724-1804) for recognizing (or revitalizing) the value of skepticism, and breaking free from Christian theology in order to engage with newly emerging scientific ideas that favored rational thought and critical inquiry to dogmatism (Foucault, 1984; Williams, 2001). The ideas that stemmed from these contributors valued reason, empiricism, science, universalism, notions of progress, and a belief of a single uniform reality that could be observed. The Positivist paradigm or epistemological position developed from these ancient and modern enlightenment values and ideas.

In the 1960’s famous resisters to this biomedical model included Psychiatrist Thomas Szasz who believed that mental illness was a myth; Michel Foucault, who exposed that psychiatry was more about social control and surveillance than compassion or treatment, and R.D. Laing who wanted to understand psychotic experience but opposed coercion and compulsory “treatment” (Szasz, 1981; Foucault, 1965; Laing, 1960; Hopton, 2006). Laing’s work led him to a “therapeutic concern with fundamental existential issues” (Ingleby, 1981, p. 8). Laing criticized the process of psychiatric diagnosis, questioning the diagnosis of conduct and the use of biological treatment for issues related to one’s sense of self and one’s sense of being in the world (Laing, 1960).

Thomas Szasz “insisted that psychiatrists should return to a contractual relationship with the patient, aimed simply at promoting individual liberty” (Ingleby, 1981, p.8).

Italy’s anti-psychiatrist, Franco Basaglia criticized the concept of a “humane” asylum in the 1960s. Basaglia believed that confinement and separation were at the core of the psychiatric system of control and this was inherently inhumane. Basagli was appointed to supervise the deinstitutionalization of the Ospedal Psichiatrico in Trieste in 1971. Basaglia represented his principles in practice through the development of decentralized community services (Ingleby, 1981, p.17).

For Basaglia, ‘mental illness’ arises from the contradictions experienced by the individual in his or her social situation, and it can only be ‘cured’ by tackling these contradictions themselves; this, of course, is an idea shared by many theorists- but the striking achievement of Basaglia and his team is the concrete realization of this principle in practice.(Ingleby, 1981, p17)

As Szasz, Laing, and Basaglia suggest, there are fundamental epistemological and ethical problems with biomedical psychiatry. Their contributions also highlight the need for attention to social and political factors in our understanding of mental “illness” and challenge our ongoing use of the inhumane processes of confinement and seclusion.

A substantial amount of literature on the anti-psychiatric movement is written in the voices of activists themselves. Some examples include Judi Chamberlin’s *On Our Own: Patient-Controlled Alternative to the Mental Health System* (1978); Irit Shimrat’s *Call Me Crazy: Stories from the Mad Movement* (1997); Leonard Roy Frank’s *The History of Shock Treatment* (1978); and some examples edited by psychiatric-survivors include *Shrink Resistant: The Struggle Against Psychiatry in Canada*, edited by Bonnie

Burstow and Don Weitz (1988); and *Mad Pride: A Celebration of Mad Culture* (Curtis, Dellar, Leslie, & Watson, 2000). As Mel Starkman describes in the a 1981 issue of the Anti-psychiatric magazine *Phoenix Rising*, the movement gained wide attention in the U.S., Canada, Europe and through international conferences in Central and South America (Starkman, December, 1981).

David Ingleby criticizes the adherence to positivistic epistemological stances within the profession of psychiatry and questions the notion of objectivity that has been critiqued as early as Durkheim in 1895. As Ingleby notes, “Positivism assumes...that observations can be made objectively-that measures can be defined operationally, and applied in a precise, replicable fashion; and...that theories can be constructed on the same causal, deterministic basis as in the natural sciences” (Ingleby, 1981, p.28). Ingleby recognized the possibility in principle of stating exactly the criteria for applying physical concepts but also recognized the impossibility “to do so for concepts describing human activities and states of mind” (Ingleby, 1981, p.32). As he describes, the descriptions of human activities and states of mind are always subject to interpretation, “not in the sense that there are no criteria, but that the criteria are unstated ones, lying in the culture itself” (Ingleby, 1981, p.32).

The “breakdown of traditional empiricist philosophies of science and the public mistrust about the goals of scientists” has ushered in a discursive space from which the social and political roots of science can be exposed (Ingleby, 1981, p.12). Through these discursive spaces,

Psychiatry’s claim to impartial, objective authority is nothing but a smokescreen concealing a highly partisan position. ‘Treating people as things’

is not only a questionable methodological precept, but a highly objectionable policy. This policy, I argue, has to be understood as reflecting not on the private attitudes of individual psychiatrists, but the social role which psychiatry has acquired in the course of its history (Ingleby, 1981, p.13). Ingleby offers two explanations for how and why historical, social and political

factors are underrepresented in the research on mental health, first that social and political analyses “do not fit in with psychiatry’s mandate to change not society but the individual; they are not investigated because psychiatry quite literally has no *use* for them” (Ingleby, 1981, p.14). Secondly, the available analyses and research on social and political factors does not satisfy the conventional criteria of ‘scientific’ research, “because those criteria are not the appropriate ones to use when interpreting the social intelligibility of human action; we are not dealing with simply a different theory, but a whole different *paradigm*” (Ingleby, 1981, p.14). As Ingleby succinctly describes, “to ascribe deviant behaviour to “illness” rather than ‘badness’ is to rectify it, and locate its significance in the individual rather than their surroundings” (Ingleby, 1981, p.15).

Ingleby also exposes the political use of objective science within psychiatry through his analysis of “genetic” research, and the operationalization of “physical indicators of anger or sadness” located within the individual and validated by “excessive crying” or “foot stomping” (Ingleby, 1981). Research in psychiatry also uses clinical judgment as a “blank check” within which to embed “tacit biases and unwritten rules” (Ingleby, 1981). As Ingleby highlights, psychiatric research often uses scientific research terminology such as *Randomized Control Trials* in social situations where it is impossible to either control or randomize conditions in a vacuum as in some natural sciences (Ingleby, 1981).

Also, psychiatric research is used to support clinical judgment *as* evidence of the existence of a biological disorder, never to verify diagnosis (Ingleby, 1981).

Eurocentrism within critical mental health: a preclusion to colonial analysis

Ingleby's analysis of the methodological problems of psychiatric diagnosis is exemplified in his description of the Rosenhahn experiment. The experiment where "eight perfectly sane volunteers spent several weeks in mental hospitals without their sanity being detected, suggests that absolute diagnosis may be wildly inaccurate" (Ingleby, 1981, p.32). As Ingleby illustrates, the fact that all the medical staff agreed that the eight volunteer were insane was completely irrelevant, "they were wrong!" (Ingleby, 1981, p.32). Ingleby's analysis offers both an epistemological and methodological critique of biomedical psychiatry but his analysis of the "social and political" is deeply imbedded in the Eurocentric view of historical development. Specifically, he looks to theorists and research from America, Britain, France and Italy. Ingleby's social and political concerns engage with issues of democracy and advanced capitalism. Ingleby demonstrates his awareness of the importance of historical and political development in the understanding of the formation of disciplinary hegemonies with peculiar projects. He also notes that his work "is directly influenced" by the Frankfurt School and the writings of Jurgen Habermas (Ingleby, 1981, p.19).

Eurocentrism assumes that there are two time periods in history, that up until the renaissance (pre-capitalist society) and the growth of capitalism from the renaissance onward. Eurocentrism also assumes "that imitation of the Western model by all peoples is the only solution to the challenges of our time" (Amin, 1989). This imitation often

alludes to a specific construction of history in Europe from Greek antiquity through the middle ages to the “enlightenment”. Enlightenment ideas focus on the search for universal truths through the use of reason. As Foucault demonstrates for us, much of what constitutes reason, (according to Emmanuel Kant) depends on the judgments of what is privately and publically considered *reasonable* (Foucault, 1984). Any pre-capitalist, pre-modern, pre-enlightenment countries, periods, or ideas are seen as naïve or archaic. Within the Eurocentric view, the “maturity” to use reason represents a type of evolution of society. What is assumed in Eurocentrism is that a “freedom” is achieved through the use one’s reason but according to Kant when one is reasoning as a member of reasonable humanity, a person

“makes a private use of reason when he is ‘ a cog in a machine’; that is, when he has a role to play in society and jobs to do; to be a soldier, to have taxes to pay, to be in charge of a parish, to be a civil servant, all this makes the human being a particular segment of society; he find himself thereby placed in a circumscribed position, where he has to apply particular rules and pursue particular ends. (Foucault, 1984, p.36)”

Foucault describes the period of the enlightenment and European modernity as an attitude that is based on a particular conceptualization of history (Foucault, 1984). This history also happens to be a history of Europe. The modern, enlightened, rational, reasonable human, must of course not use her or his reason in ways that place her or him outside of a circumscribed position. This would constitute irrationality and unreason, or madness.

The Eurocentrism evident in Ingleby’s work presents itself through a lack of attention to critical analyses outside of a European context as well his reliance on a Western conceptualization of history (confined to North America and Europe). Also, all

of the contributors to his work, *Critical Psychiatry: The politics of mental health* are professionals and academics. In doing so, the contributions of psychiatric-survivors specifically and the analysis advanced from first-person perspectives generally, is precluded. Although Ingleby's analysis advocates for a consideration of culturally accepted "truths" and their alignment with capitalism and democracy in Western nations, there is no discussion of particular historical political projects such as a specific attention to colonization or an analysis pertaining to the production of difference and race.

Ingleby does however provide a thorough critique of the problems with the universal truth seeking imperatives of modern psychiatry and their failures in advancing "objective" and "impartial" categories and diagnoses in the field of psychiatry. Ingleby's dependence on empirical, or modernist arguments to counter those of modern psychiatry participates in the perpetuation of professionalism and academic knowledge while devaluing the perspectives and knowledge of those who have experienced mental health systems dominated by biomedical psychiatry. These voices and perspectives reveal to us the context of oppression and the discourse of a person's understandings of their experience. First person perspectives are also revealing of the dominant cultural norms and political circumstances of the time.

Ann Laura Stoler's book, *Race and the education of desire: Foucault's history of sexuality and the colonial order of things* (1995), provides a careful analysis of Foucault's first volume of *The History of Sexuality* to point out that the colonial context is absent from Foucault's genealogy. The consequences of Foucault's inattention to colonization when tracing the history of sexuality and the formation of the European

Bourgeois subject are both: 1) a constrained writing of history and 2) a limitation in the discourse on sexuality. Without attention to colonization, Foucault's History of Sexuality participates in the ongoing violence within Eurocentric knowledge production. Stoler attempts to raise questions and investigate tensions between the Foucault's writings and speeches and help us "rethink the connection between European and colonial historiography, between a European bourgeois order and the colonial management of sexuality, as well as how those tensions might bear upon how we go about writing genealogies of race today" (Stoler, 1995, p.viii).

For Foucault, a discourse of sexuality was activated as an instrument of power in the 19th century, "not as a Freudian account of Victorian prudery would have it, by injunctions against talk about sex and specific sexual couplings in the bourgeois family, but by patterned discursive incitements and stimulations that facilitated the penetration of social and self-disciplinary regimes into the most intimate domains of modern life" (Stoler, 1995, p.3). *Biopower* was a key political technology identified by Foucault; it was a means by which mechanism of life could be drawn into the calculations that forged the distinctions of bourgeois identity (Stoler, 1995). Biopower could then also be a means by which knowledge and power could be leveraged for social transformation. Stoler demonstrates that a number of studies that pay attention to the colonial context have contributed that "the discursive management of the sexual practices of colonizer and colonized was fundamental to the colonial order of things" (Stoler, 1995, p.4). Discursive practices of sexuality helped classify colonial subjects into distinct types, and "policed the domestic recesses of imperial rule" (Stoler, 1995, p.4). Stoler looks to how Foucault's

insights play out in colonial settings as well as to how “the discursive and practical field in which nineteenth-century bourgeois sexuality emerged was situated on an imperial landscape where cultural accoutrements of bourgeois distinction were partially shaped through contrasts forged in the politics of language and race” (Stoler, 1995, p.5).

The histories of the West and Europe are often presented in neat divisions without mention or inclusion of the Others upon which “the West” was founded. The reference point of “the savage, the primitive, the colonized” is not apparent in Foucault’s work. Stoler’s analysis reveals how “bourgeois identities in both metropole and colony emerge tacitly and emphatically coded by race” (Stoler, 1995, p.7). For Stoler, racism is not an ideological product of the universalistic principals of the modern liberal state but a foundational friction within it. Stoler demonstrates that Dutch, French, and British notions of the Bourgeois subject were defined through “a language of difference that drew on images of racial purity and sexual virtue” and this cannot be analyzed from Europe itself (Stoler, 1995, p.10). Bourgeois identity was fundamentally tied to notions of being European and being “white”. Stoler highlights how “an implicit racial grammar underwrote the sexual regimes of bourgeois culture in more ways than Foucault explored and at an earlier date” (Stoler, 1995, p.12). From Stoler, we see that pointing out Western methodological and epistemological problems from a Eurocentric viewpoint can facilitate a continuation of discursive practices that take Eurocentric histories as transparent. Without a colonial context embedded within critical perspectives, we can miss the violence infused in the very professions, disciplines, and practices we wield to address issues of social justice. In mental health systems and research, a lack of attention to this

violence allows for movements of resistance to be compromised within the professional technologies of difference and civilizing, moralizing projects.

The necessity of an attention to colonization

David Ingleby's 2005 book, *Forced Migration and Mental Health Rethinking the Care of Refugees and Displaced Persons*, includes both first person perspectives and contributors that offer a critique the humanitarian aid programs offered to refugees and displaced persons. The context provided references the numerous political conflicts that have resulted in increased numbers of displaced persons since World War II (Ingleby, 2005). Ingleby and the other contributing authors suggest that the Western concept of Post-Traumatic Stress Disorder often looks at an individual who is coping with a stressor or traumatic event in a "disordered" way and pays little attention to the specific political context or situation for groups of refugees leaving war-torn parts of the world (Ingleby, 2005). What he proposes is a move towards understanding the contexts and cultures from which displaced persons and refugees experience trauma and the use of programs that adhere to the humanitarian principles upon which aid programs are based (Ingleby, 2005).

Although Ingleby and the contributing authors offer a critique of the Western analysis of the experience of trauma and its ramifications for mental health services for refugees or displaced persons, little analysis is given to the historical context upon which many of the political conflicts have arisen. There is little attention to the historical imperial and colonial projects of division of both land and people as well as resource extraction through the processes of the production of essentializing taxonomies of both

culture and race. With consideration of this deeper historical context that examines the technologies used during colonization to advance ideas of difference across geographic, cultural, and racial domains, the proposal of remedying current problems by “understanding” the specific cultural and political experience of refugees would be exposed for reproducing Western colonial methodologies aimed at “helping” those as they are defined and separated in term of lack. This remedy could then never been described as being one that helps a person or group cope with or resolve the experience of dehumanization and loss experienced as a result of political conflict and trauma. Rather we would again have a system that looks at individuals in their present context without recognition of the ancestry of the violence imbedded in our conceptualizations of *identification* and *treatment* that ignore the violence within our methods, the projects of moral therapy and of helping Others by imposing on them what is dominantly considered reasonable and civilized. We would again have a system that sees Others as more at risk for developing “illness” and “their” need for treatment. Our techniques of treatment and therapies attached to colonial moralizing and civilizing projects do not escape dehumanization.

Vicki Coppock and John Hopton’s book *Critical Perspectives on Mental Health* (2000) attempts to provide a “cohesive” critical perspective on mental health that builds upon critics failures “to acknowledge the positive contributions made by mainstream medical psychiatrists and clinical psychologists to our understanding of mental distress and....the failures of critics of psychiatry to recognize the existence of critical and radical discourses within the mainstream” (Coppock and Hopton, 2000, p.3). Coppock and

Hopton suggest that psychiatric drugs “can be used in a way which ‘empowers’ service users” (Coppock and Hopton, 2000, p.8) They cite the need to use “tranquilizers such as Valium (diazepam) and other benzodiazepines...to manage acute anxiety as part of a wider strategy of short term crisis intervention” but express “reservations about the use of electro-convulsive therapy (ECT) and psychosurgical intervention” (Coppock and Hopton, 2000, p.8). Coppock and Hopton also suggest an “eclectic and skills-based” model of psychotherapy. The authors acknowledge the use of mental health systems for social control and that “collective political action is more useful than individual therapy” (Coppock and Hopton, 2000, p. 157 & p.171). They continue by stating that a “truly anti-oppressive, anti-discriminatory model of mental health care should...incorporate biological, psychological, and social perspectives...and...it should have anti-racist and anti-sexist dimensions to it (Coppock and Hopton, 2000, p.168). They advocate for a bio-psycho-social model of aetiology and intervention, as well as user-centered approaches. The authors also suggest that collective community development approaches could be used to address discrimination within mental health systems and political issues (Coppock and Hopton, 2000, p. 170).

Coppock and Hopton’s chapter on gender and race critiques fails to integrate the connection between the historical projects of colonization, the construction of difference and the common ancestries of the violent technologies used within academic and professional disciplines including psychiatry. An analysis of the technologies that use coercion, harmful procedures and diagnostic mechanisms to pathologize and control difference offers a critique that can help to explain the disproportionate diagnosis and

lack of access to “treatment” offered to women and racialized minorities. This analysis would problematize the “user-centered” approaches and recommended techniques of psychotherapy, the use of tranquilizers and (addictive) benzodiazepines as focusing on the individual and rationalizing the application of harm. If we consider the histories of psychotherapies such as “harassment therapy” and “rage reduction therapy” aimed at “bringing out inmates’ inward-turned anger at the controlled environment” that consists of “therapeutic beatings” ranging from “tickling to heavy blows”, we might question the use of and research behind “eclectic and skill-based” psychotherapies and their participation in dehumanizing physical punishment and moral therapy” (Stannard, 1978).

As D.L. Stannard describes, the application of rage reduction therapy resulted in therapeutic beatings that allegedly caused the death of one patient and back injuries to another (Stannard, 1978). A jury in San Jose California awarded \$170,000 to a person who had “undergone thirteen hours of rage reduction therapy in which she claimed to have suffered near-fatal kidney damage, severe bodily bruises, and a lacerated mouth” (Stannard, 1978, p. 127). Also, Stannard describes the experience of *Jane*, who he witnessed (Stannard working as an attendant) being forced to scrub a shower room with a tooth brush. She was “harassed” as part of her therapy kicking over her wash pail and throwing finger paint onto the floor as she cleaned (Stannard, 1978, p. 128). Although Coppock and Hopton provide a thorough catalogue of the existing critical perspectives on mental health and psychiatry, their suggestions offer little relief from the violent technologies embedded within individualistic, biomedical approaches and civilizing moral therapy. Their work represents an attempt to appropriate the discourse of resistance

to the system and empowerment into a “cohesive” discourse that allows harmful treatments and civilizing therapies to persist.

Barbara Cruikshank provides an analysis of how the concept of self-esteem has been wielded by professionals (including social workers) as a “technology of citizenship” that enforces conformity through self-government (Cruikshank, 1999). Although consent is appropriated for self-esteem based therapies, power operates upon the self to regulate behaviour. The language of empowerment is appropriated from social movements to construct the subject as those who “lack self-esteem”, ignoring poverty, sexism, and racism (Cruikshank, 1999). Social responsibility is placed on the individual and those who do not present with the appropriate responsible, respectable behaviours are viewed as a risk or threat to society (Cruikshank, 1999). Shoshana Pollack has demonstrated how the operations of self-governance within social assistance structures also act to (re)produce subjectivities such as the “submissive lone mother” (Pollack, 2009). The refocus on the individual continues the practice of silencing the political and historical ancestry (including colonization) of violence within moralizing, and civilizing projects while subjugating acts of resistance that provide potential for transformation.

Suman Fernando’s book, *Mental Health, race and culture* (2010) challenges modern Western approaches to mental health with his analysis of race, culture, ethnicity and identity in contemporary mental health systems. Fernando exposes racism within Western based mental health services and suggests alternative ways of thinking about mental health from perspectives around the globe. Fernando overviews the many problems with Western traditional approaches to mental health through an analysis of the

development of modern Western psychiatry from Hippocrates, Galen and early Islamic understandings (Egypt in AD 683, Syria [then Aleppo] in AD 755, etc.) continuing with the rise of Enlightenment ideas in Europe, positivism and the development of asylum and community mental health services. Fernando provides a thorough analysis of racism within Western psychiatry and offers suggestions for alternative approaches for understanding mental health (with examples from spiritual and Asian understandings) and alternatives for treatment (Yoga, Herbal remedies, Acupuncture, Meditation etc.) (Fernando, 2010). Fernando describes the traditional Western approaches as “the culture of psychiatry” and suggests that a multi-cultural perspective that allows for a pluralistic view of mental health will also provide the basis for universal understandings.

The final vision is that a concept of illness may well remain but it will be very different from the present one, and will not be fixed in firm categories that are supposed to be universally applicable. Different societies will develop variation on what may be, eventually, one or more universal themes; and culture will be an integral part of the way that illness will be defined and recognized...Any one type of explanation will not be seen as superior to another because they will all be embedded within their cultural but understandable on the basis of universal themes- and hence, not ‘culture-bound’ (Fernando, 2010, p. 175).

Fernando begins by describing the contours of race, culture, ethnicity, identity communities, and racism. Fernando cites Emmanuel Eze to highlight the racism within Eurocentric, enlightenment thinking (Fernando, 2010). Prominent “enlightenment” figures including David Hume, Georg Wilhelm Friedrich Hegel, and Immanuel Kant played an influential role “in articulating Europe’s sense not only of its cultural but also racial superiority...” “reason” and “civilization” became almost synonymous with “white” people and northern Europe, while unreason and savagery were conveniently located

among the non-whites, the “black”, the “red”, the “yellow”, outside Europe” (Eze, 1997, p.5 cited in Fernando, 2010, pg. 7). David Hume reasoned that a civilized nation never existed that was not white or “any individual eminent either in action or speculation” (Fernando, 2010, p. 7-8). Immanuel Kant wrote that the differences between white and black races “appears to be as great in regard to mental capacities as in color” (Eze, 1997, pp. 33-35, cited in Fernando, 2010, p.8). These ideas continued in Darwinian notions that saw race as *species* and *subspecies*. Sociological concepts of race saw race as playing more of a social role rather than a biological one but continued to influence the structure of humanity. Fernando cites Omi and Winant to define race as “a concept which signifies and symbolizes social conflict and interests by referring to different types of human bodies” (Omi and Winant, 1994, pp. 54-5, cited in Fernando 2010, p.9).

For Fernando, culture is more complex. Culture has been understood in multiple ways: from being synonymous with being civilized, to a unique way of life, a mix of behaviour and cognition “arising from shared patterns of beliefs, feeling and adaptation which people carry in their minds”(Leighton an Hughes, 1961, p. 447 cited in Fernando, 2010, p.9), to the culture of occupations or professions (such as police, social work, psychiatry referring to the “ethos or the intangible underlying determinants of people’s behaviour in a particular context” (Fernando, 2010, p.9). Culture also refers to groups identified by specific characteristics and experiences (i.e., youth culture, drug culture respectively). Fernando also notes that understandings of culture have changed over the past few decades. From Foucault and Gerd Baumann (1996), “there was an increasing awareness of the relationship between discourse – fields of knowledge, statements and

practice, including those in medical, psychiatric and psychological practice - and power. Hence, categories which lump peoples or experiences together have become suspect” (Fernando, 2010, p.10). Also, culture has been described as something people assume passively but this has been problematic alongside the idea that cultures are the “products of human volition, desires and powers” (Bauman, 1996, p.31, cited in Fernando, 2010, p.10). Fernando notes that in the post-modern context culture is seen as variable and dependent on historical and political perspectives in a context of power relations but also dynamic and changing.

Wendy Brown has articulated how the cultural discourse on *Tolerance* acts to position “liberal and non-liberal subjects, cultures, and regimes” through operations of governmentality that homogenize cultures and stratifies identities of the tolerant, the tolerated and the intolerant. These orders have continuing and propagating effects on global relations and conflict (Brown, 2006, p.4).

Fernando describes the contributions of Homi Bhabha as adding emphasis to the “hybridity of cultural forms and behaviour in today’s world” (Fernando, 2010, p.10). For Fernando, Edward Said’s analysis in *Culture and Imperialism* (1994) “unravels the intimate connections between the understandings of culture presented in Anglo-American literature and European domination- nowadays called globalization” (Fernando, 2010, p.11). Beginning with Fernando’s contribution, it is crucial that we expand our cultural analysis beyond the two concepts *hybridity* and *globalization* of Bhabha and Said⁶. When

⁶ See footnote from page 20 re: Homi Bhabha, “Of Mimicry and Man: The Ambivalence of Colonial Discourse,” *October* 28 (Spring 1984): 125-133. Hybridity is explored in the colonial context for its affront to essentialization but also Mimicry is explored as a complex representation of the colonizer for multiple

considered with a greater degree of attention, we might also glean from Bhabha that cultures and histories constantly intrude on the present and resist colonizing formations in particular ways understood through Bhabha's concepts of hybridity, mimicry, ambivalence, etc. (Bhabha, 1994). From this degree of attention, we might begin to see perceive that oppressed groups resist representations and practices that reproduce colonial form of violence from the past in the present. We might also perceive the value of this voice in transforming current systems and practices.

Said also insisted that colonization had a strong ideological component. Although formal colonization may come to an end (the physical inhabitation and appropriation of resources), the ideological influences remain (Said, 1994). Through art, literature, music, and science, the discourse of empire and domination persist. Said provides examples of how a conquering nation rationalizes and justifies to its own people why it is necessary to dominate another nation (Said, 1994). The language of the "civilized" and "uncivilized" are formed and science becomes the means through which colonization is facilitated. Race also becomes attached to the "civilized" and "uncivilized" which creates a hierarchy that becomes internalized among the colonized (Said, 1994). As the attitudes of dominance and civilization permeate the public discourse, the colonizers view themselves as the superior, bringing civilization to the world. The process changes the social

purposes including self-preservation of identity. and ambivalence is described with respect to the colonizer's position toward the colonized as a place for disrupting colonial binary relation of subordinate Other and colonizer.

⁶ See Said, E. W. (1994). *Culture and imperialism*. London: Vintage. Said refers to contemporary globalization as the current workings of imperialism through the forced imposition of political, social and cultural institutions on countries targeted by Western powers.

relations within a nation and becomes a *culture* of imperialism, a *culture* of dominance and subjugation. Often some of the colonized internalize these values and begin to idealize the colonizer and feel the need for them. This extension of Said's *Culture and Imperialism* (1994) demonstrates the processes whereby Fernando's suggestion can be problematic. Hierarchies (of profession, of discipline, of race) remain in non-Western countries which can structure how difference is (re)produced when trying to appropriate the "cultural practices" of those identified as Other.

Fernando identifies that imperial and colonial projects are linked to the rise of ideas of difference and race and that these become institutionalized in mental health services. Upon this foundation, it is necessary that we additionally provide an analysis of the historical developments of the processes and mechanisms that (re) produce hegemonic disciplines, professions, and discourses that dominate mental health systems and juridical structures in relation to colonization and imperialism. This analysis would allow for recognition of the social relations that position Western biomedical perspectives as superior to Others and would problematize the processes of taxonomization and of categorization of difference for civilizing and moralizing projects. Fernando's analysis describes Western psychiatry as a racist culture (Fernando, 2010, p.11). For Fernando, if we add multiple perspectives from multiple understanding across cultures (i.e. Ayurveda training for psychiatrists suggested on p. 12), we can reduce the tendency for Western models of psychiatry to target people of colour within mental health diagnosis and treatment by allow for a spectrum of services and understandings. With this suggestion, the historical projects that (re)produce ideas of difference through identification,

categorization and essentialization are relied upon to appropriate culturally specific mental health interventions.

This approach to racism within mental health services is permeable to eugenic thinking and civilizing, regulating projects as it seeks to fix that which is represented as abnormal through systems of inspection, taxonomization, and the application of treatments to erase difference. There is also the vulnerability to overlook the violence within the processes of cataloging “cultural practices” and the (re)packaging of these ideas for offering mental health services and treatment (I do not imply that this is what Fernando intended, I merely name the climate of commodification, appropriation, exploitation that would benefit from a postcolonial critique). The appropriation, reduction and colonial violence resulting from some of these suggestions would go unnoticed without also including a thorough analysis of the historical development, eugenic ideas, and colonial projects whereby these “alternative cultural approaches” could be perceived as dangerous when wielded to “help” those identified as different.

Suman Fernando, David Ndegwa and Melba Wilson provide a more specific analysis of race and culture with respect to forensic institutions in *Forensic Psychiatry, Race and Culture* (1998). The authors overview the glaring disproportionate representation of people of colour in Forensic institutions in the U.K.. “Black mentally disordered offenders” are more likely to be: “remanded in custody for psychiatric reports; subject to restriction orders, detained in higher degrees of security for longer; be referred from prison to medium secure units or special hospitals” (Fernando, Ndegwa, & Wilson, 1998, p. xviii). Also African-Caribbean people formed 37 percent (compared to 2.3

percent in the general population) of regional secure unit beds over a 12 year period in the North Thames Forensic Psychiatric Service (Fernando, Ndegwa & Wilson, 1998). The authors question the process of diagnosis, the issues of racism and bias in forensic practice, public policy and the legal pathways between criminal justice and psychiatric systems. The suggestions for change involve providing “anti-racist” psychotherapy, assessment, separate services, training (on racism), and changes to both legal and medication practices. Through these suggestions, there is again an underestimation of the impacts of the history of eugenic and racial thinking, moral therapy and difference producing mechanisms embedded within the specific fields of criminal justice and mental health. Also marginal to this analysis are the difference-producing effects that remain, once racialized people are treated the same as everybody else. With these kinds of suggestions, the value of patient’s perspectives are often overlooked, and the historical and political projects (such as colonization) that reveal the incongruences between an anti-racist perspective and the existence of forensic-psychiatry itself, cannot be perceived.

There are two other books that pay specific attention to race and culture in forensic psychiatry. Charles Kaye and Tony Lingah’s *Race, Culture and Ethnicity in Secure Psychiatric Practice* (2000) and Melissa Thompson’s *Race, gender, and mental illness in the criminal justice system* (2005) both point to the racism within forensic psychiatric practice but offer little consideration of the historical and political relations that are infused within professions, disciplines, and practices based on colonial eugenic and racial thinking, and the dehumanizing discourse upon which ideas of dangerousness and threat to Western civilization take root. Phil Fennell’s *Treatment Without Consent: Law,*

Psychiatry and the Treatment of Mentally Disordered People Since 1845 (1996) provides an overview of the development of forensic mental health laws and practices in Britain, exposing the use of physical violence and the suspension of rights. Fennell's work examines specific acts and policies without attention to the political histories of capitalism, colonization, eugenic and racial thinking from which this violence was rationalized. In Lynda Frost and Richard Bonnie's book, *The Evolution of Mental Health Law* (2001), a little less than two and one-half pages are devoted to issues of colonization or race. This discussion is particular to the temporal parallel between the rise in attention to the rights of those diagnosed with mental health issues and the civil rights movement since the abolition of slavery in the U.S (Frost and Bonnie, 2001).

In Robert Menzies book, *Survival of the sanest: Order and disorder in a pre-trial clinic* (1989), 592 forensic cases are evaluated from the Metropolitan Toronto forensic service (METFORS). Menzies examines medical and criminal records to trace how forensic decision making work in collaboration with police, courts, social workers, psychiatrists and other medical experts. The 592 "patients" are followed from their initial arrest until two years after their initial assessment (Menzies, 1989). Menzies demonstrates how professions work in "concert" as "knowledge brokers" who assume the task of creating formal knowledge that translates directly into coercive power. Although the clinic and clinician's only task is to assess a person's fitness to stand trial, they are found to consistently make sentencing recommendations and assess "dangerousness" (Menzies, 1989). In Menzies' follow-up research he found that clinicians and psychiatrists were wrong more than half of the time in predicting future violent behaviour. Clinicians and

psychiatrists adjust their knowledge to adhere to legal systems and terms so much so that their recommendations (including imprisonment, confinement, or alternative dispositions) are often accepted by the courts. Clinicians, police and courts work together “to justify and legitimate the most coercive sanctions in terms of scientific knowledge and medical expertise” (Menzies, 1989, p. xviii). This collaboration functions while advancing the careers and expertise of clinicians and legitimizing clinical judgment as a measure of risk and dangerousness (even though it is incorrect more than half of the time). The “helping” aspect of the clinical profession is abandoned, the accused’s voice and identity are erased and the “clinic’s only source of knowledge is itself” (Menzies, 1989, p. xvii). Menzies examines the patient’s prospects for freedom, labels as deviants and indicators of criminality within their records as well as the number of carceral or therapeutic control agents to determine how well they are doing after their experience with the clinic. The accused repeatedly emerge from the clinic in worse condition than they entered (Menzies, 1989).

Through our review of the contributions to critical mental health, it is apparent that there continues to be commonly appreciated methodological, epistemological and ethical problems within individualized perspectives on mental health as well as within biomedical mental health disciplines. An enduring Eurocentric view of history, embedded within the bases of political and social critique within critical mental health literature also persists. The effect of this enduring Eurocentrism is often an inattention to the complicit influences of colonial and imperial projects on the practices and technologies of

dehumanization, taxonomization, and the establishment of human hierarchies to rationalize violence through the implementation of racial and eugenic rationale.

A postcolonial analysis insists upon a consideration of Eurocentrism and provides a critique that allows for a refusal to accept solutions such as those that propose that “anti-racist” and “psychotherapy” can be commensurate. Postcoloniality demands that one interrogate the projects of cataloguing people by differentiated type based on lack, that holding positions of superiority over Others by professing to “know” the Other and what is required for their “cure” through the application of moralizing and civilizing therapies is by design a dehumanizing technology. The rise of the technologies of psychotherapy in Europe were crucial to the success of the colonial enterprise and were dependent on racial and ablelist hierarchies (Metzl, 2009; Roman, Brown, Noble, Wainer, & Young, 2009). This level of critique appreciates that the technologies of civilization and colonization (including the fields, knowledge bases and practices of criminal justice, mental health and immigration) were violently produced to consolidate notions of the civilized upon the creation of the savage and the mad.

Chapter 3

The Canadian Forensic Mental Health System: an overview

The term *forensic mental health system* is often used to refer to the intersections of the mental health system and the criminal justice system (Betteridge, & Barbaree, 2004). Here, I will provide a brief overview of aspects of the Ontario Mental Health act, the Criminal Code of Canada and the Canadian Immigration and Refugee Protection Act relevant to the topic of deportation for those identified with mental health issues. The Mental Health Act applies to every psychiatric facility with regards to rights or prohibitions for people identified as having a mental disorder. It includes provisions or restrictions regarding voluntary and involuntary examination, admission, treatment, consent, detention, psychosurgery and community treatment orders. These policies and laws are continually being rearticulated to reinforce ideas of an unrehabilitatable criminal, a untreatable mentally ill person, and undeserving foreign alien. The *Not Criminally Responsible Reform Act* passed the House of Commons on June 19, 2013; the *Faster Removal of Foreign Criminals Act* received Royal Assent on June 20, 2013 (Department of Justice, 2013; Citizenship and Immigration Canada, 2013b). These laws are dependent on the continuations of colonial technologies and practices that channel ideas of racial hierarchy, eugenics, and foreign exoticism. Individually, these changes and laws can be presented as progressive maneuvers working to improve safety, save tax dollars, or to be responsive to the public while adhering to old systems of refusal of entry, confinement, punishment, containing and ejection. Together, these changes and laws can be seen as maintaining their eugenic and racial regulatory functions.

Criminal Code of Canada and Mental Disorder

The Criminal Code of Canada is currently an 1128 page document governing criminal law in Canada. The sections pertaining to “Mental Disorder” include section 672.1-672.95 of Part XX.1 of the criminal code. It includes provisions and restrictions regarding assessment orders, assessment reports, protected statements, fitness to stand trial, the verdict of not-criminally-responsible, dispositions, review boards, appeals and transfers. Within the criminal code, the courts (either a judge or justice) or a medical practitioner (someone licensed to practice medicine) can order a psychiatric, forensic assessment for a maximum period of 60 days (5 days maximum for an assessment of fitness to stand trial, a 30 day maximum and a maximum 30 day extension if the Review boards finds there to be “compelling circumstances”) (1991, c. 43, s. 4; 2005, c. 22, s. 5). Also, as outlined in section 672.16 of the criminal code, the courts, a medical practitioner, or a review board can order that the person be assessed be detained in custody.

Review boards are established for people found not criminally responsible for a criminal act by reason of mental disorder (NCRMD) or unfit to stand trial (Criminal Code of Canada, 1985, section 672.121). The review boards must be comprised of at least 5 people (appointed by the lieutenant governor), 1 of whom must be a psychiatrist (Criminal Code of Canada, 1985, section 672.38). The Review boards conduct annual reviews until a disposition of absolute discharge is granted for someone found NCRMD or until someone found previously unfit to stand trial, becomes fit (able to understand the legal proceedings and the nature of their crimes). Section 672.19 clearly states that “No

assessment order may direct that psychiatric or any other treatment of the accused be carried out, or direct the accused to submit to such treatment” (Criminal Code of Canada, 1985).

The Mental Health Act (Ontario’s Example)

The Mental Health Act offers a provision permitting the restraint, observation, and treatment of people detained in a psychiatric facility under Part .1 of the Criminal code of Canada⁷ (Mental Health Act R.S.O. 1990, CHAPTER M.7). A police officer, a justice of the peace or a physician (a person licensed to practice medicine) can order an assessment (involuntarily) if that person has “reasonable cause to believe that the person,

(a) has threatened or attempted or is threatening or attempting to cause bodily harm to himself or herself;

(b) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him or her; or

(c) has shown or is showing a lack of competence to care for himself or herself,”

And “has reasonable cause to believe that the person is apparently suffering from mental disorder of a nature or quality that likely will result in,

(d) serious bodily harm to the person;

⁷ See section 25- Mental Health Act R.S.O. 1990, CHAPTER M.7:
Detention under the *Criminal Code* (Canada)

25. Any person who is detained in a psychiatric facility under Part XX.1 of the *Criminal Code* (Canada) may be restrained, observed and examined under this Act and provided with treatment under the *Health Care Consent Act*, 1996. 2000, c. 9, s. 8.

(e) serious bodily harm to another person; or

(f) serious physical impairment of the person. (Mental Health Act, R.S.O. 1990, c. M.7, Section 15, 16, 17)”

This authority is granted for 7 days after the application form is signed by a justice of the peace or a physician. Permission is then granted to forcibly take the person to be assessed by a physician and held for 72 hours (Mental Health Act, R.S.O. 1990, c. M.7, Sections 15, 16, 17). See,

“Authority of application

(5)An application under subsection (1) or (1.1) is sufficient authority for seven days from and including the day on which it is signed by the physician,

(a) to any person to take the person who is the subject of the application in custody to a psychiatric facility forthwith; and

(b) to detain the person who is the subject of the application in a psychiatric facility and to restrain, observe and examine him or her in the facility for not more than 72 hours. R.S.O. 1990, c. M.7, s. 15 (5); 2000, c. 9, s. 3 (6).

(Mental Health Act, R.S.O. 1990, c. M.7, Sections 15, 16, 17)”

Once, taken to a physician and assessed, if the person is admitted to hospital because they are deemed a threat to themselves, to others or physically impaired, they can be “certified” involuntarily as outlined below,

Authority of certificate

(4)An involuntary patient may be detained, restrained, observed and examined in a psychiatric facility,

(a) for not more than two weeks under a certificate of involuntary admission;

and

(b) for not more than,

(i) one additional month under a first certificate of renewal,

(ii) two additional months under a second certificate of renewal, and

(iii) three additional months under a third or subsequent certificate of renewal,

that is completed and filed with the officer in charge by the attending physician. R.S.O. 1990, c. M.7, s. 20 (4) (Mental Health Act, R.S.O. 1990, c. M.7).

Both the Mental Health Act and the Criminal code of Canada contain the definition “mental disorder” means a disease of the mind” (Ontario Mental Health Act, 1990; Criminal Code, RSC 1985, c C-46). Both Acts are prohibitive, the forensic mental health system “exists” because “Society believes it is unfair to punish people for a criminal act if people have a mental illness that:

- prevents them from understanding what they have done, or
- prevents them from realizing what the result of their actions will be” (Betteridge, & Barbaree, 2004, p. 4).

For people who have committed a minor offence and require connections to mental health supports, where available, a mental health court option may be suggested.

Mental health courts have been initiated in Ontario and New Brunswick, Newfoundland and Labrador, British Columbia, Manitoba, Nunavut and Yukon (Reiksts, 2008). These courts offer a court support worker, connections to mental health services and programs to *divert* people away from the criminal justice system. As outlined by CMHA Ontario,

In general, mental health diversion programs take one of three forms: (a) police pre-arrest, or pre-booking diversion; (b) court diversion and; (c) mental health courts (MHCs). Arrest diversion allows the police to use their discretion in laying charges. Court diversion programs, on the other hand, are post-booking, pre-arraignment programs that involve staying charges for eligible offenses if the person agrees to treatment. In addition to the mentally ill defendant and her or his family, MHCs involve a dedicated judge, crown, defense, and court support worker (CSW). Characteristics of MHCs include: (a) all identified mentally ill defendants are handled in a single court/docket, (b) the use of a collaborative team which includes a clinical specialist who recommends and makes linkages to treatment, (c) assurance of availability of appropriate clinical placement prior to the judge making a ruling, and (d) specialized court monitoring with possible sanctions for noncompliance (Steadman, Davidson & Brown, 2001 cited in CMHA Ontario, 2013).

Through the mental health courts, if psychiatric services or psychiatric based treatments are refused, the accused person is pursued by the criminal justice system. Conditions that mandate psychiatric treatment or psychiatric-based services can be added to a person's bail conditions and in other cases, a community treatment order can be established by the mental health service providers that become involved with the accused. A community treatment order under the Mental Health Act can require that a person follow psychiatric treatments or psychiatric-based services.

The forensic system exists because the criminal justice system and the mental health systems do not individually provide supports that encourage rehabilitation and

reintegration into the community. Those who operate or work at this intersection are often either legal or mental health professionals with experience working in both systems.

There are a number of areas related to the intersections of the mental health system and the criminal justice system that are not mentioned in the Mental Health Act or the Criminal Code as they relate to the everyday practicalities of how this system plays out on the lives of real people. I have mapped this out in figure 1.

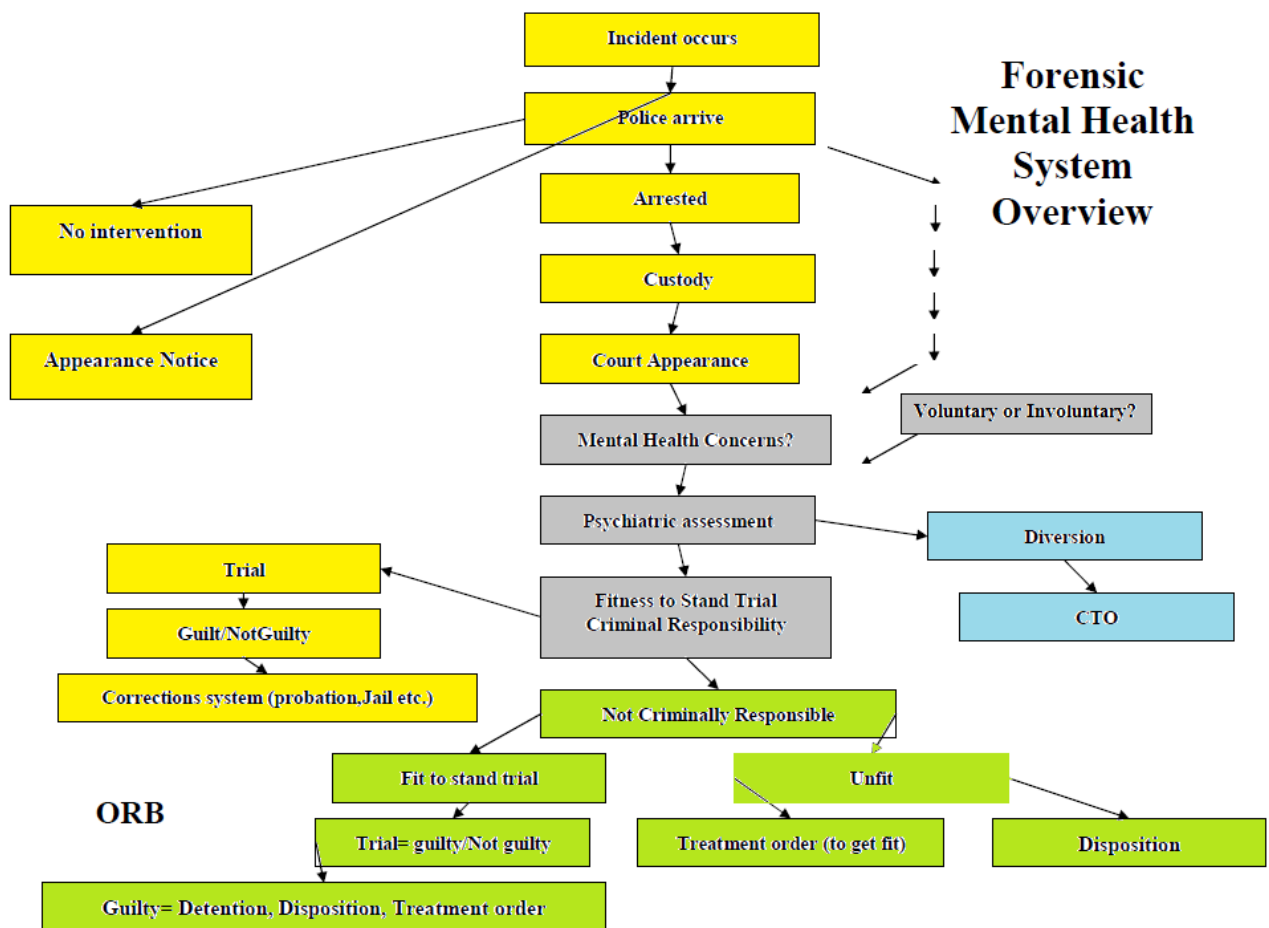


Figure 1: (ORB=Ontario Review Board, CTO= Community Treatment Order)

The forensic system is very complex. This is a very basic overview. The yellow areas refer to the traditional criminal justice system. The grey begins the overlap of the criminal justice system and mental

health system, the green refers to the jurisdiction of the Ontario review boards and the blue is the mental health courts.

The forensic mental health system in Canada offers access to voluntary and involuntary psychiatric and psychiatric-based treatments and services sometimes delivered when the accused is living in the community, in hospital, or in custody (some are quite reluctant to differentiate these three when mandated reporting, treatments, permitted intrusions, and a violation of personal freedoms are permitted). At every stage or area of the system, the opportunity for the individual to be detained or forced into treatment is present. Failure to comply with the psychiatric-based assessment and recommendations sends one back to the criminal justice system, or escalating measures of the forensic system by default. Until 2013, without someone being an imminent threat to themselves or others or being criminally responsible for a crime, they cannot be detained or forced into a relationship with psychiatry. The NCRMD defense, the mental health courts, the restrictions on powers to detain or force treatment were advocated for to value the notion that people who are unwell deserve care, not punishment.

The Canadian Immigration and Refugee Protection Act and the Forensic Mental Health System

The Canadian Immigration and Refugee Protection Act (IRPA) “renders any non-citizen convicted of a certain level of offence inadmissible on the grounds of criminality or *serious criminality*⁸, meaning they can be involuntarily removed from Canada and barred from returning. Additionally, non-citizens who are sentenced to a term of

⁸ Emphasis added

imprisonment of two years or more are denied the right to appeal their case to the Immigration and Refugee Board” (Schizophrenia Society of Ontario, 2010). Specifically, the IRPA states in section 36 (1),

A permanent resident or a foreign national is inadmissible on grounds of serious criminality for

- (a) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed;
- (b) having been convicted of an offence outside Canada that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years; or
- (c) committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years (Immigration and Refugee Protection Act S.C. 2001, c. 27).

The application section includes the following specificity,

(c) the matters referred to in paragraphs (1) (b) and (c) and (2)(b) and (c) do not constitute inadmissibility in respect of a permanent resident or foreign national who, after the prescribed period, satisfies the Minister that they have been rehabilitated or who is a member of a prescribed class that is deemed to have been rehabilitated (Immigration and Refugee Protection Act S.C. 2001, c. 27).

With the IRPA, non-citizens can be deemed inadmissible and a removal order can then be issued to deport non-citizens from Canada. Serious criminality is a construct that can be adjudicated at the discretion of the Minister of Immigration. The initial report can be made by any officer appointed by the Ministry of Immigration,

44. (1) An officer who is of the opinion that a permanent resident or a foreign national who is in Canada is inadmissible may prepare a report setting out the relevant facts, which report shall be transmitted to the Minister (Immigration and Refugee Protection Act S.C. 2001, c. 27).

Sections 54-61 go on to outline the permissions of the IRPA to detain or remove a foreign national. An officer of the Ministry of Citizenship and Immigration can order detention for the purpose of assessment or examination, under “reasonable” grounds that the person is inadmissible for serious criminality, if the person is deemed to be a threat to the public, or unlikely to attend hearings, examination or proceedings (Immigration and Refugee Protection Act S.C. 2001, c. 27). The Minister also has the authority to impose any conditions that he/she considers necessary on a foreign national upon release (Immigration and Refugee Protection Act S.C. 2001, c. 27).

Current immigration law in Canada requires medical guidelines that state, “**38.** (1) A foreign national is inadmissible on health grounds if their health condition (a) is likely to be a danger to public health; (b) is likely to be a danger to public safety; or (c) might reasonably be expected to cause excessive demand on health or social services” (Immigration and Refugee Protection Act [S.C. 2001, c. 27]).

The current Canadian immigration guidelines include the following specificity: “Examples of “excessive demand” include ongoing hospitalization or institutional care for a physical or mental illness” (Citizenship and Immigration Canada, 2013a).

Currently the legislation in place regarding deportation is the *Immigration and Refugee Protection Act* (Bill C-11) and was adopted in 2002 (Chan, 2005). The old Immigration Act existed since 1976 with numerous amendments until it was eventually replaced. Under the old Immigration Act, individuals ordered to be deported were granted a right to appeal. The appeal process was up to the sole discretion of the Appeal Division of the Immigration and Refugee Board (IRB) (Chan, 2005). The Appeal

Division is required to examine all the circumstances of the case and decide whether or not the person should be removed from Canada. The factors that outline what the Appeal

Division needs to consider in its exercise of discretionary jurisdiction include:

1. The seriousness of the offence or offences leading to the removal order;
2. The possibility of rehabilitation or, alternatively,
3. The circumstances surrounding the failure to meet the conditions of admission;
4. The length of time spent, and the degree to which the appellant is established in Canada;
5. The family in Canada and the dislocation to the family that removal would cause;
6. The family and community support available to the appellant;
7. The degree of hardship that would be caused to the appellant by the appellant's return to his or her country of nationality (Chan, 2005).

In 1995, these factors were amended to include a Minister's power to override the board's decision with regards to "danger to the public". If a person was assessed by the minister as a danger to the public, there was no right to appeal (Chan, 2005). The current appeals process legislation (Bill C-11) has greater restrictions, appeals are even more difficult to access, and the process is currently described as expensive and slow (Chan, 2005). The current legislation allows for the systematic deportation of immigrants and refugees with mental illness who become involved with the criminal justice system, whether they are criminally responsible or not. For those who cannot be deported, they can be forcibly confined and treated with harmful medications or psychosurgical procedures (i.e., ECT). Jamaica was the number one ranking country of origin for criminal inadmissibility (unable to appeal) cases in 2006, 2007 and 2008 in Canada (Schizophrenia Society of Ontario, 2010).

If any protections or provisions were made available by the forensic system for people identified with mental health issues who had become involved with the criminal

justice system, they can be overruled by the Immigration Division if someone is a non-citizen. Any conditions, including detention, hospitalization, reporting, and psychiatric treatment can be imposed on someone who is deemed by an officer of the Minister of Citizenship and Immigration to be a “threat to the public” or a “serious criminal” (Immigration and Refugee Protection Act S.C. 2001, c. 27). Here, for a person already deemed a non-citizen, already involved with the criminal justice system, and already identified with mental health issues, a determination of their freedom is left to someone’s discretionary evaluation of them being a potential “threat” or a “serious criminal”. This evaluation is only open to the input of legal professionals involved in reporting via the criminal justice system and the input of medical professionals or psychiatric-based mental health service professionals. This privileged authority on issues pertaining to criminality, or to mental health is granted by the Criminal Code of Canada and the Mental Health Act and confined to the fields of law and medicine respectively. When a discretionary authority is granted in this way, it is permeable to and a conduit for many judgments, prejudices, and beliefs governing historically forged laws and contemporary practices in immigration, criminal justice and mental health. As this thesis will show, the legacy of eugenic and racial thinking in the biomedically dominated mental health system, criminal justice and immigration system is both persistent and crucial to current research and practice, especially so for the problem of deportation. The legacy of eugenics and racial thinking at the confluence of immigration, mental health and criminal justice systems includes ideas of the untreatable, the unrehabilitatable, the foreign undeserving other.

With the new changes to the Criminal Code and the IRPA, additional powers are being granted to the courts to deem someone "high risk" overriding the current criminal code's provisions that allow people found NCRMD to get an absolute discharge. The courts now have the discretion to make decisions "to protect the public" through the Not Criminally Responsible Reform Act. Also, with the new Faster Removal of Foreign Criminals Act, the right to appeal is being removed at the discretion of the courts. Absolute authority is being granted to the courts, enacting a rule of law that removes freedoms from those deemed as a threat to what is (re)consolidated as the "Canadian public". These changes however are actually historical continuities, entrenching notions of Canadian nationalism, of foreign as threat, and individualized notions of mental "illness" and criminality. This unified front allows for a common outcome: the seclusion, ejection, or tranquilization of anyone who is deemed permanently mentally ill, unrehabilitatable criminal, or an undeserving foreign threat. These determinations of dehumanized identities, deserving of violence and undeserving of care must rely on one another to achieve their common outcome. The technologies and practices of dehumanization and expulsion must also be resilient to change and overturn amendments to the contrary in order to ensure the reproduction of a white, ablest, "civilized" Canadian national identity.

Policies and procedures of the Canada Border Services Agency (for identifying people for removal from Canada)

The Canada Border Service Agency (CBSA) is charged with the enforcement of removal orders (or deportation orders) for foreign nationals. The Minister of Public Safety and the Minister of Citizenship and Immigration have the power to delegate this

authority to the CBSA. The procedural policies are outlined in the Citizenship and Immigration Canada operational manuals subtitled “enforcement”. The removals program objectives stated on page 8 of the document “ENF 10” highlight the following:

2. Program objectives

The objectives of Canada’s immigration policy concerning removals are:

- to maintain and protect public order, health and security in Canada;
- to remove alien criminals from Canada expeditiously;
- to ensure that all the legal rights accorded to foreign nationals being removed are observed; and
- to conduct their removal effectively and equitably.

(Citizenship and Immigration Canada, 2010).

When a person in Canada who is either a non-citizen or a citizen commits a crime, calls the police, reports a missing person et cetera, that information is entered into the Canadian Police Information Centre (CPIC) database. The CPIC information is available to law enforcement officers across Canada including the CBSA (see appendix ii). As a 2011 national news report revealed, CPIC captures information about people identified with mental health issues, whether they have committed a crime or not. This information is also being shared with the US department of homeland security and has led to refusal of entry (to the US) for people who have called the police in the past for mental health reasons (Bridge, 2011, September 9). As Bridge’s article states, suicidality is not a crime in either Canada or the US, yet this information from a CPIC is shared nationally and internationally (Bridge, 2011, September 9). Put simply, the criminal justice system’s database is used to identify mental health system information (i.e., harm to self) to the immigration system by implying that the person could be dangerous (without serious

criminality or threat to the public) by virtue of their mental health issue identification and can be used to for an international denial of entry.

Here we see how at the practice level, the systems of enforcement and regulation for people identified as “alien”, “criminal”, or “mentally ill”, reproduce outcomes based on a devaluing of the foreign Other, a propagation of a notion of inherent criminality residing within an individual, and of a sick person that is permanently a threat both to the “Canadian Public” and the Canadian economy. People identified as criminal, foreign, or mentally ill are cast outside the lines of the Canadian public or the Canadian economy. As will be revealed in the contemporary cases, they are deemed as a cost, an intrusion, a subhuman pathogen.

Chapter 4

Conceptualizing the violence of deportation at the confluence of criminal justice, mental health and immigration systems

In this chapter, a conceptualization of violence is suggested, capable of engaging with the complexity of historical, contemporary, and seemingly separate issues of violence within the construction, legitimization, and authorization of deportation for those identified with mental health issues in Canada. In order to recognize the historical violence embedded in contemporary practices and technologies or the violence institutionalized within professional discourses, within law, and governing policies, we must see the confluence of violence as an interdependent process. A recognition of the violence of abuse, war, sexual violence, collective violence and state violence must also acknowledge the violence that is social, political, and economic, while appreciating the violence within the institutions and laws that through their contributing professions and knowledge authorities, (re) lay the groundwork for violent means to achieve violent ends. This must then also consider the practices and technologies that permit violence to continue while resisting inquiry, and transformation. In order to achieve such a conceptualization, I convene contributions from theorists on violence that have attempted to describe the nuances, tensions and complexities of violence.

Complex issues relating to oppression are often approached through an intersectional analysis that understands that various forms of oppression are targeted at certain groups by virtue of their identification by race, class, age, ability, gender, sexual orientation, religion, language, etc.. Intersectional approaches often describe one or more

“types” of oppression (i.e., racism, heteronormativity, mentalism, ageism etc.) working interrelatedly or together depending on which identity categories a person or group is understood as belonging to. Criticisms of this approach have highlighted its lack of attention to hierarchy, to relations of power and the formation of subjectivities, and an overreliance on identities or subjectivities (Carbado, 2013; Nash, 2008; McCall, 2005; Heron, 2005). Some scholars have suggested a systemic analysis that looks at interlocking systems of oppression or a matrix of domination to reveal one historically related system and how they need and secure one another hierarchically (Collins, 1991; Nash, 2008; Heron, 2005; Razack, 1998).

I suggest that it may be possible to consider the material effects of segregation, oppression or violence that is targeting delineated groups without requiring the identification technologies of difference, or the (re)establishment of hierarchies to advance a position of social justice or any ethical claims for recognition, redistribution or reconciliation.

An analysis of confluence is offered as a departure from an intersectional or interlocking analysis in that a confluence is never static, no part is completely distinct from another, and there are multiple perspectives from which one can examine or trace the same idea, system, factor or influence. Confluence demands a historical consideration, an appreciation of the temporal. Imagine that no cubes of a matrix, spheres of intersecting difference or systems that interlock can remain static. An appreciation of confluence acknowledges that all categories and systems of difference are suspect and focuses or redirects our attention to their common projects as well as their resulting fields

of knowledge, practices and technologies. An analysis of confluence also acknowledges identity/difference as complicit within and a product of historically perpetrated violence. While the term confluence has been used as a guiding concept to study complex issues elsewhere (Joe, 2000; Rix, 2000; Sung, Mellow & Mahoney, 2010; Press & Tanur, 1991; Dickerson, 2008; Phillips, Leathers & Erkanli, 2009), the above metaphor tracing the operations of power across temporal periods, within social relations, discourses, through the establishment of hierarchies and hegemonies and governing processes to reveal a project is my own contribution.

Conceptualizing violence

violence is a structure....a fundamental force in the framework of the ordinary works and in the multiple processes of that world” (Lawrence & Karim, 2007, p.5).

This thesis examines how deportation is constructed through the confluence of mental health, criminal justice and immigration systems where these systems operate interdependently in order to accomplish deportation. Each system brings its specific history of violence and the moment of deportation enacts the confluence of systems required to sustain the mission of nation building through exclusion. The purpose of this thesis is to analyze this process in order to expose mechanisms of racial violence cloaked as protection of Canadian society.

Introducing a discussion of the meanings of the term violence or a theorization that captures the violence of the process of deportation for people identified with mental health issues (including its contributors, interlocutors, practices and products) is impressively difficult. Often when we think of the term violence, images of physical combat, war, physical abuse, sexual violence, or collective violence come to mind. When

we proceed from these prime images, we can soon come to the consideration of examples of violence including social, political and economic forms of violence between individuals, groups, communities and states. We can speak of violent means and violent ends. My goal here is to approach a theorization of violence that permits the analysis of the nuances, tensions and complexities involved in the construction, authorization and legitimization of deportation. This is not an attempt to resolve outstanding debates on the reification of violence or an attempt to rectify projects aimed at essentializing violence. I in no way purport to provide a *raison d'être* for violence but rather to encourage exploration and contestation of all forms of violence as they manifest in our daily lives.

Two key, exemplary Canadian reports have summarized how racism (recognized as a form of violence) can adversely affect the health and wellbeing of people by affecting or restricting their access to healthcare services. Racist systems and services create unequal opportunities to access treatment or receive equal qualities of healthcare treatment (The Inner City Health Strategy Working Group, 2010; Nestel, 2012). Experiencing racism itself can affect one's health and wellbeing, increasing the likelihood of cardiovascular disease, mental health issues, diabetes, cancers, and exposure to physical violence etc. (The Inner City Health Strategy Working Group, 2010; Nestel, 2012). Also, racism at structural levels in society can effect one's opportunity to attain the social determinants of health and well-being i.e., education, housing, employment, food, etc (The Inner City Health Strategy Working Group, 2010; Nestel, 2012). These two reports are exemplary because they cite well-respected literature from critical race scholars and theorists on racism in the health care system while contributing to this

knowledge base from specific studies in the Canadian context (Braveman, 2006; Brondolo, Gallo, & Myers, 2009; Brown, 2003; Fernando, 2002, 2003; Galabuzi, 2001; Galabuzi and Labonte, 2002; Krieger, 2000, 2011; Nazroo, 1998, 2003).

While we must appreciate these varying forms of racism as violence, we must also acknowledge the discursive, historical social and political structures that these forms of violence operate from and within. If a healthcare treatment or service disproportionately identifies people with an illness or pathology due to a systemic or structurally embedded form of racism, gender discrimination or ablism, would we want to advocate for people to have “equitable access” to it (i.e. a treatment or service that is racist, ablest or gender discriminatory and has historically developed to pathologize difference)? If there are differences in health statuses for people of colour or those identified by some other difference category, how do we identify a need without reproducing a discourse that will wield biological and genetic difference as a rationale for social stratification (i.e, thereby reinforcing discourses of eugenics and racism)? When we advance an argument that suggests that marginalized groups of racial, sexual, gendered, able or mental difference require “specialized” access to social determinants of health, how do we not reproduce tendencies toward constructing *cultural competencies* or segregated services (reproducing boundaries of nations, groups, us and them, the deserving and undeserving)? Violence must be appreciated at all of these levels in order for transformation to occur. This can only be appreciated if it can be acknowledged with a multi-focal, historical, social and political analysis.

Theories on violence

As Bruce Lawrence and Aisha Karim outline in their 2007 book, *On Violence*,

Theories provide a deeper reflection on what otherwise seem to be but momentary aberrations in a well-oiled, economy-driven machine of global order. Theories provide a way of linking corporate scandals with inner-city gang wars, the war on drugs with the war on terror, civil wars with genocide (p.5).

The World Health Organization once defined violence as “The intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation” (Krug, Dahlber, Mercy, Zwi, & Lozano, 2002, p.5).

From theorists such as Karl Marx, Friedrich Engels, G.W.F. Hegel and Franz Fanon, however we can acknowledge “that violence is a structure....a fundamental force in the framework of the ordinary works and in the multiple processes of that world” (Lawrence & Karim, 2007, p.5). Engels has argued that economic forces are central to subjugation. Capital “has a logic of its own” and does whatever is required to achieve economic prosperity (Lawrence & Karim, 2007). For Engels, the bourgeois revolution occurred so the political conditions could support the changing economic ones. Military innovations were and are instrumental for economic gain and at the same time a threat to it. This dialectical progression of history perpetuates violence (Lawrence & Karim, 2007). For Marx violence is necessary in the evolution and maintenance of capitalism. It is required in order to compel people to conform to a system of exploitation, the working day and wage-labor (Lawrence & Karim, 2007, p 21).

Violence must be also understood in our day-to-day practices as well, “Violence in marriage, for instance, must be framed within a theory of the structure of marriage...Rape, too, must be analyzed within the structure of gender relations, sexuality, and society” (Lawrence & Karim, 2007, via Catharine MacKinnon, p. 7). Violence is historical, rhetorical and practical, and all require confrontation (Lawrence & Karim, 2007). Epistemic violence can take the form of rhetorical or cognitive violence that can for example, assume that European, American, or other Western designs and imperial frameworks are superior to the rest of humankind (i.e. Mohandas Gandhi has described the violence of occupation and external rule that embeds the acceptance of the belief that British, American and Anglo juridical, educational, structures, even calendars and clocks are superior to all others- this is an example of rhetorical violence⁹) (Lawrence & Karim, 2007, p. 11).

Violence can be viewed as both a product and a process. Products are easier to recognize, as events, patterned occurrences, however “a product of violence is never just a single product with a seamless narrative or a fixed meaning” (Lawrence & Karim, 2007, p.12). “As process, violence is cumulative and boundless. It always spills over. It creates and recreates new norms of collective understanding (Lawrence & Karim, 2007, p.12).

For Michel Foucault, violence is a human creation and circumstance (Lawrence & Karim, 2007). Through Foucault’s analysis of the processes of subjectivity, he exposes

⁹ The rhetoric of superiority of knowledge in the Western form is also understood as epistemic violence.

how texts and institutions and discursive practices historically develop to mark difference and mask hierarchy within networks of relations of power (Lawrence & Karim, 2007).

These are the foregrounds of violence.

Pierre Bordieu asks that we focus our attentions to the *modes of domination* (that exist on a continuum) within social life and understanding those power relations as they participate and foster violence (Lawrence & Karim, 2007,p 188).

Amartya Sen (2008), reminds us that,

Cultural and social factors, as well as features of political economy, are all quite important in understanding violence in the world today. But they do not work in isolation from each other, and we have to resist the tempting shortcuts that claim to deliver insight through their single-minded concentration on some one factor or another, ignoring other central features of an integrated picture (p. 14).

Hannah Arendt describes violence as instrumental and as distinct from power (the ability to act and act in concert), force (like an energy i.e., force of nature) or strength (individual) (Arendt, 1970). Violence can destroy power but can never increase power and is often a response to a lack of power. For Arendt, although violence has the potential to effect power and to diminish power,

The very substance of violent action is ruled by the means-end category, whose chief characteristic, if applied to human affairs, has always been that the end is in danger of being overwhelmed by the means which it justifies and which are needed to reach it. Since the end of human action, as distinct from the end products of fabrication, can never be reliably predicted, the means used to achieve political goals are more often than not of greater relevance to the future world than the intended goals (p.4).

In William E. Connolly's foundational work, *Identity/Difference*, he maps out the problem of identity requiring an Other or difference in order to exist (Connolly, 1991). I include Connolly's analysis here to provoke the paradoxical thinking required for any

conceptualization of violence. Within his example we see a tendency to attempt to resolve human questions (regarding good and evil), resulting in the forging of identities and differences, the necessity of violence to vindicate or secure the self, to mark the other as heretic, to assume that any of this is indispensable and blind ourselves to the structures that reproduces evil or violence.

Connolly introduces a primary example to begin to engage with this problem. As Connolly describes, with regards to theological and moralistic theoretical endeavours focused on *good and evil*, *evil* has been conceptualized by Augustine as a product of individual *will*, while *good* is what is designed for in our nature (by God in Augustine's work) (Connolly, 1991). Evil is then "a voluntary falling away from the good" (Connolly, 1991, p. 6). The primacy of *will* permits a gap between good and evil that locates responsibility, action, identity and deviance- in people (Connolly, 1991, p. 7). This position is alternative to a Manichean¹⁰ stance which might see a duality rather than a distinction. In Augustine's view, God is understood as benevolent and people solely responsible for *their* will. This provides the gap between good and evil. The human then becomes "a deep, confessing self and a responsible agent" (Connolly, 1991, p.7). Both the faith and the identities of the faithful are established, and "any position that might

¹⁰ i.e., " a postpagan sect in a larger constellation called Gnosticism that itself moved ambiguously within and against the hegemony of Christianity" believed that good and evil were dualistic as "a cosmic force of light haunted by a powerful secondary force of darkness. The force of light lacked the ability to expunge darkness in the first instance, but it radiated with the possibility of subduing it in the last. These opposing forces were held to compete both in the world at large and within the interior of the self; and the redeemer, assuming serial earthly manifestations including Jesus of Nazareth and Mani himself, helped those who heeded its words to attain deeper *gnosis* or insight into the truth of transcendence and salvation" (Connolly, 1991, p.2).

compromise the conviction of its universal necessity or intrinsic truth becomes a threat to the integrity of one's faith and identity" (Connolly, 1991, p. 7).

As Connolly describes, this problem is pervasive within contemporary conceptualizations of identity, difference, responsibility, right and wrong, evil and good.

The indispensability of one conception of divinity, evil, and will is established by defining what deviates from it as a heresy that must not be entertained as a counter-possibility. Humans drawn to paganism or Manicheism must be made to suffer in order to vindicate the self-identity of those who find their deepest hopes disturbed, destabilized, or threatened by these alternative possibilities of interpretation. In a more general sense, Augustine's solution to the first problem of evil both delimits the sites at which responsibility can be located and intensifies the demands to identify agencies of responsibility. We are still living out the effects of this legacy (Connolly, 1991, p. 8).

For Connolly, a

second problem of evil...flows from the attempt to establish security of identity for any individual or group by defining the other that exposes sore spots in one's identity as evil or irrational. The second problem of evil is *structural* in that it flows from defining characteristics of a doctrine as it unravels the import of its own conceptions of divinity, identity, evil and responsibility...(Connolly, 1991, p.8).

This second problem is described by Connolly as a *temptation* rather than a necessity or implication. A temptation can of course, be resisted. To do so, themes that present themselves as indispensable must be open to interrogation,

Every culture seems to contain some themes that are both indispensable to it and inherently problematic within it. The pressure of their indispensability works to conceal their problematic character. This sometimes becomes clear retrospectively after the indispensability of a theme has been lost or compromised then *aporias* within it flood into the open, making contemporaries wonder how their forerunners could ever have entertained such superstitious or absurd ideas. But this very portrayal of superstitions of the past increases the probability that the problematic character of indispensable themes in the present will not be probed vigorously (Connolly, 1991, p.3).

Colonial violence

Franz Fanon emphasizes that we must also consider the violence within the writing of history or the violence within historiography. For Fanon, the colonizer/settler writes history in a way that boasts of his exploits, rationalizes and takes pride in civilizing the colonized while eliminating the history of the colonized. The colonizer/settler writes the history of their own nation in reference “to all she skims off, all she violates and starves” (Lawrence & Karim, 2007, p.24). The colonized lives in fear for his life and according to Fanon, envies the colonizer. These social, structural, and interpersonal relations are and were maintained through violence and can be undone, through violence.

Colonial violence has been described as having four levels including: brutal physical violence against another person, control and containment of violence inflicted upon others, suicide, and the violence that occurs when writing about other people, including classification (Kunreuther, 2006; Achebe & Irele, c2009).

While this thesis addresses the topic of deportation, colonial national building, racism and eugenics for those identified by the criminal justice, mental health and immigration systems, it does not cover all of the processes and technologies of reservation, internment, the appropriation of indigenous lands, or other technologies that also depend upon dehumanizing technologies discussed in this work. The processes and products of settler state colonialism demand focused attention in order to appreciate the nuances of these technologies of violence. Scholars have identified a tendency in critical race and postcolonial literature to operate within a backdrop that sometimes erases the histories of genocide, slavery and assimilation of indigenous peoples (Lawrence & Dua,

2005). Sharma and Wright (2008), later clarified that when recognizing the context of issues for racialized people on colonized lands, we must be very careful to not then categorize all migrants of complex trajectories and histories (including slavery, indentureship, refugees, or the voluntary) as “settlers” and “colonizers” as well. This would be a (re)production of the nationalist discourses that were advanced with colonial nation building to establish ideas of nationhood, belonging, and the Other or stranger. These discourses must be held to account for their violence including that of the reinforcement of colonial social relations that reinstitute hierarchies of who is deserving, of who lays claim to lands and property and the ordering of these privileges based on arrival (Sharma & Wright, 2008).

Aimé Césaire’s *Discourse on Colonialism* describes how the violent relations of colonization result in the perpetuation and exacerbation of violence for the colonizer and the colonized. For Césaire, the colonial relationship rationalizes violence towards the colonized through the advancement of the practices of dehumanization and the provocations of images of the uncivilized and the savage (Césaire & Pinkham, 2007). At the same time, the colonial relationship actually recreates this violence, this imagined savagery and uncivility in the colonizer. For the colonizer,

“colonization works to *decivilize* the colonizer, to *brutlize* him to buried instincts, to covetousness, violence, race hatred, and moral relativism: and we must show that each time a head is cut off or an eye put out in Vietnam and in France they accept the fact, each time a little girl is raped and in France they accept the fact, each time a Madagascan is tortured and in France they accept the fact, civilization acquires another dead weight, a universal regression takes place, a gangrene sets in, a center of infection begins to spread; and that at the end of all these treaties that have been violated, all these lies that have been propogated, all these punitive expeditions that have been tolerated, all these prisoners who have been tied

up and “interrogated”, all these patriots who have been tortured, at the end of all the racial pride that has been encouraged, all the boastfulness that has been displayed, a poison has been distilled into the veins of Europe and, slowly but surely, the continent proceeds toward *savagery*. (Césaire & Pinkham, 2007, p.35-36).

Jean-Paul Sartre’s ‘Preface’ to the *Wretched of the Earth* (1961) begins with a discussion of how the colonizers from Europe carried out their civilizing mission and what the (by)products of this were (Fanon, 1965). He sums up how the ‘civilized’ native, who had learnt to echo his master’s voice finally led to the independent individual who disregarded the European civilization and would not mind taking up arms, when necessary, against his erstwhile oppressor (Fanon, 1965).

On the lines of Fanon, Sartre ridicules the biased Western idea of humanism which had denied a human status to more than half of the world’s inhabitants (Fanon, 1965). He uncovers the Western hypocrisy as he shows how the West, in a bid to exploit, murdered and meted out inhuman treatment to the natives, dehumanised them and reduced them to the level of “superior monkeys”; how the colonizers made a calculated attempt to wipe out the native culture, traditions, languages, and substitute them with that of his own (Fanon, 1965, p. 15). Thus attempts were made to create a root-less native who belonged to nowhere in particular.

This turns the native into a creature—neither man nor animal. Under these circumstances where he is beaten, undernourished, ill and terrified, where he exhibits laziness, slyness and a propensity to steal, he can understand only the language of violence (Fanon, 1965). However, the colonizer, whose basic aim is exploitation, cannot murder the native outright as this would be against his purpose. Soon this machinery,

however, goes out of control and the oppressed take up violence as the only way to face the oppressor (Fanon, 1965). This takes place in two stages. Initially the traumatized native, unable to contain his terror, anger and frustrations takes up arms against his fellow brothers, in the absence of the real enemy. Some take recourse to religion, spiritualism and rites. This, as Sartre states, is merely the result of the seeds of violence sown by the oppressor (Fanon, 1965). This phase is soon over, after which the oppressed identifies his common enemy and turns against him (the European) en masse (Fanon, 1965). Their only duty then becomes driving out colonialism by every means at their disposal. Soon, as Sartre says, “his rage boils over, he rediscovers his lost innocence and he comes to know himself in that he himself creates his self” (Fanon, 1965, p.21). Thus a ‘man’ is born from the wreckage of the humbled, terrorised, effeminate native who can hold both the plough as well as the gun—the new man who is ready to sacrifice himself in war for the cause of his nation (Fanon, 1965, p. 22-23). As Sartre reminds us, “we only become what we are by the radical and deep-seated refusal of that which others have made of us” (Fanon, 1965, p, 17)

Sartre discusses the different ways in which the colonizer strengthens his hold over the oppressed. In certain places, the mother-country maintains some paid feudal lords who rule according to her wishes (Fanon, 1965). At other places she divides and rules and either creates a native bourgeoisie or gives rise to different factions. Or else she plays the double game of settlement and exploitation simultaneously (Fanon, 1965). Thus Europe encourages divisions and stratification of the colonised country. This is what compels Fanon to state that to fight the colonizer, the colonized must at first fight against

itself. The internal fight should be directed at uniting the different classes and groups, as Sartre points out: “In the heat of the battle, all internal barriers break down” (Fanon, 1965. P.11).

Sartre, through Fanon, speaks of the necessity for the peasant classes to hold power. The peasants unlike the petty bourgeoisie or the urban proletariat, suffers the most (Fanon, 1965). “The peasantry, when it rises, quickly stands out as the revolutionary class” (Fanon, 1965, p.11). This class knows the taste of naked oppression and in order not to die of hunger it never makes any compromise with their demands— a complete demolition of all existing structures is what they demand (Fanon, 1965). Sartre feels that “In order to triumph, the national revolution must be socialist... if the native bourgeoisie comes to power, the new state, in spite of its formal sovereignty, remains in the hands of imperialists” (Fanon, 1965, p.11). Thus a new union of the Third World is formed under the command of the peasant classes.

Sartre however warns the reader of the dangers of the cult of leaders and personalities, the over influence of western culture and “moving back into the twilight of past culture” (Fanon, 1965, p. 12). The true culture for him is the culture of the Revolution which constantly creates and remakes a nation and prevents stagnation and accumulation of wealth, knowledge and power in the hands of bourgeoisie imperialists (Fanon, 1965).

An Integrated theoretical perspective on violence: Slavoj Žižek

According to Slavoj Žižek’s *Violence*, there are three modes of violence - the subjective, objective, and symbolic. Subjective violence includes the most visible forms

of violence including physical, verbal violence and organized violence perpetrated by individuals, states, groups. Objective violence contains two kinds: *symbolic* violence embodied in language and its forms, and *systemic* violence “the often catastrophic consequences of the smooth functioning of our political and economic systems” (Žižek, 2008, p. 2). Symbolic violence “is not only at work in the obvious-and extensively studied-cases of incitement and of the relations of social domination reproduced in our habitual speech forms: there is a more fundamental form of violence still that pertains to language as such, to its imposition of a certain universe of meaning (Žižek, 2008p.2). Systemic violence is “violence inherent in a system: not only direct physical violence, but also the more subtle forms of coercion that sustain relations of domination and exploitation, including the threat of violence (Žižek, 2008, p. 9). As Žižek states, “one should resist the fascination of subjective violence, of violence enacted by social agents, evil individuals, disciplined repressive apparatuses, fanatical crowds: subjective violence is just the most visible of the three” (Žižek, 2008, p.11). As Žižek describes,

the catch is that subjective and objective violence cannot be perceived from the same standpoint: subjective violence is experienced as such against the background of a non-violent zero level. It is seen as a perturbation of the “normal”, peaceful state of things. However, objective violence is precisely the violence inherent to this “normal” state of things. Objective violence is invisible since it sustains the very zero-level standard against which we perceive something as subjectively violent (Žižek , 2008, p.2).

“A step back enables us to identify a violence that sustains our very efforts to fight violence” (Žižek , 2008, p. 1). Žižek’s discussion of violence exemplifies how a confluence of violence can be perceived from an attention to the subjective and objective including systemic and symbolic forms. From Žižek, we have a framework with which

to organize and perceive various forms of violence while having the capacity to accommodate the preferences, considerations and contributions of Bordieu, Fanon, Sartre, Foucault, Césaire, Arendt, Connolly, Sen, Marx, Engels, MacKinnon and Gandhi that I have noted above. With Žižek's framework, we can include an analysis of physical violence, the structural violence of economic relations, day-to-day violence (marriage and Rape), epistemic, cognitive and rhetorical forms of violence, as products and processes, as human creations, relations of power, and modes of domination, cultural and social factors of violence, and the dangers of violent means to achieve unpredictable ends. We can also recognize the violence resulting from the problem of identity requiring an Other or difference in order to exist. With respect to colonization, Žižek's framework also accommodates a consideration of the violence in the writing of history or historiography, the violence reproduced from the master/slave relationship (in both the colonizer, the colonized, as products, practices and technologies of these relations for humankind, including the ongoing potential threat of violence). Implicit in this thesis is my use of Žižek's conceptualization of violence while accommodating the complementary contributions of Bordieu, Fanon, Sartre, Foucault, Césaire, Arendt, Connolly, Sen, Marx, Engels, MacKinnon and Gandhi for their needed specific contributions. The attentions to violence within language and speech forms (symbolic) and forms of coercion that sustain relations of domination and exploitation (systemic) are deeply historical area for consideration in this thesis (Žižek, 2008, p. 9). Specifically, the use of figurative language and colonial trope to construct the dehumanized identities of the untreatable,

unrehabilitatable or undeserving alien are accommodated within my use of Žižek's framework/conceptualization of violence.

Beyond intersectionality

Intersectional approaches are often called upon to conceptualize identities (race, class, gender, sexual orientation, ability, etc.) and forms of oppression/privilege (Racism, sexism, heteronormativity, patriarchy, mentalism etc.) as separate yet mutually constitutive categories. This reliance on difference exposes our ongoing propensity to resist a transformational analytic perspective that permits an engagement with social issues without a reliance on a basis of identity categories and systems that were forged through violent means. From this point of analysis we are often confined to weaving theoretical perspective together.



Image Retrieved from,
<http://www.blackfeminists.org/wp-content/uploads/2013/03/intersectionality.png>

One outcome of this is often an over-attention to difference and its products, which (re)deploy historically established systems and technologies to securely establish power relations and hierarchies. Another outcome of this is our imbalanced attention to historiography or the writing and rewriting of history through our contemporary horizons

of interpretation. To track a contemporary category of difference into the past can often map a category of difference onto the past, thereby obscuring the project, system, technology, power relations, and interdependent practices that produced it while anachronistically placing a contemporary representation or understanding of violence or difference in the past. In this instance, the potentials for resistance and transformation become exponentially undermined.

Immanuel Wallerstein uses the example of the idea of “India” to propose that our present ways of thinking determine how we think of the past and therefore our past is ever changing. As Wallerstein outlines, the current “India” is an invention of the modern-world system (i.e. capitalism/colonialism/imperialism), its pre-modern history is an invention of modern India and our conception of this historical culture may change in the future from how we define it today. This change in interpretation or conception thereby changes it in the past. Wallerstein is certain to highlight that he is not denying the historical specificity of India but rather is asserting that what is included in this description is “an ever-changing, very fluid phenomenon” (Wallerstein, 1991, p 134).

Scholars attribute the origins of the term *Intersectionality* to Kimberle’ Williams Crenshaw who published *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics* in 1989 (Carbado, 2013, p.811; Nash, 2008). However, bell hooks articulated a similar analytical necessity some time earlier in her 1981 book, *Ain’t I a Woman* (hooks, 1981). In it, hooks notes that we are all socialized by sexism, racism and classism to varying degrees and the work to rid ourselves of these socialization must be a conscious one

(hooks, 1981). It has been described as a paradigm to understand “the relationships among multiple dimensions and modalities of social relations and subject formations” (McCall, 2005. P. 1771).

McCall suggests “that different methodologies produce different kinds of substantive knowledge and that a wider range of methodologies is needed to fully engage with the set of issues and topics falling broadly under the rubric of intersectionality” (McCall, 2005, p.1774). She posits (reluctantly so) that methodologies focused on intersectionality can broadly be looked at as anti-categorical/deconstructing, intercategory (examining the relationship among existing categories), or intracategory (“acknowledges the stable and even durable relationships that social categories represent at any given point in time, though it also maintains a critical stance toward categories” McCall, 2005, p.1774)

Although the contribution has led to a more widespread consideration of multiple forms of oppression, critiques have been abundant to say the least. While I cannot attend to all contributors here, I have chosen some key critiques that have summarized some of the central concerns.

Jennifer Nash critiques intersectionality for “the lack of a defined intersectional methodology; the use of black women as quintessential intersectional subjects; the vague definition of intersectionality; and the empirical validity of intersectionality” (Nash, 2008, p.1). She goes on to specify that “Ultimately, my project does not seek to undermine intersectionality; instead, I encourage both feminist and anti-racist scholars to

grapple with intersectionality's theoretical, political, and methodological murkiness to construct a more complex way of theorizing identity and oppression" (Nash, 2008, p.1).

Barbara Heron has suggested that rather than identifying or reflecting on one's specific identity categories via an intersectional approach to delineate a "social location", the process of reflection can achieve a potential for resistance through an examination of power relations, of one's subjectivity or subject position. As Heron names, "Implicit in this structural analysis is an intersectional model of oppression which does not assert a hierarchy of oppressions but rather seeks to explain that oppressions may act in concert, in opposition, or in other complex ways in specific contexts" (Heron, 2005, p. 343).

Devon Carbado has attempted to address the following critiques of intersectionality:

1. Intersectionality is only or largely about Black women, or only about race and gender.
2. Intersectionality is an identitarian framework.
3. Intersectionality is a static theory that does not capture the dynamic and contingent processes of identity formation.
4. Intersectionality is overly invested in subjects.
5. Intersectionality has traveled as far as it can go, or there is nothing more the theory can teach us.
6. Intersectionality should be replaced by or at least applied in conjunction with (fill in the blank). (Carbado, 2013, p.812)

In his address, Carbado fulsomely responds to number one. In his response to items 2-4, Carbado briefly states,

"Intersectionality reflects a commitment neither to subjects nor to identities per se but, rather, to marking and mapping the production and contingency of both. Nor is the theory an effort to identify, in the abstract, an exhaustive list of intersectional social categories and to add them up to determine—once and for all—the different intersectional configurations those categories can form" (Carbado, 2013, p.815).

Carbado here also references Cranshaw's original project of "how the law constructs (and describes preexisting) social categories" (Carbado, 2013, p.815).

Carbado's brief response insufficiently addresses criticism 2-4. The dynamic and contingent processes of identify formation are not revealed by a *commitment* to doing so. Intersectionality, by way of practice does have the tendency to generate multiple combinations of categories that are often perceived as an effort to form an exhaustive list. Merely stating that its efforts are focused elsewhere is highly dismissive of the regular application of intersectionality in practice (in social service settings, community organizations, within social work practice, etc.)

With regard to items five and six, Carbado shelves alternatives to intersectionality due to a "discursive limitation" whereby "all these theories seem to imagine the synthesis or interaction of things that are otherwise apart" (Carbado, 2013, p.816). Carbado's efforts directed at salvaging intersectionality as a concept are deployed in order to propose his own subcategories of analysis, namely, "colourblind intersectionality" and "gender-blind intersectionality" (Carbado, 2013, p. 817). These two categories just happen to be another combination of identities (the seemingly invisible operations of whiteness and gender in specific instances) which are also very worthy of consideration. While his contribution brings attention to another intersecting area of identity/oppression, it fails to respond to the critiques of intersectionality while exposing that the concept of intersectionality and alternatives to intersectionality maintain difference and separation as a starting point and reproduce ideas of difference in their analyses and theorizations.

Other scholars have suggested that the critiques of intersectional approaches can be very informative. In the concluding statements Jennifer Nash's article, *Re-thinking Intersectionality*(2008), she suggest that intersectional analyses could be enriched could by,

examining how race and gender utilize differing technologies of categorization and control, disciplining bodies in distinctive ways, and coalescing (or colliding) in particular formations in certain historical, social, cultural, representational, legal, and technological moments. In analyzing race and gender both as co-constitutive processes and as distinctive and historically specific technologies of categorization, intersectionality scholars will be able to offer insights that far exceed imagining race and gender as inextricably bound up (Nash, 2008, p.13).

Interlocking systems of oppression

Other articulations or analyses of oppression/privilege and identity/difference include Patricia Hill Collins' "Matrix of "domination 'along interlocking axes of race, class, and gender oppression' (Collins, 1991, p.225) among other axes such as sexual orientation and religion. She writes:

The significance of seeing race, class, and gender as interlocking systems of oppression is that such an approach fosters paradigmatic shift of thinking inclusively about other oppressions, such as age, sexual orientation, religion, and ethnicity...opens up possibilities for...a both/and conceptual stance, one in which all groups possess varying amounts of penalty and privilege in one historically created system (Collins 1991, p. 225, cited in Martinez, 1999).

As Sherene Razack describes, "Analytical tools that consist of looking at how systems of oppression interlock differ in emphasis from those that stress intersectionality. Interlocking systems need on another, and in tracing the complex ways in which they help to secure one another, we learn how women are produced into positions that exist symbiotically but hierarchically" (Razack, 1998, p. 13).

From Nash, Collins, Heron and Razack, acknowledged are the necessities of our attention to the specific historical conditions revealing “one historically created system” (Collins, 1991), “historically specific technologies” (Nash, 2008), power relations and subject position (Heron, 2005), and the interdependency of these systems that “secure” them and order them “hierarchically” (Razack, 1998). What is less emphasized in these contributions is the paradoxically maintained reliance and reproduction of categories of identity/difference and systems of domination/oppression/privilege that are discursively and operationally delineated as separate in order to speak of them as “mutually constituting” interdependent or “interlocking”.

An ongoing problem is how can we consider the material effects of segregation, oppression or violence that is targeting delineated groups without requiring the identification of technologies of difference, or the (re)establishment of hierarchies to advance a position of social justice or any ethical claims for recognition, redistribution or reconciliation.

To begin with an aspect of difference to trace its production, dependency, (co/re)produced power relations and subject positions, often disturbs the process of appreciating a common project that privileged “one historically created system” (Collins, 1991), used “historically specific technologies” (Nash, 2008), and established and reinforced power relations and subject position (Heron, 2005) all in support of this/these projects. We also lose focus on the importance of the interdependency of these systems and an attention to the practices and processes that “secure” them and order them “hierarchically” (Razack, 1998).

While the analysis of interlocking systems of oppression are important, theorists who utilize the interlocking metaphor have contributed that more can be considered with an attention to the processes and technologies rather than beginning with analysis of systems interlocking such as patriarchy or racism. A study of confluence allows for a consideration of that which is not already established in an analytical category or interlocking set of analytical categories. Rather than focusing on the distinct systems of oppression or the identity categories of difference (whether recognized as mutually constitutive, present in every moment or not), we focus *on the how and the why*, the practices and technologies and the social relations, thereby revealing a project. An example of a project that is revealed in this study through an analysis of confluence is that of eugenics. The project of eugenics was identified and rendered out through the tracing of the processes of dehumanization that had particular benefits to colonization, nation building and the establishment of professional and human hierarchies and authorities. It also (re)generated the products of racism, ableism, mentalism, sanism, and professionalism. Historically speaking, eugenics, mentalism, and sanism have been areas of neglect among those who rely on interlocking analyses alone. However interlocking analyses can make key contributions when looking at how the systems of ableism and patriarchy and racism interlock during specific instances or in specific spaces, i.e., courtrooms, etc. (Razack, 1998).

To illustrate my insistence on what I will further elaborate on as confluence, I will use a short personal example. Through my example, I mean to render transparent my

ethical position, one that refuses violence done to me or violence done to the cases I am examining in this thesis.

When I was an undergraduate and a graduate, the practice of critical reflexivity and critical reflection was explored/taught through an intersectional analysis. Students were asked to identify aspects of privilege and oppression among categories of difference and think about how they have experienced these privileges and oppressions or inherited/learned them. I often found myself generating a list that covered the most identity categories and threw in the words “power and intersecting...” to fill any holes (this was the best analysis of course!).

I am Ameil Joseph, a cis-gender, heterosexual male, no identified mental diagnosis or developmental disabilities, no acquired injuries limiting my ability or variation of ability that marginalizes me by virtue of my mobility, eyesight, hearing, social interaction, level of verbal or non-verbal communication, a Canadian born, Guyanese of South Asian descent, who was raised Catholic, is university educated, speaks English, a person of color, et cetera, et cetera.

I often chose to write about an aspect of intersectionality i.e. how my male, English, Canadian born, educated privilege was affected by racism. What I could never really capture was the story my father helped me to appreciate over time. That although we speak English, *our* English was and is never considered as the same as a white person who speaks English, especially if one speaks with an accent. It is *their* language, not *ours*. Ours may have been Hindi (we think, as my great grandmother spoke Hindi), but that was taken from us, beaten and erased over decades. We were punished for speaking it, and rewarded for speaking “the King’s English”. We were indentured laborers from India, brought to work *their* sugar plantations, to make *them* rich, while leaving *us* poor.

If English is a privilege, it is yours that I speak it, not mine that I can. For me, it is a reminder that my language was held as inferior, as savage and uncivilized. It is a reminder for me that your English is superior, universal, and owned by you. If it affords me opportunities above others in the present, it is only within a context of great suffering and loss where that “privilege”, when accepted as such by me, reinforces a reminder that my language is inferior, savage, and uncivilized and yours is superior, therefore, I am privileged to speak it. I always felt so sad handing in that assignment. Sad, that I couldn’t tell my story because it could not be depicted on the petals of a flower. I grew up listening to Hindi music and watching Hindi movies. My parents, family and I still enjoy them with unspeakable satisfaction, even though we cannot speak a word of the language.

My father helped me to understand our missing languages in relation to a system of dominance, a project of colonization, of global imperialism, the establishments of hierarchies of language, and how difference was perpetuated between *us* and *them*, *theirs* and *ours*. This was always much more informative to me than an intersectional analysis that looked at English and Hindi as privilege and oppression, or an interlocking analysis directed at the power relations operating at an institutional level revealing a disparity of access at one given instance. In my father’s version, historiography must be appreciated for the historical positioning of English as dominant, universal and privileged. The project of colonization and technologies of subjugation are crucial to an understanding of this equation of English with privilege and what that does to Hindi in my situation.

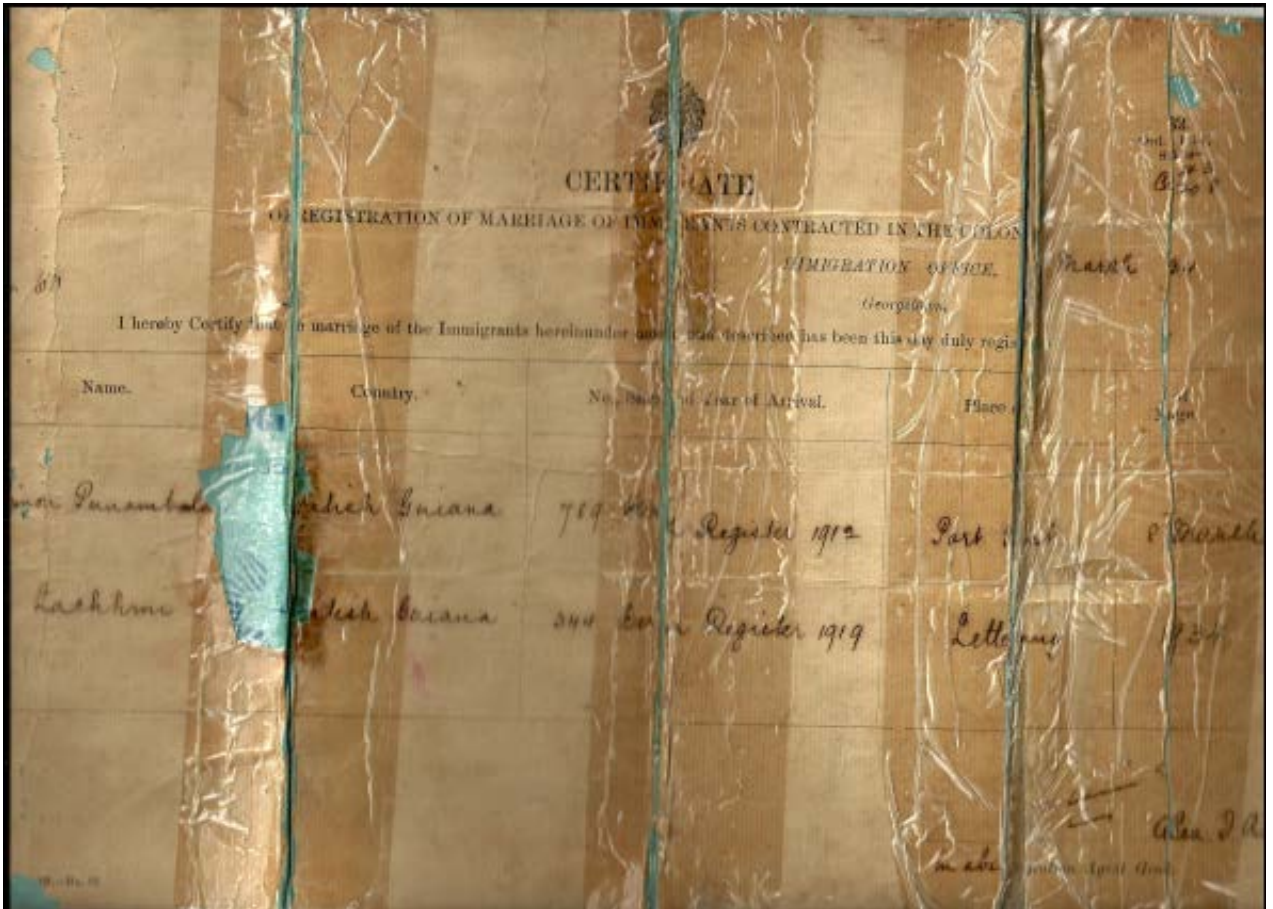
In those reflections, I also often felt pressured to accept the privilege of my affiliation with Catholicism. Living in a Judeo-Christian nation, I am attached among

those who represent the most abundant religious group, the dominant group, and the laws that privilege this affiliation. What I have difficulty sharing is that my mother *was* Hindu, my ancestors on my father's side were likely Sikh. If my grandfather did not align with a Christian faith in Guyana (then a British colony), he would not have been able to get work outside of the sugar fields or send his children to school, the British system did not allow this. Also, marriages in the colonies were sanctified by the colonizers. If both parties did not assimilate to the recognized method of marriage, the marriage was not recognized.

Hinduism was depicted as an ancient primitive, exotic, paranormal, fairy-tale. Christianity was a religion. While there are those who maintained their Hindu or Islamic affiliation, my family did not. To describe my affiliation with Catholicism as representing privileges afforded to me in the present or to my families' past is at the very least, an incomplete representation. For this example, some would want me to accept that "I'm better off" because I am affiliated with Christianity both now (although I would resist this affiliation), and for my family in Guyana. This is a zero-sum game I do not enjoy playing or accepting. My reality is one where my affiliation with Christianity was a product of colonial dominance, the systemic coercion to assimilate, a denial and erasure of indigenous traditions and beliefs, the development of contempt for what was depicted as mysticism, exotic, and primitive.

The alternative to Christian imposition was often no family (a denial of marriage), no education (refusal of access to education), malnutrition, poverty (resulting from lack of employment), shorter lives or death. For me to accept this as a privilege is to accept

that the benefits come with the affiliation, rather than acknowledging that these “benefits” arise from the violence that set Christianity as the privilege and Hinduism as the oppressed. It is the project of colonization that is important here, the technologies of assimilation and erasure, the interconnectedness of systems and establishment of the institutions of education, employment, marriage (based on this violence) that provide us a contextual understanding of this as it was then and as it is now. What is also important is how the rivers of language and religion run together with the project of colonization, they develop and merge with race, and never can be separated and then analytically interlocked to achieve an analysis of indentureship realized through the practices and technologies of coolie labour. My examples themselves are only a bucket drawn from this ever flowing, dynamic and changing confluence. Only telling my portion, represented partially, contingently, and through my horizons of interpretation (effected by a father who was directly involved in Guyana’s revolution for independence, educated in the Soviet Union by a socialist regime encouraging liberation from capitalism colonial imperialism, a father who fought for separation of Church and state etc.).



This is my grandparent’s marriage certificate, labeled “Certificate of Registration of Marriage of Immigrants Contracted in the Colony”.

Confluence

In this study of the practice of deportation for people identified with mental health issues at the confluence of criminal justice, immigration and mental health issues, complexity will be the primary focus. While the realities of difference are noted in the contemporary, difference will not be the starting point of analysis. Rather, our focus will be on the processes, discursive technologies, practices, historiographies, which produce

ordered difference, relational and professional hierarchies and relations of power and dominance. I substitute confluence for an interlocking or intersectional approach for these political ends.

To study a confluence is to trace how more than one idea, system, factor or influence run or merge together at a similar point or junction, just as two or more bodies of water run together and affect the composition and trajectory via their contributing sources. The study of confluence differs from an intersectional or interlocking analysis in that a confluence is never static, no part is completely distinct from another, and there are multiple perspectives from which one can examine or trace the same idea, system, factor or influence. Confluence demands a historical consideration, an appreciation of the temporal. It must also attend to complexity by engaging with the terrain as it is, with its many contributors of differing composition. Imagine that no cubes of a matrix, spheres of intersecting difference or systems that interlock can remain static. Imagine that their relations are fluid and therefore time must always be an aspect for consideration.

Confluence has been used as a guiding concept to analyze the phenomenon of youth homicide through an analysis of social and economic factors in neighborhoods in Chicago across historical periods (Joe, 2000). Confluence has also been studied to trace the historical, social, scientific and political developments that have effected legislation regarding trauma and child sexual abuse (Rix, 2000). Other examples include the study of confluence with respect to “jail inmates with co-occurring mental health and substance use problems” (Sung, Mellow & Mahoney, 2010), the study of how the disciplines of sociology, statistics, and public policy are relevant to family assistance programs (i.e.,

Food Stamps, Aid to Families with Dependent Children (AFDC), and Medicaid (Press and Tanur, 1991), how residential segregation results in racial inequality in future occupational outcomes (Dickerson, 2008), and how criminal justice and child welfare systems effect the outcomes for the children of probationers (Phillips, Leathers & Erkanli, 2009).

Kenneth Hamilton has illustrated the importance of an attention to historical contributing social, political, and specifically colonial contexts through his analysis of the targeting of queer sexualities. As Kenneth Hamilton has suggested, “the legacy of colonization has always historically meant the targeting of queer sexualities and spiritualities, the crushing of fluid sexual behavior to establish a heteronorm” (Hamilton, 2010). As Hamilton describes, the current injustice of the anti-homosexuality bill in Uganda (passed October 13, 2009) owes its ancestry to the criminalization of “sodomy and homosexual acts” that began in 1886 in a history that Christian Europe has authored as the “Passion of the Uganda Martyrs” (Hamilton, 2010).

Hamilton articulates clear examples of how the formation of the heteronorm in Uganda owes an inheritance to the legacy and violence of colonization. For a theory of violence and confluence that is able to consider contemporary Ugandan homophobic violence, or anti-homosexuality bills, and their resulting experiences of humiliation and disrespect, we must acknowledge that it is crucial to recognize the complex, specific, historical, political, and social conditions for any person because in the absence of this greater understanding, violence prevails. i.e., condemning Uganda and Ugandan’s as homophobic people thereby erasing global complicity in this contemporary situation.

While the term confluence is not original, my use of it for this new political and conceptual purpose is a departure from other approaches to complexity. In all of the above examples of the study of confluence, an appreciation of complexity directs the methodology, examining for continuities rather than differences. The outcome, rather than it being examined for what it has left out, can be appreciated for its representations, and our interpretations, through the functions of discourse, that reveal the contours of a set of power relations, systems, and technologies that (re)create a hierarchical structure, an interdependent set of hegemonic knowledge structures and practices, and governing processes. This understanding exposes a project, a project that can no longer be understood as “post” or “neo” but as colonization, as imperialism, as liberalism.

Chapter 5

Colonial continuities & Colonial technologies of difference:

In this chapter, specific attention is directed to colonial practices and technologies of violence and difference at work at the confluence of mental health, criminal justice and immigrations systems. Here the intricate processes required for Orientalism are recognized as dividing practices and gendered discourses at our confluence. Also, the colonial practices and violence of erasure (the elimination of voice or aspects relevant to any consideration of a person including their histories, and circumstances), of appropriation (of acts of resistance as “evidence” used for the constructing of identities worthy of violence, and for the rationalization of positions that legitimize violence) and the processes of dehumanization are explored for their use value in colonial and imperial projects. The establishment and implementation of professional hierarchies and disciplinary hegemonies at the confluence of immigration, criminal justice and mental health are interrogated for their imbrication with and reflection on the establishment, and reproduction of human hierarchies and hegemonies of knowledge and authority. These practices, policies and technologies are also challenged for their complicity in the remaking of North-South division, their participation in the reinforcement of ideas of nationalism and the utilization of moral and ethical arguments for the justification of atrocities.

Orientalism, Dividing practices and the White Family of Man: (re)producing the fantasy of difference

When exploring the complexities of the confluence of immigration, mental health and criminal justice systems through the example of the practice of deportation, the opportunity for transformation is foreclosed without an analysis that perceives the multiple layers and levels of historical violence revealed through an attention to colonial continuities and colonial technologies of difference. The contemporary deportation appeal cases alongside the archival cases reveal the continuation of practices and technologies that rely on historically established methods of constructing difference in order to rationalize (via policy and law and reference to professional expert knowledge) exclusion, surveillance, segregation, exploitation, or subjugation.

Historically, the practices and technologies of Orientalism (pace Edward Said) and similarly, *dividing practices* and subjectification (pace Michel Foucault) (re)produce violence at the discursive level, the legislative level, within institutions and within our day to day practices and technologies of decision making. Our attention to these specific historical processes (the technologies and practices exemplified by Orientalism and dividing practices) extends our analysis of the multi-focal conceptualization of violence (qua Žižek) to permit our temporal analytical ethos (that of our conceptualization of confluence) to question the violence of division and subjugation at all levels (contemporarily and historically). In this way, *any* practice or technology that presents itself as “new”, progressive, considerate of the most recent available “evidence”, or that has applied the most up-to-date technologies of objectivity, in order to authorize and

legitimate violence is exposed for its complicity in the deployment of technologies that were forged through violent means.

For Foucault, it has been said that the goal of his work has not been to analyze power but to “create a history of the different modes by which human being are made subjects” (Rabinow, 1984, p. 7). Paul Rabinow has outlined Foucault’s three modes of objectification of the subject to present Foucault’s main themes: 1) Dividing Practices 2) Scientific Classification 3) Subjectification. The most famous examples of dividing practices from Foucault’s work include the isolation of lepers during the Middle Ages; the confinements of the poor, the insane, the rise of modern psychiatry and its entry into the hospitals, prisons, and clinics throughout the nineteenth and twentieth centuries; and the “medicalization, stigmatization, and normalization of sexual deviance in modern Europe” (Rabinow, 1984, p. 8).

The subject is objectified through the processes of division either within him or herself or division from others. During this process, human beings are given both a social and a personal identity. These dividing practices are modes of manipulation that combine the action of science and exclusion in both spatial and social contexts (Rabinow, 1984, p. 8). In Foucault’s discussion of dividing practices, he highlights that there has historically been an interconnection between dividing practices and the formation and sophistication of the social sciences, its modes of classification, control, and containment and their relationship to the humanitarian rhetoric on reform and progress. This process has also becomes more efficient and proficient at applying these procedures of power and

knowledge to dominated groups or to the groups formed and given an identity through dividing practices (Rabinow, 1984, p.8).

From our analysis of the various forms of violence perpetuated within mental health, criminal justice and immigration systems, we have an overwhelming repository of historical dividing practices to which our current problems owe an inheritance. The three cases and related historical legislation reviewed in the archival documents chapter as well as Ena Chadha's review of the 1910 House of Commons debates reveal that early psychiatry propounded the belief that persons with mental disabilities were *undesirable immigrants* because they were by nature degenerates, dangerous and dishonest in disposition (Chadha, 2008).

Through Foucault's discussion of *scientific classification* as a mode of objectification he illustrates how discourses on life, labour, and language have been formed into disciplines that have achieved a high degree of internal autonomy and coherence and have changed abruptly at several junctures throughout history (Rabinow, 1984, p. 9). Foucault highlights this discontinuity which often is viewed as progress, as a demonstration of how we are made subjects through relations of knowledge and power in psychological, pedagogical, economic, and linguistic discourses (Rabinow, 1984).

The third of Foucault's modes of objectification is that of *subjectification* or the ways in which human beings contribute to their own subject formation. Foucault is concerned here with the "processes of self-formation in which the person is active" on the formation of their own bodies, thoughts, and conduct. These processes involve self-

understanding usually mediated through dominant discourses or disciplines (Rabinow, 1984, p.11).

These three modes of objectification involved in the formation of subjects are crucial components to any analysis of the violence perpetuated within mental health, criminal justice and immigration systems. The maintenance of the separations between health and mental health, between those deserving of respect and the undeserving, the human and the inhuman, and between the citizens and non-citizens all require dividing practices, scientific classification, and subjectification to rationalize violence.

Foucault however has been criticized for his lack of direct attention to race and colonization often due to his reliance on a Eurocentric conceptualization of history (Young, 1995). Foucault's analytical contribution however has been a frequent theoretical reference point for postcolonial theorist. Edward Said extended a Foucauldian concept of discourse to allow "the creation of a general theoretical paradigm through which the cultural forms of colonial imperial ideologies could be analysed" (Young, 1995,p. 2). As Robert C. Young clarifies,

Said's point was that Orientalism was a form of ideological fantasy, with no necessary relation to the actual cultures that it supposedly described and understood: the very Orient itself was an Orientalist fiction. At the same time Orientalism as Said defines it, was a relationship of power, of cultural domination, the cultural equivalent of the colonialism which it accompanied" (Young, 1995, p 2).

Said's contribution went beyond a Marxist economic primacy in the development of colonialism and imperialism to examine the cultural effects, and processes of colonialism and imperialism.

With respect to race, Young describes that Foucault's sixth and final volume of the History of Sexuality (never to be released) was to have been originally titled "Populations and Races" (Young, 1995, p.11). In Foucault's discussion of biopolitics, the "ideological term that held class, race and sexuality together was that of blood" (Young, 1995, p.11). Racism according to Foucault was a result of the proliferation of blood-consciousness in the second half of the 19th century and the beginning of the 20th century exercised through the devices of sexuality to protect the purity of bloodlines (a eugenic rationale) (Young, 1995, p.12). This is an example of a confluence where ideas of race, class and sexuality are emerging and co-developing interdependently through history through the deployment of multiple forms of violence. While confluence can help us trace the eugenics project with an attention to technologies and practices, an interlocking analysis could follow the products of racism, classism and the policing of sexual identities, behaviors and orientations. With these considerations, in addition to Foucault's three modes of objectification we must also consider that dividing practices and the exclusions endemic to the development of the bourgeois subject are for racialized people, historically bound to the violent practices of racial slavery, indentureship, genocide, and colonization (and thereby endemic to the development of the *fantasy* of the subhuman, the savage, the uncivilized-deserving of violence).

Theorists such as Edward Said and Franz Fanon, and Gayatri C. Spivak offer analyses that speak to the discursive violence and development of hegemonic academic and professional disciplines forged on a complete knowledge of the Other, predicated on the violence of colonization and highlight the discursive, literary and cultural practices

that write subaltern groups out of history through the operations of discourse aimed at regulating and civilizing the uncivilized Other. Here, we must also consider how ideas and understandings of race and culture advance dehumanizing discourses while infinite identities resist representations that seek to finalize and essentialize them. It is here where the past meets the present and the infinite humanity collides with dehumanizing technologies that violence prevails.

Edward Said demonstrated in *Orientalism* how orientalist discourse justified and advanced colonial rule through Western Academic knowledge and a will-to-power to govern the Orient (Young, 2001). According to Said, there were a number of productive outcomes that have forged themselves into the practices of academic disciplines and claimed objectivity during colonial projects. Individuals in “the orient” were subordinated into a *general type* through orientalist discourse and posed through consistent binaries that set Europe apart from “the orient” geographically, racially, and religiously (Said, 1978). This Orientalist discursive regime also produced an ontological and epistemological difference between the European “us” and the Oriental “them” (Said, 1978). The “Orient” becomes static and unchanging, and authors on the subject draw clear distinctions between themselves (White, male, European etc.) and the oriental (Said, 1978). The orientalist also produces an overarching sense of contempt for the Other, and becomes the expert who knows the oriental better than the oriental can know her/his self (Said, 1978). Orientalism structures and guides academic fields and allows for a tendency to define the Other in broad sweeping terms (either Orient or Occident), eliminating the

need to sub-define or for heterogeneity within groups (Said, 1978). Social science is an advanced form of this orientalizing practice. As Said describes, Orientalism is,

A distribution of geopolitical awareness into aesthetic, scholarly, economic, sociological, historical, and philological texts; it is an elaboration not only of a basic geographical distinction (the world is made up of two unequal halves, Orient and Occident) but also a series of “interests” which, by such means as scholarly discovery, philological reconstruction, psychological analysis, landscape and sociological description, it not only creates but also maintains; it is, rather than expresses, a certain will or intention to understand, in some cases to control, manipulate, even to incorporate, what is a manifestly different (or alternative and novel) world; it is, above all, a discourse that is by no means in direct, corresponding relationship with political power in the raw, but rather is produced and exists in an uneven exchange with various kinds of power, shaped to a degree by the exchange with political power (as with a colonial or imperial establishment), power intellectual (as with reigning sciences like comparative linguistics or anatomy, or any of the modern policy sciences), power cultural (as with orthodoxies and canons of taste, texts, values), power moral (as with ideas about what “we” do and what “they” cannot do or understand as “we” do) (Said, 1978, p. 12).

From Said, we see how the creation of general taxonomies, the production of difference, the rise of expertise and professional hegemony developed during colonization and was inextricably linked with racial thinking, hierarchy, dominance, geopolitics and knowing the Other better than they know themselves. These colonial products continue to exist within professions such as biomedical psychiatry and social work and must be acknowledged for within the violent historical and political context from which they developed in order to appreciate their capacity for violence and necessity for attention in the present.

Interrogating the application of a process like Orientalism or dividing practices is to question *any* project that requires the construction of identities of difference and to demand clarification as to why authority is confined to particular disciplines, professions

and forms of knowledge. Within our conceptualization of confluence (i.e., to trace how more than one idea, system, factor or influence run or merge together at a similar point or junction, just as two or more bodies of water run together), dividing practices, scientific classification, and subjectification can be understood as fluid, interdependent *and* with a trajectory toward colonization and nation building.

Anne McClintock demonstrates in *Imperial Leather: Race, Gender, and Sexuality in the Colonial Contest*, that a central process to the colonization of South Africa was the reordering of black labor and the black family through the legitimation of discourses on progress, degeneration, and “the invented tradition of the white father at the head of the global Family of Man” (McClintock, 1995 p. 234). Through McClintock’s analysis of Henry Rider Haggard, a colonial administrator and author of *King Solomon’s Mines* (1885), the reinvention of patriarchy is achieved through a reliance on these discourses “culminating in the regeneration of the authority of the white father in the historical form of the English middle-class gentlemen” (McClintock, 1995, p. 234).

Historically subjugated people are made whatever subject is necessary in the present in order for the *fantasy* to continue, whether it be an unrehabilitatable criminal, an untreatable biomedical anomaly, or an undeserving foreign Other. The fantasy of a multicultural Canadian society is upheld at the expense of the racial genocidal history of colonization that claimed Canadian lands. The fantasy of a society of that is fair and just rests on a denial of social disparity, immigration policing, mental distress, and variance in ability, gender, sexual orientation, language, or belief systems. At this level of analysis, the project is revealed for its eugenic and racial basis, the technologies and operations or

power are held as suspect and we have destabilized the fantasy of the Canadian protector of the purity of the blood (or the idea of the innocent Canadian public) and the fantasy of the savage, threatening uncivilized Other, deserving of violence and the fantasy of the rational criminal justice system, the fair immigration system and the effective mental health system, thus remaking a white Family of Man.

Erasure

The violence within the practices and technologies of erasure and appropriation are exceptionally active in the contemporary deportation appeal cases as well as in the archival cases representing the confluence of mental health, immigration and criminal justice systems. Often the histories of people are reduced to their history of life with a biomedical diagnosis or the period of time since their first interaction with the criminal justice system. A majority of the 20 years of life in Canada, per person in the 10 contemporary deportation appeal cases (on average) is then erased. For the people in these cases, explanations are given to them through the immigration system, the criminal justice system and mental health system that explain their history in terms of a period without treatment and after (yet always sick), a period before being convicted and after (yet always criminal), and a period before coming to Canada and after (yet never Canadian).

Often the histories of people before they have arrived in Canada are erased. As detailed in Chapter 9, the historical, social and political circumstances (i.e. for convention refugees [Nur Mohamed Jama], persecution due to sexual orientation [Guhad Mahamoud Hassan], political oppression [Niranjan Sambasivam]) are completely eradicated from

consideration. In doing so, any historical, social or political complicity and therefore responsibility can also be denied through an over emphasis on the individuality of mental illness, criminality and immigration status. Also, through this unique practice of temporal erasure hundreds and sometimes thousands of years of history is rendered obsolete.

Erasure also takes place through the denial of records or record keeping. In the case of Audley Horace Gardiner, the police records either did not exist or did not mention self-defense in their reporting of his assault charges. In doing so, erased was the context within which Audley was homeless, in a shelter and found the need to defend himself. In the archival case of the deportation of hobos the records of who was being deported was also erased thereby permitting the use of police to profile people on the street and deport them without public knowledge or inquiry. In most of the cases, the subjects are often rendered voiceless. Their opinions and experiences are filtered through designated representatives, legal counsel or as observations reported by professionals within the mental health system. In doing so the voices of the accused are erased.

The technologies and practices of erasure were key to the project of colonization, and to the institution of racial and eugenic hierarchies. The experiences of certain minority and marginalized groups including racialized minorities and those identified with mental health issues are often rendered invisible or irrelevant through the historical process of systematic oppression. This oppression has been said to occur through the hegemonic writings of history by social elites (Gramsci, 1971; Spivak, 1988). These *subaltern* groups, whose voices have been silenced, are then excluded through discursive

practices within organizations, institutions, practices, disciplines, and academic knowledge (Gramsci, 1971; Spivak, 1988). Hegemony according to Gramsci is the organization of coercion and consent by the ruling or dominant class through language, culture and ideology (Ives, 2004). Gramsci ties language to culture and ideology to say that philosophy cannot be divorced from politics and the operations of power (Ives, 2004). Gramsci's notion of hegemony includes the public and private relationship as well as institutional and social analyses of schools, churches, newspapers, publishers et cetera (Ives, 2004). Also according to Gramsci, *subaltern* groups include people who accept the hegemony of the ruling class that has very different interests from their own (Ives, 2004). Spivak extends the concept of the subaltern to include those who have been separated or excluded from the traditional lines of social mobility including organized resistance (Spivak, 2003). Both Gramsci and Spivak point out the analytical utility of language in determining hegemonic structures in the critique of ideology to perceive the space where the resistance of subaltern groups might be considered.

Lata Mani and Gayatri Spivak both have written on the historiography of women in the context of colonization through the example of Hindu widow self-immolation (Mani, 2000; Spivak, 1988). Without attempting to track their entire arguments here, I name them to highlight their examples of how this specific history, in the context of colonization, was written by the British empire, through the privileging of the masculine Hindu elite and their interpretations of religious doctrine, within a Eurocentric episteme that has written the subaltern groups (Hindu widows) out of the history, while women remain the ground or terrain upon which the debates on "tradition" and histories are

articulated (Mani, 2000; Spivak, 1988). The concept of Sati (Hindu widow self-immolation) is thereby forged without a woman as the subject or object in the discourse (Mani, 2000).

The social and political formation of concepts such as *authentic traditional practice*, and the formation of laws to regulate Sati all have implications for a historical analysis that understand the rule of professional opinion (or elitist opinion). The history of colonization in this case discursively removed the ability for Sati to have multiple regulations or none, and removed (discursively) the ability for Hindu widows to participate in the discussions of the practice or the existence and practice of alternatives. To discuss the historical influences of heteropatriarchy, colonization, and “tradition” on contemporary issues, we must be able to consider the complex specific historical and political contexts for any person, subject, object, agent, terrain, or otherwise. In mental health, we can see similar hegemonic practices that privilege the voices of psychiatrists, lawyers, and expert opinion leaving the subaltern voices of racialized minorities diagnosed as mentally ill as the terrain upon which these issues are discussed while leaving little space from which this subaltern group can speak or be heard.

While this study does not intend to reproduce a discussion of deportation in absence of how women are effected at the confluence of immigration, mental health and criminal justice systems, we must acknowledge that the targeting of men of colour occurs in a way that is commensurate and complicit in the processes that reproduce the “politics of rescue” among women who are identified with mental illness, involved with the criminal justice system and marked as Other by the immigration system (Razack, 1998,

p.131). The pathways for Women who may have a tendency to be forced into positions of multiplied vulnerability or victimization in order to appeal for consideration or recognition may be quite different than what happens to men at this confluence. The construction of the identities of the unrehabilitatable criminal, the untreatable mental ill person and the undeserving foreign alien also reproduce subjectivities of threat requiring bodies in need of protection. These constructions, authorizing and legitimizing violence in this study of course occur within this broader construction of the vulnerable, the victim, the Women in need of rescue, the male rescuer, all resting on the ideas of the savage, the uncivil, and mad. Sherene Razack has noted this tendency towards a gaze of vulnerability and victimization participating in a “politics of rescue” for Women identified with developmental disabilities. Razack goes further to suggest that we can move from the “politics of pity” to one of respect when we acknowledge the reproduction of hierarchies or oppression and our complicity within these systems (Razack, 1998, p. 131-132).

For racialized people, languages, meanings and religions have been historically erased and supplanted by the languages, meanings, and religions of the colonizer. This process of language, and cultural erasure occurred for both Diaspora and indigenous racialized people. As Pemina Yellow Bird states in a reflection of the Hiawatha Asylum in the United States of America,

Our peoples, for centuries students and philosophers of the stars and of all nature, gentle, compassionate, hard-working and courageous, lived a completely Spirit-dominated life, with every decision made on behalf of the people completed in an attitude of love, prayer and humility. This was our life, these were the ways of our ancestors, and in a very short period of time our millennia-old way of life was nearly wiped out by the

behaviors and actions of the newcomers to our country (Yellow Bird, 2004).

Those aboriginals who did not comply with or fit in with the process of re-educating people as English speaking Christian subjects were institutionalized as insane in asylums like the Hiawatha Asylum. The asylum had a history of horrifying maltreatment of inmates. Yellow Bird also notes that the history of the Hiawatha Asylum for “Insane Indians” has also been erased, the asylum was torn down and replaced by a golf course (Yellow Bird, 2004). The only historical marker on the golf course is a sign referencing that Scandinavian homesteaders had once built a ski jump on that land (Yellow Bird, 2004).

For African American slaves in the United States of America, literacy was openly outlawed. In 1845, 12 states had passed anti-literacy statutes and educational restrictions were placed on slaves and free blacks (Watson, 2009). This was 12 years after the British abolition of slavery act of 1833. African American’s were punished during slavery for using African language and names, and were forced to later acquire Anglo-European literacy and religion (Watson, 2009). This is a further example of a colonial technology whereby indigenous language is oppressed and the colonizer’s language is forced upon the colonized.

Beginning in 1834, South Asians (then referred to as “Indians”) were introduced to British colonies in order to meet the shortage of agricultural labour resulting from the abolition of slavery ACT of 1833. The shortage would have threatened to destroy the sugar industry for Britain and involve Great Britain in the “moral disgrace of having to buy sugar from slave labour areas” (Cumpston, 1956). From 1838-1920 British, Danish,

Dutch, and French governments transported hundreds of thousands of Indentured South Asian labourers to Guyana, Trinidad, Suriname, Guadeloupe, Jamaica, Martinique , French Guiana, Grenada, Belize, St. Vincent, St. Lucia, St. Kitts, Nevis, and St. Croix (Roopnarine, 2009). The South Asian labourers came from a diversity of religious backgrounds and spoke a plethora of languages such as “Bengali, Punjabi, Hindu, Urdu, Oriya, Nepali, Gujarati, Telugu, Tamil, Oraons, Santals, Vanga, Radha, Varendra, Rajbangshi, Magahi, Maithili, Shadri, Awadhi, Bhojpuri, Eastern and Western Hindi, Bangaru, Ajmeri, and Tondai Nadu” (Roopnarine, 2009). Many Muslim South Asian Labourers in Guyana spoke Koshali, Braj—which is more than 2,000 years old—Koeli, Bagheli, Hundeli and Bhojpuri, the latter being the dominant language of Uttar Pradesh and Bihar (Khanam, & Chickrie, 2009). In 1941, Muslim leaders recognized that the British colonial government policies of “civilizing the natives” had all but erased these ancient languages from the people. They sought to pass a resolution in the British Guiana [sic] Education Code and nothing came of it, the ancient language of the people “suffered a slow death” (Khanam, & Chickrie, 2009).

The languages and religions that were erased during colonial rule also erased long histories of accumulated knowledge and meaning for the racialized, colonized. The option was to either assimilate to British language and culture or have none at all. In Guyana, education in the British system was compulsory by law if there was a school within two miles of the child’s home (Cumpston, 1956). This meant that for the few of those who worked close to the plantation owners, British education was available. The majority of the Indians in Guyana remained illiterate (Cumpston, 1956). Some South

Asian Labourers were shipped back to India if they were no longer needed. The ex-indentured labourers were treated like “*tapuhas*” or strange island people. As Roopnarine quotes from a 1931 report by Sannyasi & Chaturvedi, Mahatma Gandhi comments on the ex-indentured labourers :

They all looked famished. Their lot is the lowest ebb of human misery. The fact that the majority of these men are Colonial born aggravates their misery ... These men are neither Indian nor Colonial. They have no Indian culture in the foreign land they go to, save what they picked up from their uncultured half-dis-Indianised parents. They are Colonial in that they are debarred access to the Colonial, i.e., Western Culture. They are therefore out of the frying pan into the fire. There, at least they had some money and a kind of a home. Here they are social lepers, not even knowing the language of the people (Sannyasi & Chaturvedi, 1931 as quoted in Roopnarine, 2009).

On almost every return ship from the Caribbean to India, there were paupers, invalids, and those labeled insane, who were rejected by the colonies for being or becoming unproductive (Roopnarine, 2009). This level of cultural, personal, physical and discursive violence could not be captured in any sort of system of concrete categorization for the purposes of diagnosis or to appropriate a “culturally appropriate alternative” treatment. From Spivak, Said and Mani, we see the deeply problematic outcomes of civilizing work aimed at encapsulating “tradition” and becoming experts on the Other.

In Sherene Razack’s book *Casting out: The eviction of muslims from western law and politics*, the influences of race thinking about the “dangerous” Muslim, the “imperiled” woman, and the “civilized” Westerner are explored for their use in the rationalization of violence (Razack, 2008). The myth of the just and democratic Western nation is forged upon the advancement of ideas of a Muslim menace. Through labeling, stigmatization, imprisonment and war, the racialized Muslim is dehumanized, evicted

from Western law and politics and constitutes a body of difference whereby rights could be suspended at any moment (Razack, 2008).

Sherene Razack also demonstrated in *Race, space, and the law: Unmapping a white settler society* (2002) how spatial separation of the bourgeois citizen (who has gained mastery “over his own body” through self-control and discipline) from *degeneracy* or *abnormality* developed to prevent weakening of the bourgeois citizen subject and the state. The technologies of regulation worked through the mechanism of moral regulation. This spatial separation is evident in the European national history of Canada, becomes “truth” in Canadian law, and denies the violence upon which spatial separation was both justified and implemented (Razack, 2002). The myth of European settlers claiming uninhabited lands places the history of aboriginal peoples at a separate place and time.

People of colour are scripted as late arrivals, coming to the shores of North America long after much of the development has occurred. In this was, slavery, indentureship, and labour exploitation—for example, the Chinese who build the railway or the Sikhs who worked in the lumber industry in nineteenth-century Canada—are all handily forgotten in an official national story of European enterprise. (Razack, 2002, p.3).

The effect of writing people out of history and space rationalizes the view that people of colour are “intruders” and ignores the contributions of people of colour to society while denying the violence of conquest, genocide, slavery and indentureship. Razack describes through Dara Culhane’s example of *Terra nullis* (empty uninhabited lands) that in the case of British colonialism, already inhabited nations became legally defines as uninhabited “if the people were not Christian, not agricultural, not commercial, not ‘sufficiently evolved’ or simply in the way” (Razack, 2002, p.3).

Appropriation

The products and processes of colonization are not the only aspects that must be considered when acknowledging the ancestry of colonial violence within mental health, criminal justice and immigration systems. Particular formations have also developed through the dehumanizing, difference making relations of colonization and racial thinking. Dominance must be resistant to criticism while rationalizing to the colonized and the colonizer that hierarchy and oppression are necessary.

In Ethan Watters' book *Crazy Like Us* (2010), the author questions the process of exporting Western concepts of mental illness and pharmaceuticals around the world. As Watters describes, North American concepts of biomedical knowledge are transported overseas with a promise of certain relief from mental health issues and stigma. Western concepts and treatments for Post-Traumatic Stress Disorder, Schizophrenia, Depression, and Anxiety have infiltrated countries overseas at an alarming rate (Watters, 2010). Watters uses examples from Hong Kong, Zanzibar and Sri Lanka to highlight the devastating consequences of exporting Western concepts of mental illness as they clash with local custom and understandings and religions (Watters, 2010). This exporting and imposition of Western knowledge as both superior and certain has had the effect of not only destroying local understandings and historical traditions but changing the mental illnesses themselves (Watters, 2010). The so-called "identification" of PTSD and schizophrenia has flourished and these concepts now exist where they never did before (Watters, 2010). Watters suggests that a Western concepts of mental illness cannot simply be mapped onto other countries and cultures as a template (Watters, 2010). The

erasure of the diversity of understandings, history, and culture is a threat to our understanding of the human mind.

The forms of erasure mentioned in the contemporary appeals cases, the archival cases as well as our discussion of the practices of erasure necessary for colonization permit a particular writing of history. This history is forged both through erasure and through the appropriation of the histories of others. While the history of the fair immigration system, protecting criminal justice system and effective mental health system is written, the histories of people found at this confluence (mostly racialized minorities) are appropriated as evidence to support this narration of history. When social, political and historical circumstances are erased, their products (in these cases represented as individual psychopathology, criminality and foreignness) are appropriated as individual ills, or threats, aliens that require Western treatment, protection, or civilization. It is upon this writing of history that authoritative status is reproduced, while constructing hierarchies of identities and legitimizing violence. Exploiting the histories of the global South for Western advantage is a violent colonial continuity that can only be fully appreciated for its harm when explored with the temporal considerations provided by an attention to confluence and a multi-focal perspective on violence as provided by Žižek.

Dehumanization

The practices and technologies of dehumanization are revealed through the contemporary deportation appeals cases through their reliance on the interdependent construction of the identities of the untreatable biomedical anomaly, the unrehabilitatable

criminal and the undeserving foreign Other. These unique and very particular constructions have historically been mobilized to advance the rationalization of racial, mental and ablest hierarchies that target people of color, rationalize slavery, refuse support and belonging, and authorize violence.

The Faculty of Political Science at Columbia University edited a book as part of a series on “Studies in History, Economics and Public law” by Professor Howard W. Odum in 1910. Professor Odum served as Assistant Director of Research for President Herbert Hoover's Research Committee on Social Trends and was President of the American Sociological Association in 1930. His work had a great influence and reflected the research trajectories within his field. The subject of his research is described as having a tendency towards criminality, to addictions, to not wanting to work and “mental defect oftener takes the form of idiocy, and all acute psychoses like mania issue sooner in imbecility” (Odum, 1910, p. 169). This book is entitled “The Social and Mental Traits of the Negro”.

Ian Dowbiggin's book *Keeping America Sane: Psychiatry and Eugenics in the United States and Canada, 1880-1940*, provides a detailed account of the history of Eugenic thinking and policy development within psychiatric and legal domains in Canada and the United States (1997). Eugenics is a term coined by a cousin of Charles Darwin, Francis Galton in 1883. Galton defined Eugenics as “the study of the agencies under social control that may improve or impair the racial qualities of future generations” (Francis Galton, *Inquiries into Human Faculty and Its Development*, 1907, p.17 cited in Dowbiggin, 1997). Eugenicists argue that “the sterilization and institutionalization of the

mentally disabled as well as laws restricting immigration and marriage would improve public health.” (Dowbiggin, 1997, p. vi).

Emil Kraepelin was a German psychiatrist during the late nineteenth and early twentieth centuries and is known as the “father of modern psychiatry”. At the time, it was believed that “specific action and life event caused specific types of insanity” (Metzl, 2009, p.27). Kraepelin published in the sixth edition of *Lehrbuch der Psychiatrie* in 1899 a classification described *Dementia Praecox*. Dementia Praecox was a construct that described those who “exhibited ‘hallucinations, delusions, incongruous emotivity, impairment of attention, negativism, and progressive mental dilapidation” (Metzl, 2009, p.29). Kraepelin had earlier discovered an organic basis for what is presently categorized as Alzheimer’s disease. He was determined to find a biological basis for what he categorized as Dementia Praecox as well. In 1911, Paul Eugen Bleuler, published that praecox was not a dementia or a biological disorder but a

psychical splitting of the basic functions of personality. He thus maintained that the term dementia praecox should be replaced by a name that combined the Greek words for “split” (schizo) and ‘mind” (phrene). Bleuler renamed Dementia Praecox, Schizophrenia “because the splitting of the different psychic functions is one of its most important characteristics (Metzl, 2009, p.29).

Kraepelin’s terminology is no longer used regularly. However, his ideas of an organic or biological basis for mental disorder fit well with global colonial projects as well as with beliefs in the United States in the 1920s and 1930s that “negros were biologically unfit for freedom” (Metzl, 2009, p.29).

The 1928 law based on Eugenic thinking in Alberta led to the sterilization of over 2800 Albertans¹¹ (Dowbiggin, 1997). By 1940 thirty American states had passed sterilization laws for the handicapped and in the early 1920s both America and Canada passed immigration laws to regulate “aliens” from “southern and eastern Europe”. Alberta and B.C. also passed sterilization laws. The most famous Eugenics law of course was in July 1933, when Adolph Hitler’s Nazi Germany passed legislation to involuntarily sterilize over 400,000 Germans.

The idea that mental and physical difference is burdensome to “Canadians” is both a product of eugenic ideas and a contemporary outcome of a social service system that sees differences in race, mental fitness, and physical ability as something external to the “normal”, biologically determined and wasteful to address with public expenditure. Dr. Helen MacMurchy was Ontario’s leading public health expert in 1914 and “inspector of the feeble minded” from 1906-1916 (McLaren, 1990). In her role as first chief of the Division of Maternal and Child Welfare in 1920 she sought to effect public health needs in the areas of infant mortality, maternal mortality and feeble-mindedness” (McLaren, 1990, p. 30). Her 1920 account, *The Almosts: A Study of the Feeble-Minded* promoted eugenic ideas that advocated for segregation and sterilization to eliminate the feeble-minded, their economic costs and their criminal threat to society (McLaren, 1990). MacMurchy declared at a conference in 1914 that “the problem of defective children

¹¹ Leilani Muir sued the province of Alberta in 1996 and was awarded \$750,000 in compensation. A class action lawsuit soon followed in 1999 that resulted in an \$82 million dollar settlement for 700 victims of this atrocious practice (Dowbiggin, 1997).

could only be solved if special education and medical inspection were complemented by restriction of immigration” (McLaren, 1990, p.46).

Harriet Washington documents how Psychiatric and census data was used to advance ideas of racial difference and to justify slavery. Dr. Peter Bryce began running the Alabama Insane Hospital in 1860. Bryce was respected for taking “thorough case histories” and observing “closely before diagnosis”. He admitted one of his own former slaves in 1867, a man named John Patterson (Washington, 2006). Bryce concluded that Patterson experienced mania because his inadequate intelligence and judgment was unable to deal with freedom. Patterson’s “illness” becomes attached to his freedom thereby justifying the need for slaves and slavery and the need for practices that remove freedoms for people of colour (Washington, 2006). Psychiatry was used as a tool both to advance ideas of racial difference and to justify slavery. During the 1840 census, the first counts of the “insane and idiots” was taken (Washington, 2006). The census provided “objective data” to support slavery. The data was used to support arguments such as “free blacks suffered far worse health, especially far worse mental health, than did enslaved blacks, who enjoyed low rates of disease and suffered almost no mental illness” (Washington, 2006, p.146). Madness became an indicator of black helplessness. The census data was used by politicians in powerful statistical arguments in support of slavery (Washington, 2006). For example, it was “found” that the North and South had equivalent rates “insane and idiot” whites but not of mentally defectives blacks. Only one out of every 1558 black in the South was an “idiot or insane”; but one out of every 144 Northern blacks had similar mental problems (Washington, 2006, p.146). These statistics

were used to argue the case that slavery was better for the mental wellbeing of blacks. Case histories described how blacks “almost starved after spending their money on wine and tobacco or feel ill with Tuberculosis after buying flashy clothes that were completely unsuitable for northern weather” (Washington, 2006, p.147). Dr. Edward Jarvis who helped found the American Statistical Association in 1839 and Dr. James McCune Smith of Harvard University exposed the numerous methodological problems with the data. Some Northern towns had no black residents “but were endowed census statistics that said otherwise”, (i.e, in Dresden, Maine, there were only three black inhabitants but “six insane negros”) (Washington, 2006, p.148). In Worcester, Massachusetts there were 133 “coloured lunatics and idiot”, but this was actually the number of white patients in Worcester’s State Hospital for the Insane (Washington, 2006, p.148). .

In Jonathan Metzl’s book *The Protest Psychosis: How schizophrenia became a black disease* (2009), a detailed analysis is provided on the changes in criteria for schizophrenia from docility to rage beginning in the 1960s and the psychiatric and medical targeting of African Americans. Although Metzl recognizes the racism within psychiatry, he does not critique the diagnostic processes and treatments of biomedical psychiatry themselves or their relation to the production of difference based on racial, eugenic thinking and colonial projects.

As Metzl describes, the over diagnosis of African American patients continues in the present. In June 28, 2005, a Washington Post study by Jon Zeber reported that African American patients were diagnosed with schizophrenia four times as often as white patients (Metzl, 2009). This occurs even though “the research team uncovered no

evidence that ‘black patients were any sicker than whites,’ or that patients in either group were more likely to suffer from drug addiction, poverty, depression, or a host of other variables” (Metzl, 2009, p.x).

Metzel describes early diagnostic categories for African Americans including *Drapetomania* (the “insanity” of black slaves running away from white masters-coined by Samuel A. Cartwright) and described a condition called *Dysaesthesia Aethiopsis*, a form of madness manifest by “rascality” and “disrespect for the master’s property” that was believed to be “cured” by extensive “whipping, hard labour, and, in extreme cases, amputation of the toes” (Metzl, 2009, p.30). Psychiatric authors combined Krapelin’s ideas with Cartwright’s. For example, as Metzl outlines, in 1913 a psychiatrist from the Government Hospital for the insane in Washington, D.C. wrote an article for the *Psychoanalytic Review* entitled “Dementia Praecox in the Coloured Race”, in which she described dramatic increases in the illness in ‘coloured’ patients” (Metzl, 2009). The author linked the appearance of praecox in “negro” patients to the pressures of freedom for which they were “biologically unfit” (Metzl, 2009, p.31).

In the 1960s, research articles in psychiatric journals began asserting that schizophrenia was a condition that afflicted “negro men” and that black forms of the illness included the schizophrenia of civil rights protests, “particularly those organized by Black Power, Black Panthers, Nation of Islam, or other activist groups” (Metzl, 2009, p. xiii). Rage became a diagnostic feature. The title of the book comes from a 1968 article from the *Archives of General Psychiatry* that describes schizophrenia as a “‘protest psychosis” that made black men develop “‘hostile and aggressive feelings’ and

‘delusional anti-whiteness’ after listening to the words of Malcolm X, joining the Black Muslims, or aligning with groups that preached militant resistance to white society. According to the authors, the men required psychiatric treatment because their symptoms threatened not only their own sanity, but the social order of white America” (Metzl, 2009, p.xiv).

Pharmaceutical companies advertised anti-psychotic medications for the control of this “primitive” and “aggressive” behaviour.

Assaultive and belligerent?

Cooperation often begins with
HALDOL
(haloperidol)
a first choice for starting therapy

Acts promptly to control aggressive, assaultive behavior

Several studies have reported the rapid effectiveness of HALDOL (haloperidol) in controlling aggressive and delusional behavior. "Even the most violent assaults sustained by a group of criminal patients 're-saw to minimal levels of psychoticism' was reduced substantially during treatment with HALDOL." (Metzl, 2009, p. xiv)

Usually leaves patients relatively alert and responsive

Although some instances of delirium have been observed, marked sedation with HALDOL (haloperidol) is rare. In a report on a study with criminal psychotics, the investigators state, "The patients remained alert and more amenable to psychotherapeutic interventions." Another investigator reports that HALDOL "normalizes" behavior and produces a sensitivity to the environment that allows more effective use of the social milieu and the therapeutic community."

Reduces risk of serious adverse reactions

HALDOL (haloperidol), a butyrophenone, avoids numerous many of the problems associated with the phenothiazines. Hypotension is rare and severe orthostatic hypotension has not been reported. There is also less likelihood of adverse reactions such as liver damage, ocular changes, serious hematologic reactions and skin rashes. The most frequent side effects of HALDOL (haloperidol)—extrapyramidal symptoms—are usually discernible and readily controlled.

References: 1. Darling RP. The New York Times. 32(1) Jan 1 1971. 2. Metzger, F.A., and Chou, C.H. Psychopharmacology 14:66 (Jan-Feb 1973). 3. Levine, M.L., and Malone, E. Paper presented Amer. Acad. Psychiat. Psychiatry Forum Meeting, N.Y., Sept. 19-21, 1972. 4. Metzl, J.W. The New York Times. 31(1) 1970. 5. Howard, J.R.C. (Ed. 1968) 2:113-114.

FIG. 1 Advertisements for the antipsychotic drug Haldol from the 1970s depicted black men with clenched fists, under the headline “Assaultive and belligerent?” (Archives of General Psychiatry 31, no. 5 (1974): 732-33.)

(Metzl, 2009, p.xiv)



FIG. 11 During the early to mid-1970s, psychiatric journal advertisements for the antipsychotic medication Stelazine depicted tribal artifacts or masks. (Source: Archives of General Psychiatry 33, nos. 2 and 9 (1976): back cover)

(Metzl, 2009, p. 104)

Basic tool of primitive psychiatry

Fertility protective status. For pregnant women, the status insured a healthily, beautiful child, and protected both mother and child from the "wifery." For sterile women, the status insured power aided fertility. Akosua Ghana. From the collection of the Negi Gallery, New York City. Reproduced with permission.

Basic tool of modern psychiatry

Thorazine®

brand of chlorpromazine

Tablets: 25 and 50 mg of the HCl

- Effective control of psychotic symptoms
- Especially useful in agitated, violent or anxious schizophrenic patients
- Unsurpassed clinical experience
- 18 convenient dosage forms and strengths

Before prescribing, see complete prescribing information in SK&F literature or PDR. The following is a brief summary.

Indications
Based on a review of this drug by the National Academy of Sciences—National Research Council and/or other information, FDA has classified the indications as follows:
Effective for the management of manifestations of psychotic disorders. For control of the manifestations of acute depressive illness (manic phase).
Probably effective for the control of moderate to severe agitation, hyperactivity or aggressiveness in disturbed children.
Probably effective for control of excessive anxiety, tension and agitation as seen in outpatients.
Final classification of the less than-effective indications requires further investigation.

Contraindications Convulsion states, presence of large amounts of C.N.S. depressants or other known depressants.
Warnings The possibility of extrapyramidal symptoms. The extent may include the diagnosis of Rye's syndrome or other extrapyramidal signs. Therefore, avoid use in children or adolescents with suspected Rye's syndrome. Avoid using in patients hypersensitive (e.g., blood dyscrasias, purpura) to any phenothiazine. Caution patients about activities requiring alertness (e.g., operating vehicles or machinery) especially during the first few days' therapy.

Precautions Use cautiously in persons with cardiovascular, liver or chronic respiratory disease, or with acute respiratory infections. Due to its strong sedative properties, avoidance of somnolence is possible. May prolong or intensify the action of C.N.S. depressants. Use cautiously in persons with prolonged extrapyramidal signs in newborns whose mothers had received chlorpromazine.
Precautions Use cautiously in persons with cardiovascular, liver or chronic respiratory disease, or with acute respiratory infections. Due to its strong sedative properties, avoidance of somnolence is possible. May prolong or intensify the action of C.N.S. depressants. Avoid concurrent use of barbiturates in use in hospitalized patients. Anesthetics may mask signs of acute drug overdosage or obscure diagnosis of conditions such as cerebral anoxia, brain tumor, and Rye's syndrome (see "Warnings"). Discontinue therapy, using term therapy gradually.
Patients on long-term therapy, especially high doses, should be evaluated periodically for possible adjustment or discontinuation of drug therapy.

Adverse Reactions Drowsiness, orthostatic hypotension, dry mouth, constipation, leukopenia, hemolytic anemia, orthostatic hypotension, tachycardia, lightheadedness, blurred vision, and other extrapyramidal symptoms, especially in the newborn, psychotic symptoms, catatonic like states, cerebral

edema, convulsive seizures, abnormality of the electrocardiogram and prolonged QT interval, reactions and photosensitivity, edematous dermatitis, contact dermatitis, lactation and breast engorgement in females on long-term therapy, hypotension, dry mouth, nasal congestion, constipation, and acute glaucoma, urinary retention, ataxia, myasthenia, after prolonged administration, acute pulmonary edema, peripheral neuropathy, muscular and corneal deposits and pulmonary hypertrophy, visual impairment, mild fever, other large M.M. changes, hyperreflexia, increased specific acetylcholinesterase activity, other phenothiazine reportedly due to metabolic arrest or apnea due to failure of cough reflex that has been reported, but no causal relationship has been established.

Supplied Tablets, 25 mg., 50 mg., 100 mg., and 200 mg., in bottles of 100. Single Unit Packages of 100 intended for institutional use only. Syringes* 25 mg., 50 mg., 100 mg., and 200 mg., in bottles of 100. Single Unit Packages of 100 intended for institutional use only. Capsules, 25 mg. and 50 mg., 100 mg., and 200 mg., in bottles of 100. Single Unit Packages of 100 intended for institutional use only. *SK&F is a Sanofi-Sintelabo company.

SK&F
a Sanofi-Sintelabo company

Helps Return Patients to Reality

FIG. 12 Throughout the 1970s, Thorazine ads portrayed tools of “primitive” psychiatry. (Source: Archives of General Psychiatry 35, no. 1 (1978): 94–95)

The image on the left depicts fertility statues from Ghana. The advertisement states that the medication is “Especially useful in agitated, violent or anxious schizophrenic patients” (Metzl, 2009, p.105).

Metzl explains that these racial divisions and tensions have become

structured into clinical interactions long before doctors or patients enter examination rooms. To a remarkable extent, anxieties about racial difference shape diagnostic criteria, health-care policies, medical and popular attitudes about mentally ill persons, the structures of treatment facilities, and, ultimately, the conversations that take place there within (Metzl, 2009, p. xi).

This institutional racism functions above the levels of individual perceptions or intentions, in structures such as zoning, laws, economics, education and juridical systems (Metzl, 2009).

Although Metzl criticizes the racism within psychiatry he denies that schizophrenia is a socially constituted disease (Metzl, 2009, p. xvi-xvii). Metzl (himself a psychiatrist) believes that institutional racism skews the diagnosis and treatment process thereby targeting people of colour. Metzl fails to recognize the violence within the diagnostic processes and treatments of biomedical psychiatry or their relation to the production of difference based on racial, eugenic thinking and colonial projects. Metzl's work is an example of the dangers of highlighting institutionalized racism within mental health, legal and immigration systems without an analysis of the colonial technologies embedded within biomedical psychiatry or treatments. Without an analysis that reveals the assumptions within the technologies of biomedical psychiatry and treatment, we are left unable to perceive that the systems of diagnosis and treatment are completely imbricated with the production of difference and the violence upon which these technologies were forged.

Through Odum, Dowbiggin, Washington and Metzel, the racist and eugenic practices and technologies used to rationalize slavery, immigration regulation, and psychiatric pathologization can be appreciated for their continuous deployment in contemporary circumstances at the confluence of mental health, criminal justice and immigration systems via the construction of the untreatable, the unrehabilitatable and the undeserving.

Professional Hierarchy & Hegemony/Human Hierarchy and Hegemony

In the contemporary deportation appeals cases and within the archival cases we see a reliance on a particular set of professional authorities, bound to hegemonic positions within policy and law and whose forms of knowledge are valued as legitimate. This set of authorities, medical, legal and colonial (immigration) have historically worked interdependently for the advancement of colonial projects.

Colonial Western psychiatry has been described as a vehicle used to advance colonial nation building and the very definition of “civil” society (Roman, Brown, Noble, Wainer, & Young, 2009). Canada’s early asylum and colonial administrators were often one and the same and communicated with other asylum and colonial administrators both at home and abroad in the United States, the United Kingdom, and other parts of Western Europe regularly in the effort to share information on how to run asylums efficiently as part of world-wide colonial projects (Roman, Brown, Noble, Wainer, & Young, 2009).

“The Woodlands School, [formerly the Victoria Lunatic Asylum, the Provincial Asylum for the Insane in Victoria, BC 1859–72 and the Public Hospital for the Insane] closed through public protest in 1996, was one of British Columbia’s first segregated total residential institutions for people with developmental disabilities”(Roman, Brown, Noble, Wainer, & Young, 2009, p.19).

Also, “the colonization and segregation of First Nations people in residential schools involved judges, doctors, and psychiatrists confining those deemed as medically or psychiatrically ‘unfit’ – whether First Nations or not– to asylums and hospitals” (Roman, Brown, Noble, Wainer, & Young, 2009, p.18). The author’s analysis of the Woodlands records, and history focuses “on the first colonial administrators and medical authorities who established Woodlands in its first iteration as an asylum after coming

from England” and exposes the “conjunct processes of colonialization, racial, gender, class, and ableist oppression as expressions of empire ... part of which was the city of Victoria, British Columbia as part of the process of expansion.” (Roman, Brown, Noble, Wainer, & Young, 2009, p. 18-19). The authors note that “some of First Nations people in Alberta and British Columbia, as well as parts of the United States were psychiatrically deported to an asylum exclusively to warehouse Native Americans and First Nations at the Hiawatha ‘Indian’ (*sic*) Asylum in Canton, South Dakota” (Roman, Brown, Noble, Wainer, & Young, 2009, p. 22). According to the authors, the processes of medical colonization involved multiple forms of colonial and medical rules articulating who was “medically unfit” and orchestrating their confinement on appropriated lands. The emergence of civil institutions such as the courts, legislation, police, prisons and asylums was in cooperation with modern Western psychiatry, medicine, hospitals, clinics, and schools. The historical development of these institutions had “rarely been analyzed as related” (Roman, Brown, Noble, Wainer, & Young, 2009, p. 19).

The first Asylum in Canada was opened in St. John, New Brunswick, in 1836, in Nova Scotia 1859 (Dowbiggin, 1997, p, 14). In Quebec (at that time Lower Canada) the first asylum was opened in 1845 in Beauport. Prior to this those deemed mentally ill were institutionalized along with the “paupers, criminals, and alcoholics” (Dowbiggin, 1997, p, 14). In the 1880s British psychiatrist Daniel Hack Tuke visited North American mental hospitals and called “what he witnessed at Beauport and Longue Point a “chamber of horrors” due to their deplorable conditions (Dowbiggin, 1997, p, 15). In Upper Canada, the Toronto Asylum was opened in 1850. The exposure of deplorable conditions

continued and marked the beginning of the end of psychiatrist run, state asylums, as they became more accountable to state politicians. “By 1881 the province of Ontario was responsible for the upkeep of 2652 mentally disturbed persons” (Dowbiggin, 1997, p.16).

Psychiatrists saw the benefit of working bureaucratically with Provincial administrators to influence policies within the provincial mental health system. Charles Kirk Clarke (after which the former Clarke Institute of Psychiatry in Toronto is named) came from one of the “most respected political families” in Ontario and “was arguably the most famous psychiatrist Canada has ever produced” (Dowbiggin, 1997, p. 17). Clarke’s sisters both married psychiatrists- one of which was the son of Joseph Workman, superintendent of the Toronto Asylum. In 1874, Clarke got his first job under Workman, and in 1905 became superintendent. Clarke visited Emil Krapelin’s clinic in Munich in 1907 and in 1908 he was appointed Dean of the Faculty of medicine and Professor of psychiatry at the University of Toronto. “In 1918 he became the first medical director of the Canadian National Committee for Mental Hygiene (CNCMH), the forerunner of the Canadian Mental Health Association and counterpart to the U.S. National Committee for Mental Hygiene (NCMH)” (Dowbiggin, 1997, p.19).

Clarke influenced policies and laws that governed health care, education and immigration (Dowbiggin, 1997, p19). C.K. Clarke “struggled mightily” to “ensure that mentally and physically handicapped immigrants could not enter the country and take undue advantage of Canada’s charitable institutions and organizations” (Dowbiggin, 1997, p.133). As immigration increased from 1897-1918, “concern about immigration dovetailed with growing anxiety among native English-speaking Canadians about the

future of the British empire” and “Canadians’ fears about “race suicide” had escalated. “[T]he steady arrival of such immigrants over the years led to warnings about their low quality and triggered campaigns to assimilate newcomers by training them to be law-abiding, productive, healthy, and self-reliant citizens.” (Dowbiggin, 1997, p137).

Psychiatry “began alleging that foreign-born patients were disproportionately represented in public asylums and this was due principally to immigrants’ hereditary defectiveness” (Dowbiggin, 1997, p138). As Dowbiggin illustrates,

except for one interlude later in his career, Clarke remained Canada’s most consistent medical proponent of immigration restriction until his death in early 1924. What initially compelled him to turn to hereditarianism and eugenics was a combination of his passionate identification with the professional fortunes of psychiatry and Canada’s late nineteenth-century cultural climate, which stressed race, empire, reproduction, child welfare, and public health reform (Dowbiggin, 1997, p.139).

The terms of the 1869 immigration act contained provisions that barred the entry of insane, destitute and disabled immigrants. In the mid-1890s, Canadian immigration was still governed by this act. “From 1889 to 1902 the federal government followed a policy of sending back unwanted immigrants to their country of origin in what amounted to an informal system of deportation; yet virtually no medical inspections were performed on immigrants disembarking at Canadian ports or crossing the U.S.-Canadian border” (Dowbiggin, 1997, p.141). Clarke recommended “a far more rigid system of inspection than that in use at present” as well as a deportation policy for “the indigent classes of immigrants who show marked evidence of mental disease or defect, or criminal tendency” (Dowbiggin, 1997, p.142).

Clarke unfortunately was not alone. Canadians called for stricter inspections of “aliens” and criticized officials for admitting too many uninspected *aliens* to settle Canada’s farmlands and work in Canada’s factories (Dowbiggin, 1997, p. 141). This is a prime example of how eugenic and racial thinking did not coincide with economic rationale as immigration was being advertised by Federal government from 1897-1913. Clarke viewed immigrant “defectives” and “degenerates” as a stark contrast to the “study agriculturalist of the British Isles” (Dowbiggin, 1997, p. 142). In 1903, the immigration branch of the Department of the interior “began medical inspections by hiring doctors on a fee for service basis to inspect immigrants and detain diseased newcomers either for deportation or further treatment and admission.” (Dowbiggin, 1997, p.145). In 1906, “the Canadian government had made deportations legal for the first time. Immigrants who within two years of their arrival in Canada ended up in a publicly funded charitable institution-such as an insane asylum-were eligible for deportation” Clarke wanted this to be extended. S.A. Armstrong (Ontario’s inspector of prisons and public charities) and Clarke “continually petitioned the Immigration branch to deport foreign-born patients in Ontario asylums” (Dowbiggin, 1997, p.150). Clarke, in 1907-08 was relentless in his pursuit of deportations for immigrants. He submitted ongoing complaints to the immigration branch and published numerous articles on immigration. In 1910, the law was amended from 2 years to 5 years with the help of Clarke’s advocacy. To this day, immigrants are ineligible for social assistance (including disability support program) income for the duration of their sponsorship which can be up to 10 years.

Clarence Hincks 1885-1964 (after which the Toronto Hincks-Dellcrest Institute was named) was a clinical assistant to Clarke. Hincks promoted the development and use of diagnostic testing, examinations and surveys to scan for hereditary weaknesses in the aim of achieving mental hygiene. As Dowbiggin confirms, “the data from their school surveys, completed in the postwar period, appear to confirm their allegations. All too often, they complained, they discovered a high percentage of immigrant children among the youngsters they diagnosed as delinquent, immoral, or subnormal” (Dowbiggin, 1997, 171).

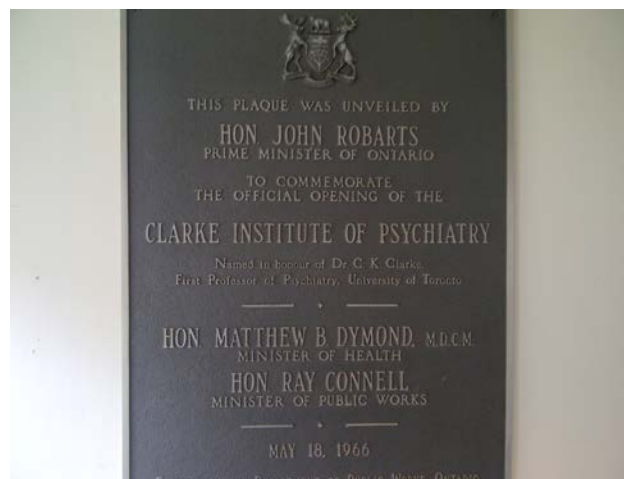
In 1919, Clarke circulated an unpublished book entitled “*The Amiable Morons*” to “demonstrate the tie between immigration and criminality”. Clarke linked bolshevism to mental defectiveness and makes his intentions of influencing public policy known. Also in 1919, Canadian Parliament passed amendments to the Criminal Code and the Immigration Act to refuse to admit or deport newcomers for political reasons,

newcomers who could be shown to have an interest in overthrowing government, destroying property, or promoting riots or other public disorders. As well a literacy test for immigrants over the age of fifteen was approved, and the list of “undesirables” was lengthened to include conditions such as “constitutional psychopathic inferiority,” a favorite label for the feebleminded (Dowbiggin, 1997, p.174).

The story of C.K. Clarke and the influence of eugenic and racial thinking in Canada demonstrates the power of psychiatry to influence criminal law, immigration law, and social policy. Evident in C.K. Clarke’s work is the dehumanizing discourse based on racial and eugenic thinking that is now institutionalized in currently existing systems and policies. Policies, laws and practices based on this thinking cannot produce outcomes that are beneficial to newcomers or anyone’s wellbeing as they are based on the assumption

that newcomers and those labeled with any disability or mental illness are a threat to the “Canadian” and the “sturdy industrialist of the British Isles”, as they might “take undue advantage of Canada’s charitable institutions and organizations” and contaminate the race of “Canadians”. The rationale for these policies that continue to exist include the belief that newcomers carry some sort of “defectiveness” that is both a burden to society and a threat to the purity of the “Canadian” race.

The Centre for Addiction and Mental Health in Toronto’s College Street location has recently undergone renovations. This was formerly the site of the Clarke Institute of Psychiatry. In the opening foyer sits this plaque “in honour of Dr. C.K. Clarke”:



(Photo taken June 13, 2011)

An ever present reminder of Clarke’s contribution to psychiatry and a “not welcome” mat for newcomers and those deemed mentally ill.

The examples of the Woodlands school, C.K. Clarke and Clarence Hincks demonstrate the rise of psychiatric professional authority that is historically bound to the regulation of those historically deemed/constructed as undesirables. The confluence of

mental health, immigration and criminal justice systems gained momentum via the practices of judges, doctors and colonial administrators through the courts, asylums, police, and legislation to advance colonial nation building. These systems are both a product of and reliant on the violent practices and technologies of racial and eugenic differentiation. In the contemporary deportation appeals cases, these practices, technologies, and authorities are accepted as such without interrogation and thereby reproduce colonial relations of racialized and eugenic violence. The current laws, the professions that hold hegemonic positions of authority within them, and the practices that result from them that limit the rights of people identified as biologically different, inherently bad/savage/uncivilized, or as foreign aliens, are through their delineations and demarcations discriminatory, racist, and eugenic. The Canadian mental health system, immigration system and criminal justice system must acknowledge its ancestry and complicity in order for any transformative change to occur.

Remaking North-South divisions-the reinforcement of nationalism

The analysis of the contemporary deportation appeals cases as well as the archival cases revealed the historical and contemporary practice of reinforcing national boundaries through criminal justice, immigration and mental health systems. In the selective and partial weighting of the *Ribic* factors, the idea of the “Canadian public” was often referenced as the most valuable of all factors. In the historical cases, this was also an idea that permeated decisions. Notions of what was historically considered desirable required undesirability to be defined (exemplified in the list of “prohibited classes”. In the contemporary cases, notions of who belonged to the Canadian public required a

conceptualization of who does not belong to this group. Throughout the decision making process, the period of time a person had been in Canada did not appear to have an influence on their inclusion into this conceptualization of the Canadian Public. The existence of family members or supports, having a sponsor or being a convention refugee in Canada also did not have substantial effect on a person's inclusion into the Canadian public.

Through the designation of people as not a part of the Canadian public and the defining of criminality, psychopathology or foreignness as individual, anomalous attributes, violence is attached to the constructed identities of the criminal, the mentally ill, or the uncivilized alien who does not belong. Through this mechanism the fantasy of the civilized, objective, protecting, genetically and racially pure Canadian public is perpetuated. Responsibility or care for these individualities is then reserved to some *other* public. The violence of the totalization of a person as dehumanized, or the violence of surveillance, forced treatment, confinement, or deportation, via Orientalism, dividing practices, erasure etc. is legitimated as necessary in order to uphold these boundaries.

The peculiarity of this trend was the *kind* of national boundaries being forged and protected. As our descriptive statistical representation depicted, the overwhelming majority of countries that people were being deported to were in South Asia, East Asia, Africa, South East Asia, West Asia, Latin America and the Caribbean.

According to Immanuel Wallerstein, “(c)ore-periphery refers to spatial concentrations of economic activities to be found within the capitalist world economy” (Wallerstein, 1991, p.143). This core-periphery structure can refer to zones such as

North-South which is in structural space and long-term. In the world-systems model the core-periphery structure is that of the capitalist/colonialist/imperialist world economy, reinforced within discourses of North-South. Over time, spatial locations in geopolitical space can change their ideological space and maintain the overall core-periphery structure of the capitalist world economy. The example Wallerstein provides is that of Japan, “(y)esterday, Japan was a locus of cheap labor. Today it is a so-called core state. Tomorrow, it may be the hegemonic world power” (Wallerstein, 1991, p.143). In this way a member of the “periphery” can become a member of the “core” without disrupting the structure of the capitalist/colonialist/imperialist world economy. Wallerstein also notes that there are other possible concepts beyond “core” and “periphery” such as “semiperiphery”, and “external arena” (a spatial concept linked to the process of incorporation) (Wallerstein, 1991).

The global proliferation of Western models of immigration regulation, criminal justice, psychotropic medications, treatments and perspectives on mental illness has penetrated the globe. They carry with them, the legacy of eugenic and racial thinking and perpetuate colonial forms of violence. Colonial technologies are of course dependent on the global and individual divisions based on eugenic and racial thinking for the regulating and civilizing project that produces the respectable, moral, able, bourgeois/civilized subject. The contemporary decisions at the confluence of mental health, criminal justice and immigration systems participate in the perpetuation of global North-South divisions. These divisions have historically reflected the racial lines upon which slavery, and

indentureship were established, and how contemporary forms of international exploitation occur.

From our analysis thus far, within mental health, criminal justice, and immigration systems and practices, we can now see how the technologies of Orientalism, dividing practices, erasure, appropriation, dehumanization, the formation and hegemony of professions and disciplines, and the remaking of North-South divisions act to regulate subjects.

Moral and ethical arguments to justify atrocities

The moral and ethical arguments advanced to legitimate the practice of deportation for people identified with mental health issues and by the criminal justice system are clearly problematic. The positions of authority, knowledge bases relied upon for legitimacy and the practices of professionals in the construction of dehumanized identities are all imbricated with historical and contemporary forms of racial and eugenic colonial violence as they proclaim to protect people or act fairly in their decision making processes.

The importance of understanding the permeability and responsiveness of our knowledge bases, laws, professions, and practices to social and historical influences (including prejudice and discrimination) is often underappreciated. The attention to the idea of confluence sanctions the ability to question the capacity of our contemporary laws to represent the knowledge and lessons that have been accumulated throughout human history. It is often accepted that our laws reference the most recent and therefore the most valid decisions. It is also assumed that by virtue of our aggregate allegiance to positivism

and scientific supremacy that these decisions will include the most up-to-date knowledge and research as contributed by expert witnesses, professionals, and knowledge brokers. This is all very inaccurate. The appearance of progressive decision making relying on valid, reliable and rational forms of knowledge is merely a fantasy. The contemporary outcomes of the moral and ethical arguments wielded in the deportation appeal decisions at the confluence of criminal justice mental health and immigration systems are marked with violence and collectively amount to atrocities.

The use of moral and ethical arguments to justify atrocities is also not only a problem of our contemporary world. Thomas Malthus wrote his highly influential piece entitled, *An Essay of the Principle of Population* in 1798. In his famous work based on statistics and mathematics, he argued that population growth will eventually be regulated by the supply of food. Presented as unbiased and with rigorous objectivity, Malthus' argued against the poor laws, or any public provision of relief for the poor (Malthus, 1798, p.39-45). Malthus's arguments were intended for the future improvements of society. By taking the people out of his work, he allowed for an erasure of the hunger and death that would afflict the poorest in society based on his recommendations. The scarcity of supply of food (resources) became the rationale for his authorization of violence. In doing so, Malthus erased the tendencies toward monopoly in capitalism (as well as the corresponding concentration of wealth and resources into the hands of a few). Malthus had other opinions as well. Malthus articulated his racial and eugenic beliefs by asserting that by "an attention to breed, a certain degree of improvement, similar to that among animals, might take place among men" (Malthus, 1798, p.72). Malthus was not

without a human, social and political context himself. His position beginning in 1805 was as Professor of History and Political Economy at the East India Company College, the school that trained officers to work in India for the East India Company whose armies enforced the ongoing colonial exploitation of India. Malthusian rationale is relied upon readily today to argue for the dissolution of public supports and services supplying that private charity would tend to those in need (or rather that poverty, hunger and disease would account for those left at the margins of capitalism, colonialism and imperialism).

Emmanuel Levinas (a holocaust survivor and ethical philosopher) studied under Martin Heidegger at the University of Freiburg in 1928. Levinas critiques Heidegger's rationalization and justification for Nazism revealing how "'ethical' categories can too easily be invoked as a moral justification for atrocities" (Murray, 2003, p.27).

Henry Friedlander has described how moral and ethical arguments were used in Nazi Germany to rationalize eugenic and racial violence. Through the development of the science and technology of eugenic and racial control (researched and advocated well in advance of World War 1 and centered in America and Britain), the Germans implemented government policy and the operationalization of its desired outcomes via sterilization, euthanasia, and eventually mass extermination. The arguments held that the human race would be better through exclusion (the policy was actually named *Aufartung durch Ausmerzung* –translated as "improvement through exclusion") and that compassion was the motivation for the "destruction of life unworthy of life" (Friedlander, 2001, p.150).

After World War 1 the children of soldiers from North Africa and German mothers were rejected by Germany because they were coloured. They were referred to as the Rhineland bastards and were sterilized against their will. During the development of the scientific knowledge of division, the Germans paralleled the work of the United States dividing population into hierarchies, “they hoped to safeguard the nation’s ‘genetic heritage’ (*Erbgut*) and viewed degeneration (*Entartung*) as a threat” (Friedlander, 2001, p. 146). The sterilization laws directed their aim at those identified as disabled, carrying hereditary diseases or perceived hereditary diseases such as schizophrenia. The courts adjudicated the cases, physicians weighed in as expert knowledge brokers, and names were forwarded through identification processes and practices of public health services, hospitals, clinics, teacher, and social workers of the welfare system (Friedlander, 2001, p.148). The killing of the disabled began with infants and children using overdoses of medications (sedatives, barbiturates, sleeping pills) and starvation (Friedlander, 2001). When the killing expanded to include disabled adults, they required a more efficient process. The gas chambers were designed for this reason and later used for the mass extermination of Jews and others identified as threats of enemies.

Chapter 6

Method: A post-colonial document analysis of confluence

In this chapter, I describe the methods used in this study and argue for the necessity of a *post-colonial analysis of confluence*. I also outline this study's focus on historical continuities by attending to the temporal (that which is dynamic and changing and that which is continuous yet carried through time). I outline what is drawn on (partially) from Foucaudian genealogical analysis and how this method departs from this. I also illustrate how the method used in this study attend to material continuities (how projects of nation building relied/rely on eugenic and racial knowledge formations and disciplinary processes and laws) through an attention to processes that discursively frame people to construct, legitimize and authorize violence. By acknowledging that all our interpretive and discursive structures are subject to historical influence, it is also pertinent that we also disclose the *horizon* of these interpretations. As Hans-Georg Gadamer made very clear in his magnum opus, *Truth and Method*, every person has a historically effected consciousness, making claims to objective knowledge impossible. Through our concurrence with this position, we can appreciate that all vantage points are partial, contingent, and subject to representation and interpretation. The horizon of interpretation in this study is committedly focused with an attention to the levels of analyses and contribution provided post-colonial theory.

The method of a post-colonial analysis of confluence is described in application to the contemporary decision documents of the appeals division of the Immigration and Refugee Board of Canada, both contemporary and archival policies and laws, as well as

archival correspondence relating to mental health, criminal justice and immigration practices that support deportation for those identified with mental health issues, non-Canadian citizens and involved with the criminal justice systems.

Attending to the temporal: Genealogy, questioning “progress”, discursive framing, and material continuities

Foucauldian genealogy provides some unique methodological insights that support an analysis of confluence. Genealogy has been defined as “the union of erudite knowledge and local memories which allow us to establish a historical knowledge of struggles and to make use of knowledge tactically today” (Foucault, 1980). Genealogy reveals power and knowledge networks through analysis of discourse (Carabine, 2001). Some things come to be known as truths and others do not; there are many particular forces and power relations that produce what these truths are. Genealogy reveals the history of how things become truths, problems, valued or dismissed. Foucault developed his conception of genealogy in *Discipline and Punish* and in *The History of Sexuality* by studying various cultural institutions and their historical development to posit them as locations of social control (Prado, 1995). Foucault’s concept of genealogy expanded on Nietzsche’s idea that history is misconceived as an attempt to capture the exact essence of things and that history is flawed if it is conducted as a search for objective truths (Prado, 1995). The genealogical concept holds that there are no essences to be discerned behind historical developments and none that explain why things are as they are. History is not a story with a beginning, middle, and an end. Rather, history is less contiguous; its essences and origins presented are fabricated for varying purposes and only indicate disparity. As one author describes, “Genealogy does not claim to mine a contiguous vein in which

determinants of later events can be found if only our research is good enough... [it] finds the antithesis of essence...accidents and coincidences united by interpretation” (Prado, 1995).

Foucault also draws upon Nietzsche’s use of the concept of descent (*Herkunft*) or lineage to capture likenesses and differences in any continuous portrayal of history so as to reveal the discontinuous nature of beginnings (Prado, 1995). In contrast to readings of historical data that search for grand designs, genealogy attempts to identify the accident, minute deviations, the reversals, the errors that give birth to the things that have value for us (Prado, 1995). Genealogy examines particular historical moments (often ones that contradict contemporary representations of history) through “non-linear, layered, critical historical enquiry and reflection (Rabinow, 1984)—to create a history of the present” (Schmid, 2010, p. 2104). The goal is to present how truth is maintained in the present while problematizing it in relation to the past through an analysis of the operations of discourse to reveal the relations of power (Schmid, 2010).

Thus informed and cautioned by Foucauldian genealogy, the historical consideration in this study explores for *contingencies* (rather than causes or origins) as genealogy does, while it *also* follows the strands of *common projects*. The common projects of colonization and imperialism and the use of identification, segregation, dehumanization, confinement, and deportation based on perceived differences are necessary points for attention in this study via my horizon of interpretation: postcolonial theory. This historical consideration of confluence also departs from a Foucauldian genealogy in that it does not look to outline a *history of the present (as the accident of*

history) by attending to discontinuities and differences *per se* but rather to engage with the forces of colonization and imperialism at work for their contributions to power-knowledge, to bodies, to practices, policies and laws as they *cohere* and diverge in ways that are very meaningful and truthful to those they act from and upon. The multifocal methodological process in this study looks at both the functions of discourse including the productions of truth and meaning *and* the material and symbolic effects of truth and meaning. As I pointed to above, via Foucault, it is interpretation that unites the “accidents and coincidences” of history in the present. Simply put, this study will attend to continuing pieces of history through an attention to purposes and projects that supported colonization by drawing on theoretical and methodological contributions that permit an analysis of confluence through the work of discourse and its material effects on people.

Specifically, I will draw on techniques that other researchers and scholars have developed to analyze the work of discourse and its effects. In Social Work, Carolyn Taylor has demonstrated how the reflective study of writing practices such as reports and case notes can reveal the embedded persuasive technologies and claims to truth that result in the categorization of both professionals and services users (Taylor, 2008; Taylor & White, 2000).

Debjani Ganguly has employed a deeply historical postcolonial analysis of caste to map and critique how technologies of colonization (i.e., the cataloguing of essentialized categories of caste through the British gaze) including social scientific “representations of caste have rendered normative a vision of modernity and a template of modernization that cannot but display caste in a retrogressive light” (Ganguly, 2005,

p.xi). Ganguly's purpose is to see caste as a continuation of a "life-form" that over a hundred and fifty years of colonial rule and the forces of global capitalism have failed to eradicate while refusing to articulate an idea of caste as a form of cultural autonomy to hold onto. Ganguly's method allows for us to consider "what kinds of modernities are we living with" (Ganguly, 2005, p. 3). It allows for us to consider the hegemonic knowledge-formations that frame our outlook on the world and constantly remind people that caste is too outdated for modernity; to speak of caste is to move in the opposite direction of "progress" (Ganguly, 2005). These technologies of colonization frame the way we view ourselves through the lens of Western social scientific knowledge while confining Others to the past and denying heterogeneity, and indigenous knowledge.

Matthew Dorrell's analysis of the Canadian Government's apologies for the residential school system provides another example of how acts of narrative (in his case apology) are defined and used in the present context to imply progress and change. This use of narrative and its interpretations "confines the abuses of the residential schools to the past while removing contextual information needed to understand the schools system as a critical component of a larger and continuing colonial project" (Dorrell, 2009, p.29-30).

Also, Sunera Thobani has demonstrated through an examination of white/Western feminists' responses to the post-9/11 state of affairs, that through *discursive framing*, Western feminists have theorized the War on Terror in relation to gender in ways that continue to position the West as the civilized and the Islamic Other in need of civilizing-a colonial relationship. Regardless of the differences in political responses to the War on

Terror, the foundational assumptions of many Western feminists “have constituted their subject positions as endangered by Islamic terror, violence, and misogyny. In the process, they have helped revitalize “Western” feminism through a focus on the global that constitutes the West’s gendered subject as the mark of the “universal”, and the world of the Muslim gendered subject as that of death, violence, and misogyny” (Thobani, 2010, p.129).

Debjani Ganguly, Matthew Dorrell and Sunera Thobani contribute to our project the methodological tools to question the “modernities we are living with”, how the implication of progress and change is achieved through Government narratives, and how discursive framing can be interrogated for its practical usage in the constructing of identities worthy of the violence of deportation.

Horizon of interpretation: Post-colonial Analysis

The post-colonial theoretical necessity in my work is one that is deeply concerned with the operations and effects of power. Its unique contribution is that post-colonial theorists have been able to highlight the operations of colonial power and domination (through discourse analysis and deconstruction *pace* Said and Spivak respectively) that, as Midgley describes, “expose the imperialist attitudes inherent in the contemporary European cultural repertoire” while accommodating the need to present a critique of the narratives of oppression (i.e., Fanon, Césaire) (Césaire & Pinkham, 2007; Fanon, 1965; Midgley, 1998. p.33; Said, 1978; Spivak, 1988).

To study a confluence through these complementary theoretical lenses, including post-colonial theory, presents the possibility of acknowledging (for example) when and

where enlightenment-based assumptions are relied upon in order to deconstruct or interrogate these very assumptions (i.e., relying on ideas of objectivity, progressivity, universalism and the technologies of colonization within one's interpretations or analysis). I credit the contributions of post-colonial theory for highlighting for me the importance of this necessary task (Spivak, 1988; Ganguly, 2012; Muldoon, 2001). In order to study a confluence while attending to relations of power through discourse analysis and the advancement and effects of enlightenment-based and colonial interpretations, one must be able to analyze across knowledge regimes to engage with all of the levels of what is transpiring.

Post-colonial theory repudiates the objectivity, progressivity and universalism of modern science as post-modernism and post-structuralism do. It uniquely contributes that there is an irreconcilable and incommensurable difference in rationalities between modern Western science and Western based philosophy on the one hand, or the rationalities of 'other' groups occupying different cultural spaces (i.e., class, gender, ability, race, etc.) in the same culture (Gandhi, 1998; Loomba, 1998; Nanda, 2001; Young, 2001). It rejects the fundamental enlightenment and ancient Western philosophical impulse to interrogate inherited religion, cosmologies, norms, and tradition-sanctified knowledge, with the tools of modern science (Nanda, 2001). "If it is power that constructs knowledge, then a challenge to Western power demands that we challenge Western knowledge. Thus post-colonial theorists insist upon, in the name of genuine openness and radical democracy, the right of the pre-scientific traditions to question scientifically established knowledge" (Nanda, 2001). Post-colonial theory contributes to

this project by examining how colonialism becomes reconfigured after so-called decolonization and is committed to how colonial relations are maintained (discursive or material) as relations of antagonism and resistance (Ahmed, 1996; Gandhi, 1998; Loomba, 1998; Nanda, 2001; Young, 2001).

Pace Gyan Prakash and Partha Chatterjee, this postcolonial analysis acknowledges the epistemic violence within the enlightenment based colonial project of “using science as a paradigm of rational knowledge and bringing other knowledges under its purview” (Chatterjee, 1986, p. 11, cited in Nanda, 2001). Via Said and other post-colonial theorists, I am reading for colonial processes that “Orientalize” the Other through a wide range of practices that involve forming national ideas of community¹² while un-forming or re-forming existing communities in lands new to the colonizers.

According to Said, individuals in the Orient were subordinated into a general type through Orientalist discourse and positioned through consistent binaries that set Europe apart from “the Orient” geographically, racially, and religiously (Said, 1978). This Orientalist discursive regime also produced an ontological and epistemological difference between the European “us” and the Oriental “them” (Said, 1978). The “Orient” becomes static and unchanging, and authors on the subject draw clear distinctions between

¹² “In a seminal book, *Imagined Communities*, Benedict Anderson (1991) states: ‘Communities are to be distinguished, not by their falsity/genuineness, but by the style in which they are imagined’ (p.6.). The creation of communities with meaning for the people who are involved may have little to do with geographical contiguity of residence or even actual person-to-person contact. Yet, once someone identifies as belonging to a community – for example, a nation – there is an almost irrational attachment ‘for the inventions of their imagination’ (p.41). So it is important to be careful in designating the term ‘community’ in any given instance.” (Fernando, 2010, p.20).

themselves (White, male, European etc.) and the Oriental (Said, 1978). The Orientalist also produces an overarching sense of contempt for the Other, and becomes the expert who knows the Oriental better than the Oriental can know her/himself (Said, 1978). Orientalism structures and guides academic fields and allows for a tendency to define the Other in broad sweeping terms (either Orient or Occident), eliminating the need to for heterogeneity within groups (Said, 1978).

The colonial practices of “trade, plunder, negotiation, warfare, genocide, enslavement and rebellions...were shaped by a variety of writing: public and private records, letter, trade documents, government papers, fiction and scientific literature. These practices and writings are what contemporary studies of colonialism and postcolonialism try to make sense of” (Loomba, 2005, p.8).

This postcolonial multifocal analysis of the processes of colonization while attending to their larger project and its outcomes is crucial to my approach. In this study, I will engage in an analysis of deportation cases via the discursive frames deployed at the confluence of mental health, criminal justice and immigration systems. The *horizon* of interpretation of such frames is informed by post-colonial theory. Hans-Georg Gadamer insists that people always have a "historically effected consciousness" (*wirkungsgeschichtliches Bewußtsein*) (Gadamer, 1997). We are the result of our histories and always have biases and prejudices. Gadamer acknowledges that objective knowledge about an Other cannot exist through a denial of the self, a forgetting or setting aside of the self (Gadamer, 1997). Also, there exists no absolute knowledge or universal history that can be represented through a single horizon as there is always a representation and

interpretation. Therefore, understanding must involve the fusion of one's horizon with an Other's while acknowledging that horizons are neither closed nor unique (Gadamer, 1997). This dialectical process during interpretation involves an acknowledgment of the self and the Other in dialogue, effected by history, and always relevant to a vantage point or horizon.

Gadamer defines Horizon as:

Every finite present has its limitations. We define the concept of "situation" by saying that it represents a standpoint that limits the possibility of vision. Hence essential part of the concept of situation is the concept of "*horizon*." The horizon is the range of vision that includes everything that can be seen from a particular vantage point... A person who has no horizon is a man who does not see far enough and hence overvalues what is nearest to him. On the other hand, "to have an horizon" means not being limited to what is nearby, but to being able to see beyond it...**[W]orking out of the hermeneutical situation means the achievement of the right horizon of inquiry for the questions evoked by the encounter with tradition** (emphasis added).

(Gadamer, 1997, p.302)

A Postcolonial Document Analysis of Confluence

As mentioned above, my research process has started by examining the decision documents from the Immigration and Refugee Board's Appeal division to answer my research question- How does an understanding of confluence at the site of criminal justice, immigration and mental health systems illuminate the construction, authorization and legitimization of mechanisms of state violence through the example of deportation? In order to explore the multiple levels of violence at the confluence of mental health, criminal justice and immigration systems, and violence must be examined for its symbolic, subjective and objective forms.

This research will examine subjective violence by examining deportation as a mechanism of state violence (including the use of brutal physical violence, i.e. containment, incarceration and removal). It will highlight the symbolic violence within discourses of professions and disciplines (including the colonial forms of violence that occur when writing about other people, including classification). It will also focus on the systemic violence resulting from policies, laws, and practices embedded in institutions (including the colonial forms of control and containment of violence inflicted upon others).

I reviewed each document closely for **discourse** (including professional talk and references texts, policies and laws) and **Discourse** (ways of thinking about race, mental health, and criminality and how these affect particular historical and moral positions) to examine for how identities and rationales for deportation are **constructed** (examining the deployment of biomedical discourse, perceived genetic variation, nationalism as *subjective violence*), how violence (*qua* Žižek) is **authorized** (examining the preference of hegemonic knowledge regimes, eugenic rationale as *symbolic violence*) and how violence is **legitimated** (examining the effects of policies and the law as *systemic violence*) (Žižek, 2008; Taylor & White, 2000).

Specifically I am reading the documents to pull out this information and to answer these questions **during the first readings of cases individually:**

1. How is “mental illness or mental health” represented for this person? What interpretations, Discourses and discourses are at work?
2. How is “criminality” represented for this person? What interpretations, Discourses and discourses are at work?

3. How is national identity, ethnic origin, or belonging established? What interpretations, Discourses and discourses are at work?
4. Upon what historical premise or precedents do these invocations or Discourses operate, and for what purposes?
5. How are identities being discursively framed for or positioned?

For question 4, I have also reviewed historical materials through archival research at the Archives of Ontario, examining past Immigration and Refugee Protection Acts (and its pre-existing form i.e. the Immigration Act), the Criminal Code of Canada (and its pre-existing forms specific to the sections on “mental illness”), and the Mental Health Act (and its pre-existing form including the Mental Hospitals Act).

I also reviewed relevant correspondence for changes to these acts. Through this work, I have been drawn to the common use of criminal justice and mental health systems for “immigrants” and found that mental hospitals have historically been used and officially designated as immigration stations. Prisons have historically been used for the containment of immigrants and those identified as mentally different. Also, the deportation of “undesirables” was orchestrated by the Department of Immigration and Colonization to keep track of people by racial origin, and by using incarceration, deportation, and representations of people as limited in terms of their perceived “genetic” make-up. These decisions were also appealed historically and I have found cases that represent historical appeals for people identified as “undesirable”, “mentally ill”, or burdensome due to their “criminality”, thereby unworthy of citizenship or support from Canada. This component of my methodology is not in search of origins but rather looks to the continuation of colonial practices, their purpose and outcomes by examining the *discursive framing* of criminality, of Otherness, and of mental illness. These historical

documents, ideas, discourses and interpretations demonstrate key components of the confluence while contributing to the overall accretion of laws, policies, practices and disciplines as they delineate their object. The process involved requesting and reviewing line-by-line, dozens of boxes of policy, laws and correspondence documents relevant to the confluence of mental health, immigration, colonization and criminal justice practices in Canada from 1906¹³ to the present.

The questions outlined above for the first reading are designed to expose what I will suggest are the dominance of biomedical discourses (“the untreatable”), discourses of inherent criminality (“the unrehabilitatable”), and the discourses of the non-ideal citizen who does not belong within the construction of national identities (“the alien/ the undeserving”). As I will demonstrate, these ideas are advanced through the workings of interpretations that rely on an acceptance of racial and eugenic ideas and the processes of identification and dehumanization necessary for colonization.

Crucial to this analysis is asking the question of how what is present (in the text and discourse) also produces what is not there i.e., How do biomedical discourses, and discourses of criminality (as inherent or permanent) (re)produce a sole focus on individuals, a direction for blame (i.e. “non-compliance with medication”), while advancing notions of an ideal citizen (through establishing what an ideal citizen is not) and maintaining the constitution of the savage, mad, primitive Other? What conclusion is

¹³ The 1906 revision of the immigration act expanded the scope of its exclusionary measures to the “feeble-minded, idiot, epileptic, or who is insane or has had an attack of insanity within five years; deaf and dumb, or dumb, blind or infirm” (Chadha, 2008). It was also the earliest period whereby Psychiatrists collaborated with immigration and government officials to include provisions in law to systematically deport people in insane asylums in Canada.

this document being written for us to draw? How are truth claims being made and how are actors laying claim to truth as self-evident through their case-construction? How are expertise and authority assumed in the text?

Specifically I am reading the documents to pull out this information and to answer these questions **during the subsequent readings of cases individually and together:**

I chose to analyze contemporary cases and decisions from the only known public records on deportation in Canada including the reflex database of the Immigration and Refugee Board¹⁴ and the cases that go onto the Federal Court of Canada (Chan, 2005). The complete decision documents from the Immigration and Refugee Board are accessible through the **Canadian Legal Information Institute (CANLII)** database from 1996-2012. Complete decision documents from the Federal Courts are accessible from the **Federal Court decision database** from 1990-2012. The reports for these decisions of the Federal Court are also accessible through the Office of the Commissioner for Federal Judicial Affairs Canada, Federal Court reports database.

Purposive Sampling:

I specifically chose to analyze decisions from the Immigration and Refugee Board's Appeals Division. These cases represent acts of resistance to systems of identification, incarceration and removal in Canada. These cases also arrive at the confluence of the mental health, criminal justice and immigration systems in Canada.

¹⁴ As of July 2013, the Reflex database on the Citizenship and Immigration Canada website is no longer publishing decision documents stating, "The Immigration and Refugee Board of Canada (IRB) is currently reviewing the manner in which its tribunal decisions are made available to the public."

Retrieved December 11, 2013 from <http://www.irb-cisr.gc.ca/Eng/NewsNouv/NewNou/Pages/reflex.aspx>

Search Criteria:

In the CANLII database I used the search criteria: "mental health" or "mental illness" and "removal order" or "deportation". I selected the most recent complete 10 years for my analysis at the time of commencement of my study. The dates included: January 1, 2001- December 31, 2011. This search generated 93 results. I combined documents that referred to the same person and eliminated a few documents that did not correspond to the topic of my research (i.e. where the words "mental" and "illness" are mentioned but not relevant to the case or the person to be deported). **This left me with 75 results.**

My approach to this study acknowledges that research and methods are themselves political acts (Gitlin, 1994). My approach also acknowledges the potential for resistance to relations of domination and subordination within research from the margins, i.e., "research by, for, and with them/us. It is research that takes seriously and seeks to trouble the connections between how knowledge is created, what knowledge is produced, and who is entitled to engage in these processes. It seeks to reclaim and incorporate the personal and political contexts of knowledge construction" (Brown & Strega, 2005, p.7).

I have chosen to use cases from the Appeals Division of the Immigration and Refugee Board. I believe these cases provide me with ample material to begin to study the confluence of systems of immigration, criminal justice and mental health while acknowledging and respecting the resiliency, resistance, and agency of those who find themselves at the convergence of this confluence. The dates I have selected are from January 1, 2001-December 31, 2011, allowing me to gather a generous cross section of

cases over a decade, while limiting the unit of analysis to an amount that permits for the depth and breadth of analysis necessary for this work. I have queried the appeals database for "mental health" or "mental illness" and "removal order" or "deportation", resulting in matches corresponding to 75 people. This period also allows for an analysis of the most complete years of the “contemporary effects” of what I will argue in this thesis are discourses that have historically advanced racial, eugenic, and colonial ideas to constitute subjectivities and identities of difference and human limitation to justify and authorize violence (including the deportation of people and their confinement and totalization to the “unstatusworthy, unrehabilitatable, or untreatable” castes.

Chapter 7

Historical case data-archival artifacts:

Regulating Undesirables

When considering the contemporary construction, authorization and legitimization of deportation for people identified with mental health issues, we must attend to the historical, political and social contexts that have shaped the policies and practices that govern our current realities. The notions that criminal matters are separate from mental health matters and also separate from immigration matters, ignores the common projects of colonization and nation building that depended upon the subjugation and elimination of those considered *undesirable*.

In order to appreciate the historical contributions to the fabrication of hierarchies of biology, race, nationalism and the importance of portraying an image of moral authority in the justification of violence, it is important to examine the workings of this confluence at earlier stages of its project. Through a historical examination/reflection of similar outcomes (the construction of subordinate identities, the selective provision of authority and the unjust practices of legitimization) at the confluence of immigration, criminal justice and mental health systems, exposed are the projects of nation building and colonial violence upon which these technologies and practices gained momentum and became convention.

In the following chapter, I overview the relevant historical legal and political context for tracing the colonial project at the confluence of immigration, criminal justice and mental health systems and then through three exemplary cases provide a

demonstration of the achievements of the outcomes of colonial nation building through the practices and technologies that are relied upon in contemporary deportation decisions, dependent on racial and eugenic rationale. Also exposed is the practice of delineating an idea of a Canadian identity, one forged upon a devaluation of those whose characteristics are encapsulated as inferior, costly, threatening, or undeserving.

These three cases focus on the practices of professionals and authorities in the control of undesirables. In the case of the *Historical use gaols of the criminal justice system for detention of undesirables by the Department of Immigration and Colonization (circa 1919)¹⁵*, the interdependence of the criminal justice and immigration systems to control undesirables (including those identified with mental illness) is revealed as well as their dependence on the application of a eugenic rationale, the utilization of racial hierarchy, the abuse of discretionary powers to commit violence and the projection of an image of authority and legitimization through the selective referencing of authoritative texts.

In the case of the *Deportation of Hobos, tramps, undesirable aliens (circa, 1915)¹⁶*, we see the practice of the criminal justice system working outside of the provisions of the law with the immigration department “for the protection of the

¹⁵ W.W. Dunlap, Inspector of Prisons, Toronto: Query re: authority of Department of Immigration to use gaols for detention of undesirable immigrants. Also concerns the specific case of Elsie Saborowiski, who associated with known revolutionaries, 1919, RG 4-32, Archives of Ontario.

¹⁶ W.D. Scott, Department of Immigration, Ottawa: Request for information on the deportation of Hobos from Ontario, 1915, RG 4-32, Archives of Ontario.

province” to remove those deemed undesirable. This case example demonstrates the manipulation of records (or lack of record keeping) to deny inquiry (i.e., as is also exemplified in the lack of police records maintained in the Audley Horace Gardiner case to deny a self-defense claim or details in the case of Niranjana Sambasivam detailed in Chapter 9). Also transparent is the denial of the process of racial profiling through police surveillance (contemporarily conducted by the CBSA) and the use of a eugenic rationale permitting the continuation of the violent practices of colonial Nation-building while perceptively representing a fair and just process to any who would inquire.

In the case of *The Department of Immigration’s designation of Ontario Hospitals for the Insane as Immigrant stations (circa 1927¹⁷)*, we see yet another example of the interdependence of immigration and mental health systems as well as the deployment of eugenic and racial rationales through the seemingly peculiar designation of hospitals for the insane as immigration stations (contemporarily exemplified in the deportation cases where psychiatric institutions are relied upon to confine or control non-citizens).

While these archival examples provide a unique perspective at this confluence, they also provide an opportunity for inquiry into the practices of figures of authority, a perspective focused on the violence of professionals, organizations, and governmental structures. While individually they contribute an analysis of individual actors and decision makers, together they demonstrate the cooperation and interplay of criminal

¹⁷ H.M. Robbins, Dept. Prov. Sec.: Request for opinion re power of Immigration Dept. to designate Ontario Hospitals for the insane as immigrant stations, 1927, RG 4-32, Archives of Ontario.

justice, immigration and mental health systems for common imperial and colonial projects. The technologies revealed at this level of analysis are crucial to an analysis of contemporary rationalizations of violence, including the practice of deportation for those identified with mental health issues and involved with the criminal justice system.

Canada's immigration laws have produced and reinforced a long legacy of social prejudice against persons with mental disabilities (Chadha, 2008). In 1886, the first truly comprehensive immigration act was enacted in Canada. It required any vessel arriving at a Canadian port to report any “lunatic, idiotic, deaf and dumb, blind or infirm person” on their ship, failure to do so would cost the Master of the ship a \$20-\$100 fine (Chadha, 2008). This structure allowed the immigration system to encourage vessel Masters to not take any “lunatic, idiotic, deaf and dumb, blind or infirm person” on their ship and the ability to identify and deport any that were reported.

The 1906 revision of the immigration act expanded the scope of its exclusionary measures to the “feeble-minded, idiot, epileptic, or who is insane or has had an attack of insanity within five years; deaf and dumb, or dumb, blind or infirm” (Chadha, 2008). If a person belonged to a family and could prove to the minister that he or she would not be a burden on society, they would be considered for landing status. In 1910, the House of Commons debates revealed that early 20th century psychiatry propounded the belief that persons with mental disabilities were *undesirable immigrants* because they were by nature degenerates, dangerous and dishonest in disposition (Chadha, 2008).

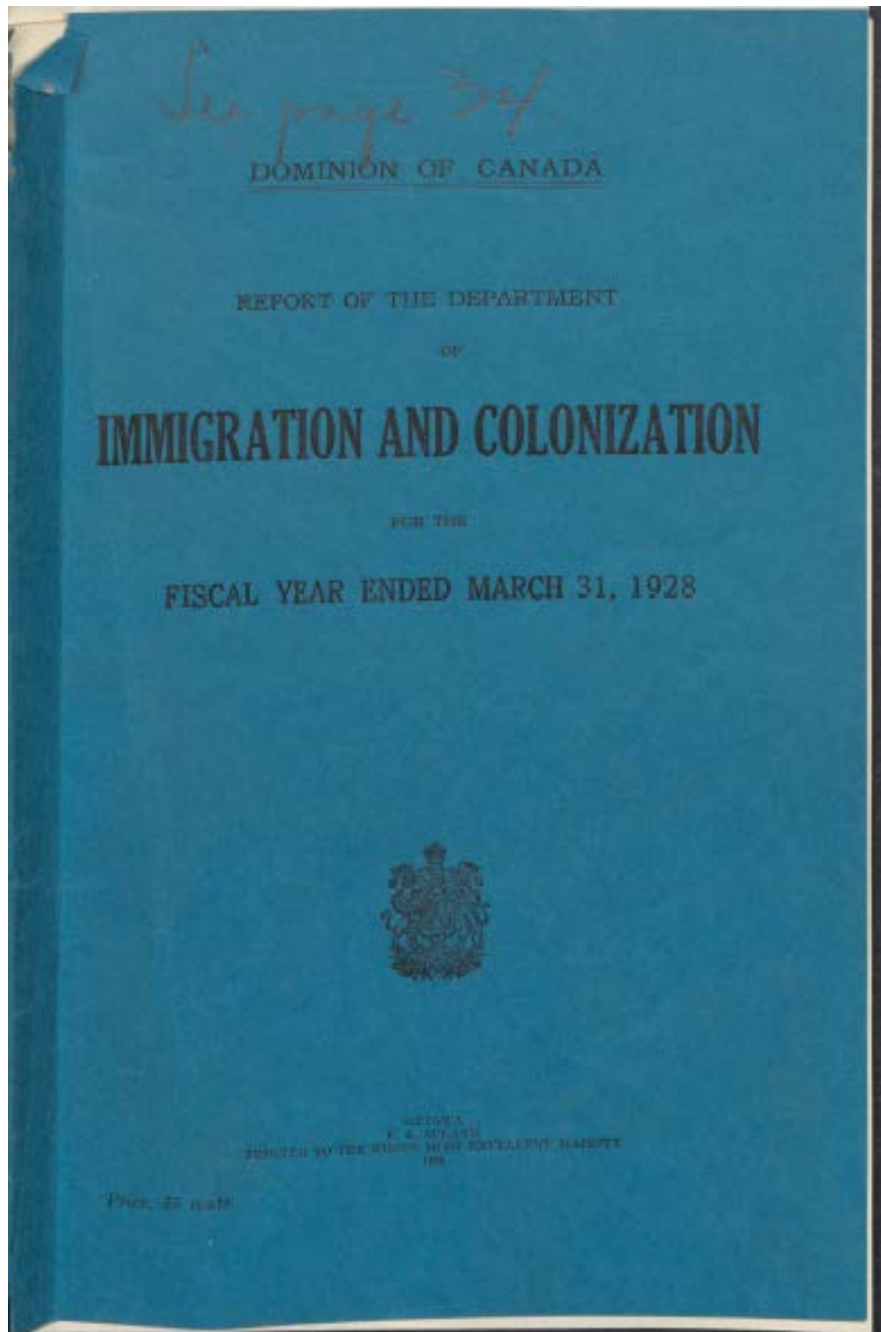
The Department of Immigration and Colonization was established in 1917. Before then, immigration was a responsibility of the Department of Agriculture and then the

Department of the Interior (Library and Archives Canada, 2010). From 1936-1949, immigration became the responsibility of the Department of Mines and Resources (Library and Archives Canada, 2010). After 1950 until 1966, immigration was the responsibility of the Department of Citizenship and Immigration (as independent Canadian Citizenship was only available after 1947) (Kary, 2013). From 1966 until 1977, immigration became the responsibility of the Department of Manpower and Immigration under the Department of State for Citizenship (Kary, 2013). From 1977-1991 immigration was a responsibility of the Department for Employment and Immigration and ever since has been known as Citizenship and Immigration Canada (Kary, 2013). This timeline is crucial to an understanding of the history of immigration in Canada.

From 1891 to 1914, over three million people came to Canada after the construction of the newly constructed railway and an increase in the mining operations in the Klondike and the Canadian Shield (Brown & Cook; 1974; Creighton, 1979). The War Measures Act was passed in 1917, disenfranchising certain immigrants as “enemy aliens” (Canadian Council for Refugees, 2000). As immigration increased from 1897-1918, “concern about immigration dovetailed with growing anxiety among native English-speaking Canadians about the future of the British empire” and “Canadians’ fears about “race suicide” had escalated (Dowbiggin, 1997, p.137). “The steady arrival of such immigrants over the years led to warnings about their low quality and triggered campaigns to assimilate newcomers by training them to be law-abiding, productive, healthy, and self-reliant citizens” (Dowbiggin, 1997, p.137).

The Department of Immigration and Colonization was established to ensure that Canada's colonial project was able to continue to monitor its regulation of immigrants and the colonization Canada so that its racial composition and employment composition privileged British Canadians and restricted those who were identified as undesirable, of an inferior race, or an "enemy".

The Department of Immigration and Colonization kept meticulous reports on their efforts to control the Canadian population.



(Report of the Department of Immigration & Colonization, 1928, RG 7-12-0-112, Archives of Ontario)

Annual reports documented immigration statistics tracing occupations, destinations, and reported on initiatives in place to regulate specific populations of undesirables.

TABLE 14.—Statement of Immigration, via Ocean Ports, for the Fiscal Year 1927-28, showing Racial Origin and Month of Arrival

	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Totals
Albanian.....	0	2	2		19							0	30
Arabian.....					5								6
Armenian.....	4	1	1	25	4	2			1				41
Austrian.....	102	107	117	8	12	16	20	12	10	7	14	81	606
Belgian.....	688	487	174	179	68	90	99	37	42	17	54	227	2,171
Bohemian.....	4				1	1				1			7
British—													
English.....	6,400	4,067	3,021	2,478	2,045	1,790	1,833	944	439	450	513	1,804	25,991
Irish.....	2,018	1,590	1,332	993	562	545	533	219	106	92	151	554	8,750
Scottish.....	2,449	2,470	2,719	1,399	1,034	823	1,078	599	331	306	962	677	14,341
Welsh.....	533	275	180	194	120	111	134	54	41	21	30	115	1,784
Hungarian.....	17	15	35	17	10	9	17	25	32	9	19	26	349
Croatian.....	484	144	10	5	4	2	26	9	8	5	6	6	109
Czech.....	332	82	10	26	34	14	8	6	36	13	28	123	902
Dutch.....	354	313	212	173	216	80	65	50	23	19	28	193	714
East Indian.....	4	4	11	4	12	8	2	2	2	3			1,928
Estonian.....	25	19	17	1	7	5	2	2	2	3			56
Finnish.....	608	529	641	486	375	408	396	216	290	129	157	253	1,110
French.....	128	139	98	82	53	83	82	51	48	13	20	64	4,765
German.....	2,577	1,966	1,275	883	730	461	662	314	288	261	320	2,283	868
Greek.....	55	37	40	47	24	55	67	50	62	34	55	57	12,032
Hebrew.....	184	302	454	331	382	344	409	330	401	349	234	317	583
Herzegovinian.....	4												4,280
Italian.....	171	458	694	535	326	442	369	211	190	84	112	59	4
Japanese.....	57	77	49	45	32	25	26	23	24	17	22	81	3,093
Jugo-Slav.....	821	260	44	15	8	36	13	13	17	10	15	197	479
Lettish.....	19	11	12	19	3	1	5	2	2				1,450
Lithuanian.....	375	110	60	36	32	30	46	14	28	55	25	238	77
Magyar.....	1,972	1,371	888	167	134	134	150	124	138	94	105	569	1,037
Maltese.....	1	2	13	4	5	2	1	1					5,318
Moravian.....	8	8	6	9						1	0	3	39
Negro.....	7	11	15	13	7	8	10	12	2				33
Persian.....	2	1	1										88
Polish.....	2,486	1,466	920	358	225	151	215	136	156	98	108	478	4
Portuguese.....	1		1		2		1						6,733
Roumanian.....	62	29	14	16	17	21	11	21	5	7	9	25	7
Russian.....	188	220	167	99	42	37	46	34	39	17	22	71	237
Sathasian.....	3,109	1,729	1,310	534	346	334	367	228	269	206	189	1,487	948
Scandinavian—													10,128
Danish.....	879	820	251	294	189	158	122	100	58	45	129	792	3,835
Icelandic.....	2		8	2	3	6		1	2		4		28
Norwegian.....	1,602	826	337	356	193	252	144	97	39	42	40	238	4,327
Swedish.....	689	501	257	236	232	165	131	117	100	99	74	401	3,134
Sachian.....	242	58	13	10	12	7	8	6	6	4	5	49	411
Slovak.....	2,606	483	379	32	36	61	67	61	26	25	24	457	411
Spanish.....	5	2	2	3	2	3	6						3,714
Swiss.....	103	149	59	55	37	29	34	13	4	8	3	1	28
Syrian.....	4	16	31	9	2	7	6	6	7	11	1	2	614
Turkish.....													82
Totals.....	32,923	21,428	15,410	10,137	7,619	6,807	7,150	4,165	3,282	2,469	2,838	12,282	126,590

(Report of the Department of Immigration & Colonization, 1928, RG 7-12-0-112, p.20, Archives of Ontario)

Statistics were categorized by “racial origin” sometimes alluding to the country of origin, but the use of the term “negro” for example, clearly denotes a racial category.

REPORT OF THE CHIEF CONTROLLER OF CHINESE IMMIGRATION,
A. I. JOLLIFFE

The head tax of \$50 imposed upon Chinese in 1885, which was increased to \$100 on January 1, 1901, and to \$500 on January 1, 1904, was abolished under the provisions of the Chinese Immigration Act, 1923, which confines the entry to Canada of persons of Chinese origin, or descent, to members of the following classes:—

- (a) Members of the diplomatic corps, or other government representatives, their suites and their servants, and consuls and consular agents;
- (b) Children born in Canada of parents of Chinese race or descent, who have left Canada for educational or other purposes, on substantiating their identity to the satisfaction of the controller at the port or place where they seek to enter on their return;
- (c) (1) Merchants as defined by such regulations as the minister may prescribe; (2) Students coming to Canada for the purpose of attendance, and while in actual attendance, at any Canadian university or college authorized by statute or charter to confer degrees.

During the fiscal year 1927-28 three Chinese immigrants were admitted to Canada; of these two were Chinese women who originally arrived in Canada during 1923 and who were admitted by virtue of a decision of the courts upon payment of the head tax in vogue at that time, and the other a merchant. Two students coming to attend Canadian universities, who will return to China when their studies have been completed, were admitted as non-immigrants. Eleven Chinese were deported during this period under various provisions of the Act.

Permits were issued under section 9 authorizing the temporary admission, for periods up to one year, of 75 Chinese, consisting mainly of actors and actresses under contract to appear in the different Chinese theatres, amahs, and servants of tourists, missionaries, students and teachers. Of this number 28 have left Canada within the year. In the case of actors, amahs, servants and teachers, cash or guarantee bonds are required by the department, guaranteeing that they will engage in no other wage earning occupation and that they will leave Canada within the period of their permit.

The registration carried on during 1923-24 shows a Chinese population in Canada of approximately 55,706. Of this number 48,305 were males, 1,302 females and 6,099 children under 18 years of age, distributed as follows:—

British Columbia.....	31,116
Alberta.....	4,857
Saskatchewan.....	3,961
Manitoba.....	2,146
Ontario.....	9,377
Quebec.....	3,753
New Brunswick.....	270
Nova Scotia.....	404
Prince Edward Island.....	19
Not specified.....	3
	55,706

(Report of the Department of Immigration & Colonization, 1928, RG 7-12-0-112, p. 51, Archives of Ontario)

Although the head-tax on Chinese immigrants was abolished in 1923, the department of Immigration and Colonization continued to provide surveillance on Chinese Canadians by reporting on them specifically in the annual reports as well as documenting how many have been registered.

DRUG ADDICTS

There have been 51 aliens deported from ports in this division under the provisions of the Opium and Narcotic Drug Act, 39 of these convictions being made in British Columbia and 12 originating in the Eastern and Western Divisions.

INVESTIGATIONS

At places other than ports of entry, 149 investigations of various kinds were conducted and 247 Boards of Inquiry held by investigating officers.

Regular visits have been paid to provincial jails, penitentiaries, mental hospitals, sanatoria and other public institutions by investigating officers and the cases of all aliens in such institutions have been carefully investigated with a view to establishing their status in Canada.

During the year 47 British immigrant children residing in this province were inspected and the living conditions found to be very satisfactory. This is the smallest inspection report for a number of years owing to the fact that there were very few juvenile immigrant children brought to Canada and sent to this province during the past year.

No new ports were opened but the office at Port Simpson was closed on February 29, 1928. Six new officers have been appointed in this district during the past year, four part-time immigration officers and two to fill the duties of full-time officers.

From April 1, 1927, to March 31, 1928, but three applications were made by Chinese to enter Canada under the provisions of paragraph "C" of section 5 of the Chinese Immigration Act. Two of the applications referred to were made by bona fide students who were coming to attend Canadian universities and their entry was authorized at the port of Vancouver. The third application was made during the latter part of March by an alleged merchant and a decision regarding his admissibility has not been reached. It will therefore be seen that the number of Chinese attempting to qualify for admission as immigrants remains negligible since the passing of the 1923 legislation.

There have been sixty Chinese temporarily admitted during the fiscal year under section 9 of the Chinese Immigration Act, forty of whom arrived at Vancouver and twenty at Victoria. This is a decrease of eight from the figures of last year.

Systematic searching of transpacific vessels has been undertaken and in addition during the last four months officers have kept a continuous watch on steamships during the time they have been in port. The fact that no stowaways have been discovered would indicate the measures taken have checked any attempts at illegal entry by this means.

There has been only one attempt at entry by impersonation. In the case referred to a Chinese arrived misrepresenting himself as a person who had registered out to visit China. The impersonation was readily detected and after a term of imprisonment was served as a result of a successful prosecution under the Provisions of section 32 of the Chinese Immigration Act, the impersonator was deported.

There were eight desertions of Chinese seamen during the period under review. These desertions were all during November, 1927, and since that time extra precautionary measures have been taken both by the transportation interests and by our officers to see there is no recurrence.

The travel through Canada of overland Chinese has been less than the previous year, 4,108 of this class being handled during 1926-27, and 3,183 during 1927-28. There has also been a decrease in the number of outward registrants under section 23 of the Chinese Immigration Act. The figures for last year were 5,573 and for the year just ended 4,731. During the year 335 Chinese who regis-

tered out have lost their right to return by not applying for readmission within the statutory period of two years and 213 left Canada without applying for outward registration, thereby forfeiting their right to return.

There has been a total of seven head taxes collected, five under the provisions of section 27 of the Chinese Immigration Act, three at Vancouver, and two at Victoria, and two to cover the admission of Chinese women whose cases had been outstanding through court action since 1923.

Following is a table covering Chinese immigration figures for the years 1926-27 and 1927-28:—

	1926-27		1927-28	
	Victoria	Vancouver	Victoria	Vancouver
Admitted to Canada under Paragraph (c) of Section 5		2		2
Applications based on Section 5 rejected			2	
Persons deported after rejection	1	17	2	
Admitted under Section 9	10	58	20	40
Chinese deported after proceedings Section 26		6	3	7
		(3 from other provinces)		(2 from other provinces)
Awaiting decision on appeal after deportation ordered under Section 26	3	1		1
Prosecutions under Section 32, Sub-sec. 1		2		1
Chinese stowaways apprehended by search of incoming vessels		15		
C. I. 9 registrations	1,525	4,048	1,250	3,481
C. I. 9A registrations	146	101	125	99
Chinese returned and re-admitted under C.I. 9 registration	1,593	3,345	1,158	2,871
C.I. 9 registrations marked expired on failure of registrants to return within two years	176	297	99	236
Chinese leaving Canada without applying for outward registration	74	190	54	159
Persons admitted under bond in transit to other countries	241	2,184	222	1,035
Persons passed out of Canada after being admitted in transit to China at other ports	331	1,352	243	1,683
Persons paying Head Tax as provided for in Section 27	1	1	2	3
Section 18 registrations	29	51	35	64
Native born re-admitted			102	73

(Report of the Department of Immigration & Colonization, 1928, RG 7-12-0-112, p.100-101, Archives of Ontario)

The ongoing surveillance of Chinese immigrants included continuing investigations including the “systematic searching of transpacific vessels” inspection of vessels entering Canadian ports, deporting Chinese immigrants who were found to be “illegal”, the numbers deported and travel statistics.

DEPORTATIONS

Two hundred and thirty-six persons were deported from the Pacific Division, of which one hundred and forty-four were deported from Pacific coast ports and ninety-two were taken east for deportation by deportation officers from other divisions. Causes for deportation were as follows:—

	To United States	To Other Countries
Accompanying.....	2	15
Criminality.....	19	39
Drug Addicts.....	3	48
Insanity.....	2	21
Public charges.....	3	20
Previous deportation.....	4	25
Entry by stealth, misrepresentation, etc.....	7	26
Other causes.....		
Totals.....	40	196

Records of deportations often reported by cause including “accompanying, criminality, drug addicts, insanity, etc.

(Report of the Department of Immigration & Colonization, 1928, RG 7-12-0-112, p.99, Archives of Ontario)

Historical use gaols of the criminal justice system for detention of undesirables by the Department of Immigration and Colonization

The Canadian criminal justice system has historically worked in cooperation with the Canadian Immigration and Colonization Department to stretch the interpretation of law to allow for the imprisonment of people deemed *undesirable*. Archival correspondence from the Ontario Department of the Attorney General reveals that in 1919, official permission was requested from the Attorney General by the Immigration and Colonization Department to use gaols in the province for the detention of undesirables. A reply to the request from the Inspector of prisons and public charities, one, W.W. Dunlop includes the explanation, addressed to a Mr. Edward Bayly that,

“it would appear from the Immigration Act that undesirables, alien enemies, idiots, imbeciles, feeble-minded, epileptics and other classes of persons may be arrested and detained in custody (see section 11 of the Immigration Act: subsection 7 of section 33; subsection 4 of section 42: section 3, “Prohibited Classes”. You might also refer to the Orders under P.C. 23 and P.E 924” (December 23, 1919),

Here it is important to review the specific cited pieces of legislation provided as authority by Mr. Dunlop. The Immigration Act of 1910 section 11 permits any officer to arrest, detain or deport “any immigrant, alien, or other person” if there is a written order from a Minister or officer under the Immigration Act.

Section 11:

Duties of
police to
execute
orders of
Minister.

11. All constables and other peace officers in Canada, whether appointed under Dominion, provincial, or municipal authority, shall, when so directed by the Minister or by any officer under this Act, receive and execute according to the tenor thereof any written order of the Minister, or of the Minister of Justice, or of a Board of Inquiry or officer acting as such, and any warrant of the Superintendent of Immigration, for the arrest, detention or deportation of any immigrant, alien or other person in accordance with the provisions of this Act.

(An Act Respecting Immigration, 1910).

Subsection 7 of section 33 of the Immigration Act allows for “all constables and other peace officers” to detain, deport or fine (up to 100\$) people who elude examination at a point of entry, or escape from detention.

Subsection 7 of section 33:

7. Any person who enters Canada except at a port of entry, ^{Avoiding port of entry.} or who at a port of entry eludes examination by an officer, or Board of Inquiry, or who enters Canada by force or misrepresentation or stealth or otherwise contrary to any provision of this Act, or who escapes from custody of an officer or from an immigrant station when detained for any cause under this Act, shall be guilty of an offence under this Act, and liable on conviction to a fine of not more than one hundred dollars, and may be arrested and detained without a warrant by any officer for examination as provided under this section; and if found not to be a Canadian citizen, or not to have Canadian domicile, such entry shall in itself be sufficient cause for deportation whenever so ordered by a Board of Inquiry or officer in charge subject to any appeal which may have been entered under section 19 of this Act.

(An Act Respecting Immigration, 1910).

Subsection 4 of Subsection 42 considers it a crime if someone is ordered deported and refuses to leave. Upon conviction of this crime, a person could be imprisoned or deported.

Subsection 4 of section 42:

Penalty for rejected or deported person remaining in or re-entering Canada.	<p>4. Any person rejected or deported under this Act who enters or remains in or returns to Canada after such rejection or deportation without a permit under this Act or other lawful excuse, or who refuses or neglects to leave Canada when ordered so to do by the Governor in Council as provided for in this section, shall be guilty of an offence against this Act, and may forthwith be arrested by any officer and be deported on an order from the Minister or the Superintendent of Immigration, or may be prosecuted for such offence, and shall be liable, on conviction, to two years imprisonment, and immediately after expiry of any sentence imposed for such offence, may be again deported or ordered to leave Canada under this section.</p>
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(An Act Respecting Immigration, 1910).

Under the section 3 of the Immigration Act of 1910, the “prohibited classes” are identified in the following order: “Persons mentally defective”, “Diseased persons”, “Persons physically defective”, “Criminals”, “Prostitutes or pimps”, “Procurers”(see below), “Beggars and vagrants”, “Charity immigrants” and “Persons not complying with regulations”.

PROHIBITED CLASSES.

Prohibited classes of immigrants.	<p>3. No immigrant, passenger, or other person, unless he is a Canadian citizen, or has Canadian domicile, shall be permitted to land in Canada, or in case of having landed in or entered Canada shall be permitted to remain therein, who belongs to any of the following classes, hereinafter called "prohibited classes", —</p>
Persons mentally defective.	<p>(a) idiots, imbeciles, feeble-minded persons, epileptics, insane persons, and persons who have been insane within five years previous;</p>
Diseased persons.	<p>(b) persons afflicted with any loathsome disease, or with a disease which is contagious or infectious, or which may become dangerous to the public health, whether such persons intend to settle in Canada or only to pass through Canada in transit to some other country: Provided that if such disease is one which is curable within a reasonably short time, such persons may, subject to the regulations in that behalf, if any, be permitted to remain on board ship if hospital facilities do not exist on shore, or to leave ship for medical treatment;</p>
Persons physically defective.	<p>(c) immigrants who are dumb, blind, or otherwise physically defective, unless in the opinion of a Board of Inquiry or officer acting as such they have sufficient money, or have such profession, occupation, trade, employment or other legitimate</p>

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mate mode of earning a living that they are not liable to become a public charge or unless they belong to a family accompanying them or already in Canada and which gives security satisfactory to the Minister against such immigrants becoming a public charge;

(d) persons who have been convicted of any crime involving moral turpitude; Criminals

(e) prostitutes and women and girls coming to Canada for any immoral purpose and pimps or persons living on the avails of prostitution; Prostitutes and pimps.

(f) persons who procure or attempt to bring into Canada prostitutes or women or girls for the purpose of prostitution or other immoral purpose; Procurers.

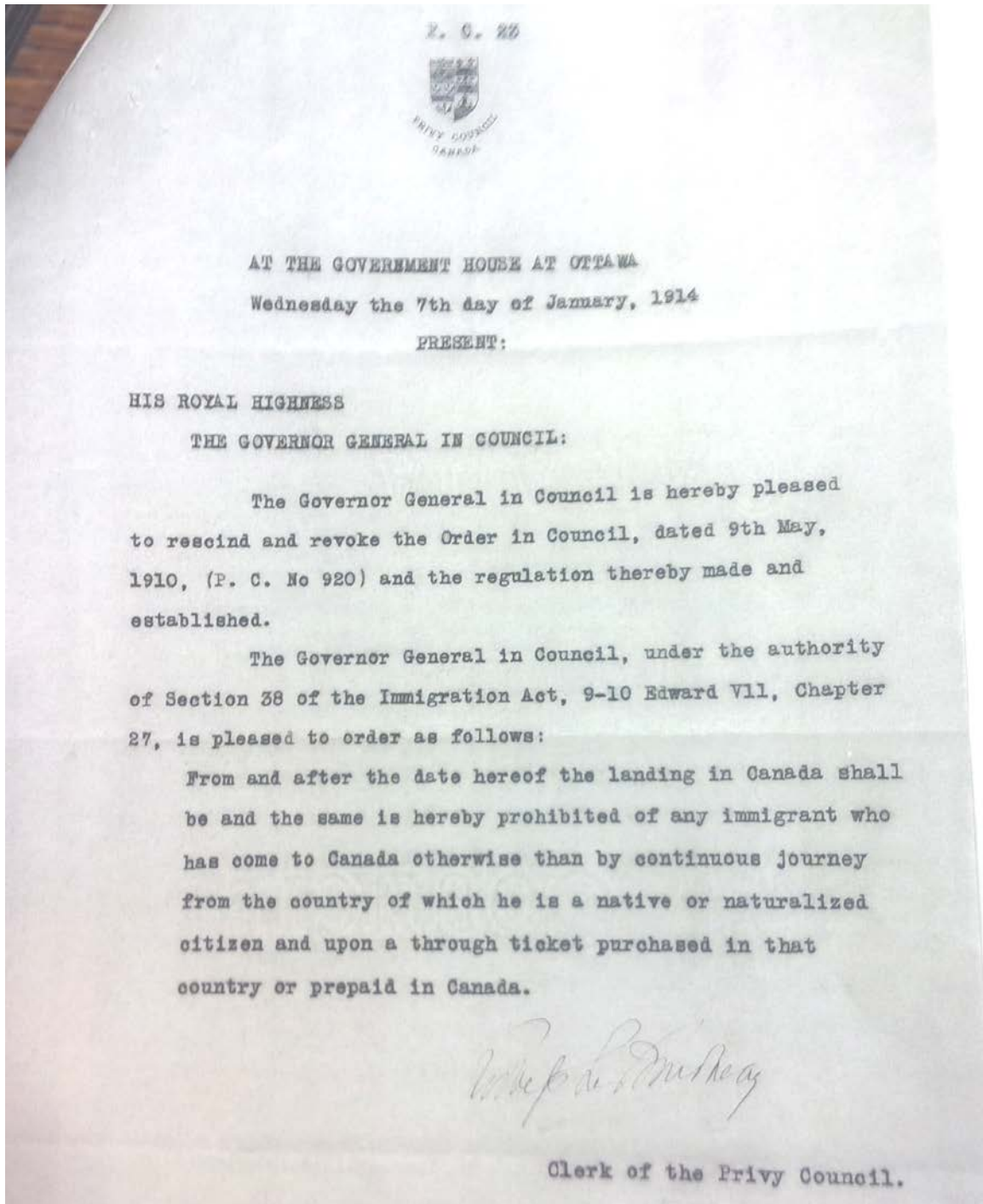
(g) professional beggars or vagrants, or persons likely to become a public charge; Beggars and vagrants.

(h) immigrants to whom money has been given or loaned by any charitable organization for the purpose of enabling them to qualify for landing in Canada under this Act, or whose passage to Canada has been paid wholly or in part by any charitable organization, or out of public moneys, unless it is shown that the authority in writing of the Superintendent of Immigration, or in case of persons coming from Europe, the authority in writing of the assistant Superintendent of Immigration for Canada, in London, has been obtained for the landing in Canada of such persons, and that such authority has been acted upon within a period of sixty days thereafter; Charity immigrants.

(i) persons who do not fulfil, meet or comply with the conditions and requirements of any regulations which for the time being are in force and applicable to such persons under sections 37 or 38 of this Act. Persons not complying with regulations.

(An Act Respecting Immigration, 1910).

P.C. 23 is a Privy Council order that specifies that a person can only enter Canada by “continuous journey” from the country of which they are a “native or naturalized citizen”.



With P.C.924, the Immigration Act was amended to include provisions that required immigrants to come to Canada “unless he or she have in actual and personal possession at the time of arrival, money, belongings absolutely to such immigrant to the amount of at least \$25.00 in addition to a ticket or such sum of money as will purchase a ticket or transport for such immigrant to his or her destination in Canada.”. The amendment order specifies \$12.50 for each additional family member aged 5-18, that men are required to have farm employment, women to do domestic work, or men or women must either be visiting a husband, wife, be a child going to a parent, a brother or sister visiting a brother or sister, a minor going to visit a sister or a parent going to visit a son or daughter. The amendment ended with the following specificity, “These regulations shall not apply to immigrants belonging to any Asiatic race”. A postulate that reminds the reader that those of any Asiatic race (any non-European country of origin specifically referring to people that would be today described as of Asian race) are unwelcome to any rights and privileges granted to white people in Canada.

P.C. 924



AT THE GOVERNMENT HOUSE AT OTTAWA
Monday the 9th day of May, 1910

PRESENT:

HIS EXCELLENCY

IN COUNCIL:

His Excellency in Council is pleased, in virtue of the provisions of Section 37 of the Immigration Act of 9 & 10 EDWARD VII, to make and doth hereby make the following Regulations:-

1. No immigrant, male or female, other than a member of a family provided for under the following regulations shall be permitted to enter Canada between the first day of March and the thirty-first day of October, both days inclusive, unless he or she have in actual and personal possession at the time of arrival, money, belonging absolutely to such immigrant to the amount of at least \$25.00 in addition to a ticket or such sum of money as will purchase a ticket or transport for such immigrant to his or her destination in Canada.

2. If an immigrant so intending to enter Canada is the head of a family and is accompanied by his or her family or any members thereof, the foregoing regulations shall not apply to such family or the members thereof but the said immigrant head of family shall have

in

in his or her possession, in addition to the said sum of money and means of transport hereinbefore required, a further sum of money, belonging absolutely to such immigrant, equivalent to \$25.00 for each member of the said family of the age of eighteen years or upwards and \$12.50 for each member of said family of the age of five years or upwards and under the age of eighteen years, and in addition tickets or a sum of money equivalent to the cost of transport for all the said members of the family to their place of destination in Canada.

3. Every such immigrant, seeking to enter Canada, between the first day of November and the last day of February, both inclusive, shall be subject to the foregoing regulations, with the substitution of \$50.00 for \$25.00 and \$25.00 for \$12.50, wherever the said sums of \$25.00 and \$12.50 are mentioned in the said regulations.

4. It shall be the duty of the immigration officers at the various places or ports of entry or landing in Canada to see that the foregoing regulations are complied with. Provided, however, that the immigration agent may, notwithstanding anything hereinbefore contained, exempt any immigrant from the operation of the foregoing regulations if it is shown to his satisfaction that:-

(a) The immigrant, if a male, is going to assured employment at farm work, and has the means of reaching the place of such employment; or

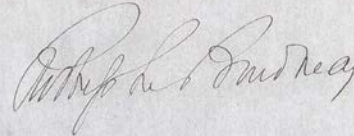
(b) That the immigrant, if a female, is going to assured employment at domestic service, and has the means of reaching the place of such employment; or

(c)

(c) That the immigrant, whether male or female, is of one of the following descriptions, and is going to reside with a relative of one of the following descriptions, who is able and willing to support such immigrant and has the means of reaching the place of residence of such relative:-

- (1) Wife going to husband.
- (2) Child going to parent.
- (3) Brother or sister going to brother.
- (4) Minor going to married or independent sister.
- (5) Parent going to son or daughter.

These regulations shall not apply to immigrants belonging to any Asiatic race.



Clerk of the Privy Council.

In all of these references to the legislation provided as permission by W.W. Dunlop to use gaols for the detention of “undesirables, alien enemies, idiots, imbeciles, feeble-minded, epileptics and other classes of persons”, there is no reference to an ability, reason or rationale to detain people in prison gaols for merely *being* “undesireable”. According to the referenced legislation, a person must have a written order from the Minister, have eluded inspection, been convicted of a crime, been found to have come by way of a non-continuous journey, or not have enough money, work or family. W.W. Dunlop grants

authority to the Department of Immigration and Colonization to use the prison gaols by selectively weaving together pieces of the legislation that reference powers for police officers, authorities to detain, and prohibited classes within the Immigration Act, but is unable to produce the legislative support for what is being requested. The blending together of these references allows Dunlop to convey authority, reference authoritative text (legislation), and at the same time bestows a power to Immigration and Colonization Department officials to imprison anyone who may belong to a *prohibited class*. Through this action, the dehumanizing, hierarchical systems of exclusion for those encapsulated under *prohibited classes*, are granted an opportunity to permissively and discretionally deploy violence. Justice and due process are denied for anyone recognized as belonging to a *prohibited class* and a precedent is set for an unjust practice to continue with approval that represents itself as legitimate.

In Mr. Bayly's memo to the Attorney General approximately 1 month after W.W. Dunlop's memo, (Mr. Edward Bayly was delegated the responsibility of advising the Attorney General on the use of the prison gaols by the Immigration and Colonization Department for the custody of undesirables) he reported that he had reviewed the referenced legislation provided by W.W. Dunlop and clearly stated in his memo "There is no specific provision in any of these sections or in either of the Orders in Council which covers the point". He goes on to say that although Mr. Dunlop and Immigration authorities have held that it was covered under the legislation, "In this they appear to be mistaken". Also, Mr. Bayly confers, "I must say however that if there is room in a prison and a request is made by the Dominion authorities for the use of the prison and they pay

reasonable expenses it would be very unusual and at times very inconvenient if the accommodation were refused to them. My suggestion would be a letter of protest rather than a refusal to permit the gaol to be used". Here, Mr. Bayly recognizes that the practice of using prison gaols by the Immigration and Colonization Department for the detention of undesirables is not provided for within the law. Mr. Bayly also confirms that Mr. Dunlop and Immigration authorities' interpretation of the law and current practices are "mistaken" (or in other words illegal). Mr. Bayle then takes the opportunity to provide permission for the Immigration Department to *not* be refused the use of the prison gaols (he suggests a letter of protest), "if there is room...a request is made...and they pay reasonable expenses", so as not to be perceived as unusual or inconvenient by the Immigration and Colonization Department. Both administrators sought to forego adherence to the provisions of the law to support or permit an outcome whereby anyone in this growing list can be detained by the Immigration and Colonization Department in prisons:

- "undesirables,
- alien enemies,
- idiots,
- imbeciles,
- feeble-minded,
- epileptics",
- "Procurers",
- "Beggars and vagrants",
- "Charity immigrants"
- "Persons mentally defective",
- "Diseased persons",
- "Persons physically defective",
- "Criminals",
- "Prostitutes or pimps",
- "Persons not complying with regulations".
- "immigrants belonging to any Asiatic race

The work of Mr. Dunlop and Mr. Bayly enables the ongoing project of exclusion and colonial nation building to continue uninterrupted through the deployment and

rationalization of violence. Concurrently, the legislation itself continues to be read as though even prohibited classes have the right to due process and fair proceedings. Mr. Bayly's calculations erase any consideration of what might be "unusual" or "inconvenient" for a person imprisoned in a provincial jail of the criminal justice system for *being* someone who does not represent the body, mind, race, gender, employment status, or class of what is desired by the authorities in Canada. The rationalizations and practices exemplified in this case demonstrate the powers of the criminal justice system to work alongside the immigration system for the orchestration of population control for people identified as undeserving of protection under the law or unworthy of consideration in comparison to monetary expenses, availability of space, convenience, or the regular practice of immigration officials.

In order for the actors in this case to achieve their outcome they required the application of a eugenic rationale (to assume that being a member of a prohibited class must also sanction unlawful imprisonment), the utilization of racial hierarchy (to exclude those of any Asiatic race from any protection under the law), the abuse of discretionary powers to commit violence (making an authorization without legal authority to do so or consultation of the public), and the projection of an image of authority and legitimization through the selective referencing of authoritative texts (referencing legislation, selectively, partially and inaccurately to achieve a desired outcome). These practices and technologies of colonial nation building have a legacy within current policy and practice regarding people identified in the contemporary versions of the terms: undesirable, belonging to a prohibited class, or of an unwanted race.

Deportation of Hobos, tramps, undesirable aliens

It has also been a historical practice in Canada to deport undesirables under the enforcement of the criminal justice system without any record keeping for such actions on either the part of the Immigration Department or the criminal justice system.

Deportations, being a matter for the Immigration Department must occur through a process in accordance with the Immigration Act. The use of police to deport undesirables would be an abuse of authority, and a violation of those deported and denied justice without due process.

Archival correspondence from 1915 from the office of the Attorney General of Ontario revealed that an inquiry was initiated by a W.D. Scott, Esq. (The Superintendent of Immigration at the time) to query the deportation of 1135 “Hobos, tramps, undesirable aliens” from November 1913-October 1914 by provincial police. The statistic reported in the Provincial Police Annual Report and was inquired about by the Department of Immigration due to the large numbers of “Hobos, tramps, undesirable aliens” that were breaching the borders. The Superintendent was concerned with the permeability of the Canadian border and any “remissness on the part of the Immigration Officials”. The responses to the superintendent’s inquiry from Sarnia, Ottawa, Windsor, Bridgeburg, and Niagara Falls denied “any records” of handing over people to the police for deportation.

FGE/IB.



ADDRESS:
THE SUPERINTENDENT OF IMMIGRATION
OTTAWA

IN YOUR REPLY REFER TO NO. 822813 Imm.

KINDLY DO NOT WRITE OF MORE THAN
ONE SUBJECT IN ANY ONE LETTER

Ottawa, 22nd January, 1915.

ATTY. GEN'L DEPT.
RECD. & ACKD.

JAN 23 1915

Sir,

I notice in the press summary of the annual report of the Provincial Police issued by your Department recently, that the statement is made that the Provincial Police rounded up and handed over to the Federal Government for deportation 1138 "hoboes".

This Department is I suppose the one to which all these vagrants and tramps were reported, and the fact of such a large number being apprehended within the Province in one year would seem to indicate that there is some lack of proper supervision of the Border entry ports. I should like very much to have some further information about these 1138 souls, and as I presume that some statistics must have been kept in your Department showing who they were and where they came from and where they were apprehended, you can possibly supply me with such further information as will enable me to find out the weak spots in our Border inspection work.

I shall be very glad to have this information at as early a date as possible.

Your obedient servant,

A handwritten signature in dark ink, appearing to read "H. D. Scott", written over a horizontal line.

Superintendent of Immigration.

J. R. Cartwright, Esq., K.C.,
Deputy Attorney General,
Toronto, Ont.



Memorandum for the Deputy Attorney General.

Re,- Deportations.

With reference to the attached communication from Mr Scott I forward a return showing the number of persons handed over by the Provincial Police For Deportation, and the points of deportation. In view of the statement made by Mr Scott I would be glad if you would request him to give the names of the points where assistance has not been given by the Provincial Police in order that I may also investigate the matter.

	Nov	Dec	Jan	Feb	M'ch	Apl	May	June	July	Aug	Sep	Oct	Totals
Niagara Falls	53	30	22	16	31	74	95	76	90	74	35	37	633
Windsor	15	2	7	1	7	13	18	32	35	39	11	4	184
F't Erie & Bridgeburg	20	30	14	17	21	25	40	18	20	12	34	16	267
Sarnia			2				2	1					5
F't Frances & Rainy River						7	18	5	2	4	4	6	46
Total	88	62	45	34	59	114	173	132	147	129	84	63	1135.

J. C. Rogers
Superintendent.

Toronto 22nd February, 1915.

The Superintendent of the provincial police was able to report on the totals for most ports but does not furnish any details as to why police were deporting so many people.



Memorandum for the Deputy Attorney General.

Re,- Deportations 1913-14.

With reference to the attached letter from the Superintendent of Immigration I may say that there has been no remissness on the part of the Immigration Officials. For some time past the Provincial Police stationed at frontier points, such as Niagara Falls, Queenston, Chippawa, Bridgeburg, Port Erie, Carnia, Windsor, Fort Frances, and Sault Ste Marie, ^{& Rainy River} have been cooperating with the Immigration Officials in preventing tramps obtaining entrance to the Province. The persons picked up by the Police are largely American hoboes, the proportion of Europeans being small, who crossed the frontier riding on freight trains at night, in small boats, and through the bush.

The Provincial Police regular patrol the railway yards and, have, therefore been able to render the assistance mentioned.


Superintendent.

The Superintendent of provincial police also reports that there is no remissness on the part of the Immigration Officials (which was W.D. Scott's original concern) and explains that the police have been cooperating with Immigration Officials in preventing tramps from entering the province who are "largely American hoboes, the proportion of

Europeans being small...on freight trains at night, in small boats, and through the bush". In this letter we have an example of the provincial police "cooperating" with Immigration Official to profile people appearing to be "tramps or hoboes" at the borders and railway yards without having the responsibility to do so. The superintendent describes this as "being able to render the assistance mentioned". Without records of who was deported and for what purpose, we have little information for why the police would take on this added responsibility to support population control.

The term "hoboe" was used to describe migrant workers, and the word "tramp" was a term used to describe a ranking beneath hoboe for someone who "worked only when made to"(Lieberman, 2008). It may be important to note that the first *great migration* (a movement of millions of African American's to the North after the emancipation proclamation) in the United States began in 1910 and between 1910 and 1930 the "African-American population increased by about 40% in the Northern states" including the cities of "Detroit, Chicago, Cleveland and New York City" seeking employment and safety (Penny Liberty, 2012).

106
157



ADDRESS:
THE SUPERINTENDENT OF IMMIGRATION
OTTAWA

IN YOUR REPLY REFER TO NO. 822813 Imm.

KINDLY DO NOT WRITE OF MORE THAN
ONE SUBJECT IN ANY ONE LETTER

F.C.B.-L.G.S.

ATTY. GEN'L'S DEPT.
RECD. & ACKD.

Dear Sir,- FEB 20 1915 Ottawa, 19th February, 1915.

I duly received your letter of the 25th ultimo, #106-1915, intimating that from the Supt. of Provincial Police you have it that there has been no remissness on the part of Immigration officials on the border.

I cannot say that I am satisfied to let the matter drop now. If 1138 souls described as "hoboes" were rounded up by the Provincial police during 1914 and handed over to the Federal Government for deportation, I think it is a plain indication that our inspection of the boundary is not as thorough as it should be. I have no doubt that some system of keeping track of these cases is in vogue at Toronto and that with possibly a little trouble I could be supplied with statistics showing how these figures are arrived at. Our Inspectors at 2 or 3 of the more important points have written me unsolicited explaining that no such traffic goes on at these ports and that they have no record of the Provincial police having handed over people for deportation. If the statement of these officers is to be believed, then the entry of "hoboes" must take place at some point or place at which we have no inspection, and I wish you would secure for me some definite information which will enable me to investigate what on the surface appears to be a most serious state of affairs.

Yours truly,

Superintendent of Immigration.

J.R. Cartwright, Esq.,
Dept. of Attorney General,
Toronto, Ont.

W.D. Scott replies to the Superintendent of provincial police, unsatisfied with his response and noting that “Our inspectors at 2 or 3 of the most important points have written me unsolicited explaining that they have no record of the Provincial police having handed over people for deportation”. Mr. Scott insists on more information so as to investigate how those being deported breached the border without remissness on the part of Immigration Officials.



Memorandum for the Deputy Attorney General.

Re.- Deportations.

In view of the statements made in the attached copies of letters forwarded by Mr Scott I sent for Inspector Mains from whose Division the alleged deportations were made, and he made statements to me to the following effect.

Before the Immigration Department established their frontier force the Provincial Officers used to return undesirables to the United States on passes for the Bridge issued by the City of Niagara Falls. Subsequently the City refused to issue any more passes. When the Ontario Provincial Police Force was reorganized instructions were given to turn all undesirables over to the Immigration Officers. This was done for some time, and then the U. S. Immigration Officers at Niagara Falls N. Y. objected to receiving persons who had entered Ontario at Ports of Entry other than Niagara Falls, or who had not been apprehended at the time of crossing. No twenty-five per cent of the persons picked up at Niagara Falls entered the Province at that point, but entered at Windsor, Fort Erie, and Bridgeburg, and were picked up at Niagara Falls two or three days later. Under these circumstances Inspector Mains came to the conclusion that it was no use filling the County gaol with these men, and putting the Province to the cost of their maintenance. For the protection of the Province Inspector Mains devised a scheme to get rid of this element.



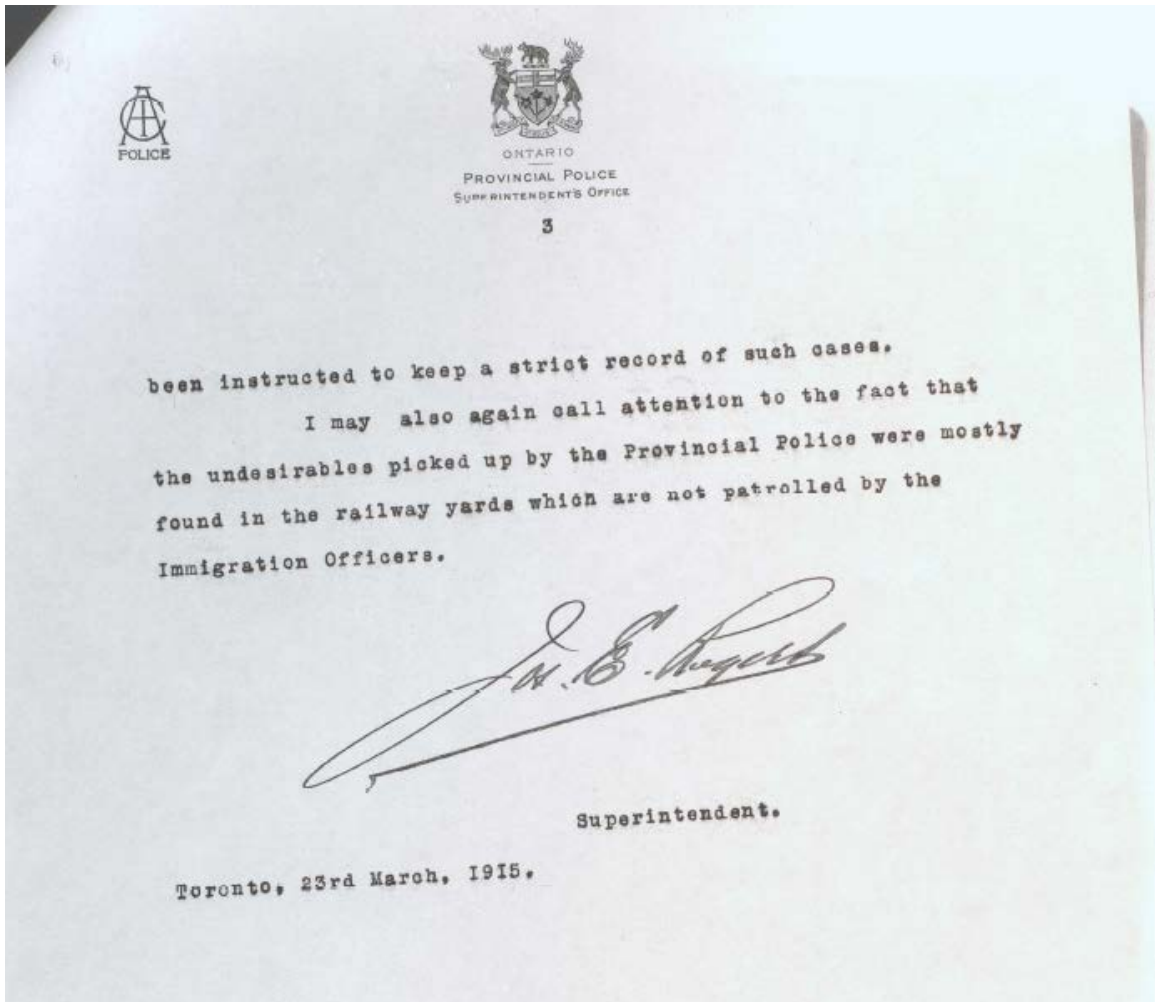
2

The Constables were instructed to advise such persons who claimed to be citizens of the United States to leave the country, and reenter the United States, and in a number of cases the Constables have advanced the Bridge tolls to destitute persons. Of this arrangement I had no knowledge.

At the Bridge it sometimes happens, when a crowd is passing, that undesirables escape the attention of the Immigration Officers. The Police realize this and have picked up a number of such persons, returned them to the Bridge, and they have been deported by the Immigration officers. Apparently the Immigration Officers have kept no record of these cases showing that they have been turned over by the Provincial Police.

Apparently the word "Deported" in the Constables' reports has, in some instances, been improperly used but nevertheless the fact is that the number of persons mentioned have been returned to the United States. So far as the Police and the Immigration Officers are concerned they work in harmony assisting one another to the best of their ability, and it would be injurious should the plan adopted by the Provincial Police for getting rid of undesirables at Niagara Falls be made known to the United States Immigration Department.

Inspector Mains has now made arrangements with Inspector Wilcox, Niagara Falls, that in ~~xxxx~~ future all hoboes belonging to the United States arrested by the Provincial Police will be handed to the Immigration Officers for deportation, and he has



After W.D. Scott's persistence, the Superintendent of Police shares with him an explanation stating that Police have long been rounding up and deporting undesirables until U.S. ports began refusing to take undesirables back in ports other than Niagara falls. The superintendent explains that "Inspector Mains came to the conclusion that it was no use filling the country gaols with these men, and putting the Province to the cost of their maintenance. For the protection of the Province, Inspector Mains devised a scheme to rid of this element". The plan involved finding and handing over undesirables to immigration officials for deportation that "escape the attention of immigration officials"

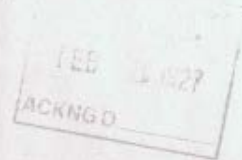
at the bridge (where there are immigration officials) and railway yards (where no immigration officials patrol).

With the Superintendent of the Provincial Police's explanation, we see the practice of the criminal justice system "devising a scheme" outside of the provisions of the law "for the protection of the province" to control for undesirable (an Immigration Department responsibility) at their own discretion. A lack of record keeping and documentation enabled this practice to continue without inquiry into why and how people were being identified and deported by police. The methods of surveillance and identification are erased from this practice while authorities make room for the practice to continue outside of the provision of law. Simultaneously, the identities, voices, faces, protections or considerations for wellbeing for those described as hoboes, tramps, or undesirables are eliminated from consideration.

The conversation is confined to possible gaps in border surveillance on behalf of the immigration officials and record keeping on behalf of the police. This case example demonstrates the use of record keeping to deny responsibility, the unchecked surveillance of difference by criminal justice officers as well as another example of the confluence of power within immigration and criminal justice systems to regulate for types of people, ensuring that Canada remains composed of people most resembling a white, able (in body and mind), English speaking British Canadian settler/worker. The denial of the process of racial profiling and the use of eugenic rationale permits the continuation of the violent practices of colonial, nation-building while perceptively representing a fair and just process to any who would inquire.

***The Department of Immigration's designation of Ontario Hospitals for the Insane as
Immigrant stations***

Correspondence between the Ontario Deputy Provincial Secretary (H.M. Robbins), the Deputy Attorney General (Mr. E. Bayly), as well as Immigration and Colonization Department and Ontario hospital officials revealed that in 1927 the practice of assigning hospitals for the insane *as* immigrant stations was well underway. Here the notion of undesirability becomes even more pronounced. The practice includes, when required, the rationalization of violence through the manipulation of the interpretation of authoritative texts and laws interchangeably for immigrants, and the mentally ill.



Toronto, February 4, 1927.

Re Admission of Patients.

Dear Sir:

We recently issued instructions to the Superintendents of the Ontario Hospitals, requesting that no patients be admitted therein until the requirements of the statutes in that behalf be complied with. These statutes are, of course, provincial in their jurisdiction, and the only Federal reference so far as we know is in the E.N.A. Act, Section 92 Subsection 7, in which it is explicitlyly stated that the Provincial Legislature has exclusive powers to deal with the establishment, maintenance and management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province. Upon this statutory authority we have based our Provincial Legislation and local Regulations dealing with the admission and treatment of the insane.

The Superintendent of the Toronto Hospital has replied to our circular, stating that he received a letter in July, 1921, of which the following is a copy.

Office of the Minister of Immigration,
Ottawa, Canada.

20th July, 1921.

Re Admission of Patients.

Superintendent,
Ontario Hospital for the Insane,
999 Queen St. West,
Toronto, Ont.

Dear Sir:

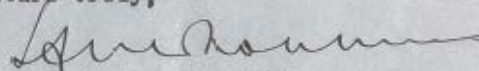
I beg to inform you that under the authority of Subsection "S" of Section 2, of the Immigration Act, 9-10 Edward VII, Chapter 27 as enacted by 11-12 George V, Chapter 32, the Ontario Hospital for the Insane is hereby designated as an Immigrant Station for the examination, inspection, treatment or detention of immigrants, passengers or other persons for any purpose under the Immigration Act."

(S.G.D.) W. W. Cory.

Acting Deputy Minister.

I am passing this on to you for the purpose of obtaining an opinion on this point, namely, whether the Federal Legislation as enacted in the above quotation takes precedence over the B.N.A. Act or the Hospitals for the Insane Act, Chapter 295, R.S.O., 1914.

Yours truly,



Deputy Provincial Secretary.

Deputy Attorney-General,
Parliament Bldgs.,
Toronto, Ont.

IRA/NT

H.M. Robbins inquires to the Deputy Attorney General as to whether the 1921 designation of the Ontario Hospital for the Insane at 999 Queen st. W. in Toronto (presently the Centre for Addiciton and Mental Health) as an “Immigration Station for the examination, Inspection, treatment or detention of immigrants, passengers or other person for any purpose under the Immigration Act” takes precedence over the BNA Act or the Hospital for the Insane Act, chapter 295, R.S.O. 1914.



ONTARIO
DEPARTMENT OF THE PROVINCIAL SECRETARY
THE DEPUTY PROVINCIAL SECRETARY

IN REPLY PLEASE REFER TO

H.M.R.

Toronto, November 30th, 1927.

DEC 1 1927
ACKNGD

Dear Sir,-

Attached hereto you will find copies of letters dated October 12th, 1927 and November 23rd, 1927, from the Department of Immigration & Colonization, the effect of these letters apparently being to notify us that under the provisions of the Immigration Act the Ontario Hospital at Brockville has been designated an immigrant station.

Will you be kind enough to advise me as to the legal aspect of this matter. Does this mean that the Immigration Authorities have the right to dump in and hold at our institutions any immigrants who for any reason they may wish to detain for a time?

Yours truly,

John Rowan
Deputy Provincial Secretary.

Mr. E. Bayly,
Deputy Attorney General,
BUILDINGS.

H
Encls

1012080

Toronto 5, Feb. 8th, 1927.

Dear Sir:-

I have your letter of February 4th with reference to the power of the Minister of Immigration to designate an Ontario Hospital an Immigrant Station pursuant to the provisions of the Immigration Act, 9-10 Edward VII, Section 2, paragraph (B).

There is no conflict between the provisions of the above Act and of the British North America Act, and I have no doubt that by specific legislation, the Dominion Parliament could designate any Ontario Hospital or Building an Immigrant Station. The present provisions of the Immigration Act, however, do not go that far, and Mr. Cory's letter is in my opinion ineffective.

Yours faithfully,

(E. Bayly)
Deputy Attorney General.

H. M. Robbins, Esq.,
Deputy Provincial Secretary,
Buildings.

Mr. Bayly's response to H.M. Robbins is that "The present provisions of the Immigration Act, however, do not go that far" indicating that the practice of designating a

hospital for the insane as an immigration station is not allowed for in law and is illegal to be practiced lest there be a specific piece of legislation allowing this. Some nine months after this February correspondence, H.M. Robbins provides letters from October 12, 1927 and November 23, 1927 that indicate that the Brockville hospital for the insane has been designated as an Immigration station under the same rationale as was 999 Queen st. W.

COPY

12th October, 1927.

Dear Sir,-

I beg to inform you that under the authority of Subsection (s) of Section 2 of the Immigration Act, 9-10 Edward VII, Chapter 27, as enacted by 11-12 George V, Chapter 32, the Ontario Hospital for the Insane, Brockville, Ontario, is hereby designated as an Immigrant Station for the examination, inspection, treatment or detention of immigrants, passengers or other persons, for any purpose under the Immigration Act.

Yours truly,

(Sgd) W. J. Egan

Deputy Minister

The Superintendent,
Ontario Hospital for the Insane,
Brockville, Ont.

COPY

Ottawa, November 23, 1927.

Dear Sir,-

To avoid possible legal complications at any time the Ontario Hospital for the Insane, Brockville, among other such institutions, has been designated as an Immigrant Station under the authority of sub-section (s) of Section 2 of the Immigration Act, which reads as follows:

"Immigrant Station" means any place designated by the Minister for the examination, inspection, treatment or detention of immigrants, passengers, or other persons for any purpose under this Act."

A letter to the above effect addressed to you by the Deputy Minister of this Department is attached hereto and I am instructed to explain that the action in this regard does not in any way make any change in the Departmental procedure in connection with deportations from such institutions, nor is it intended that the institutions will be used except for the examination under the Immigration Act of persons who are liable to deportation. The advice as contained in the Deputy Minister's letter is going forward merely in accordance with the requirements of the Immigration Act.

Yours truly,

(Sgd) J. S. Fraser,

Division Commissioner.

The Superintendent,
Ontario Hospital for the Insane,
Brockville, Ont.

	by an officer under this Act, otherwise than for inspection or treatment or other temporary purpose provided for by this Act;
"Rejected."	(q) "rejected," as applied to an immigrant or other person seeking to enter Canada, means that such immigrant or other person has been examined by a Board of Inquiry or officer acting as such and has been refused permission to land in Canada;
"Deportation."	(r) "deportation" means the removal under authority of this Act of any rejected immigrant or other person, or of any immigrant or other person who has already been landed in Canada, or who has entered or who remains in Canada contrary to any provision of this Act, from any place in Canada at which such immigrant or other person is rejected or detained to the place whence he came to Canada, or to the country of his birth or citizenship;
"Immigrant station."	(s) "immigrant station" means any place at which immigrants or passengers are examined, inspected, treated or detained by an officer for any purpose under this Act, and includes hospitals maintained for the purposes of this Act;
"Transportation company."	(t) "transportation company" means and includes any corporate body or organized firm or person carrying or providing for the transit of passengers, whether by ship, railway, bridge, highway or otherwise, and any two or more such transportation companies co-operating in the business of carrying passengers;
"Act."	(u) "Immigration Act" or "Act" shall be held to include all orders in council, proclamations, and regulations made hereunder.

(An Act Respecting Immigration, 1910)

The Immigration Act of 1910 specified that " 'immigration station' means any place at which immigrants or passengers are examined, inspected, treated or detained by an officer for any purpose under this Act, and includes hospitals maintained for the purposes of this Act " (An Act Respecting Immigration, 1910). H.M. Robbins original question was, "Does this mean that the Immigration Authorities have the right to dump in and hold at our institutions any immigrants who for any reason they may wish to detain for a time"? The final response from the Deputy Attorney General E. Bayly is dated December 4, 1927 and states that "You wrote to me about this matter on Feb. 4th, 1927, and I replied on Feb'y 8th. If you desire a copy of my letter I shall be glad to send it to you". Here Bayly makes his point clear that "The present provisions of the Immigration

Act, however, does not go that far” so as to allow immigration official to deem any hospital including a hospital for the insane as an immigration station. Beyond a letter dated December 6th 1927 where H.M. Robbins requests copies of the February 8th letter, the correspondence on this matter ceases. The question as to whether a hospital for the insane should be designated as an immigration station is suspended. The practice of medical inspection for communicable disease that is provided for within the Immigration Act, is from then onward, wielded to authorize the confinement of immigrants to hospitals for the insane.

In 1919, the Immigration Act was amended “adding new grounds for denying entry and deportation (e.g. constitutional psychopathic inferiority, chronic alcoholism and illiteracy)” (Canadian Council for Refugees, 2000). The spirit of eugenics and racial exclusion is captured in this example of an inquiry into a seemingly peculiar designation of hospitals for the insane as immigration stations. In the context of colonial nation building and identity formation in Canada, we can perceive how the authorization of violence is validated upon the construction of an identity delineated upon their common undesirability.

This example alongside the example of the correspondence related to the “deportation of hoboes”, and the example of the correspondence surrounding the use of prison “gaols for the detention of undesirable” (including those deemed undesirables, alien enemies, idiots, imbeciles, feeble-minded, epileptics, Persons mentally defective, Diseased persons, Persons physically defective, criminals, Prostitutes or pimps, Procurers, Beggars and vagrants, Charity immigrants and Persons not complying with

regulations, and persons of any Asiatic race) begins to illustrate the not-so peculiar practices at the confluence of immigration, mental health, and criminal justice systems that permit the use of violence through the selective referencing of law and authoritative texts, the exclusion and denial of racial and eugenic rationale (when not provide for in law), and the portrayal of abuses of power and authority as provided for within the discretionary authoritative powers of the state. Also exposed is the practice of delineating an idea of a Canadian identity, one forged upon a devaluation of those whose characteristics are encapsulated as inferior, costly, threatening, or undeserving.

Chapter 8

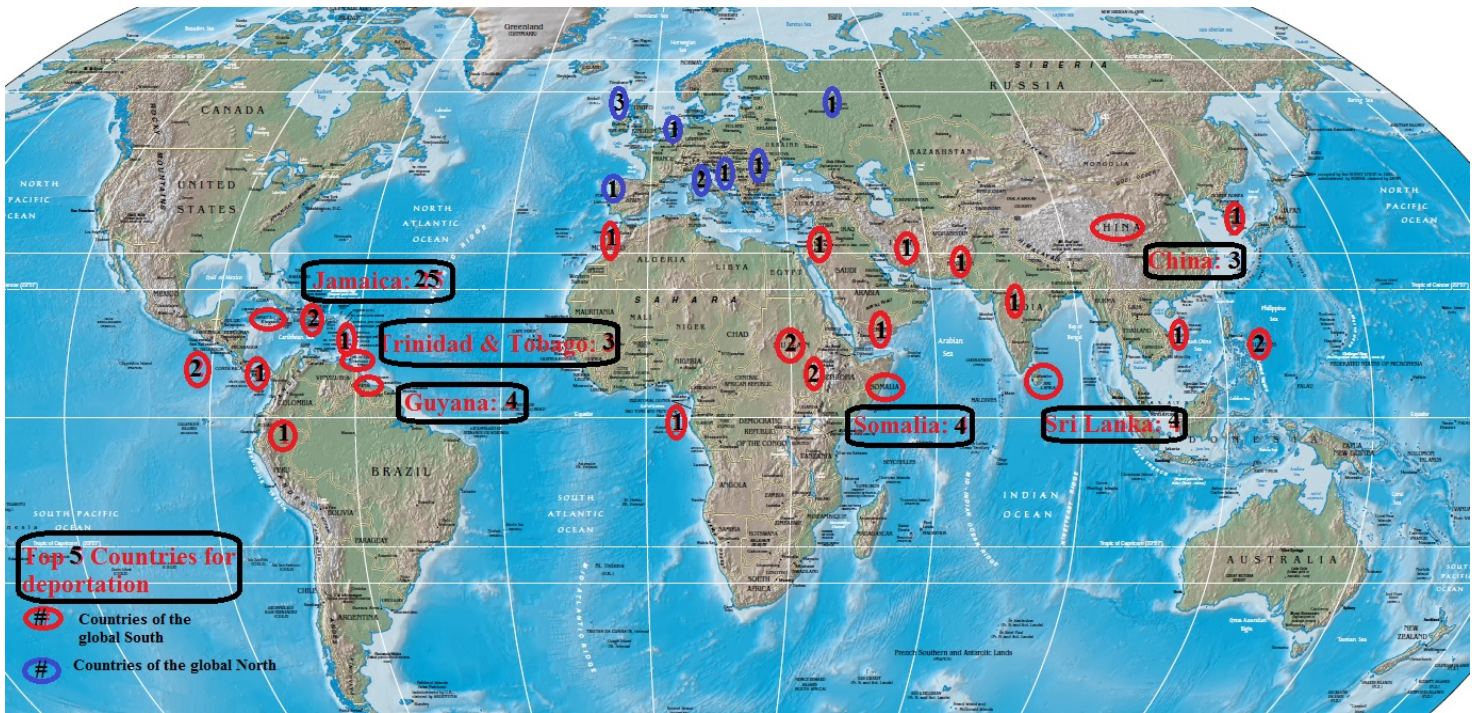
Case studies-the Appeals division of the IRB: stories of resistance

In this chapter we detail an overview of the cases and case data from the appeals division of the Immigration and Refugee board as well as cases that go on to the Federal Court of Canada analyzed in this study. These documents are the only known public records on deportation and were retrieved from the Canadian Legal Information Institute database and the Federal Court decision database. These cases provide both a representation of the technologies, practices and laws at work at the confluence of mental health, immigration and criminal justice systems specific to deportation in Canada while also depicting unique and powerful act of resistance to systems of dehumanization, identification, incarceration and removal in Canada. The analysis of the descriptive data for the 75 cases matching the criteria (those appeal cases for deportation for those identified with mental health issues) from 2001-2011 (the most complete and recent years for analysis at the commencement of this study), reveals the overwhelming prioritization of racialized countries for deportation. The idea of fair procedures or due process are also held suspect when we see that an overwhelming majority of cases result in decisions for either deportation or the imposition of heavy restrictions, confinement, forced treatment and reporting requirements. In order to facilitate the reading of these complex cases, I provide in this chapter an overview of the Immigration and Refugee Board and the Appeals Division with respect to deportation decisions.

A description of the deportation appeals decisions data from the Immigration and Refugee Board for people diagnosed with mental illness in Canada from January 1, 2001- December 31, 2011:

Secondary Data Analysis:

- The average age of the people up for deportation was approximately 37 years.
- The average amount of time people up for deportation had lived in Canada was approximately 20 years.
- Of the 29 countries of origin, 13.3 % of the people identified for deportation (10) were from the 7 countries of Croatia (1), Holland (1), Italy (2), Portugal (1), Romania (1), Russia (1), and the U.K (3).
- 57% (43) of the people up for deportation were from these countries representing the top 5 countries for deportation:
Jamaica (25), Guyana (4), Sri Lanka (4), Somalia (4), Trinidad and Tobago (3), China (3) (tied for 5th).
- The other 22 (29 % of people up for deportation) were from:
Ecuador (1), El Salvador (2), Ethiopia (2), Guinea (1), Haiti (2), Israel (1), India (1), Iran (1), Morocco (1), Pakistan (1), Panama (1), Philippines (2), South Korea (1), St. Lucia (1), Sudan (2), Vietnam (1), Yemen (1).
- 86 % being from racialized countries from: South Asia, East Asia, Africa, South East Asia, West Asia, Latin America and the Caribbean.
- 55 % or 36 out of 66 people had been diagnosed by a Medical Professional and had access to Psychiatric treatment for 5 year or longer.



Access to psychiatric treatment was not an issue. People had been diagnosed and offered psychiatric treatment for an average of 8.8 years. 63% of these people had access to treatment for 3 years or longer (ranging all the way to 39 years since diagnosis). In fact, the people up for deportation were often held responsible when the treatments were ineffective or when medication was discontinued. Disparities in access to treatment are often used as explanations for disproportionate representations of racialized people with mental health issues in the criminal justice system or over representations of racialized people in the forensic system.

When the above description is compared to Canadian Census Data 2001-2006: Jamaica is ranked 25th as the place of birth for immigrants coming to Canada, Guyana, 28th, Sri Lanka 11th, Somalia 40th, Trinidad and Tobago 39th (Statistics Canada, 2009). China, the US, and the UK are in the top 10 (Statistics Canada, 2009). From this

comparison, apparent is the disproportionate selection of people from Caribbean, African and Asian countries for deportation.

Appeals were allowed in only 12% of cases. 38.7% of people were eventually deported. The remaining 49.3% of cases were granted a stay of the deportation order with strict conditions stated as commands without a detailed plan for how the person is to adhere to the conditions and often demanding that individuals take complete ownership of meeting these conditions.

Example excerpt of conditions:

CONDITIONS OF STAY OF REMOVAL ORDER

The removal order in this appeal is stayed. This stay is made on the following conditions –the appellant must:

- [1] Inform the Canada Border Services Agency (the “Department”) and the Immigration Appeal Division in writing in advance of any change in your address.
The address of the Department is:
Canada Border Services Agency (CBSA), The Greater Toronto Enforcement Centre,
6900 Airport Road, P.O. Box 290,
Mississauga, Ontario, L4V 1E8.
The address of the Immigration Appeal Division is:
74 Victoria Street, Suite 400, Toronto, Ontario, M5C 3C7.
- [2] Provide a copy of your passport or travel document to the Department or, if you do not have a passport or travel document, complete an application for a passport or a travel document and to provide the application to the Department.
- [3] Apply for an extension of the validity period of any passport or travel document before it expires, and provide a copy of the extended passport or document to the Department.
- [4] Not commit any criminal offences.
- [5] If charged with a criminal offence, immediately report that fact in writing to the Department.
- [6] If convicted of a criminal offence, immediately report that fact in writing to the Department and the Immigration Appeal Division.
- [7] Provide all information, notices and documents (the “documents”) required by the conditions of the stay by hand; by regular or registered mail; by courier or priority post to the Canada Border Services Agency, 6900 Airport Road, P.O. Box 290, Mississauga, Ontario, L4V 1E8. It is the responsibility of the appellant that the

documents are received by the Department within any time period required by a condition of the stay.

- [8] Provide all information, notices and documents (the “documents”) required by the conditions of the stay by hand; by regular or registered mail; by courier or priority post; or by fax to the Immigration Appeal Division at 416-954-1165. **Include your IAD file number.** It is the responsibility of the appellant that the documents are received by the Immigration Appeal Division within any time period required by a condition of the stay.
- [9] If granted a conditional or absolute discharge by the Ontario Review Board (ORB), report within ten days to the Department in person at The Greater Toronto Enforcement Centre, 6900 Airport Road, Entrance 2B, Mississauga, Ontario, L4V 1E8 between 07:30 a.m. to 15:00 p.m. and every **six** months thereafter. The reports are to contain details of the appellant’s:
- employment or efforts to obtain employment if unemployed;
 - current living arrangements;
 - marital status including common-law relationships;
 - attendance at any educational institution and any change in that attendance;
 - participation in psychotherapy or counselling (please specify type);
 - meetings with parole officer, including details of any violations of the conditions of parole;
 - other relevant changes of personal circumstances.
- [10] Make reasonable efforts to seek and maintain full time employment and IMMEDIATELY report any change in employment to the Department unless on Ontario Disability Support Program (ODSP).
- [11] Continue psychotherapy with any qualified psychiatrist as required. (**Note: If you withdraw your consent to the foregoing condition, you must bring an application to the Appeal Division forthwith to have this condition removed.**)
- [12] Make reasonable efforts to maintain yourself in such condition that:
- a) your chronic schizophrenia and/or substance abuse will not cause you to conduct yourself in a manner dangerous to yourself or anyone else; and,
 - b) it is not likely you will commit further offences.
- [13] Not knowingly associate with individuals who have a criminal record or who are engaged in criminal activity, except contact that might result while attending meetings of Alcoholics Anonymous, or any other drug or alcohol rehabilitation program or any psychiatric programs, including residency in any psychiatric facility.
- [14] Not own or possess offensive weapons or imitations of offensive weapons.
- [15] Respect all parole conditions and any court orders.
- [16] Refrain from the illegal use or sale of drugs.
- [17] Keep the peace and be of good behaviour.
- [18] Other: Shall provide written consent to the ORB authorizing the CBSA and IAD to be notified of all hearing dates, to receive copies of all dispositions regarding any decisions made and to permit Representatives of CBSA and/or the IAD to attend any hearing. Further consents to the ORB notifying CBSA and the IAD if and when he has withdrawn his consent to the above. (**Note: If you withdraw your**

consent to the foregoing condition, you must bring an application to the Appeal Division forthwith to have this condition removed.)

At each of your reporting dates you will bring with you and present to the appropriate CBSA Official a medical report from an appropriate psychiatrist giving an update of current treatment and medical assessment. **(Note: If you withdraw your consent to the foregoing condition, you must bring an application to the Appeal Division forthwith to have this condition removed.)**

(Immigration and Refugee Board [Immigration Appeal Division] 2008, C.A. Williams, IAD File No./Dossier : TA2-15889)

In this example, the person given a stay of the deportation order is also given 18 areas with which to accumulate more charges for non-compliance or 18 opportunities to rationalize their own deportation. Constant surveillance and reporting responsibilities are delegated to the individual.

Representative Sample for Post-Colonial Document Analysis of Confluence

I have selected a representative sample of ten cases for in-depth analysis. The representative sample of ten of the seventy-five cases corresponded directly with the descriptive statistics generated by SPSS in relation to country or origin/country for deportation, period of time in Canada, age, how long the person has had a psychiatric diagnosis and access to treatment, immigration status, gender, diagnosis and most recent decision outcome (stay of removal order, appeal allowed, or deported). The representative sample generated by SPSS included three appeals cases of people from Jamaica, two from Somalia, one from Trinidad and Tobago, one from Guyana, one from China, one from Sri Lanka and one from Russia. Four people had a diagnosis of Schizophrenia (not otherwise specified), three had a diagnosis of paranoid schizophrenia, one had a diagnosis of bipolar disorder and post-traumatic stress disorder, one had a diagnosis of bipolar disorder and one had a diagnosis of an anxiety disorder (not

otherwise specified). Seven cases included the immigration status of permanent resident, two were identified as convention refugees and one case specified that the person was being sponsored under the family class. The average length of time in Canada was 17.4 years. The average age was 35.6 years and the average number of years with a diagnosis or access to treatment was 10.

The 10 sample cases were not significantly different than the other cases (of the 75, where the information was available) when tested (using T-Tests for Age, length of time in Canada, and how long they have had a diagnosis/access to treatment and using a crosstab/Chi-Square test for gender) on the basis of Age, length of time in Canada, how long they had been diagnosed/had access to treatment or gender.

- ❖ There is no statistically significant difference between the 10 sample cases and the other 64 cases (1 case was missing this piece of information) in terms of how long people had been in Canada.

Group Statistics

	sample-member	N	Mean	Std. Deviation	Std. Error Mean
Length of time in Canada	.00	64	20.3359	10.53944	1.31743
	1.00	10	17.4000	9.81156	3.10269

Independent Samples Test

		Levene's Test for Equality of Variances		t-test for Equality of Means						
		F	Sig.	t	df	Sig. (2-tailed)	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference	
									Lower	Upper
Length of time in	Equal variances assumed	.029	.865	.826	72	.411	2.93594	3.55380	-4.14844	10.02031

Canada	Equal variances not assumed			.871	12.4	.400	2.93594	3.37080	-	10.249
					80				4.37720	08

- ❖ There is no statistically significant difference between the 10 sample cases and the other 59 cases (6 were missing this piece of information) in terms of age.

Group Statistics

	sample-member	N	Mean	Std. Deviation	Std. Error Mean
AGE	.00	59	37.1356	10.10199	1.31517
	1.00	9	35.6667	8.17007	2.72336

Independent Samples Test

	Levene's Test for Equality of Variances		t-test for Equality of Means						
	F	Sig.	t	df	Sig. (2-tailed)	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference	
								Lower	Upper
AG E	.845	.361	.415	66	.679	1.46893	3.53845	-5.59582	8.53367
			.486	12.076	.636	1.46893	3.02429	-5.11584	8.05370

- ❖ There is no statistically significant difference between the 10 sample cases and the other 56 cases (9 were missing this piece of information) in terms of how long they have had a mental health diagnosis/access to psychiatric treatment.

Group Statistics

	sample-member	N	Mean	Std. Deviation	Std. Error Mean
How long with Diagnosis/access to psychiatric treatment	.00	56	8.5595	9.25813	1.23717
	1.00	10	10.0000	7.31817	2.31421

Independent Samples Test

		Levene's Test for Equality of Variances		t-test for Equality of Means						
		F	Sig.	t	df	Sig. (2-tailed)	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference	
									Lower	Upper
How long with Diagnosis/access to psychiatric treatment	Equal variances assumed	.532	.469	-.466	64	.643	-1.44048	3.09337	-7.62019	4.73923
	Equal variances not assumed			-.549	14.683	.591	-1.44048	2.62415	-7.04425	4.16328

- ❖ There is no statistically significant difference between the 10 sample cases and the other 65 cases in terms of gender.

Case Processing Summary

	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
sample-member * Gender	75	100.0%	0	0.0%	75	100.0%

sample-member * Gender Crosstabulation

Count		Gender		Total
		Female	Male	
sample-member	.00	8	57	65
	1.00	0	10	10
Total		8	67	75

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	1.378 ^a	1	.240		
Continuity Correction ^b	.389	1	.533		
Likelihood Ratio	2.432	1	.119		
Fisher's Exact Test				.587	.299
N of Valid Cases	75				

a. 1 cells (25.0%) have expected count less than 5. The minimum expected count is 1.07.

b. Computed only for a 2x2 table

During the generation of the representative sample by SPSS, approximately one out of the 10 cases could have been a woman. While this analysis does not purposefully exclude women, the representation of gender in these cases raised many questions with regards to the pathways for women and other genders found at the confluence of immigration, mental health and criminal justice, as well as the spectrum of constructions of identity, authorities and authorizations of violence and the representational discourse used to legitimize violence directed in gendered ways. These areas require further investigation.

An overview of the processes of the immigration system IRB, etc in reference to deportation

Canada's immigration and refugee system currently has three main parts: Citizenship and Immigration Canada, Canada Border Services Agency, and Immigration and Refugee Board of Canada. Citizenship and Immigration Canada is responsible for who can apply for refugee protection, who can immigrate to Canada, issuing of visas, travel documents, determining residency obligations, administering resettlement program and the overall responsibility for immigration and refugee matters including the granting

of citizenship (Immigration and Refugee board of Canada, 2006, p.4). The Canada Border Services Agency is responsible for the direct policing of Canada's borders. The Canada border Services Agency directly admits people to Canada, refers refugee claims made at entry ports to the Immigration and Refugee Board, detains people who are deemed a "security risk or a danger to the public" and removes people who are found to be "inadmissible" to Canada (Immigration and Refugee board of Canada, 2006, p.4).

The Immigration and Refugee Board of Canada is a decision making body for immigration and refugee matters. The Immigration and Refugee board makes decisions of who "needs" refugee protection, they "hear" appeals on particular immigration matters and are responsible for conducting admissibility hearings and detention reviews (Immigration and Refugee board of Canada, 2006, p.5). The Immigration and Refugee board is the largest administrative tribunal in Canada. While the Immigration and Refugee Board is accountable to Parliament via the Minister of Citizenship and Immigration, it is identified as an "independent" part of the Canadian Immigration and Refugee system because it is separate from Citizenship and Immigration Canada and the Canada Border Service Agency (Immigration and Refugee board of Canada, 2006, p.5). However, this independent identification is used to imply a position of impartiality even though all parts of the Immigration system are listed in the Immigration and Refugee Protection Act, and are interdependent in practice (Immigration and Refugee Protection Act , S.C. 2001, c. 27.).

The Immigration and Refugee Board of Canada has three divisions, the Refugee Protection Division, the Immigration Division, and the Immigration Appeal Division

(Immigration and Refugee board of Canada, 2006, p. 6). The Refugee Protection Division is the decision making body for claims made by people who are in Canada. The Immigration Division is the division responsible for hearing cases about people identified as “foreign nationals” or “permanent residents” who are detained under a provision for the Immigration and Refugee Protection Act (Immigration and Refugee board of Canada, 2006, p.6). The Immigration Division is also responsible for the admissibility hearings for those who are accused of contravening the Immigration and Refugee Protection Act (those identified for admissibility hearings are also foreign nationals or permanent residents) (Immigration and Refugee board of Canada, 2006, p.6). The Immigration Appeal Division is responsible solely for hearing appeals on immigration matters. Appeals can be for sponsors whose applications were denied, for removal orders, for permanent residents who do not fulfill the residency requirement required to maintain permanent residency status in Canada (i.e., who did not live in Canada for the required number of days per year). There are also appeals by the Canada Border Service Agency “on behalf of Public Safety and Emergency Preparedness Canada of decisions of on admissibility made by the Immigration Division” (Immigration and Refugee board of Canada, 2006, p.6). What is also important to note is that, “In some cases, the CBSA has the power to issue removal orders, that is, to send you out of Canada, without requesting an admissibility hearing” (Immigration and Refugee board of Canada, 2006, p. 15).



The IRB does... the IRB does not

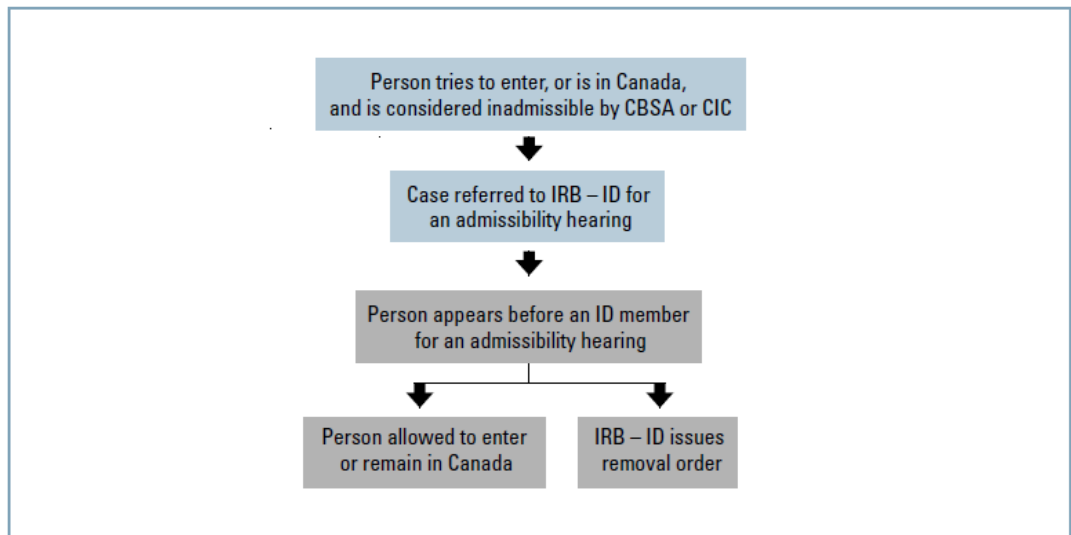
The IRB does...	The IRB does not...	CIC does...	The CBSA does...
	<ul style="list-style-type: none"> • make refugee and immigration policy 	✓	
	<ul style="list-style-type: none"> • determine the eligibility of people to claim refugee protection 	✓	✓
<ul style="list-style-type: none"> • decide refugee claims made by people in Canada 	<ul style="list-style-type: none"> • decide refugee claims made by people abroad 	✓	
<ul style="list-style-type: none"> • hold admissibility hearings to determine if people may enter or remain in Canada 	<ul style="list-style-type: none"> • select immigrants 	✓	
<ul style="list-style-type: none"> • hold detention reviews 	<ul style="list-style-type: none"> • arrest and detain people under <i>IRPA</i> 		✓
<ul style="list-style-type: none"> • hear and decide appeals on immigration matters (removal orders, sponsorship appeals, residency obligations) 	<ul style="list-style-type: none"> • issue visitor visas, student visas, travel documents, work permits or Minister's permits 	✓	
	<ul style="list-style-type: none"> • determine residency obligations 	✓	
	<ul style="list-style-type: none"> • do pre-removal risk assessments (PRRA) 	✓	
	<ul style="list-style-type: none"> • remove people from Canada 		✓
	<ul style="list-style-type: none"> • decide applications to stay in Canada on humanitarian and compassionate grounds 	✓	
	<ul style="list-style-type: none"> • issue security certificates 	✓	✓
	<ul style="list-style-type: none"> • grant Canadian citizenship 	✓	

(Immigration and Refugee board of Canada, 2006, p.7).

The admissibility hearings are “adversarial”, meaning, the legal counsel representing the Minister of Citizenship and Immigration will argue for why a person should be removed from Canada (Immigration and Refugee board of Canada, 2006, p.16). The onus is therefore upon an individual or their lawyer to respond to a case built against them by Professional, Doctors, and Lawyers representing the government.

The admissibility hearing process

The following chart illustrates the admissibility hearing process:

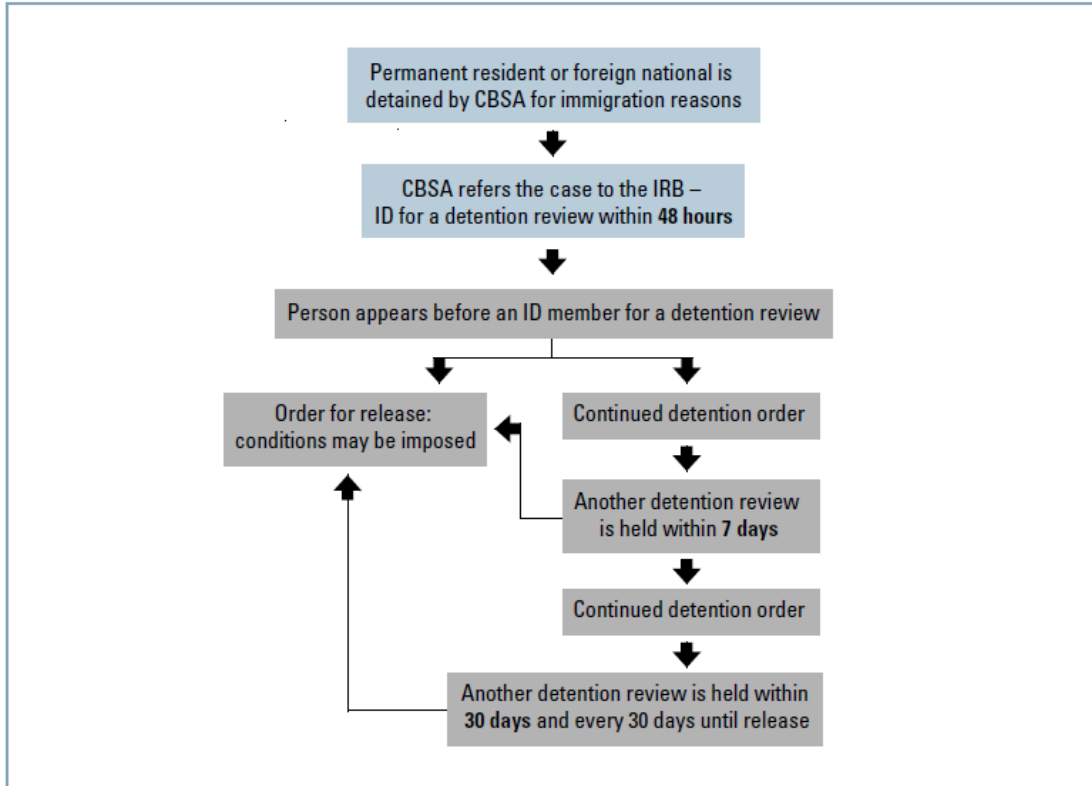


(Immigration and Refugee board of Canada, 2006, p.17)

If the CBSA deems someone a flight risk or a danger to the public, or cannot confirm their identity, they can be detained.

The detention review process

The following chart illustrates the detention review process:



(Immigration and Refugee board of Canada, 2006, p.18).

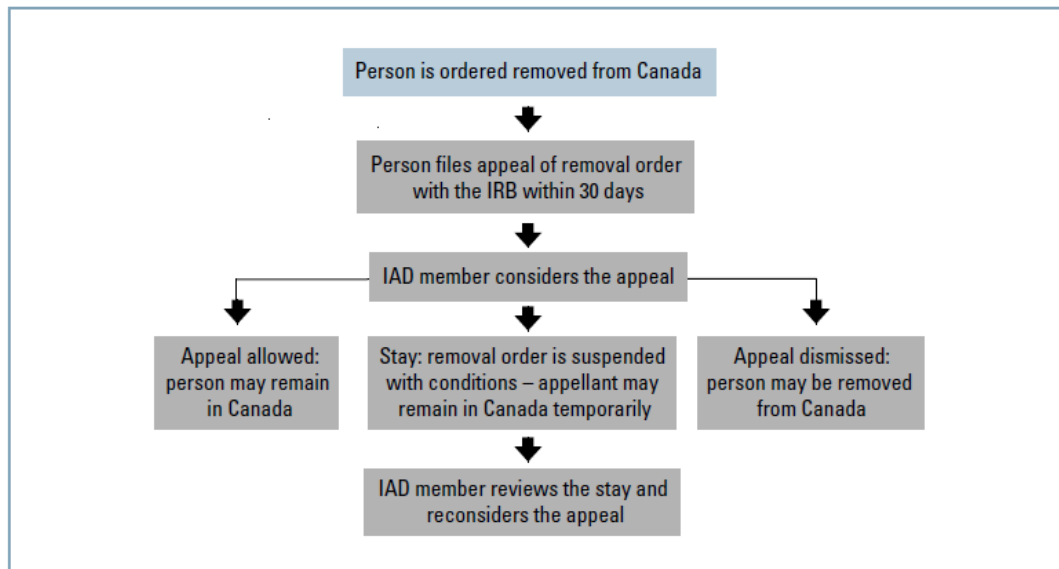
A person cannot appeal a removal order if they were found to be a “serious criminal” i.e., committed an offence punished by a term of imprisonment of two years or more (Immigration and Refugee board of Canada, 2006, p.19). If a person is involved in organized crime, deemed a security risk, or if a person has been deemed inadmissible because of human rights or international rights violations. A person can appeal if there was an “error in law or fact” or a “breach of a principle of natural justice” (Immigration and Refugee board of Canada, 2006, p.20). Principles of natural justice are defined as:

Principles of natural justice: Principles of law that require administrative tribunals to be procedurally fair when making decisions. These principles include the person's right to know the case to be established and to have the opportunity to be heard, and the right to be judged by an impartial and independent decision-maker.

(Immigration and Refugee board of Canada, 2006, p.27).

The removal order appeal process

The following chart illustrates the removal order appeal process:



(Immigration and Refugee board of Canada, 2006, p.22).

The above description of the contemporary Immigration and Refugee System and the subdivisions is necessary for reading the appeals cases and analysis provided in this study. Within the contemporary structure, we see the ability to for the government to apply discretionary authority (to the CBSA specifically) for determinations of *risk* and *threat to the public* as a rationalization for detention and removal. Also, the adversarial process allows for the exercise of authority and power to favour the position of detention or removal for those deemed *serious criminal* or *threat to the public*. The Immigration and Refugee Board also present itself as an upholder of the principles of natural justice,

as fair, impartial and independent while the rationale for deportation and removal are heavily influenced by historical prejudices and oppressive valuations in a system that is far from impartial and independent in practice.

Chapter 9

Confluence: analysis of cases

The 10 representative cases selected for analysis included decision documents from the Immigration and Refugee Board's Appeals Division, Immigration Division, the Federal Court of Canada (when a judicial review is requested by the accused) as well as referenced legislation. Throughout the decision making, three thematically distinct arguments are made: 1) that the accused has a biomedical mental illness that is dangerous, and only treatable with medications. The accused is solely responsible for managing his mental illness and not taking medications is considered both careless and illegal. The accuracy of the accused's assessment or diagnosis, the efficacy of their treatments and the responsibility of their caregivers is dismissed from consideration. 2) the accused is an antisocial, aggressive, and hostile serious criminal that cannot be controlled. Their criminality and aggression are attributed to the accused as an individual and their social, political and economic circumstances are not discussed. Their criminality is seen as separate from their mental health, reinforcing a distinction that fosters the least compassion. 3) The accused does not belong in Canada, is a burden to society and is a non-contributing member to Canadian society.

These ideas reproduce: 1) a focus on the individual in biomedical terms that redirect responsibility solely toward the individual, 2) a notion of inherent criminality, dehumanized and deserving of punishment, and 3) a reproduction of the Other represented in terms of lack, who is not "one of us" or deserving of our support or care.

The accused becomes encapsulated into a general type, seen only through a lens of difference.

It is important to note that in all 10 of these cases, many of the convictions upon which the notion of “serious criminality” is based are as a result of the surveillance of the criminal justice system. Charges such as failure to appear, failure to comply with conditions are noted often and not withdrawn even though mental illness has been identified and diagnosed. It is also important to note that there were no charges of murder, attempted murder, manslaughter, or crimes related to children. Theft was the most common charge and assaults were often associated with a period without basic necessities or care (i.e., during a period of homelessness, in a conflict at a shelter, one was during a raid on a building where the accused (later convicted) person was cooking in his own kitchen with a knife, or a period of acute mental/emotional distress.

The analysis also reveals the necessity of the mental health system, the criminal justice system and the immigration system to present as independent, objective and judicious institutional process while clandestinely acting in concert to resist appeals for adequate care, safety or a consideration of external factors. This nuanced interdependency uncovers the confluence of violence, identity/difference and systems of oppression as contemporary manifestations of the legacy of colonial and imperial professionals of authority, the establishment and use of disciplinary hegemonies, and the discretionary manipulation of law to construct a dehumanized subject worthy of legitimized violence or expulsion. The end result is the continuation of violent racial and

eugenic systems, technologies and practices of population control and nation building, (re)producing ideas of the savage, mad, uncivilized Other and the pristine, civil, self.

As suggested in chapter 5, in these cases we must attend to Orientalism, (and dividing practices), appropriation, erasure, dehumanization, the establishment of professional hegemonies and hierarchies, the reinforcement of North-South relations and the use of moral and ethical argument to justify atrocities as processes and technologies of colonial violence. Orientalism as a process is appreciated for its production of an ideological fantasy (in this thesis, the processes of construction of the ideas of Oriental, the Orient and the Occident are used to trace the construction of the ideas of the untreatable, the unrehabilitatable, the undeserving alien, as well as the fantasy of the Canadian public). Orientalism is also appreciated for how it achieves the production of fixed human taxonomies of differences, the rise of expertise and professional hegemonies, and for its dependence on racial thinking, dominance, geopolitics and hierarchy. Understood through the framework of violence provided by Slavoj Žižek and with an analysis of confluence, we are required to consider the subjective violence authorized within a colonial technology such as Orientalism (the obvious forms of exploitation, subjugation etc.), the objective forms including the symbolic (how we talk about the Oriental or the untreatable within language and its forms), and the systemic (that which becomes embedded within academic and professional disciplines and in law). To appreciate these violence technologies and their achievements, they must be considered within a historical, social and political confluence that questions the ends, the means and the social relations that carry eugenic and racial supremacist discourses.

The names of the people involved in these cases have been made public and published online through the Citizenship and Immigration Canada website (via the Reflex database that was available until July 1, 2013¹⁸) and are still available through the CANLii database website. While I acknowledge the humanity and personhood of the people involved in these cases, I acknowledge that an exclusion of names in this work would provide no protection for anyone (as these are public documents) and could participate in the achievement of the outcomes of the dehumanizing technologies that are questioned throughout this research. I also acknowledge the names of those who are recognized in this work (and those who are not) as resisters to the oppressive, coercive and violent systems that construct subordinate identities and authorize and legitimate violence.

The Untreatable: the biomedical, the biologically inferior, the genetically different

In the cases of Carlton Anthony Williams, Kevin Sheldon Bennett and Guhad Mahamoud Hassan the confluence of immigration, criminal justice and mental health systems can be examined for their reliance on and production of identities as well as identifiers of people as untreatable biomedical problems achieved through violent means to rationalize violent outcomes.

The Untreatable -The case of Carlton Anthony Williams:

In the case of Carlton Anthony Williams, we see a primary focus on biomedical mental illness that is associated with dangerousness, and only treatable with medications.

¹⁸ Shortly after the *Not Criminally Responsible Reform Act* passed the House of Commons on June 19, 2013 and the *Faster Removal of Foreign Criminals Act* received Royal Assent on June 20, 2013 (Department of Justice, 2013; Citizenship and Immigration Canada, 2013).

The responsibilities for these individually localized issues are placed solely on Carlton. In doing so, any forces or factors outside of a biomedical explanation are eliminated from consideration. Carlton is then held accountable to this individually directed responsibility, reinforcing a portrayal of him as careless and uncooperative with rules and laws. The accuracy of his assessment or diagnosis, the efficacy of his treatments and the responsibility of his caregivers is dismissed from consideration. Carlton is constructed as an antisocial, aggressive, and hostile serious criminal who cannot be controlled, separate from his mental illness, thereby generating a baseline rationale for the authorization of violence. The professionals and authorities responsible for his monitoring and care legitimate his incarceration and removal through the deployment of psychiatric, juridical, and eugenic moral discourses that convey expertise, demonstrate and reproduce hegemony, and erase or dismiss information that would make their claims and reasoning permeable to criticism.

3 documents¹⁹ analyzed:

1. Application to reconsider removal order 2005
Canada (Citizenship and Immigration) v. Williams, 2005 CanLII 56880 (IRB).
2. A Judicial review by the Federal Court 2006
Williams v. Canada (Minister of Citizenship and Immigration), 2006 FC 1402 (CanLII).
3. Appeal to Immigration and Appeal Division 2008
Canada (Public Safety and Emergency Preparedness) v. Williams, 2008 CanLII 58124 (IRB).

¹⁹ The documents will be references at the beginning of their first reference so as not to further crowd the text with lengthy and repeated in-text citations.

A removal order was made for Carlton Anthony Williams in 2002 for Serious Criminality (Canada (Citizenship and Immigration) v. Williams, 2005). He was granted a stay of the removal order with conditions. In 2005, the Minister of Citizenship and Immigration filed to have Carlton's stay cancelled and for Carlton to be deported. An appeal was filed to reconsider Carlton's case in 2005. The appeal was dismissed. Carlton and his family took the case to the federal court to appeal based on a misrepresentation of the powers of the Ontario Review Board in the consideration of Carlton's Appeal. The Federal court allowed for the appeal to be heard and the Immigration and Appeal Division of the Immigration and Refugee Board granted Carlton stay of the removal order with conditions for a period of four years with an increase to his conditions.

Carlton is firstly described as a serious criminal, who is severely mentally ill, addicted to crack cocaine, and aggressive and hostile due to "antisocial traits". He is described as having "amassed over at least 50 criminal convictions". Listed are "assault, sexual assault, failure to comply, attempted break and enter, drug trafficking, harassment and failure to appear". Of the seven charges listed two are related to appearances in court or compliance with a condition imposed by the courts. Carlton has a supportive family and "had made significant progress in understanding his mental illness and its treatment"

His original conditions included an obligation to continue psychotherapy with a psychiatrist. Carlton was held responsible for "making reasonable efforts to maintain himself in a condition to prevent his mental illness and substance abuse from conducting

himself in a manner dangerous to himself and others from committing further offences”.

He was also expected to not associate with any other known criminals.

After Carlton’s initial stay, he was charged by officers for assault. No details of context to the charges were given except that Carlton was found not criminally responsible by reason of mental disorder for half of the charges and criminally responsible for the other half. He was then under the observation of the Ontario review board and ordered to be detained at the Centre for Addiction and Mental Health in Toronto for “custody and rehabilitation”. Carlton is evaluated as individually responsible for failing to adhere to the condition of his stay and order for the stay to be canceled and for Carlton to be deported. The rationale given is through a consideration of the *Ribic*²⁰ factors:

Accordingly, the *Ribic* factors are:

- a. the seriousness of the offences leading to the deportation order;
- b. the possibility of rehabilitation;
- c. the length of time spent in Canada and the degree to which the appellant is established here;
- d. the family in Canada and the dislocation to the family that deportation would cause;
- e. support available to the appellant, within the family and within the community; and

²⁰ The leading case on this matter is *Ribic v. Canada (Minister of Employment and Immigration)*, [1985] I.A.D.D. No. 636, affirmed by the Supreme Court of Canada in *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 84.

In *Ribic*, the IAD noted that: In each case the Board looks to the same general areas to determine if having regard to all the circumstances of the case, the person should not be removed from Canada. These circumstances include the seriousness of the offence or offences leading to the deportation and the possibility of rehabilitation or in the alternative, the circumstances surrounding the failure to meet the conditions of admission which led to the deportation order. The Board looks to the length of time spent in Canada and the degree to which the appellant is established; family in Canada and the dislocation to that family that deportation of the appellant would cause; the support available for the appellant not only within the family but also within the community and the degree of hardship that would be caused to the appellant by his return to his country of nationality. While the general areas of review are similar in each case the facts are rarely, if ever, identical.

f. potential foreign hardship the appellant will face in the likely country of removal.

The Immigration Appeals Division also states its mandate to:

The panel is also guided by section 3(1)(h) of IRPA, which states that:

3(1) The objectives of this Act with respect to immigration
are

(h) to protect the health and safety of
Canadians and to maintain the security of
Canadian society...

In 2006, Carlton appeals to have his case reviewed at the Federal court level because Carlton feels his potential foreign hardship was not considered and that the panel has misinterpreted the jurisdiction of the Ontario Review Board which would not release him into society unless he was no longer a danger to the public (*Williams v. Canada*, 2006). The federal court agreed that conditions could be imposed to address the issue of concern that the ORB could release Carlton without the IAD knowing or having an ability to decide if this is in the best interest of the health and safety of Canadian Society. In 2008, the IAD then adds a condition to have Carlton report to the IAD if he is released into the community (*Canada v. Williams*, 2008). His appeal to the IAD to dismiss the removal order due to potential foreign hardship is acknowledged by the panel as something that would put Carlton in a worse-off situation but is rejected as something that “would not shock the conscience of Canadians, particularly if the appellant is unwilling or unable to pursue medical treatment in Canada or his condition is not treatable and it is necessary to execute the removal order so as to protect the Canadian public.”

A reliance on the individual in biomedical terms permits an erasure of the social, political and historical circumstances relevant to all people. Also, ideas of individual biomedical bases for mental or emotional suffering become and are reproduced as the

only option for intervention. Supports or care at the community or state level are dismissed and taken as irrelevant. i.e., “having been diagnosed with paranoid schizophrenia in 1990 as well as a personality disorder...He is also troubled by frequent psychotic episodes and paranoid delusions because of which he believes others will harm him and can read his mind... it was noted the applicant was consistently non-compliant in respect of taking medication and attending at his psychiatrist”. The ability for a critique of the availability or adequacy of support is also erased through a refocusing of responsibility on the individual. Any criticisms regarding the efficacy of the treatment, why the individual may have discontinued medication or therapy are dismissed; any harmful side effects or experiences are rejected in favor of an emphasis on “compliance”. The goal or achievement not being wellness but rather whether or not one can comply with the demands to take medications, be observed and agree with the biomedical understanding of their mental and emotional distress. Carlton was identified with mental illness 16 years prior to 2005 appeal yet no comment is made regarding any failings on behalf of professionals in assessment or treatment. The opportunity for an acknowledgement of Carlton’s capacities and strengths is bleak within an individual biomedical focus. His 29 years of history in Canada, his refusals to be deported and appeals are not taken as evidence of any sort of capability or capacity. The implication is that Carlton is untreatable, he is fundamentally, biologically, or genetically inferior or faulty.

The Untreatable- The case of Kevin Sheldon Bennett:

In this decision, the Immigration, criminal justice and mental health systems collaborate to ensure a common outcome, the removal of the undesirable person from society, and the control or elimination of a perceived threat to Canadian society which Kevin is not considered to be a part of, despite his 29 years of life in Canada and his resistance through his appeals. Kevin's humanity is erased from this story, one that permits the use of harmful treatments, the elimination of freedoms, and the need for perpetual surveillance and biological control. Kevin's identity is constructed as a non-Canadian foreign Other, who must be confined/imprisoned. He is excluded from the protection of Canadian law, and viewed always as a potential threat.

In this case, Kevin is constructed as someone who is incapable of having freedom, he is described solely as a biological anomaly, untreatable, genetically different, and form of subhuman person on whom medications are not effective. If he is non-compliant with psychiatry, these items would not be weighted in his favour as he would be considered a "danger to the Canadian public". The use of discretionary authority and the selective interpretation of law are crucial to the achievement of this outcome. The interdependence of the mental health, criminal justice and immigration systems are absolutely necessary to confine decision criteria to individual biomedical matters, to notions of criminality, and to permit the IAD to weigh these matters as they chose for their desired outcome.

One document was available for analysis:

1. Immigration Appeals Division decision January 2011
Bennett v. Canada (Public Safety and Emergency Preparedness), 2011 CanLII 87450 (IRB).

Mr. Kevin Sheldon Bennett appealed a removal order dated July 15, 2008 for serious criminality (Bennett v. Canada, 2011). The decision document states at the introduction that a joint recommendation was accepted for a stay of 2.5 years with conditions. The document states that the legal validity of the deportation order itself was not challenged and is therefore legally valid. The appeal considered whether there are sufficient humanitarian or compassionate grounds that support a stay. Sheldon is described as “a 43-year old citizen of Trinidad and Tobago. He landed in Canada on May 13, 1982 as a 14-year old teenager. He was born on February 11, 1968”. He has been in Canada for 29 years which is over 2/3rds of his life.

Mr. Bennett’s is said to have testified at two hearings in 2010 and 2011. His mother is his designated representative who was appointed in 2009. Mr. Bennett was present for the second hearing in 2010 and testified for himself. His mother testified on his behalf in 2010. The document claims that “the panel has regard for the Ribic factors” but qualifies this by stating “These factors are not exhaustive and the weight given to them may vary according to the particular circumstances of the case”.

The document notes that the Panel has “paid attention to “ section 3 (h,e,i) of the IRPA, “to protect the health and safety of Canadians and to maintain the security of Canadian society”, “to promote the successful integration of permanent residents into Canada, while recognizing that integration involves mutual obligations for new immigrants and Canadian society” and “to promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks”, and ”The document provides the specificity of the

Supreme Court of Canada in *Medovarski* case where the objectives expressed in the IRPA were “viewed collectively” to “communicate a strong desire to treat criminals and security threats less leniently than under the former Act”. The Panel makes it clear in the document that “It is the appellant’s onus to establish sufficient humanitarian and compassionate factors through evidence that is sufficiently clear, cogent and convincing, in order to get special relief”.

In determining the “seriousness of the appellant’s criminal conduct” the panel begins by providing a brief listing of Kevin’s convictions and sentences. His charges include assault causing bodily harm, theft under \$1000, uttering threats (two charges), and assault with a weapon. The panel also lists a charge from December of 2010 even though this charge has been withdrawn. Subsequent to the listing of charges without reference to the contexts or details (i.e., what kind of weapon, the nature of the threats, were the petty thefts for food? etc.), the panel claims “The appellant’s criminality is very serious. He can be dangerous and has demonstrated an escalating propensity for violence.”

In the section devoted to the “possibility of rehabilitation and the likelihood of reoffending”, the document noted that Kevin was being held in a “secure wing of the Centre for Addiction and Mental Health (CAMH) and therefore not present at the hearing”. With regard to Kevin’s mental health, the panel describes that “there is significant reliable documentary evidence on the appellant’s serious mental illness” and that he has “approximately 30 arrest under the mental health act”. In this statement the panel associates any enforcement of the mental health act whether it be due to a

perceived or potential harm to Kevin from himself, due to lack of self-care, attempted suicide, cutting etc., or harm possibly to others, whether he is taken by police or ambulance or by family members using a Form 2 or requesting assistance to take Kevin to hospital for an assessment- all here are considered arrests. Kevin has been on ODSP since 1994, 17 years. The Document states that “based on the medical evidence, I find that there is a nexus between the appellant’s mental illness and his pattern of criminality”.

A Psychiatrist of the “COTA Health-ACT Team (Community Occupational Therapy Associate-COTA) (Recovery Oriented Assertive Community Treatment-ACT))”, who has been Kevin’s attending Psychiatrist since September 2010 reports that Kevin “suffers from a severe and persistent form of schizophrenia.”. An ACT team is a multi-disciplinary community-based mental health team with powers to dispense and observe medication in the community 24 hours a day, 7 days a week. The teams are standardized in Ontario and are comprised of a Psychiatrist, nurses, occupational therapists, and social workers, often with specializations in addictions, criminal justice, and sometimes social recreational programming. Specifically the Psychiatrist’s report is quoted in the Panel’s decision document stating,

“During the CAMH admission, the antipsychotic medication, Clozapine was introduced, and Mr. Bennett underwent a course of electro-convulsive treatments (ECT) that eventually produced mental stability. Adjunctive medications, including long-acting medication (Clopixol 200mg administered biweekly) and the mood stabilizer, Lithium carbonate, were also prescribed towards achieving this result. With the exception of the ECT, all of the above treatments remain in place.”

Here the sedation (via the Clopixol and Clozapine) and memory loss (via the ECT) Kevin has endured is used as evidence for his need for such treatments as they are described as producing "mental stability".

The Psychiatrist's report is also referenced to report on his Community Treatment Order which requires him to have his medications overseen by the ACT team as well as seeing the psychiatrist once per month. The Psychiatrist notes that "The treatment team is not aware of any incidents of aggression or even threatening behaviour over the past four months of community residence. There was one day he inadvertently missed a dose of Clozapine and he immediately became paranoid, but he did not become agitated. With resumption of the Clozapine the next day, he quickly returned to his best baseline." Here the Psychiatrist provides support for Kevin' "need" for Clozapine, threatening instability if even one dose it missed.

The psychiatrist also reports that Kevin is "incapable of making treatment decisions" and his substitute decision maker will renew the CTO when the current 6 month period is over. The Doctor states that

"It should be noted that one major reason for the use of the CTO is the fact that Mr. Bennett does suffer from a significant degree of *treatment refractory disorganisation* (emphasis added) which produces a circumstance in which he needs a high degree of support to sustain steady administration of medication, his current level of mental stability and his residential status. Our ACT Team had daily contact with him, and to date, have been able to keep up this level of support, largely because of his patient cooperation with everything that is entailed by his treatment plan."

Treatment refractory disorganization is a term used in Psychiatry, especially in cases of Schizophrenia where the use of tranquilizers/sedatives/antipsychotic/neuroleptics or other "psychiatric treatments" are ineffective (Elkis, 2010). The term was used as early

as 1950 for the drug chlorpromazine and quite heavily as of late to rationalize the use of Clozapine for people diagnosed with Schizophrenia (Elkis, 2010). Clozapine causes agranulocytosis, a dangerous reduction in white blood cells requiring weekly blood test when it is used. Clozapine can also cause diabetes, bowel infarction all of which can cause death (Townsend & Curtis, 2006).

Kevin's ECT shocks, his injection medication (Clopixol), his dangerous tranquilizers (Clozapine), his loss of freedom (due to the assignment of a substitute decision maker, CTO and ACT team) are all seen as necessary due to his "treatment-refractory disorganization". The inefficacies of the Psychiatric treatments themselves, the individualized focus of their biomedical interventions are eliminated from the determination of Kevin's freedom. Kevin's "mental stability" is dependent on this, and the ongoing necessity for the use of violence, coercion, and restrictions on his freedoms are required due to "treatment-refractory disorganization".

The Psychiatrist concludes that

“In general, it should be noted that treatment with Clozapine often reduces impulsive and violent behaviour in people with Schizophrenia. After eight months of treatment with this medication, it appears that Mr. Bennett is experiencing this benefit. As long as he remains fully compliant with this medication, it is likely that he will continue to pose a reduced risk to public safety, other factors remaining the same, such as residential stability and his present apparent non-abuse of substance.”

His freedom and ability to remain in Canada are dependent on his cooperation with violent and harmful treatments, an elimination of freedom, and a complete submission to an individualized assessment of his issues.

The same psychiatrist is quotes from a report from 2010 stating that

“Mr. Bennett has been definitively diagnosed with Schizophrenia, which in the past has featured quite severe symptomatology, both on account of non-adherence to medication, but also because most of the medications he was treated with were relatively ineffective in abating his psychotic symptoms as compared with his present treatment. This incomplete treatment produced a pattern of homelessness and legal difficulties which in turn undermined efforts to provide ongoing mental health care and to ensure mental stability.”

In the psychiatrist’s opinion, Kevin’s experiences of homelessness and legal difficulties are the result of his “incomplete treatment”, “compared with his present treatment”.

Regardless of his current status, his “treatment-Refractory disorganization”, his need for a substitute decision maker, a CTO, his “present treatment” is described as somehow effective, ensuring that he will not become involved with the law or homeless.

Kevin’s discharge into the community on a CTO under the supervision of the COTA-ACT team is described as a “relief from his psychotic symptoms due to treatment” from Clozapine and ECT “reserved for the most treatment refractory cases of Schizophrenia”. The psychiatrist is quoted again to make the link between Kevin’s criminality and his mental health,

“While I am not intending to dismiss the relevance of other factors in his historical pattern of legal difficulties, in this case it is reasonable to assert that untreated mental illness was a significant contributory factor, and likely the primary factor in the problematic course which pre-dated his recent CAMH admission”,

The statement effectively dismisses any other factors related to the legal charges and stating that “untreated mental illness” was “likely the primary factor” in Kevin’s criminality. The document names the psychiatrists who have issued and who will monitor the CTO and the primary worker on the treatment plan, providing legitimacy and authority to its validity. The panel notes that they have also considered the opinions of

two other CAMH psychiatrists which also aims to provide legitimacy and authority to the validity of this decision.

In item 28 of the decision document, Kevin's perspective is presented, which is summarized as testimony that indicates that "he is aware of the importance of taking his medication." A glimpse into the life that Kevin must agree to in order to stay the order for deportation is revealed:

"The appellant testified about the assault causing bodily harm incident, the offence which brought about the deportation order. He also identified his mental illness as schizophrenia, which causes a chemical imbalance in the brain. He indicated that he takes medication: pills every day and a needle once a month. He subsequently said he has a needle two times per week. According to him, the side effects of the pills are terrible, causing drowsiness and nausea. He was given pills that would address the vomiting. He said that he has taken medication, eleven pills, every day, except he forgot to take one of the eleven pills required every day, once or twice. He also has diabetes, for which he also takes medication. He only has to take one pill at night, by himself. He indicated that ACT sees him every day to ensure he takes his medication. The appellant testified that he is staying healthy by taking medication, eating properly and sleeping properly. He said he submits to blood and urine testing. Since his release, they have adjusted his medication by lessening the amount of Lithium. The appellant's testimony indicated that he is aware of the importance of taking his medication"

The panel finds that Kevin will then likely comply with the conditions of his stay if his mother and ACT help him. The document reiterates that Kevin is supervised taking his medication every day by the ACT team, has subsidized housing and sees his psychiatrist regularly.

The conclusion of the panel based on his likelihood of rehabilitation is,

"Therefore, on a balance I find that the appellant's mental illness is an underlying reason for his pattern of criminality. Based on the medical evidence, as long as he has a high level of structured and daily support from ACT, and the support of his mother, to ensure he takes his

medication, he refrains from abusing substances, his mental stability and his residential status there is the possibility of rehabilitation, which reduces the likelihood of him re-offending and posing a danger to the public. I am satisfied based on the evidence that the appellant has the requisite high level of community and family support in regards to his rehabilitation. This is a factor in his favour”.

In determining the degree of establishment in Canada, the Panel notes that the Federal court considers the criteria for establishment from the *Archibald*²¹ case. The panel states that since Kevin is a long term resident, and has family, friends, is on ODSP, and has housing,

“As noted by the Court in *Archibald*, financial factors should not be given precedence over social factors in assessing establishment; both must be considered...Under the circumstances, the appellant’s lack of economic establishment does not diminish the weight I give to his time in Canada and his ties to the country. Overall, this factor weighs in favour of granting a stay”.

With respect to the degree of hardship Kevin would face if deported, it is accepted that Kevin would face significant hardship if he was sent back to Trinidad & Tobago and this was in Kevin’s favour. The final decisions allows for a stay for 2.3 years with 15

²¹ “(i) Length of residence in Canada;
(ii) The age at which one comes to Canada;
(iii) Length of residence elsewhere; frequency of trips abroad and the quality of contacts with people there;
(iv) Where one is educated, particularly in adolescence and later years;
(v) Where one's immediate family is;
(vi) Where one's nuclear family lives and the ties that members of the nuclear family have with the local community;
(vii) Where the individual lives;
(viii) Where his friends are; the existence of professional or employment qualifications which tie one to a place, and the existence of employment contracts.”

conditions that include demands for reporting, adherence to psychiatric treatment, the surrendering of documents, and not using illegal substances.

In this decision, psychiatric expertise and testimony is relied upon heavily and extensively as evidence requiring Kevin to submit to complete psychiatric surveillance including the authority of psychiatry to have control over his freedom to make decisions and to live in the community, in a psychiatric institution or to stay in Canada after the two years. The Immigration, criminal justice and mental health system collaborate to ensure a common outcome, the removal of the undesirable person from society, and the control or elimination of a perceived threat to Canadian society which Kevin is not considered to be a part of, despite his 29 years of life in Canada. This lengthy history in Canada is reduced to a history of psychiatric issues and criminal justice issues beginning in 2004 when the deportation order was first issued for serious criminality. His humanity is erased from this story, one that permits the use of harmful treatments, the elimination of freedoms, and the need for perpetual surveillance and biological control.

The picture painted of Kevin is one that sees him as incapable of being free, a body in need of civilizing, a servant of our pharmaceutical industrial machine in need of a master. He is constructed as a biological anomaly, untreatable, genetically different, and an inferior person that is resistant to treatment even though he takes the medication that he is prescribed and submits to all observation and reporting requirements. In the end, the deportation order is still valid in law and if Kevin were to resist the harmful treatments or refuse the restrictions placed upon him via his community treatment order or make any decision for himself while he is deemed incapable, he would be in violation of his

conditions, thereby reinforcing a case for his “serious criminality” and his removal from Canada.

Since Kevin has submitted to the coercive observational, psychiatric and decision making requirement, the hardship he would face if removed from Canada is considered valid. The hardship to his family if he is removed is also considered and his lack of financial establishment is not weighted against him. If he is non-compliant with psychiatry, these items would not be weighted in his favour as he would be considered a “danger to the Canadian public”.

The use of discretionary authority and the selective interpretation of law are crucial to the achievement of this outcome. The interdependence of the mental health, criminal justice and immigration systems are absolutely necessary to confine decision criteria to individual biomedical matters, to notions of criminality, and to permit the IAD to weigh these matters as they chose for their desired outcome. Kevin is still not Canadian, confined/imprisoned, excluded from the protection of Canadian law, a threat, an anomaly and an Other. Regardless of the work being done to rationalize violence against Kevin he demonstrates an ongoing capacity for resistance through his appeals.

The Untreatable-The case of Guhad Mahamoud Hassan:

In the case of Guhad Mahamoud Hassan, the criminal justice, immigration and mental health system collaborate to fashion Guhad as a person who will forever be biomedically ill and therefore can never be free from psychiatric authority and surveillance. To achieve this outcome the panel acts to dismiss Guhad’s testimony to define what allowable hardship is for Guhad. Guhad’s context as a convention refugee,

who lost his mother to suicide and his father to war, and his sexual orientation are systematically rendered irrelevant to perceive a threatening body who is biomedically different, violent, and in need of external control. While his testimony, sexual orientation, family and political history are stripped from him, he spends over 18 months incarcerated awaiting his due process.

One Document was available for analysis:

- 1) Immigration Appeal Decision 2007
Hassan v. Canada (Public Safety and Emergency Preparedness), 2007 CanLII 70790 (IRB)

A deportation order was made for Guhad Mahamoud Hassan in February of 2007 (Hassan v. Canada, 2007). Guhad was charged with an offence (assault causing bodily harm in 2005) that qualifies him for inadmissibility on the grounds of serious criminality (i.e. “an offence punishable by a maximum sentence of at least 10 years imprisonment or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed”). Guhad appealed this deportation order.

Guhad is described as a 29 year old male who was born in Somalia, came to Canada in 1986 and became a permanent resident in 1992. Guhad has been in Canada for 21 years. He was convicted of another charge of assault causing bodily harm in May of 2006, was sentenced to a term of imprisonment and has since been on “immigration hold” as the Toronto West Detention Centre awaiting the results of his appeal. The panel notes the evidence it is considering: the appellant’s testimony, and 2 documents submitted by the appellant, the CPIC listing of criminal conviction and police reports and “related documents”. The panel notes that there is no challenge to the legal validity of the

deportation order itself and the appeal is therefore considering humanitarian and compassionate grounds. The panel has decided to stay the deportation order for 3 years. The decision document also states that they have evaluated the appeal based on the Ribic factors.

The panel lists that Guhad has been convicted of five criminal offences dating back to 1998 which includes 3 assaults, two of which were assaults causing bodily harm. The panel comments that “these assaults are serious and the appellant poses a threat to Canadians”. The panel notes that Guhad’s history and country of origin are a significant factor in the panel’s decision. Guhad came as a Convention refugee seeker and was allowed to come to Canada as part of a special program after he fled Somalia for Kenya. After he was accepted in 1986, he came to Toronto.

The document also notes “The appellant’s parents are both dead. His mother died of an apparent suicide in 1976 and, according to the appellant, she suffered from serious mental illness and depression. The appellant’s father was killed in March 1986 in the course of the civil unrest then plaguing Somalia.” Guhad has four siblings, three of whom live in the U.K. He has little contact with them.

The decision document states “The appellant claims to be homosexual; however, he has not had any recent relationships, his previous encounter dating to when he was 14 years old. The appellant has never had relations with a woman. The appellant testified that he cannot admit to being homosexual as this would not be accepted in the Somali community. The panel finds that the appellant’s sexual orientation is not a significant factor in this appeal”. The panel chooses to imply that the Guhad’s disclosure of his sexual

orientation is somehow invalid or false and then accept this implication as grounds for not considering persecution on the grounds of sexual orientation as a factor in favour of his appeal.

Guhad is described as having “last worked in 1994. He has no assets, real or personal property. He lives on social assistance (Ontario Disability Support Program) upon which he has relied frequently since 1997. Up until the time of his incarceration he was receiving upwards of \$1,200 per month in addition to drug and dental benefits.” They also comment that he has worked as a butcher but has been unable to do that since “becoming mentally ill in 1995”.

The decision document notes that a Dr. Gojer reported that Guhad “is suffering from Schizoaffective Disorder This is a major mental illness with features of both Schizophrenia and a Bipolar Disorder. Essentially, this disorder leaves a person with altered mood states and psychotic symptoms like delusions and hallucinations. At the height of the illness the individual loses touch with reality.” It is also noted that “Dr. Julian A. C. Gojer, Forensic Psychiatrist, provided a report on the appellant dated September 12, 2007. The panel considered Dr. Gojer’s Cirriculum [sic] Vitae and is satisfied that he is qualified to make a psychiatric report”

The document notes Dr. Gojer’s descriptions of Guhad reporting that Guhad has had issues with drugs and alcohol that “had an aggravating effect on his illness” and that his illness has been associated with aggressive behaviours. The doctor also reports that Guhad “is presently stable and not showing any signs of mental illness”. The panel describes that Guhad’s assault occurred when he was hearing voices telling him to do so.

In 2005 he hears these voices telling him to hurt another patient at a hospital while he was being treated. Guhad also testified that he sometimes forgets to take his medication and needs somebody to help him remember. The document details the panel's view that "On the basis of the evidence the panel finds that the appellant is mentally ill and that when he is not medicated he poses a threat to people. The appellant's criminality is a direct consequence of his mental illness."

Guhad reports that he plans to go live in Ottawa with his uncle who is a social worker if he is not deported. Guhad reported to the panel that he will follow up with Dr. Gojer in Ottawa when he is living with his uncle. Dr. Gojer agreed and stated "He will need close follow up and regular monitoring of urine samples to ensure that he is compliant with abstinence from (sic) drugs".

The panel notes in the decision document that Guhad testified that he would never want to return to Somalia. His fears being that of persecution with respect to his sexual orientation and for fear of becoming unwell again. The respondent (The Minister of Public Safety and Emergency Preparedness) submitted that Guhad posed a public threat and his risk of re-offending was high also that deporting Guhad would cause hardship "but other than the appellant no one else would be affected by his removal."

The conclusion states that the panel finds that Guhad has no establishment in Canada and minimal family support. Also, "When he is not medicated or abusing drugs and alcohol he is at risk of committing violence seemingly at random". The panel reports that Guhad "clearly requires close medical supervision and monitoring to ensure his compliance with medication and abstinence from alcohol and illegal drugs". The panel

likes the idea of Guhad following up with Dr. Gojer in Ottawa. They demand that evidence be provided in one year of his compliance with medical treatment and supervision. Guhad is also required to “bring evidence of the adequacy of his living arrangements and his compliance with the requirement that he not associate with none drug and alcohol abuses” and demonstrate that he is attending drug/alcohol abuse counseling.

The panel also concludes that Guhad’s “hardship should he be deported would result from the difficulty of obtaining medical treatment which could result in his becoming ill again”. Their conclusion erases Guhad’s submission with regards to his sexual orientation and his fear of persecution. In doing so the panel preemptively undermines any possibility for an appeal based on humanitarian and compassionate grounds in this regard. The panel agreed to a stay of 3 years with 16 conditions for reporting and compliance. Any breach of conditions, any new charges will result in the cancellation of his stay and deportation from Canada.

Guhad will be forever sick as his identity is constructed in this case and he will never be free. His violence is rationalized through three of the panel’s statements:

1. “When he is not medicated or abusing drugs and alcohol he is at risk of committing violence seemingly at random”.
2. “clearly requires close medical supervision and monitoring to ensure his compliance with medication and abstinence from alcohol and illegal drugs”.
3. “On the basis of the evidence the panel finds that the appellant is mentally ill and that when he is not medicated he poses a threat to people. The appellant’s criminality is a direct consequence of his mental illness.”

The final decision appears to name then dismiss historical, social and political considerations for Guhad. The panel noted (a rarity among these cases) that “history and

country of origin are a significant factor in the panel's decision". The panel erases Guhad's testimony in their decision and replaces it with their determination of what would be hardship for him. In the end, his 21 years of life in Canada, the fact that he came to Canada as a convention refugee via a special program from Somalia in 1986 (which was the beginning of the Somali rebellion that started the civil war that continues to this day), the deaths of his parents (his mother by suicide and his father during the 1986 rebellion), as well as his sexual orientation and the circumstances of his fear of persecutions are all reduced to a biomedical anomaly, a predisposition to violence and drug use that is threatening to Canadian society and a body in need of external control.

The complexity of his life, the problem of voices telling him to hurt others while in hospital and taking medications as well as his states of wellness are lost in the finality of the panel's decision. The ongoing threat of deportation itself is not considered a hardship for Guhad nor is the "immigration hold" he has been on at the Toronto West Detention Centre for a 18 months. He is a biological concern which is totally explained by Dr. Gojer and can be supervised as such. If this arrangement should fail, the accountability lies with Guhad alone.

In the cases of Carlton, Kevin and Guhad, ideas of individual biomedical bases for mental or emotional suffering become reproduced as the only option for intervention. In Kevin's ECT, harmful medication and a life under the surveillance and power of psychiatric authority is all that remains. The histories, social and political circumstances for them are erased. The immigration, criminal justice and mental health system collaborate to impose a restriction to what is considered by establishing a hierarchy of

authority, the rationalization of violence, and the construction of an identity that is permanently biologically defective. The products are (re)productions of violent technologies and practices used to individualize social problems, deny public responsibility, deploy harm rationalized as treatment, and restrict how knowledge is authorized and legitimated. The outcomes are the violent separation of people by arbitrarily accepted perceived genetic variation and the segregation of people based on notions of (national or racial) origin.

The Unrehabilitatable: the inherently criminal, the dangerous, the savage

The cases of Carlton Anthony William (represented as exemplary for the interdependent constructions of the identities of untreatability, unrehabilitatable criminality and undeserving foreign Other), Nur Mohamad Jama and Nirranjan Simbasivam illustrate the practices and technologies involved in the construction of an identity of that of an unrehabilitatable criminal and the utility of this construction to achieve a desired outcome (deportation or containment). The dehumanized, unrehabilitatable criminal who is inherently dangerous and a threat to the Canadian public is a construction relied upon when biomedical rationale or immigration determinations alone do not provide the legitimizations necessary to authorize violence. This construction, its procedures and its outcomes depend on the cooperation of mental health, criminal justice and immigration systems.

The cases of Carlton Anthony Williams, Nur Mohamad Jama and Nirranjan Sambasivam demonstrate how the confluence and criminal justice, immigration and mental health systems operates to consolidate notions of unrehabilitatable criminality.

The criminality established in these cases is achieved by distancing mental health issues from criminality so as not to encourage a consideration that would suggest more support for a person. Rather, the support given (which is validated and authorized as effective treatment) only works to support the idea of a criminal who is a subordinate *type* of person. These decisions rely on the practice of evoking the idea of a subhuman, incapable of civility, and deserving of violence the application of discretionary and selective interpretation to achieve a desired outcome and the replication of forms of racialized subjugation presented as modern, progressive rational and reasoned decision making.

The idea of the unrehabilitatable criminal is a necessity at the confluence of mental health, criminal justice and immigration systems as it permits the invocation of a legitimated position of moral authority. This position upholds its persona as a protector of the Canadian public through its selective attention to mental illness (when this attention serves the purpose of containment, exclusion or generally authorizing violence), while delineating a caveat that will ultimately require containment or removal. The practices and technologies involved in its replication (the notion of criminality and the protector), remake for us the discursive and material conditions for the existence of an unrehabilitatable person, void of social, historical and political contexts, and deserving of violence. This notion of criminality alone would fail in the absence of an attention to mental health/illness. Through the confluence of mental health, immigration, and criminal justice systems, the Canadian identity is (re)established as a moral authority, relying on progressive decision making, including professionally legitimated knowledge and expertise and separate from a biologically inferior, inherently criminal Other.

The Unrehabilitatable - The case of Carlton Anthony Williams continued:

In the case of Carlton Anthony Williams, the notion of inherent criminality is achieved through the categorization of charges deemed as due to mental illness and those deemed to be due to criminal, aggressive or hostile tendencies. An emphasis on the number of charges is also used to shore up ideas of inherent criminality regardless of how many were laid by authorities after a realization that the person is suffering from mental or emotional distress. Charges laid for failure to appear, failure to comply, those laid by authorities during arrest, while enforcing conditions, or laid parallel to those deemed due to mental illness are all considered as evidence for inherent criminality. He is also depicted as a risk to the public and a threat to the public, i.e. "Further, the evidence provided by those responsible for assessing his state of health indicated that he continued to be a risk to the public and was unaware of his aggressive demeanor or the details of past criminal behavior".

The ideas of risk and threat are propagated throughout the text even though Carlton has been and will continue to be under strict observation. Carlton is given conditions stated as demands without the incorporations of supports that would make these conditions achievable. For example, in the 2005 decision, his previous stay conditions are listed as those Carlton has failed to comply with and immediately following is a ruling that due to a prediction of his failure with these conditions, his stay should be cancelled and he should be deported. During his subsequent 2008 appeal decision, these conditions are re-imposed without any comment or consideration of why they failed, the acknowledgment of a requirement for more supports, or that the imposition of such conditions have and

will be used against Carlton in the future to support his construction as inherently criminal. His final stay conditions included 18 requirements for reporting, attending treatment and complying with psychiatry, all directing sole responsibility to Carlton for their success or failure. i.e.,

“[12] Make reasonable efforts to maintain yourself in such condition that:
a) your chronic schizophrenia and/or substance abuse will not cause you to conduct yourself in a manner dangerous to yourself or anyone else; and,
b) it is not likely you will commit further offences.”

If Carlton does achieve a level of wellness that permits his discharge into the community he is ordered to comply with extensive reporting requirements within 10 days and then every six months to the Ontario Review Board, the Immigration and Refugee Board and the Canada Border Services Agency regarding his mental status and treatment as reported by a psychiatrist and:

“The reports are to contain details of the appellant’s:
- employment or efforts to obtain employment if unemployed;
- current living arrangements;
- marital status including common-law relationships;
- attendance at any educational institution and any change in that attendance;
- participation in psychotherapy or counselling (please specify type);
- meetings with parole officer, including details of any violations of the conditions of parole;
- other relevant changes of personal circumstances.”

Any failure to report will be seen as another piece of evidence supporting Carlton’s serious criminality.

The Unrehabilitatable - The case of Nur Mohamed Jama:

In the case of Nur Mohamed Jama, the process of constructing an inherently unrehabilitatable criminal, the authorization of his incarceration for two years, and his eventual deportation to Somalia is exposed for its reliance on dehumanizing practices. To

legitimize this outcome, the mental health, criminal justice and immigration system work interdependently to limit the consideration of Nur as a convention refugee, or his emotional distress or any provisions for his wellbeing or safety. He is depicted as someone who is unrehabilitatable, and his lack of income, housing and employment are used to support this argument rather than make the case for his need of support. The appeals adjudicators advance their position as upholding the integrity of Canada's immigration system and the safety of the Canadian public by selectivity and partially applying legislation at their own discretion weighted to their own liking in order to achieve the deportation of Mr. Jama.

Two documents were available for analysis:

1. Immigration Division, Detention Review January 2007
Canada (Citizenship and Immigration) v. Jama, 2007 CanLII 12831 (IRB).
2. Federal Court of Canada Decision March 2008
Jama v. Canada (Citizenship and Immigration), 2008 FC 374 (CanLII).

Mr. Jama is described as a "Citizen of Somalia" and was born there in 1964 (Canada v. Jama, 2007). Mr. Jama is 39 years of age in 2002 when he was charged with his first Canadian offence. Mr. Jama came to the United States of America as a Convention Refugee in 1992. He came to Canada as a visitor in 2002 from Uganda with an expiration date of 60 days from his arrival (residing for 6 years in Canada plus close to 10 in the United States).

The January 2007 document is a detention review for Mr. Jama that must be conducted for those held in detention under the Immigration and Refugee Protection Act. The review begins with a listing of Mr. Jama's criminal convictions. Mr. Jama was

incarcerated and given a departure order was granted in 2002. Mr. Jama was then released into the custody of the Toronto Bail Program. After Mr. Jama “failed to depart Canada in accordance with the terms of the departure order”, he was given a deportation order and taken back into custody after the Toronto Bail Program withdrew their supervision after Mr. Jama’s “failure to abide by their conditions” in both 2003 and 2004.

Mr. Jama could not be removed from Canada as a convention refugee and the U.S. did not want to take him due to his accumulation of criminal charges. Mr. Jama remained incarcerated and in January 2005, “a process was initiated to procure an opinion by the Minister ...as to whether Mr. Jama poses a danger to the public.” This would be the only way Mr. Jama could be deported to Somalia as a convention refugee. He was released under the Toronto Bail Program’s supervision and accumulated more criminal charges leading to another incarceration. “In August 2005, final submissions were forwarded to the Minister’s delegate in Ottawa for purposes of the application” to find him a danger to the public thereby rationalizing his permanent incarceration until a ruling was made on his *dangerousness* to the Canadian public making him eligible for deportation.

“On 8 December 2006, Mr. Jama signed a declaration reflecting his desire to be returned immediately to Somalia and his lack of fear of being so returned.” He retracted this declaration in January 5th, 2007, less than a month later. There was already a flight booked for Mr. Jama even though his ruling regarding his “dangerousness” to the Canadian Public had not been made.

On page 3 of the decision document, it is mentioned that in 2005, Mr. Jama's council submitted a letter from Mr. Jama's physician confirming that,

he suffers from bipolar affective disorder and post-traumatic stress disorder. The former condition afflicts him with, among other symptoms, poor judgment during manic phases. He requires medication and a supportive environment in order to do well, and, in the submission of his counsel, the Toronto Jail is not such an environment.

Mr. Jama's council questioned why "the case has been under consideration now for fully seventeen months without any indication that an opinion is forthcoming soon". Council was informed that it was only in the "early stages".

Mr. Jama's council expressed concern at the duration of Mr. Jama's detention at so dismal a venue as the Toronto Jail, and, while recognizing that the Immigration Division of the Board has no authority over setting the place of detention, opined that detention at the Centre for Addiction and Mental Health in Toronto would probably be a much more suitable place of detention in this case. She added that the detention has made Mr. Jama so despondent that at times he is prepared to accede to removal to Somalia which would have a harmful impact to Mr. Jama. Mr. Jama's lawyer suggests a Social Worker from Regent Park Community Health Centre to act as a representative when Mr. Jama is incarcerated and suffering too greatly to make a clear decision. She asks for the opinion of CAMH and a psychiatric assessment. The judge rules that Mr. Jama is too dangerous to be released and lists his criminal convictions as evidence for this necessity.

The judge suggests that the convictions accumulated under the supervision of the Toronto Bail Program are evidence for dangerousness, rather than it being evidence for the incapacity of the bail program to provide or facilitate adequate care for Mr. Jama. The

Judge described Mr. Jama as “an active and unrehabilitated criminal recidivist”. His lack of convictions since August 2006 is dismissed from consideration because he was in detention, yet this is simultaneously wielded as evidence for his dangerousness. A consideration of the circumstances and benefits that he has begun to connect with mental health services in the community including Regent Park Community Health Centre are also erased from consideration. An application to Turning Point addiction rehabilitation program is used as evidence for Mr. Jama disclosing that he is “actively addicted to alcohol and cocaine”. This is also relied upon as evidence to support the he cannot “be relied upon to desist from continuing dangerous criminality”. He has been receiving medical care since 2003 and support from Regent Park CHC since 2002. These services are deemed as ineffective due to his accumulation of criminal charges many of which result in his further incarceration without access to treatment or care. Rather than the charges being dismissed due to his need for support, in this case, all is used to support an argument for criminality.

The judge also argues that no “adequate settlement arrangements exist, no employment, no income”. This is raised to argue for his detention based on the fact that he is therefore unlikely to appear for his removal hearing, not to raise any issue with regards to support he may need in terms of settlement services. Mr. Jama’s distress regarding his confinement, delays in decision from the courts and lengthy incarceration are downplayed being described as “impatience” and “frustration”.

The judge dismisses Mr. Jama’s legal right for prioritized treatment for vulnerable persons citing that the detention review is not held accountable to this guideline

regardless of how long Mr. Jama has been detained. Keeping Mr. Jama in jail without supports regardless of his mental status is therefore authorized. His lengthy jail time is described by the judge as not unreasonable or indefensible due to his criminality, the Toronto bail program is described as “remarkably patient”. The decision results in Mr. Jama being held for another 6 months in detention while he awaits his ruling on “dangerousness to the Canadian Public” so that he can be deported.

The 2008 document from the Federal Court of Canada reviews Mr. Jama’s decision on his danger to the Canadian public (*Jama v. Canada*, 2008). The decision opens by stating that Mr. Jama had two years to submit evidence and arguments about his Danger opinion. They note that he has made three submissions. The court states that Mr. Jama did not challenge the last Danger opinion implying that he has accepted this opinion rather than being forced to submit to the overpowering counter arguments and detentions that he has been subjected to as his lawyer noted in the detention review.

Mr. Jama’s application is dismissed because he did not have an explanation for his delay. However, when Mr. Jama was detained in prison awaiting his ruling on dangerousness, delays by the criminal justice systems did not affect the deportation order. Mr. Jama held as solely responsible for providing new evidence of risk issues to Somalia, even though he is a convention refugee. He is held as at fault for his mental disorder and is described as non-compliant with his medications. The availability of medication or treatment is described to be “of no consequence to a person who has shown extensive reluctance to benefit from the same.” Simply put, it does not matter that he was kept in jail and was not offered treatment or services, he denied them in the past, therefore he is

dangerous. The court also argues that staying the removal order would upset the public interest which supports the removal of people deemed a danger to the public. The protection of Canadian society is held as utmost importance; Mr. Jama does not belong to this society.

This decision upholds the view that Canada is fair and maintains “the integrity of the Canadian refugee system” even though we are deporting a convention refugee to their country of origin after holding them in jail for two years and dismissing opportunities for support, or treatment, even though the person has long standing mental health and substance use difficulties.

With respect to the consideration of irreparable harm, the court decision also states that there has not been a material negative change to Somalia therefore he can be deported there. Mr. Jama has to prove that irreparable harm will come to him if he is deported to Somalia his mental health issues, incarceration and substance use issues are not considered here. The Federal court does not consider deportation of a convention refugee with mental health concerns and substance use issues a form of harm. It is supported thusly in the documents:

Contrary to the vague representations by the Applicant, *reg*a The Federal Court jurisprudence also establishes that irreparable harm must be something more than the inherent consequences of deportation. As Justice Denis Pelletier stated, in *Melo v. Canada (Minister of Citizenship and Immigration)* 2000 CanLII 15140 (FC), (2000), 188 F.T.R. 39:

[21] ...if the phrase irreparable harm is to retain any meaning at all, it must refer to some prejudice beyond that which is inherent in the notion of deportation itself. To be deported is to lose your job, to be separated from familiar faces and places. It is accompanied by enforced separation and heartbreak.

With regards to his family and mental health services in Somalia, the Court states that since his other mentally ill siblings are institutionalized, and not “tied to a tree”, this is acceptable. In this instance, the courts makes the point of delineating who is deserving of safety and care (the Canadian public, to which Mr. Jama does not belong) and who is associated with savagery and incivility (the only way Mr. Jama would be considered for a stay is if his deportation resulted in him being “tied to a tree” as a result of his mental health issues). Otherwise, the violence of his deportation, incarceration or conditions of institutionalization are acceptable in comparison to a potential or even the low probability of a threat to the Canadian public, the integrity of the Canadian Immigration System, its protector role and civil promotion of justice.

The court documents assert that the Minister is protecting the Canadian public by favouring the decision to deport Mr. Jama. In summary, Mr. Jama’s appeal to the dangerousness opinion is “too late”, they have asserted that deportation to Somalia of a convention refugee with mental health issues is not an irreparable harm and the safety of the Canadian public outweighs any harm that would come to Mr. Jama therefore he fails the tripartite test. The immigration system states their position as those who are charged with “the maintenance and protection of the security of Canadian society and the integrity of Canada’s immigration system”. An elaboration of their self-proclaimed valorous efforts described in the Federal court decision documents claim that their decision is

establishing fair and efficient procedures to maintain the integrity of the Canadian refugee system, protecting the safety and security of Canadian society, and promoting international justice and security by denying access to Canadian territory to persons who are security risks or serious criminals.

The law states that Canada should deport him as soon as possible rendering a stay decision illegal. Upholding this “as soon as possible” principle is what is decided will effect the integrity of the immigration system and the public’s confidence, not whether we provide adequate care to a convention refugee with mental health issues, no money, and issues with alcohol or whether he is imprisoned for two years without access to care (which is described of as inconsequential in terms of availability) to deport him. In the final decision, the application for a stay of removal from Canada is dismissed and Mr. Jama deported to Somalia.

The danger opinion itself is described as “self-explanatory”. Mr. Jama’s voice is included only in the appendix in the documents used to determine his “dangerousness”. He describes the charge of carrying a concealed weapon as one where he was given misinformation by a cousin regarding where he would be deported to (he presumed the US) if he pleaded guilty. He also describes being tricked by a security officer to reveal a weapon in his home. His charge of drug trafficking was laid by an undercover police officer who approached him for cocaine while Mr. Jama was intoxicated. Mr. Jama claims he was given baking soda by a woman in the area and then approached by the undercover officer who charged him after he tried to make a quick twenty dollars. A situation that appears to be a set-up is only considered as one of cocaine trafficking thereby supporting the argument that Mr. Jama’s criminality is dangerous.

Mr. Jama describes an incident where he also stole forty dollars from a man at a bank machine by pushing him and taking the money. He was charged with assault for the push and convicted of theft under five-thousand dollars. On another occasion he stole

twenty dollars from someone's purse when he wanted to buy a drink at a coffee shop, he was charged with theft under five-thousand dollars and assault. Mr. Jama denies that any assault took place but admits to the theft of the twenty dollars. He describes the charges in the US as a situation where he was charged with possession of a weapon during a drug bust in his building when he was actually in the process of cooking (holding a kitchen utensil). The other charges were for stealing one can of beer or "a couple of cans" of beer.

For Mr. Jama's Danger opinion to be formulated, they cite his "very expensive and most serious criminal history" including "multiple offences for weapons possession narcotics trafficking (cocaine) battery on a personal multiple assaults; malicious mischief; criminal mischief 4th and 5th degree; multiple driving offences; multiple fail to comply offences; obstructing law enforcement officer counts, unlawful bus conduct; possession proceed of crime". As the Federal Court documents state that, "He will not report and clearly will continue to victimize the unsuspecting innocent members of the population if given another chance". A mental health coordinator stated in the document that,

This writer has provided extraordinary supervision two time per week to no avail as Mr. Jama has been arrested repeatedly and this writer holds little hope of him being rehabilitated...Mr. Jama does not take his medication as prescribed as recently it has come to my attention that he has been consuming alcohol, it is for these reasons that supervision has been withdrawn.

The end result, a man who came to Canada via Uganda as a US convention refugee from Somalia with a diagnosis of bipolar disorder, PTSD and issues with alcohol is imprisoned for two years, deemed too dangerous to be in public (thereby incarcerated

without access to support or treatment), and deported back to Somalia without any provisions for his safety or wellbeing.

The Toronto Bail Program, the Immigration system and the mental health systems represent themselves as “remarkably patient”, “fair and efficient,” maintaining “the integrity of the Canadian refugee system, protecting the safety and security of Canadian society”, and “promoting international justice and security”. Mr. Jama is charged to the fullest extent of the law for theft for small sums of money or for small quantities of alcohol and these are summarized together with charges laid during drug raids or undercover work (which are of increased risk for those who live in over policed areas and racially or class profiled areas). He is dehumanized, depicted as dangerous, a risk to others, too dangerous to be among the public, yet not worthy of protection from the violence of incarceration, refused access to support or deportation as a convention refugee. No one asks a question about the circumstances of his PTSD, why he needs the alcohol, or what may be of support to him beyond the inconsistent supervision demands of compliance by the Toronto Bail Program. His mental illness is biological and requires medication which Mr. Jama is non-compliant, his theft of money and alcohol are due to his inherent criminality and he is not a member of Canadian society deserving of the safety or protections of Canadian systems or governments.

In order for this to occur Mr. Jama’s incarceration was necessary or else his deportation could be delayed. He needed to be deemed dangerous, or his deportation would not have been permitted. To do so, the immigration, criminal justice, and mental health systems often worked interdependently to secure this outcome. Through the workings of the

Toronto Bail Program, charges continued to be accumulated, rather than being diverted or dismissed due to mental disorder. Mr. Jama was held as solely responsibly due to criminality, and his access to treatment is considered to be of no consequence.

Upon this foundation, the mental health system supports the construction of his identity as inherently dangerous and criminal by stating that he is non-compliant with medications (as though taking pills equates with recovery) and unable to refrain from breaking the law. He is unrehabilitatable, and his lack of income, housing and employment are used to support this argument. The Immigration system advances their position as upholding the integrity of Canada's immigration system and the safety of the Canadian public by selectivity and partially applying legislation at their own discretion weighted to their own values in order to achieve a single outcome, the deportation of Mr. Jama.

The Unrehabilitatable - The case of Niranjan Sambasivam:

In the case of Niranjan Sambasivam, the mental health, criminal justice and immigration systems construct then rely upon an image of a violent Tamil youth who hijacks the peace and security of the Canadian public by "showing up" with "carloads" of other Tamil youth and assaults people with weapons in order to authorize his deportation. The Canadian mental health system is seen as having provided adequate assessment and offering sufficient treatment (medication and surveillance), the criminal justice system depicts itself as removing a criminal element from society and upholding Canada's "interest in combating terrorism". Any lack of employment, money or education is considered as a lack of Niranjan's establishment in Canada. Any attention to the social and political contexts of his settlement (including the fact that he was sponsored by his

mother who is a convention refugee) is erased in the redirection of the focus to Niranjan as an isolated individual. He is then made worthy of violence, excluded as a member of Canadian society, biomedically malfunctioning and resistant to the care being provided or unworthy of the provision of care offered to Canadian citizens even though his family has agreed to pay for his care. He is made into an unrehabilitatable criminal who is untreatable, underserving of Canadian care and deserving of punishment to himself and his family.

One document was available for analysis:

- 1) Immigration Appeals Division Decision on removal Order Appeals March 2007
Sambasivam v. Canada (Public Safety and Emergency Preparedness), 2007 CanLII 69167 (IRB).

Niranjan Sambasivam appealed a removal order made against him in 2005 for the possession of a weapon for a dangerous purpose (Sambasivam v. Canada, 2007). He was 26 years of age at the time of the decision. Niranjana was born in Sri Lanka and was sponsored by his mother who was deemed a convention refugee and landed with his sister in 1999. He has been in Canada for over 8 years and has had a diagnosis of mental health issues and access to treatment for over 7 years.

The panel notes that there is “no challenge to the validity of the removal order” ensuring that the best possible result for the appeal would be a stay. The appeal is supposed to consider the best interest of any child affected by Niranjana’s removal. In this case, there are his sister’s children with whom he lived with for a period of time. The decision is stated on the first page to dismiss the appeal and the deport Niranjana as there

are “insufficient humanitarian and compassionate grounds” after taking into consideration the best interests of any child that allow for a granting of the appeal or a stay.

His mother, grandmother, two brothers and his sister live in Toronto. His sister is married and has two children. The document states that Niranjana has been convicted of “numerous offences, many violent offences involving weapons”. At the time of the decision he is being held at the Toronto West Detention Centre.

The panel states that its decision is guided by the *Ribic*²² factors and.. by section 3 (1)(h) and 3 (1)(i) of IRPA:

(h) to protect the health and safety of Canadians and to maintain the security of Canadian society.

(i) to maintain and protect the health, safety and good order of Canadian society

The document states that “At both sittings of the hearing, the appellant appeared to have been on his medication. He was lucid and I was satisfied that he understood the nature of the proceedings”. The statement is used to imply that his ability to understand the nature of the court proceeding and be in a lucid state could only be possible if he was taking medications. Niranjana is described as having a lengthy criminal history spanning a period of seven years. The document describes the first incident which involved Niranjana being pulled over and he punched one of the two “peace officers” in the left shoulder. In the description of this altercation, the documents states that Niranjana could not initially

²² See Carlton Anthony Williams section on untreatability for listing of Ribic factors.

remember what had transpired on the date and “he had to be prompted by his counsel in order to remember”. Here the panel questions the legitimacy of Niranjan’s version of the story pertaining to this first charge by suggesting that being prompted is evidence of not being able to remember. Niranjan reported that he was dragged out of his car and he merely shoved the officer in self-defense.

The panel restates the opinion that Niranjan is “a poor historian” and that “he has a poor memory” thereby invalidating his version of what transpired. Niranjan is described as remembering an incident resulting in a conviction for possession of a weapon in February of 2003 when he was arguing with his mother and “smashed things in the house” he also described the details where he picked up a knife and his mother called the police. The document states that “he could not remember that he pleaded guilty to that charge”, supporting again an argument for Niranjan having a poor memory.

Another incident is described where Niranjan was convicted of an assault in 2004. Niranjan’s version of the story reports that his mother contacted him regarding an argument with a tenant. The document describes that “two carloads of Tamil youths (sic) showing up at the appellant’s mother’s residence and assaulting the victim”. The images racially identified gang violence is evoked in the description which selectively used the words “carloads” rather than merely stating the number of individual arousing fear in the reader, suggesting uncertainty with regard to how many “Tamil youths” are “showing up”. The document notes that although the victim in this incident identified Niranjan, Niranjan denied beating the victim stating that his brother hit the victim first. To undermine Niranjan’s account, the document states “in view of the appellant’s poor

memory regarding other incidents, and his conviction for this incident, I prefer the details outlined in the police report which indicate that the appellant did assault the victim". Consequently the conviction by police and the preference of the panel chair is seen as legitimate evidence for Nirnanjan's conviction of assault.

Another incident is mentioned where Nirnanjan and a friend "trashed a double double pizza store" with no reference to specific damages or costs of damages. It is said that he "assaulted a customer and his dog and then *turned* on the owner of the restaurant". The imagery here presented Nirnanjan as an animal who *turns* toward prey as though completely controlled by instinct, alluding specifically and directly to savagery. Nirnanjan only recalls throwing things inside the restaurant but is described as having "no recollection of what transpired". A final incident is described in 2005 where Nirnanjan stabbed his brother and apologized. There is no reference to any charges laid or conviction.

The panel summarizes that,

"It is evident to this panel in view of the above incidents that the appellant that the appellant's behavior is out of control and he potentially poses a threat to the Canadian public." After the summarization of Nirnanjan's poor memory and criminal violence, the document notes that as early as August of 2000, a Doctor's letter confirmed that Nirnanjan was suffering from suspected "conduct disorder, with a differential diagnosis of early stage of Bipolar Affective Disorder or Schizophrenia".

A 2005 letter stated that Nirnanjan was attending the outpatient clinic with his doctor from 2000-2005, was being treated for "bipolar disorder and poor anger control" but "had only attended on three different occasions".

Nirnanjan's diagnosis is said to be "confirmed" by a letter dated July 2007. The letter states:

This man suffers from a chronic, and rather severe, mental illness, namely Bipolar Affective Disorder (BAD), and also, possibly, Intermittent Explosive Disorder. Typically, BAD becomes evident during pubescent to young adulthood.

Untreated, BAD can lead to poor impulse control, lack of judgment, over-excitability, hypomanic episodes, crushing depressive episodes, and high level of anxiety.

In my professional opinion Mr. Sambasivam's chronic conflict with the law and his inability to control his impulses are primarily due to his mental illness. What makes this man's difficulties more entrenched and problematic is his inability to adhere to a treatment structure.

A Dr. Hassan agreed to take on Niranjana into his psychiatric practice, Dr. Hassan's submission indicated that Niranjana, "will require ongoing psychiatric follow-up, adherence to the treatment plan, abstinence from alcohol and drugs and regular ingestion of his medication. **Compliance will be a key factor in successful transition back to society.**" The bold is placed there by the Panel chair. The Panel notes that Dr. Hasan has a treatment plan set out for Niranjana but the panel is "not satisfied that there are enough safeguards in place to monitor this appellant and ensure that he is compliant with any plans laid out for him".

A letter is cited from Dr Hassan from January 2008 stating that

...
In summary, Mr. Sambasivam's impulsive violent behavior is due to a mental health illness that can be adequately controlled by effective psychiatric treatment. **Without regular psychiatric follow-up and treatment this man will most likely reoffend.** On the other hand, effective ongoing psychiatric treatment will allow him to conduct his life with acceptably low risk of acting out.

The bold here is the panel's again.

The letter indicated that this behavior is different than usual, that Niranjana presented as angry and frustrated with all of the reporting conditions and compliance requirements imposed on him. The letter itself confirms Niranjana's attendance at a

psychiatric appointment and reports that he would not use alcohol or drugs. In the contexts of the appeal decision, the letter is being used as evidence that he will not be compliant with treatment thereby making him “likely to reoffend” and supporting an argument for a denial or dismissal of his appeal.

The panel also decides that they have an issue with Niranjan’s ability to pay for his own healthcare as he is unemployed and his mother is on social assistance. Nirnanjan’s mother stated that Niranjan’s “two brothers are working full-time and have agreed to assist in covering costs of the medication”. The panel dismisses this information because no letters were submitted by the brothers. The fact that Niranjan’s health needs are unsupported by the Canadian health care system (because he is sponsored by a convention refugee) is projected as a fault or incapacity onto Niranjan. His family members in Canada are dismissed as a reason for keeping him here as they are seen as ineffective in assisting him in getting the treatment he requires. The eight years since he has been diagnosed is highlighted as evidence for the family’s ineffectiveness rather than the ineffectiveness of the psychiatric treatment he has received. His mother’s support, cooperation with the courts process and appeals procedures are not considered as evidence of support nor is his brothers’ willingness to pay for the medications.

The presence of Niranjan’s family in Canada weighs in Niranjan’s favour during the appeals process due to the Ribic factors, however, this is being dismissed because “the hardships that they will endure if he is removed from Canada are outweighed by the appellant’s potential risk to the public”. The panel states that they are required to consider the “fundamental justice balance” to evaluate if Niranjan’s charter rights,

specifically section 7 that states that “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.” They cite the *Suresh vs Canada* Decision of 2002 where the deportation of a convention refugee to a place where he would be tortured is weighted against Canada’s “**interest in combating terrorism**” (this bold is mine). The Suresh decision was very highly publicized and included the following respondents in the decision making process:

- The United Nations High Commissioner for Refugees,
- Amnesty International,
- the Canadian Arab Federation,
- the Canadian Council for Refugees,
- the Federation of Associations of Canadian Tamils,
- the Centre for Constitutional Rights,
- the Canadian Bar Association and
- the Canadian Council of Churches

The result was that the decision to deport Suresh to torture was found to violate the principals of fundamental justice and the appeal was allowed. In the Romans case cited, it was found that the member who issued the deportation order was “perverse in his conclusions that the hardships faced by the applicant in Jamaica would not be significantly worse than he faced in Canada where the applicant has a support group and the possibility of treatment”.

In considering hardship that Nirnanjan would face, the panel concludes that he is not considered a convention refugee because his mother is and she sponsored him. Nirnanjan submitted a 243 page document to speak to the country conditions in Sri Lanka. This is reduced by the panel as documents that “support the ongoing strife in Sri Lanka

focusing on the plight of Tamil males”. Since Niranjana was “young when he left Sri Lanka “therefore, he was not politically involved”. The panel notes that information was submitted on the “marked deterioration of the countries mental health facilities...declining government health funding has resulted in understaffing, poor accommodation and a lack of necessary drugs and equipment....Rising levels of psychiatric disorders are also exacerbating the situation in Sri Lanka’s mental institution”. The differences in care in Sri Lanka and Canada are dismissed as Niranjana is predicted to be non-compliant anyway. They distinguish Niranjana’s case from the Romans’ case where Romans was under strict supervision and held in a facility.

Niranjana is considered to be “not established in Canada” since he has only sporadic employment and “no special skills or education”. Therefore deporting him would not be disruptive to his career. His lack of employment opportunities or lack of access to education are seen as evidence for him not being established rather than being considered as highlighting a need of more comprehensive settlement supports or services. The hardship Niranjana would face is downplayed further by stating that this would not be the first time he would be without family and that “it is possible that the appellants father is in Sri Lanka” even though his mother has indicated that Niranjana does not know his father nor do they have contact with him.

The panel decides that Niranjana does not have any close relationships other than his mother. His sister, two brothers and his sister’s children who reside in Canada do not affect his determination even though he has lived with his sister and her children. This is disregarded because “there was no supporting testimony either orally or in writing

regarding the hardships if any, they would endure if he were removed from Canada”. It is judged that it would be in the children’s best interest if he were to be removed from Canada. The appeal is dismissed and Niranjana is deported.

The final decision of the appeal permits a portrayal of Niranjana as a violent Tamil youth who hijacks the peace and security of the Canadian public by “showing up” with “carloads” of other Tamil youth and assaults people with weapons. His mental health is described as a biomedical condition that is to be treated with medication which Niranjana is non-compliant with. This is held to be an absolute truth even though it is noted that “At both sittings of the hearing, the appellant appeared to have been on his medication. He was lucid and I was satisfied that he understood the nature of the proceedings”. The Canadian mental health system is seen as providing adequate assessment and offering sufficient treatment (medication and surveillance), the criminal justice system is removing a criminal element from society and upholding Canada’s “interest in combating terrorism”. The Canadian immigration system represents itself as ensuring that the Ribic factors are “considered” and all families, children, length of time in Canada, establishment, or potential harms to Niranjana have been considered.

The impact of his mental health on his behavior or on the construction of his criminality is only used to support an argument that his ability to refrain from criminality will be undermined by his inability to manage his own mental health thereby making him more at risk of being violent or criminal. Niranjana is held to account for his mental health; his psychiatric care is never questioned as inadequate or insufficient to address

Niranjan's support needs. Therefore the possibility of his improvement or rehabilitation is eradicated from consideration.

Any lack of employment, money or education is considered as a lack of Niranjan's establishment in Canada. Any attention to the social and political contexts of his settlement is erased in the redirection of the focus to Niranjan as an isolated individual. The context of him being sponsored by a convention refugee is also eliminated in the categorization of Niranjan as a landed immigrant and not directly a convention refugee (thereby not included in any consideration for the rights and privilege's afforded to convention refugees who may be fleeing persecution based on race, religion, political opinion, nationality or membership in a particular social group).

The 7-8 years that Niranjan has lived in Canada and the presence of his mother, two brothers, sister and nieces/nephews in Canada is dismissed in relation to a consideration the safety of the Canadian Public, any harm to the family is permitted with this consideration, any potential foreign hardship is permitted for Niranjan. He is now worthy of violence, not a member of Canadian society, biomedically malfunctioning and resistant to the care being provided or unworthy of the provision of care offered to Canadian citizens even though his family has agreed to pay for his care. He is an unrehabilitatable criminal who is untreatable, underserving of Canadian care and deserving of punishment to himself and his family.

The discretionary application of law when considering the *Ribic* factors alongside the dehumanization of Niranjan, the construction of his identity as undeserving, untreatable and unrehabilitatable depend on the interdependence of the mental health,

criminal justice and immigration systems. The authorization of violence to Niranjan at all of these levels and in the end result is also dependent upon this confluence. The delegitimization of Niranjan and his family by attacking Nirnanjan's memory/credibility, dismissing his family's support by establishing a requirement that only acknowledges documentation as legitimate proof of care and support, and by undermining his need for protection and care through a technocratic categorization that separates him from the protection of the United Nations High Commissioner for Refugees, relies on established systems of professed legitimacy and fairness yet enacts racialized and eugenic colonial forms of violence.

This is a clear example of confluence which common in the cases analyzed. Niranjan's dehumanized identity depends on the colonial processes of Orientalism, erasure, the interdependence of the mental health, criminal justice and immigration systems, the practices of the selective referencing and discretionary interpretation of law by authorities and administrators, the appropriation of Niranjan's own testimony wielded against him and the reliance on moral and ethical arguments to justify atrocities (i.e. considering safety to "the Canadian public" as the primary consideration which depends on its own construction of who it includes and the construction of who it excludes), all to advance a eugenic and racial colonial nation building project.

The Undeserving: the foreign, the alien, the Other

Through the cases of Carlton Anthony Williams, Wei Yang, Junior Christopher Weekes, Steven Anthony Bryan, and Audley Horace Gardiner, we can discern how notions of a foreign alien or undeserving Other are also relied upon (interdependently

with the notions of untreatability and unrehabilitability) at the confluence of immigration, mental health and criminal justice systems to authorize and legitimate violence.

The Undeserving-The case of Carlton Anthony Williams continued:

In the case of Carlton Anthony Williams, Carlton is also reproduced as someone who is Other, who does not belong in Canada, and is a non-contributing burden to society thereby underserving of Canadian support or care. Carlton is identified early as originating from Jamaica and not being a Canadian citizen. The history of the 29 years he has spent in Canada is reduced to a history of his criminal charges, and an abridged history of his psychiatric involvement. Although he has family and they are described as supportive, a rationale is advanced that the family will not face any “undue hardship” if Carlton is to be deported. Although Carlton has been in Canada for 29 years, he is deemed as undeserving of care or treatment and a burden to Canadian society. His conditions demand that he maintain full-time employment while simultaneously being incarcerated at medium security mental health institution which involves perpetual supervision and facilities to restrain, individually confine and forcibly sedate individuals. In a medium security facility, people are allowed to occupy communal areas and participate in programs where eligibility is determined on an individual basis through an assessment of compliance. The inclusion of a requirement for full-time employment merely acts to reinforce the idea that Canadians are expected to be employed and this is all too often solely the responsibility of the individual. It also served to act as a condition that Carlton will not be able to fulfill in his current situation and thereby used as evidence

for his burdensome status in reference to Canadian society (which he is not considered part of). The safety and health of Canadian society is proclaimed to be upheld while Carlton is confined within conditions that make it difficult for him to be well or be considered as included in Canadian Society.

Any resistance is often taken as evidence for an illness or criminality, rarely provoking discussions on why so many people appeal removal orders and have difficulty succeeding within biomedical, criminal justice or immigration systems as a non-citizen. These practices have all too common trajectories and outcomes that replicate the violent technologies of colonization. Ideas symmetrical to the colonial projects of developing mechanism of identification to establish hierarchies (racial, mental, gendered, abled, etc.), the deployment of dehumanizing discourses, and a reliance on eugenic morality continues to achieve their mandate to perpetuate regimes of authority, disciplinary knowledge, and subordination. These violent technologies of colonization, left un-interrogated, invoke ideas of the untreatable, the unrehabilitatable, and the illegal alien. They reproduce the systems of identification that taxonomize people into established hierarchies of worth, rationalize punishment, and legitimize the abandonment of human beings for the overall goals of eugenics. In order to achieve these outcomes, these systems must complement one another. The laws, procedures of authority, and hegemonies of disciplinary expertise must all act in accordance with their mandate of protecting and reproducing a state forged with the violent technologies of colonization. Acknowledging the historical goals, means, and outcomes of colonization permits our ability to recognize them today as institutionalized in law, procedures of authority, and hegemonies of expertise.

The Undeserving - The case of Wei Yang:

In the case of Wei Yang, we see the alliances of the mental health system, the immigration system and the mental health system working to secure the installation of a mechanism of interdependent surveillance and control. Any lapses in mental health status will hold Wei solely and criminally accountable. His extensive reporting requirements are demanded regardless of the fact that he has been assigned to a homeless shelter and living under the perpetual threat of deportation should he find himself charged with another crime, use drugs, find another place to live, miss a reporting deadline or breach any of the 16 conditions set out for him. During this process, the mental health, immigration and criminal justice systems represents themselves as cooperative and generous, “humanitarian and compassionate” for considering a stay. Wei’s conditions are established to ensure that through their production of material in support of a construction of criminality or untreatability, that the opportunity for deportation will present itself in the future as Wei’s status in Canada is Other.

One document was available for analysis:

- 1) Immigration Appeals Division decision 2010, March
Yang v. Canada (Public Safety and Emergency Preparedness), 2010 CanLII 91452 (IRB).

Wei Yang appealed a deportation order made against him in 2008 for the conviction he has received in April 2007 of “one count of assault with a weapon contrary to Section 267(a) of the *Criminal Code of Canada*” (Yang v. Canada, 2010). Wei is described as a permanent resident of Canada and a Citizen of China who came to Canada in 2003. At the time of the decision, Mr. Yang had been in Canada for 7 years. Wei came

to Canada from a UNHCR refugee camp in Thailand. Wei received “thirty- days, pre-trial custody coupled with twelve months probation and a five-year weapons prohibition was imposed on him”. Since the conviction attracts a maximum penalty of up to 10 years (which Mr. Yang did not receive) he is eligible for deportation. Wei asked to stay the deportation order on humanitarian and compassionate grounds. The IAD makes certain to state that Wei “does not challenge the validity of the deportation order” thereby ensuring that the deportation order could be upheld and enforced at a later date. The Lawyer for the Minister of Public Safety and Emergency Preparedness (which is the representative of the Canadian Border services Agency) and Wei’s lawyer agreed to a 5 year stay with significant conditions. The panel agrees to accept the “joint recommendation” of a stay for 5 years.

The panel states that they have reservations about the decision. Specifically that Wei used a “meat cleaver to menace a Rogers’ sales agent who he believed sold him a defective cellular telephone.” The document notes that Wei did not cause actual physical harm however, “the weapon he used had the potential to inflict serious harm on his victim.” The second reservation is that Wei “has a history of mental illness” and they were unclear what supports he had. The third reservation was the accumulation of “two further offences that involved violence” and another for “the possession of weapons dangerous to the public peace”.

One of the conditions is that Wei be supervised by the Toronto Bail Program including the approval of where he lives and if he should move or change his address, he is expected to “sign any and all consent release forms required by the Toronto Bail

Program” and “be amenable” to this supervision. The Toronto Bail Program also supervises Wei “plan of care” which “calls for the appellant to live at Seaton House where he will be treated by an on-site psychiatrist”. Seaton House is the largest shelter for men experiencing homelessness in Toronto and was built during the Great Depression to provide a place to sleep and meals to men looking for work. It is temporary shelter and not considered stable housing.

The document notes that Wei has been diagnosed with an anxiety disorder and is currently on medication that will also be supervised by the Toronto Bail program and a mental health coordinator with the “immigration section of the Toronto Bail program”. The panel notes that they have confirmed with “the appellant’s designated representative” that his is currently on “the medical regime outlines in the plan of care and that his regime is expected to continue while he is at Seaton House.” The panel states that Wei has agreed to be supervised by the Toronto bail Program (suggesting that he had the opportunity to disagree which would result in his deportation). The panel also notes that there is an “agreement of supervision” that allows the Toronto Bail Program to share information with the CBSA, the police “and other parties the Programme deems necessary to fulfill its function”. The Bail Program is also expected to notify the CBSA if the relationship is terminated between Wei and the CBSA or for any other breach of conditions. Wei is given 16 conditions with which he must comply with. He is to surrender copies of all his travel documents and identification documents to the IAD, report to the CBSA every six months with a written report, in-person, outlining the following:

- employment or efforts to obtain employment if unemployed;
- current living arrangements;
- marital status including common-law relationships;

He is required “Engage in or continue psychotherapy or counselling”, to take responsibility for his mental health so that “your mental health condition will not cause you to conduct yourself in a manner dangerous to yourself or anyone else; and (b) it is not likely you will commit further offences”. There are also stated demands to not commit crimes, use drugs, carry weapons, or knowingly associate with individuals who have a criminal record.

In the case of Wei Yang, we see the collaborations of the mental health system, the immigration system and the criminal justice system working to secure an unfavourable situation for Wei and the installation of a mechanism of interdependent surveillance and control for the immigration, mental health, and criminal justice systems. Wei is described as having a mental illness which is a biomedical concern, is being treated with medications and supervised by a psychiatrist and mental health coordinator. Any lapses in mental health status will hold Wei accountable. His charge of assault with a weapon is left uninterrogated and laid to its fullest extent without a consideration of diversion of the charge. His extensive reporting requirements are demanded regardless of the fact that he has been assigned to a homeless shelter and living under the perpetual threat of deportation should he find himself charged with another crime, use drugs, find another place to live, miss a reporting deadline or breach any of the 16 conditions set out for him. The mental health, immigration and criminal justice systems represents themselves as cooperative and generous, “humanitarian and compassionate” for considering the stay. For Wei a case is already being amassed against him, the case for his dangerousness lies with his “agreement” to surrender all

privacy so that the Toronto bail Program and the CBSA can ensure his surveillance. While Seaton House provides basic necessities and care, it will unlikely be a place where Wei will be encouraged and supported to find employment or education, be distant from illicit substances, or be in contact with those without criminal histories. Instead, Wei will be held to account for not thriving in a basic shelter, for not having an improved mental health status when only medications are considered, or for being charged with a crime in one of the most over-policed areas of Toronto. Wei is treated as undeserving of freedom, undeserving of adequate levels of care and support. While notions of Wei's criminality are being developed and evidence of his untreatability being collected, the 16 conditions will ensure that the opportunity for deportation will present itself in the future as Wei's status in Canada is Other, requiring Canadian civilizing and submission or imminent expulsion.

The Undeserving - The case of Junior Christopher Weeks:

In the case of Junior Christopher Weeks, we see the practice of the selective and discretionary application of law in Junior's decisions that authorize his deportation. These legitimizations rest on the immigration, criminal justice and mental health systems construction of Junior as a foreign Other underserving of the rights and protections of a Canadian citizen. Regardless of the 15 years that Junior has been in Canada, he is decided upon as a foreign Other not deserving of acquittal. Although Junior's criminality has been evaluated as not a threat to the Canadian public, he remains under threat of deportation due to a determination of serious criminality.

Three documents were available for analysis:

1. An application for a Judicial review by the federal court, March 2008

Weekes v. Canada (Citizenship and Immigration), 2008 FC 293 (CanLII). Retrieved December 23, 2013 from <http://canlii.ca/t/1w22b>

2. A Judicial review by the Federal Court, June 2008
Weekes v. Canada (Public Safety and Emergency Preparedness), 2008 FC 820 (CanLII). Retrieved December 23, 2013 from <http://canlii.ca/t/1zcpw>
3. Appeal to Immigration and Appeal Division March, 2009
Weekes v. Canada (Public Safety and Emergency Preparedness), 2009 CanLII 78181 (IRB). Retrieved December 23, 2013 from <http://canlii.ca/t/2840c>

In March 2008, Junior Christopher Weeks appealed a decision by the Immigration Appeal Division that denied him and extension of time in which to appeal his removal order (Weekes v. Canada [Citizenship and Immigration], 2008). He represented by his litigation guardian John Norquay. Junior is described as a citizen of Guyana. He was sponsored by his father and became a permanent resident in 1995, 13 years prior to this decision. In 1997 and 1998 Mr. Weeks accumulated a number of criminal charges that are listed early in the document including: cocaine possession, failure to attend Court, obstructing a peace officer, failure to comply with a probation order, uttering forged documents and possession of stolen property exceeding five-thousand dollars. A deportation order was issued for him in October of 1998 while he was incarcerated at Maplehurst detention Centre.

Junior reports that his previous lawyer filed an application for an extension in 1999 and never received a response. The Ministry of Citizenship and Immigration claims they did not receive the application. From 1998-2006 Junior was in custody and released on bond twice. In September of 2006 he was informed of his removal date, in October he resubmitted his application for an extension in order to appeal his deportation order, which was denied in April 2007.

The entirety of the IAD's decision reads as follows:

The application for the late filing of Notice of Appeal of deportation order issued over 8 years ago is denied. The appellant failed to establish as to why he had to wait so long before filing an appeal against his deportation. I certify that this is the decision and reasons of the member in this appeal.

The March 2008 review examined whether Junior was denied procedural fairness when he was denied his extension. Junior argues that the IAD breached procedural fairness by failing to provide adequate reasoning for the decision. Junior highlights two important issues: 1) that he had applied in 1999; and, 2) he belongs to a vulnerable group that was unable to appreciate that he had to appeal in a given time period. Junior submitted that the "IAD's use of the phrase "waiting so long before filing an appeal" demonstrates a failure to appreciate the significant problems and particular circumstances faced by the applicant and is not in the spirit of *Guidelines 8 on Procedures with Respect to Vulnerable Persons Appearing Before the IRB.*"

The Minister of Citizenship and Immigration (of the respondent to this application), submitted that reasons for decisions only need to be given in 3 circumstances "(1) with respect to final decision of any division of the Immigration and Refugee Board, (2) where the Refugee Division rejects a claimant's claim for refugee protection, and (3) where the person concerned or the Minister requests written reasons for the final decision" and that this decision was interlocutory or provisional and therefore no reasoning was necessary. The document cites these cases to validate this point "(*Faghihi v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 9370 (FC), [2000] 1 F.C.

249 (T.D.), upheld on appeal in 2001 FCA 163 (CanLII), 2001 FCA 163; *Ali v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1153 (CanLII), 2004 FC 1153."

The respondent (Minister of CIC) submitted that they have considered the only medical/psychiatric evidence that was provided and this included a letter from Dr. Jerry Cooper,

who speculatively concluded that the applicant may have schizophrenia, but that he was not certain. The respondent noted that Dr. Cooper's letter further stated that he found the applicant to be of low average to average intelligence, oriented in all spheres with social judgment superficially intact. The respondent submitted that there was also evidence before the IAD showing that the applicant was capable of, in the past and currently, appointing a lawyer to represent him in immigration and criminal matters

In this section of the decision document the court aims to undermine the existence or impact of any mental health issues that Junior may be struggling with so as to dismiss it from consideration. The respondent also submits that Junior had "waived his opportunity to raise an objection to the appeal process" at the time of his appeal or the 8 years after. As the document notes, "inadequate representation from counsel does not entitle the applicant to have a decision set aside."

In the decision analysis, the court addresses two issues. The first is "what is the appropriate standard of review". With regards to giving reasons for the decision and procedural fairness, the court finds that, "The overall decision of the IAD is a question of mixed law and fact, reviewable on a standard of reasonableness". The second issue the court addresses is "did the IAD breach procedural fairness in failing to provide the applicant with adequate reasons for its decision"? The judge determines that these are

inadequate and rules that the judicial review be allowed and referred to a different panel of the IAD.

The judicial review decision was made on June 30, 2008 with regards to the decision that was made to not defer his removal from Canada (*Weekes v. Canada [Public Safety and Emergency Preparedness]*, 2008). Junior's representative, Mr. Norquay, reported on Junior's history of mental health problems including a diagnosis of schizophrenia in 1990 by a psychiatrist, Dr. Cooper. A copy of Dr. Cooper's report is included as a piece of evidence. Mr. Norquay reports that he met with Junior in October of 2006 and found that Junior "did not understand or appreciate the nature of the proceedings against him". Mr Norquay describes Junior's criminal record as relatively minor. two charges were related to legal proceeding, i.e., failing to attend court and failing to comply with probation, he has been given conditional discharge and further charges in 2000 and 2001 were withdrawn. He has served his short sentences already for the other charges, 13 days, 60 days, and one month respectively.

The decision document notes that Mr. Norquay provided a copy of the facsimile confirmation from 1999 when Junior's previous lawyer submitted the first application for an extension of time to appeal the deportation order. It is noted that no response was received by Junior or his representatives nor was a decision made by the IAD. The Judge notes that the original refusal of deferral of Junior's removal order was an error because relevant evidence was ignored. The judge also notes that in 1999, the report from Dr. Cooper "expressed the opinion that the Applicant would not be able to understand the need to appeal the deportation order".

The document describes that the officer who denied Junior the deferral took into account his “impecuniosity” (lack of money), “lack of a permanent address and prior breaks of condition of his release”. The officer is noted to have said,

“that since the Applicant has no means to support himself financially, has been in receipt of social assistance and had no fixed address but was residing at the Salvation Army, has previously breached the condition of his release and had been charged with possession of cocaine, which charge was subsequently withdrawn, he, the Applicant, would likely return to “street life” if released from detention”.

The application for judicial review is then allowed and the decision of the officer to not defer Junior’s deportation is quashed.

In March 2009, a decision was made with regards to Junior’s deportation order appeal. Junior is requesting a stay of 2 years (*Weekes v. Canada (Public Safety and Emergency Preparedness)*, 2009).

The panel decides that it would not be appropriate to grant an outright appeal under section 67(1) of the IRPA which states

- 67. (1)** To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of,
- (a) the decision appealed is wrong in law or fact or mixed law and fact;
 - (b) a principle of natural justice has not been observed; or
 - (c) other than in the case of an appeal by the Minister, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.

Junior’s decisions up until this point has been wrong in fact and the federal courts have acknowledged this yet the IAD is only allowing a stay of two years. The panel also notes that he is not in receipt of social assistance. They also note that with regards to his criminal record, “The appellant’s CPIC record reflects convictions from 1998. They are

property offences. There is no history of violence and there have been no other criminal convictions since that time.” Junior had designated representatives testifying on his behalf, his father and his step-mother. The panel reviewed the Ribic factors for Junior’s case and in term of the seriousness of his offence, the panel found that the crimes are “somewhat dated” and the sentences indicate that they are not serious charges.

In terms of rehabilitation, Junior is noted to be “responding well to his medication”, even though he requires designated representatives. He is also noted to “not present a risk to public safety”. In terms of his length of time in Canada and establishment, this is weighted in Junior’s favour because he has been in Canada since high school, has some employment history, and family that is socially established here. In terms of hardship to the family, the panel determines that his family would be “quite devastated”.

With regards to hardship Junior would face if sent to Guyana, the panel notes that

“It is clear to me from that evidence that the mental health system in Guyana is unlikely to provide much support to the appellant were he to be removed there. In particular, the report from the World Health Organization confirms that the mental health system in Guyana is fragmented and poorly resourced, and that persons with mental health disorders are reported to suffer discrimination in their communities, workplace and educational institutions. Mental health services appear to be inadequate. As well, the appellant does not appear to have any family support in Guyana and, given his limited cognitive ability and his mental health problems, the appellant would clearly experience significant hardship were he removed to Guyana.”

The panel finds that “special relief” is warranted and the stay is allowed for 2 years with 10 conditions to report and information changes, address changes,

employment, education etc. to the IAD and the CBSA, surrendering documents and taking responsibility for his mental health.

The final decision leaves Junior's deportation order intact. The courts and IAD have acknowledged the errors they have made in what information was being considered and within the evaluations of the Ribic factors that would render the deportation order invalid and make the act of deporting Junior devastating to his family and harmful to Junior. Regardless of the 15 years that Junior has been in Canada, he is decided upon as a foreign Other not deserving of acquittal. The period that Junior was in custody up until 2006 is not recognized by the courts or the IAD as a violence they have enacted by denying responsibility for not responding to his initial appeal eight years ago. Although Junior's criminality has been seen as not a threat to the Canadian public, he is still under threat of deportation due to a determination of serious criminality. If he is to fail to report or comply in accordance with the 10 conditions of his stay, Junior would still be deported. He is both constructed as someone who is capable enough to understand the decision of the courts and the IAD to render their decisions valid yet is not mentally well enough to represent himself or to be able to live in Canada without compliance with psychiatric treatment as outlined in his conditions. The selective and discretionary application of law in Junior's decisions that authorize his deportation all rest on their construction of him as a foreign Other underserving of the rights and protections of a Canadian citizen.

The Undeserving - The case of Steve Anthony Bryan:

In the case of Steve Anthony Bryan, we see the selective and discretionary authority of the mental health, criminal justice and immigration system to weigh evidence, apply law, and impose conditions in order to achieve their desired outcome (deportation, incarceration, or surveillance). Also rendered transparent is the antagonism within the criminal justice, mental health and immigration systems through the Minister's actions to appeal Steve's stay order to achieve deportation. Mr. Bryan's criminality is linked to his mental "illness" and the use of imprisonment is rationalized through this linkage. The probability of achieving wellness and integration or belonging in Canada is foreclosed upon for Mr. Bryan. Under threat of removal, constant surveillance and biomedical rule, finding a job and becoming a Citizen are not foreseeable options. Bryan is designated a life of a foreign threat being contained and watched.

One document was available for analysis:

- 1) Federal Court Judicial Review February 2006
Canada (Minister of Citizenship and Immigration) v. Bryan, 2006 FC 146
(CanLII).

In 2006 a judicial review was held for a decision of the IAD made in April of 2005 that stayed a deportation order for Steve Anthony Bryan for 4 years with conditions (Canada [Minister of Citizenship and Immigration] v. Bryan, 2006). Mr. Bryan was born in 1972 in Jamaica; he is 34 years of age at the time of this decision and became a permanent resident in Canada in May of 1989. Mr. Bryan has lived in Canada for 17 years. The introduction to the decision reads as follows" The Respondent led a law-abiding life until approximately 1995, when he was diagnosed with schizophrenia. His

mental state led him to commit numerous criminal offences and he has accumulated 36 criminal convictions since 1995.”

The court document notes that Mr. Bryan has been detained at various correctional and mental health facilities since late 2000. He is currently being held (at the time of the review) at the St. Lawrence Valley Correction and Treatment Centre, Secure Treatment Unit in Brockville, ON. The deportation order was made in March of 2004 on ground of serious criminality. Mr. Bryan has been in detention since March 2005. The immigration division reasoned that “the absence of a "plan B" in the form of a stay in a suitable halfway house as a key factor in its decision”.

The Minister of citizenship and Immigration applied for a review of the stay decisions because the plan for Mr. Bryan had not been finalized and this is insufficient grounds with which to grant a stay. It is noted in the court document that the admission process was underway for Regeneration Housing and Support Services for My. Bryan.

In the board’s decision granting the stay, the panel notes that

In the circumstances of this case I do not believe that the appellant should be held at fault for the absence of an appropriate release plan. In my view, accountability rests with his counsel, his designated representative, his family, and medical practitioners, social workers and other professionals on whom the appellant relies to make appropriate Decision [*sic*] on his behalf. Although the plan lastly provided by Ms. Boardman [Ms. Boardman is the Respondent's social worker] is still unclear, I am satisfied that Ms. Boardman and others have decisively turned their mind to the appellant's plight. I am also satisfied that, albeit belatedly, concrete steps are being taken to ensure that the appellant is provided with an appropriate release plan. The appellant asked that I consider a stay of his removal order to show that he can be fully rehabilitated and I have turned my mind to this. For the above reasons I do believe that the granting of a stay is warranted. A stay of removal from Canada is granted for four years with specific stringent conditions.

Mr. Bryan is given 19 conditions regulating his behavior one of which is “to reside exclusively at a place arranged by his social worker and Regeneration Housing and Support Services, and he has to comply with all conditions placed upon him by the Toronto Bail Program, or any other similar program”. The court has an interim review scheduled for January 2006 of Mr. Bryan’s stay. The Minister wants to continue with the judicial review of the decision so that the board is forced to reconsider the stay.

The Minister argues that the plan for Regeneration House was accepted even though Mr. Bryan had only been put on a waiting list. The Minister also argues that supervision from the Toronto Bail Program was not in place and had a letter from the Executive Director of the Toronto Bail Program stating that they “could not and would not” continue to supervise Mr. Bryan if a stay was granted. Mr. Bryan and his counsel submit that the Board had considered all of the evidence and factors and the decision was “within the Board’s discretionary power.”

The court finds that the Board does have discretion to stay a removal order on humanitarian and compassionate grounds “in light of all the circumstances of the case”. Also, “The Board is also given a broad discretionary power to impose, vary and cancel conditions, and to reconsider any stay that it grants.” The court rules that the plan does not need to be finalized in order for a stay to be granted. The Ribic factors were considered, the stay is warranted and the application for judicial review is dismissed. The court also notes that if the plan does not get finalized, the stay can be cancelled by the Board or the Minister’s initiative.

In Mr. Bryan's case, the discretionary authority of the Board to weigh evidence, apply law, and impose conditions is made transparent. This discretionary authority serves to hold Mr. Bryan responsible for his 19 conditions while any failure on the part of the systems that support him (due to lack of available services for Mr. Bryan or by way of finalizing a plan prior to his court decision) will not be considered as factors relating to his ability to stay well or away from the criminal justice system. Also rendered transparent is the antagonism within the criminal justice, mental health and immigration systems for Mr. Bryan's favor (a stay for 4 years), the decision is appealed by the Minister of Citizenship and Immigration to have it undone and the deportation order enforced. Mr. Bryan's criminality is linked to his mental "illness" and the use of imprisonment is rationalized through this linkage, i.e. "Mr. Bryan has been detained at various correctional and mental health facilities since late 2000". The nature and circumstances of his 36 charges are not discussed in this case as they are not required in this instance to argue for his serious criminality. The outcome desired is achieved, the imposition of 19 regulatory behavioral conditions, a stay that can be revoked at any moment and the sustenance of a deportation order that cannot be challenged. The probability of achieving wellness and integration or belonging in Canada is foreclosed upon for Mr. Bryan. Under threat of removal, constant surveillance and biomedical rule, finding a job and becoming a Citizen are not foreseeable options. Bryan is designated a life of a foreign threat being contained and watched.

The Undeserving - The case of Audley Horace Gardiner:

In the case of Audley Horace Gardiner, we see the interdependence of the criminal justice immigration and mental health systems achieve an outcome of deportation, without family support, stable housing, without access to affordable medication, and likely to end up on the streets. Audley, who has lived in Canada for over 30 years, was “compliant” with the mental health system for over a decade, submitting to complete observation, injection medication and a life without freedom. Authority is established through the validation of facts (that rests on the invalidation of counter facts), the forging of a portrait of violent criminality (dependent on an erasure of social, historical and political circumstances) and the establishment of Audley as a foreign subject who is not a member of Canadian society therefore undeserving of Canadian care (abridging his 30 years in Canada to a history of violence and mental illness). The Canadian government reinvigorates its position as the protector of Canadian society, as reasonable, and humanitarian and compassionate in its considerations.

Two documents are available for analysis:

- 1) Immigration Appeals Division-Removal order appeal January 2008
Gardner v. Canada (Public Safety and Emergency Preparedness), 2008 CanLII 69814 (IRB). Retrieved December 23, 2013 from, <http://canlii.ca/t/222n0>
- 2) Federal Court Judicial Review July 2011
Gardner v. Canada (Citizenship and Immigration), 2011 FC 895 (CanLII). Retrieved December 23, 2013 from, <http://canlii.ca/t/fmf79>

Audley Horace Gardiner appealed a deportation order made against him in April of 2007 for a conviction in 2005 of assault with a weapon (Gardner v. Canada [Public Safety and Emergency Preparedness], 2008). The panel’s decision document states that they will consider the Ribic factors. It is stated that Audley has a diagnosis of paranoid

schizophrenia and was found not criminally responsible in 1993. Since 1993 Audley received injection medications from CAMH, he was at CAMH for a year and a half then released under supervision in the community where he would be required to go to CAMH once per week for assessment and medication. The panel notes that in 2003 Audley's injection medication was changed to pills. It is described that he has continued and is presently taking his medications.

Beginning in 2005, over a period of 11 months, Audley was convicted of three assault charges. Audley testified that these were in self-defense. The panel notes that the police reports do not reference self-defense and one of the assaults does not even have a police report. Audley plead not guilty and served 163 days in jail of a 2 year sentence. The panel states that it has no report from a psychiatrist or psychologist to suggest that these 3 crimes were a result of a deterioration of Audley's mental health. They also state that there is no reliable documentary evidence that "there is a change in medication that could be prescribed that could stabilize the appellant in such a way that he would not be likely to re-offend."

The panel describes that in the absence of evidence, or based on the evidence it has, "there is a possibility of reoffending and that the possibility of rehabilitation has not been established". The panel takes as evidence a letter from the Minister of the Solicitor General and Correctional Services as evidence that Audley is "a very high risk offender". The Minister's letter also states that it is likely that Audley had a psychotic break-down but this is discredited by the panel as speculation.

Ms. Stewart from the social work department states that Audley is “resistant to psychiatric care, if not closely supervised”. Audley had been co-operative with medication at the Toronto West Detention Centre where he has been in detention since 2006. The panel received two letters from a mental health organization, “Homeward”. The letters indicate that housing at a private boarding home is being arranged, psychiatric follow up is being set and Audley agreed to take medication as prescribed, by injection, once per month. The panel determines that none of this is enough evidence to convince the panel that Audley’s violent behavior can be controlled.

The panel notes that Audley has one sister and does not know what her role is in Audley’s life. They do however note that Audley’s sister did not testify, implying that if she was a part of his life, she would be present to testify. Audley testified that he has other brothers and sisters in Canada but has not seen them for years. He also has a son but has not seen him since 1997 and does not know which name he goes by. The panel concludes that Audley’s deportation would not cause any harm to his family and that he received no support from them. The panel also states that the degree of hardship to Audley if he was to be deported to Jamaica is to be established by evidence submitted by Audley. They will not consider previous decisions to this end and therefore this factor is eliminated from consideration.

The panel decides that Audley has not been,

a productive member of Canadian society, he does not own any property, and the likelihood of finding a job in Canada is no higher than the likelihood of finding a job in Jamaica since there is no evidence from either country as to any job offers or any attempt on the part of the appellant to obtain employment in either country.

Audley testified that he has worked in Canada for a number of years and he received Canadian Pension Plan payments and he as well has \$5000 in the bank. The panel dismissed this testimony due to a lack of documentary evidence.

The panel dismisses the appeal. Stating,

The evidence the panel has is of an appellant who is a paranoid schizophrenic who, despite being on medication, has engaged in criminal activity of a violent nature. The panel has insufficient reliable or trustworthy evidence that he can be brought under proper medical control and would not pose a threat to Canadian society.

In July of 2011 Audley had a judicial review by the federal court of Canada on a decision to not grant Audley permanent residency status based on humanitarian and compassionate grounds (*Gardner v. Canada [Citizenship and Immigration]*, 2011). Audley sought to resist his inadmissibility decision for serious criminality that made him eligible for deportation. For almost 5 years now Audley has been fighting to stay.

The Federal court document reports that Audley is 48 years old at the time of this decision. He was sponsored by his sister in 1980 when “he was just 18 years old” Audley has been in Canada for over 30 years. The courts reviews his history in Canada in relation to the mental health system and criminal justice system:

...was diagnosed with paranoid schizophrenia and found not criminally responsible following a violent offence. The Applicant received in-patient care for a year and a half. After his discharge in 1993, the Applicant received outpatient care in the form of weekly assessments and medication monitoring. He was given antipsychotic medication by injection until 2003, at which time he began taking pills instead. The Applicant is also diabetic.

Diabetes is one of many negative side effects of long-term anti-psychotic medication use.

The Federal court document cites that in 2004, Audley lost his housing by way of eviction. He spent “the next year and a half living in various homeless shelters”. Audley’s

counsel reported that it was during this time that his “schizophrenic symptoms” returned and made it difficult to manage his diabetes or medications regularly. In the 2008 decision, the charges accumulated in 2005 were deemed due do unmanageable criminality. They reasoned that Audley had been taking medication regularly and since no psychiatrist had submitted evidence noting a deterioration during this time, it must be therefore due to his irreparable, unrehabilitatable criminality.

The 3 charges of assault began when he was charged for stabbing another resident at a shelter. The 2008 document notes that Audley reported that these were in self-defense but since the police report either did not exist nor did it reference self-defense, it was not considered. The Federal court reviewed the 2008 decision findings and concluded, “that the Applicant had committed these violent assaults while on medication, and therefore he posed too great a continuing threat to the health and safety of the Canadian public”. Audley submitted a pre-removal risk assessment application in 2008. It was found that since any risk to Audley’s life would come from inadequate medical care this does not constitute a risk worthy or protection under the law. See section 91 (1)b, (iv)²³ of the IRPA.

²³ 97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if
(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

In October of 2010, Audley was found to be unfit to instruct counsel and his niece was appointed litigation guardian. The decision considering humanitarian and compassionate grounds reasoned that Audley is a future danger to the Canadian public because he “was a high risk offender who violently attacked strangers without provocation”. They found that Audley’s plan to live with his niece for support, to see a community mental health program 5 days per week and to take his medication was insufficient because he did not agree to take injection medication.

The court’s decision document notes that the CBSA has already been arranging for Audley’s deportation to Jamaica. They had been working with a Captain Rubin Philips to transport Audley to Jamaica (apparently the captain appropriated thousands of dollars and is no longer involved according to the Federal court documents). The psychiatrist in Jamaica who was contacted reported that Audley would not be able to afford medication in Jamaica, even under subsidy. The psychiatrist also reported that Audley could only stay in a shelter for 30 days and he could not stay in hospital as there are not enough beds for housing purposes. The psychiatrist also noted that Audley did not have family in Jamaica and that “this man is more likely than not to end up on the streets of Jamaica”.

The officer making the humanitarian and compassionate grounds decision dismissed the submissions from the Psychiatrist from Jamaica “since the doctor had not personally met the Applicant and had no first-hand knowledge of the family’s whereabouts or finances”. The Officer then relied on the psychiatrist’s evidence to state that “30 days of housing would be available, subsidized medication was available as long as the Applicant

secured a tax-payer registration number, and that the mental hospital is able to serve acutely mentally ill patients.” Here the officer works to completely falsify the availability of housing, medication and hospital care for Audley in order to authorize his deportation.

The officer considering the humanitarian and compassionate grounds also references a UK Home Office report mentioning that mental health services are moving towards more community based mental health care as evidence for available treatment. Audley’s counsel reported that homelessness, an increased risk of police brutality, unprovoked attacks as well as prejudice by the public was a likelihood for Audley. The officer dismissed these reports as speculative and that there was insufficient evidence to support this claim.

With regards to family support, the officer reported that “If Mr. Gardiner’s family in Canada is indeed attached and committed enough to help him in Canada it is not evident why they would be disinterested in redirecting their energies and financial resources to assist him in Jamaica.”

In reviewing the question of “did the officer unreasonably reject the proposed plan of care, based on an exaggerated perception of the applicant’s risk to the public?” The federal court found that the

officer undertook a detailed analysis of the Applicant’s file and came to a reasonable conclusion. As a long-time Canadian resident suffering from mental illness, the Applicant presents a sympathetic fact scenario. However, I am unable to say that she erred in concluding that the proposed care plan was insufficient.

The suggested support plan of the niece and community based mental health care was deemed insufficient because it was voluntary. The court states in the decision document

that the officer “could have come to the opposite conclusion, but given that her decision was justified, transparent and intelligible, it must stand”.

In reviewing the question of “did the officer unreasonably conclude the applicant would have family and community support in Jamaica?” Audley submitted that the officer erred in finding that community-based treatment is available in Jamaica and that his family would be able to provide support for him there. The court adhered to the arguments and considerations of the humanitarian and compassionate grounds consideration officer. The existence of his father in Jamaica and his brother (although his father is 80 years old and has pancreatic cancer and his brother is estranged) is considered as the existence of family support. The UK Home Office report document is taken as evidence that community-based services are available to Audley. This is considered over the direct testimony from a psychiatrist who currently works in Jamaica who stated that Audley would only have housing for 30 day, he would not be able to afford medication even under subsidy and he would likely end up on the streets. This is also seen as a reasonable plan instead of staying in Canada with his niece and being treated by a community-based team. As the court document notes, “The Applicant’s niece appears to be concerned with the Applicant’s well-being, so, as noted by the Officer, the possibility exists that she, and other family members, might be able to re-direct financial assistance in order to help re-establish the Applicant in Jamaica. These conclusions were open to the Officer”.

As to the question, “did the officer unreasonably conclude that the applicant would not face risk in Jamaica?” the court acknowledged that permanent residents have fewer rights than

citizens of Canada in that they can “lawfully be removed from the country notwithstanding difficult personal circumstances or vulnerabilities.” The court also suggests that Audley is using his mental illness to manipulate his citizenship status. The document states that “H&C consideration is exceptional and discretionary, and is not a “back door” through which to gain entry into Canada when the front door is closed”. In the final analysis the court reports that “The Officer gave thorough and detailed reasons. The decision is intelligible, justified and transparent. The Applicant has not shown that evidence was ignored or over-looked. Judicial deference is due to the decision and this Court will not interfere”.

Audley submitted that section 36(1) of the IRPA is discriminatory to people with mental illness (i.e. the serious criminality section that makes one eligible for deportation) because

it fails to take into account the already disadvantaged position of mentally ill foreign nationals. The result being that they are denied the benefit of permanent residence and protection from removal because of their disability, based on stereotypical assumptions that mentally ill people are inherently dangerous and incapable of rehabilitation.

The respondent dismisses this as “speculative” and cites a previous decision (*Chiarelli v Canada* [1990]) “as authority” that allows for limiting the rights of non-citizens to remain in Canada over the protection from discrimination provisions of the charter.

The court states that,

once the government creates a right available to everyone, in that case free health care, access to that right must be provided equally. However, in this case, the government has not created such a right. Section 6 of the Charter and *Chiarelli*, above, authoritatively establish that foreign nationals have no right to remain in Canada, no matter their state of mental or physical health. The Applicant’s argument fails.

The application for judicial review is dismissed and Audley is deported. The UN human rights committee in Geneva asked Canada not to deport Audley (Keung, 2011, September 1). He was deported anyway. Audley served almost 5 years in prison from 2007 until his deportation fighting for justice that never came.

In Audley's case, the final decision rests itself on the erasure, dismissal and selective interpretation of law used in prior decisions relying on the testimony of the criminal justice system, the immigration system and psychiatric and social work testimony from the mental health system. In the end, Audley, who lived in Canada for over 30 years, who was "compliant" with the mental health system for over a decade, submitting to complete observation, injection medication and a life without freedom is deported. Deported without family support, no stable housing, without access to affordable medication, and likely to end up on the streets. This outcome is achieved through the construction of a dangerous criminal, a threat to Canadian society quilted together through the elimination of the circumstances of his homelessness, struggles in self-defense in the shelter system and diabetes. In a brief 11 months period Audley is quickly reminded that he is not Canadian, he does not belong and he is undeserving of Canadian support, protection or care. Audley's years upon years held in prison are not taken under consideration with respect to his wellbeing. In fact, his jail time while taking medications is viewed as "treatment". Prison, immigration holds and hospitalization are used interchangeably at the confluence of mental health, immigration and criminal justice systems. His identity as a biomedically disordered anomaly and a foreign Other serves to maintain the necessity of his injections and his individual responsibility while in Canada but unnecessary when he is in Jamaica. He will no

longer be a threat to the Canadian public once he is gone. The mental health team responsible for his treatment in Canada is rarely mentioned in the case.

In the cases of Carlton Anthony Williams, Wei Yang, Junior Christopher Weekes, Steven Anthony Bryan, and Audley Horace Gardiner we can see how specific decision making practices at the confluence of mental health, criminal justice and immigration systems depend on the construction of a undeserving foreign alien or Other (considered qua Žižek as a form of violence) in order to rationalize the violence of deportation, confinement, erasure, or the application of harm through psychiatry. The reliance on the construction of the undeserving foreign Other is dependent upon the existence of the constructed identities of the untreatable biomedical anomaly and the unrehabilitatable criminal in order to achieve the common outcome of containment or removal.

“Not our problem!” –reinforcing exclusion and expulsion

“Not our problem!”-The case of Carlton Anthony Williams continued:

In the first two paragraphs of the 2005 decision documents for Carlton Anthony Williams, after the introduction, Carlton’s representation is constructed as being from "that country", then he is described as criminal, unemployed, addicted to crack, and violent. Separately, he is described as "mentally ill". These points are made with purpose to depict him as undeserving of Canadian support, deeply uncontrollably criminal, a "crack" user thereby invoking imagery of the *crackhead* including its racial and classed representations. The reference to his uncontrolled violence serves to depict him as a threat and the psychiatric discourse as biologically different. A crazy, violent, drug using,

criminal, immigrant who does not work. The points are presented as seemingly separate facts but are uniquely selected in a very particular arrangement that has significant historical relevance.

Carlton is also depicted as someone who has no control of himself and needs to be controlled. The authorities on his deportation are represented as having been generous to Carlton by granting a stay but he continues to be violent, criminal and non-compliant with psychiatric intervention. He is therefore unable to cope with freedom and needs to be detained. He does not know what is best for him. This is a particularly peculiar rationale given his choice to appeal his deportation and as stated in the document, he has shown improvements and lived in Canada for 29 years.

The panel decides that Carlton is only a non-threat when he is institutionalized. His history is taken as evidence of his “inability to rehabilitate himself”. Carlton is represented as oppositional to the Canadian Public. These items are weighted together while erasing any external responsibilities or contributing social, economic or political factors.

Carlton’s suffering is valued as not as important as the feelings of the Canadian public. The Canadian Public will be accepting of the level of suffering imposed on Carlton through his deportation because he has been portrayed as deserving of punishment. Any outrage or guilt from the Canadian public might prevent the suffering that Carlton is being forced to endure. However, Carlton’s life is judged to be less important than potential discomfort of the “Canadian Public”.

Carlton is commanded to comply with the expectations of civility; employment, psychiatry, no criminality, no illegal drugs. The expectations for him are provided without an acknowledgement of his structural disadvantage, being without freedom, without the ability to apply for jobs while having a criminal record, without the freedom to seek support that he actually find beneficial to his mental wellbeing or effective.

The Mental Health Act's authority to impose institutionalization and forced medical/psychiatric treatment is dependent upon a construction of Carlton as a threat to himself or others in section 15(1). The advancements of the notions of criminality as separate from his mental health and individualized permit a direction of blame towards Carlton. This separation is also concretized in the Criminal Code of Canada that provides the powers to psychiatric testimony and intervention in section 672.1, while simultaneously making him eligible for deportation through the articulation of "serious criminality" that is provided by section 36 of the Immigration and Refugee Protection Act.

The laws appear to be separate, have separate authorities and draw on the professional knowledge of distinct disciplines. However, they have historically been woven together to permit certain outcomes. These provisions listed under the Mental Health Act, the Criminal Code of Canada and the Immigration and Refugee Protection Act rely on one another to reinforce notions of the undeserving alien, the untreatable genetically inferior, and the undeserving Alien. If an argument is advanced with regards to Carlton's mental health treatment, his criminality is leveraged as a separate consideration that requires removal. If any argument is forwarded to appeal to his overall

wellbeing in Canada vs. Jamaica, his foreign status is leveraged to categorize him as undeserving of Canadian services and a threat to the Canadian public to which Carlton does not belong. Carlton is portrayed as a symbol of savagery and degeneracy, requiring civilizing, his own voice and history are erased and he only participates as the terrain upon which his freedom is negotiated.

“Not our problem!” - The case of Anton Evguenievitch Gabrielelev:

In the case of Anton Evguenievitch Gabrielelev we see a very different set of outcomes through the collaboration of the mental health, criminal justice and immigration systems. Anton’s criminality is excused by his mental illness rather than being bound to it thereby rationalizing his need for expulsion or containment. Anton’s family and length of time in Canada weighted in his favor. Anton’s is the only case that mentions Pardon’s Canada as an option for nullifying a deportation order. The Minister came forward in Anton’s case and volunteered to grant him the appeal under humanitarian and compassionate grounds, a generous offer that was not necessary in Anton’s case. Anton is the only case among the 10 analyzed here that is not from the Caribbean, South Asia, Africa, or South East Asia. Anton’s is however established as a biomedical anomaly who requires psychiatric observation, a community treatment order to provide surveillance on his mental health. He is someone who is unable to represent himself or to work. The Canadian immigration system, its criminal justice system and mental health system are presented again as considerate of humanitarian and compassionate grounds, protecting the Canadian public and providing fair and equitable consideration to the Ribic factors.

It is important to note here that of the 10 cases selected for in-depth analysis. Anton's case was among the 10 that were randomly selected. It was not selected because he was treated so very differently those in the other 9 cases nor because he was White. The absence of so many of the processes of Othering evident in the other 9 cases is astonishing to say the least. This outlying case also implores that we question its special treatment of Anton. An outcome possibly due the role of Canadian and American government's favoritism of those coming from non/post-communist states. We must of course also question the role of race in this decision.

Two documents were available for analysis:

1. Immigration Appeals Division deportation order reasons and decision 2008 *Gabrielev v. Canada (Public Safety and Emergency Preparedness)*, 2008 CanLII 76475 (IRB). Retrieved December 23, 2013 from <http://canlii.ca/t/23t3g>
2. Immigration Appeals Division deportation order reason and decision 2011 *Gabrielev v. Canada (Public Safety and Emergency Preparedness)*, 2011 CanLII 89966 (IRB). Retrieved from December 23, 2013 from <http://canlii.ca/t/fq87t>

Anton Evguenievitch Gabrielelev had a review of his stay requested by the Minister of Public Safety and Emergency Preparedness "based on a number of alleged breaches of the conditions of his stay" on October 20, 2008 (*Gabrielev v. Canada [Public Safety and Emergency Preparedness]*, 2008). Anton had failed to report on two of his reporting dates to the Greater Toronto Enforcement Centre. He was also charged with criminal harassment and failed to report this charge to the CBSA. The document notes that Anton's mother submitted a letter indicating that Anton suffers from "a mental illness". Anton is 26 years of age at the time of the decision. He is stated to be a citizen of Russia.

He became a permanent resident of Canada in March 1996 at the age of 14 along with his parents and his younger sister. He has lived in Canada for 12 years.

Anton was ordered deported for serious criminality in 2002 for convictions in 2001 of robbery (two charges), carrying a concealed weapon, and possession of a weapon for a dangerous purpose he was sentenced for a total of 18 months (two years including the 6months pre-sentence custody). In 2004 Anton was granted a four year stay with conditions.

The panel notes that Anton has been diagnosed with paranoid schizophrenia “at least since May 2006. He is on a Community Treatment Order that was first issued in May 2007 and his mother is his substitute decision maker. Anton was not present at the hearing, his mother represented him. The Minister was represented by counsel, Mr. Wayne Hagerty. Anton’s mother requested that the stay be cancelled due to Anton’s mental health issues. The Minister submitted that Anton’s breaches should result in a 2 year extension of the stay with a condition that “Dr. Packer, his psychiatrist provide a more detailed update of his prognosis”. The panel decided to extend Anton’s stay for 2 years reasoning that his breaches were not serious enough to warrant deportation at this time and they need to hold Anton responsible for the breaches nonetheless.

The panel states that they have considered the Ribic factors in the decision. With regards to the seriousness of Anton’s criminal record, it is described as “not lengthy..nor recent..His convictions are the result of a time in his life when he was desperate for money to support his drug habit”.

With respect to the possibility of rehabilitation,

his two failures to report and his failure to report his criminal charge immediately to the Department can be traced to the untreated mental problems he was having at the time. Also, his criminal charge was reported when he filed his next reporting form with CBSA in March 2006, which somewhat mitigates his failure to comply with this condition. He also failed to inform CBSA and the IAD of his change of address when he temporarily left his parent's home and went to British Columbia in 2004, but this too can be traced to a time just before he was diagnosed with mental illness.

The panel also notes that, "The appellant is now living with his parents, seeing his psychiatrist regularly, taking his medications and subject to a Community Treatment Order with his mother as Substitute Decision Maker. The possibility of rehabilitation, to the extent possible for someone suffering from a mental illness, appears positive if he continues to follow this regime to control his schizophrenia." The document also states that Pardons Canada is assisting in removing his criminal record.

With respect to Anton's establishment in Canada, the decision document states that "He has been here all of his adult life. His economic establishment is marginal, as would be expected from someone who was first addicted to drugs and now suffers from mental illness. However, his social establishment is now entirely in Canada. He has completed high school by correspondence and he did work in Canada sporadically before the onset of his schizophrenia. "

With respect to his family and Community supports, the document states that "All of the appellant's immediate, meaningful and supportive family is in Canada. He lives with his parents and his mother is his Substitute Decision Maker. It would be devastating for his family if the appellant were to be removed to Russia, where there are only elderly and ill grandparents. "Also, "The appellant has substantial family and community support in Canada. His parents, his psychiatrist and the medical and social network responsible

for his care and well-being are in Canada. His support network is in Canada. He is now on a disability pension.” In terms of hardship, the panel states that removal to Russia would result in “significant and possibly life-threatening hardship”. The decision is a stay for 2 years with 17 conditions.

In 2011, Anton appealed his deportation order because his pardon had been processed and his grounds for deportation due to serious criminality were also rendered invalid (*Gabrielev v. Canada [Public Safety and Emergency Preparedness]*, 2011). Also the panel notes that “This morning counsel for the Minister appeared and indicated that he would be prepared to consent to the appeal being allowed on humanitarian and compassionate grounds.”. The appeal was allowed on the basis of the charge being pardoned and the removal order was quashed.

Anton’s case appears to be different than the other cases within this analysis in a number of ways. Anton’s criminality is excused by his mental illness rather than being bound to it thereby rationalizing his need for expulsion or containment. Anton’s family and length of time in Canada weigh in his favor, even though the 12 years Anton has been in Canada is less than that of Carlton Anthony Williams (30 years), Kevin Sheldon Bennett (29 years), Junior Christopher Weekes (13 years), Guhad Mahamoud Hassan (21 years), Steve Anthony Bryan (17 years), or Audley Horace Gardner (31 years).

Anton’s is the only case that mentions Pardon’s Canada as an option for nullifying a deportation order. The existence of family in Russia for Anton is not equated with a support system favouring his removal. Their description as elderly and ill are considered as the non-existence of family support in Russia. In Audley’s case, the

existence of his father in Jamaica (who is 80 years old and has pancreatic cancer) was weighted as the availability of family support in favour of Audley's deportation. For Anton, his sporadic employment is attributed to his schizophrenia, his receipt of benefits from a Disability Pension are seen as a support or evidence of establishment. For others like Guhad Mahamoud Hassan or Niranjan Sambasivam, being on social assistance and having sporadic work histories were portrayed as evidence for not being established in Canada and for being a burdensome cost to the Canadian Public. Anton was not required to submit evidence of the potential hardships he would face if deported to Russia, it is accepted as a "significant and possibly life threatening". The Minister came forward in Anton's case and volunteered to grant him the appeal under humanitarian and compassionate ground. A generous offer that was not necessary in Anton's case. This is a very different treatment of the "evidence" than for the other cases in this analysis. Anton is the only case among the 10 analyzed here that is not from the Caribbean, South Asia, Africa, or South East Asia.

There are many similarities in Anton's case relative to the others including the discretionary powers of the mental health, criminal justice and immigration systems to work interdependently to achieve a common outcome. Anton remains a non-citizen, had to endure 2 years in prison and two years under the oppression of 17 conditions for his stay. Anton's is now a biomedical anomaly who requires psychiatric observation, a community treatment order to provide surveillance on his mental health. He is someone who is unable to represent himself or to work. The Canadian immigration system, its criminal justice system and mental health system are presented again as considerate of

humanitarian and compassionate grounds, protecting the Canadian public and providing fair and equitable consideration to the Ribic factors.

When arguments for contextual consideration or for support are advanced, counter arguments for ineligibility are relied upon to condone a denial of care for those who live and have family in Canada. These arguments delineating the undeserving endorse a program that denies any responsibility or belonging for people who have lived in Canada for decades. These constructions work with an dynamism and fluidity that is a result of the discretionary interpretation of policy and law, a hierarchical determination of the validity of knowledge based on an individual focus and professional expertise, and the use of positions of authority to control the population based on historically established notions of undesirability. Through this construction of a foreign Other who is undeserving, the maintenance of notions of the deserving are (re)established. Wealth, health, ability and possibly white ancestry are (re)made synonymous with deserving and belonging. The contexts of mental and emotional suffering, the social and political determinants of “crime”, and the disenfranchisement of a denial of citizenship, status or belonging become confined to considerations that depend on knowledge, professions, and legislative practices that privilege: individual biomedical malfunctioning, inherent criminal behavioral abnormality, and invading threats from the foreign undeserving alien. Each violent erasure, reduction and division sets the ground work for rationalizing more overt forms of violence. The violence perpetuated by the people in these cases with deportation orders occurs upon a violent standard upon which Canadian society operates on a daily basis.

In these cases borders are drawn among those identified as biologically untreatable, criminally unrehabilitatable and those marked as undeserving foreigners that separate anyone subjectified into these groups from “the Canadian public”. It is upon this division that a legitimization of violence rests. In so many of these cases we see harm to one person, constructed as subhuman under the authority of criminal law, biomedical psychiatry and immigration regulations presented as an alternative to a potential threat to the Canadian public. In order for this to occur, the Other must be manufactured as worthy of violence, undeserving of care, a foreign invader or carrier of biological inferiority and thereby a threat to the pristine image of Canadian society. The Other must also be completely responsible for his own biological deficiencies, his own criminality and must accept that he will never be Canadian regardless of how long he had lived here or how in need he is of Canadian society.

The image of Canadian society at the same time reinforces its facade of the protector of the public safety, the authority that carefully and uniformly adjudicates claims and appeals with pristine objectivity, relying on the most progressive and recent expert knowledge and testimony, the most recent and therefore most considerate court rulings and decisions, and carrying the heavy burden of weighing harm to one vs. harm to many.

When interrogated with a conceptualization of confluence and the framework of violence provided by Slavoj Žižek our ability to construct a dehumanized subject who is not included as a member of “Canadian” society and worthy of violence fails. The authorization of violence through reliance solely on individualized focused expert

testimony, and legitimized through objective truth claims to knowledge also fails. I name these failures because violence is not reduced or prevented but rather required through the construction of a dehumanized subject, through legitimization of hegemonic professions and knowledge structures authorizing violence. When a person living in Canada for 20 years is intentionally harmed the Canadian public so too is harmed. When the identity of a person is stripped of its social constituents, its historical producers and its opposing benefactors, violence has commenced.

These systems and technologies are historically driven to produce specific outcomes that regulate populations for types of people. The colonial and imperial agendas become transparent when we interrogate the specific practices, technologies and decision made in contemporary regulatory systems at the confluence of mental health criminal justice and immigration. With the consideration of the multi-focal conceptualization of violence via Žižek and a fluid and dynamic consideration of subjectivity and identity formation via confluence, the racial and eugenic rationale regulating and permeating our present lives becomes apparent.

Understanding confluence: The historical, the contemporary, the theory and the practice:

In these cases, an analysis of confluence is required in order to appreciate the multiple tracks and trajectories contributing to, the processes and technologies at work for, and the products and outcomes of colonial, racial and eugenic violence. In this section, I relate the analysis of the historical cases and law to contemporary practice and

law, the necessity of Slavoj Žižek framework of violence and the necessity of an analysis of confluence to an attention to the processes and technologies of colonization.

From chapter 7 we have analyses of historically established patterns of colonial authorities and administrators reinforcing ideas of desirability and undesirability through the selective and discretionary referencing of policy, law or expertise. Also from the historical cases, we have examples of colonial authorities working interdependently with the criminal justice, mental health and immigration system to authorize violence based of perceived ideas of difference and relying on moral and ethical arguments to justify these atrocities (i.e. to protect the Canadian public-an idea forged upon a devaluation of those deemed inferior, costly, threatening or undeserving).

The practices of professionals, authorities, and governmental bodies are interrogated for their selective record keeping practices (to deny racial profiling and to allow for surveillance). This analysis of historical cases upon the contemporary overview of policies and laws provided in chapter 3, allows for an appreciation of the continuing racial and eugenics practices still embedded in contemporary law and their powers to enforce ideas of desirability while (re)enforcing ideas of undesirability, and the Canadian public in need of protection. In order to achieve the outcomes required for colonial nation building to continue, officials required the application of a eugenic rationale through the establishment of “prohibited classes”, the utilization of racial hierarchy (historically exemplified in the exclusion of and “Asiatic race” from any protections of the law), and the use of discretionary powers to authorize violence (when not provided for in the law or without public consultation), while projecting an image of authority and legitimization

(through the selective referencing of authoritative texts, legislation, partially and often inaccurately).

As discussed in the case of Carlton Anthony Williams, contemporary law extends upon historically established patterns reinforcing desirability based on eugenic and racial ideas for colonial nation building. The Mental Health Act's authority to impose institutionalization and forced medical/psychiatric treatment is dependent upon a construction of the accused as a threat to himself or others in section 15(1). The advancements of the notions of criminality as separate from his mental health and individualized permit a direction of blame towards Carlton. This separation is also concretized in the Criminal Code of Canada that provides the powers to psychiatric testimony and intervention in section 672.1, while simultaneously making him eligible for deportation through the articulation of "serious criminality" that is provided by section 36 of the Immigration and Refugee Protection Act.

The laws appear to be separate, have separate authorities and draw on the professional knowledge of distinct disciplines. However, they have historically been woven together to permit certain outcomes. These provisions listed under the Mental Health Act, the Criminal Code of Canada and the Immigration and Refugee Protection Act rely on one another to reinforce notions of the undeserving alien, the untreatable genetically inferior, and the undeserving Alien. If an argument is advanced with regards to the accused's mental health treatment, his criminality is leveraged as a separate consideration that requires removal. If any argument is forwarded to appeal to his overall wellbeing in Canada vs. the country to be deported to, their foreign status is leveraged to

categorize him as undeserving of Canadian services and a threat to the Canadian public to which Carlton does not belong. Carlton is portrayed as a symbol of savagery and degeneracy, requiring civilizing, his own voice and history are erased and he only participates as the terrain upon which his freedom is negotiated (*qua* Spivak and Mani discussed in chapter 5 regarding erasure).

As discussed in chapter 7, in the 1915 case of the deportation of hobos, tramps and undesirable aliens we have an important instance of the historical practice of deporting undesirables (including those identified as mentally ill) through the interdependent work of the criminal justice and immigration systems. This case demonstrated how surveillance was provided by the criminal justice system to patrol the borders relying on racial and eugenic profiling, and legitimizing its work by moral argument = “for the protection of the province”. Also, the practice of selective record keeping to deny inquiry (as it is not a legislated role of the criminal justice system to police the borders, this is a matter for the department of immigration) is identified/challenged for its use value in controlling for undesirables.

In the contemporary cases, we require an analysis of confluence in order to appreciate the complexity of how these contributions are necessary in the continuation of colonial nation building. In the case of Audley Horace Gardiner, the lack of police records was relied upon to deny Audley’s self-defense claim and to establish his dangerousness to Canadian society. In the case of Niranjana Sambasivam, details were left out of his records (referring to “two carloads of Tamil youths” rather than reported the number of individuals and “trashed a...pizza store” rather than reporting on the nature

and costs of damages or as one who “turned on the owner” rather than reporting on whether or not a criminal act toward the owner had actually taken place and if charges were laid in this regard) to portray an image of threat and, savagery and madness. Also in current practice, the CBSA continues to provide surveillance to immigration authorities in collaboration with the mental health system to report on the private health information of people identified with mental health issues. This current operation of the criminal justice system in collaboration with the immigration and mental health system is illuminated by the eugenic, racial, colonial project it continues historically. These projects depend on established practices of authority, the historically embedded racial and eugenic rationales within law and the interdependence of the criminal justice, immigration and mental health systems. In doing so, *qua* Slavoj Žižek, subjective violence occurs (through the deportation, arrest etc.), and objective violence occurs (symbolic violence to depict a dehumanized subject deserving of violence and systemic violence within the law, and the practices of professionals and authorities).

Orientalism, appropriation, erasure, dehumanization, the reinforcement of North-South divisions and the use of moral arguments of rationalize atrocities in the cases:

Within the cases, the colonial processes and technologies of Orientalism, appropriation, erasure, dehumanization, the reinforcements of North-South divisions and the use of moral arguments to rationalize atrocities are rendered transparent for their use value in the continuation of racial and eugenic forms of colonial violence at the confluence of mental health, criminal justice and immigration systems.

The construction of the dehumanized identities of the untreatable biomedically/genetically inferior, the unrehabilitatable inherently criminal subhuman, and the undeserving foreign alien Other are insufficiently interrogated or appreciated for the violence (*qua* Slavoj Žižek) propagated within them without an attention to confluence, and colonization. These constructions were and are dependent on colonial processes and technologies such as Orientalism. When analyzed with a consideration of the colonial processes and technologies within Orientalism, we can appreciate the encapsulation of a person into a general type, seen through the consistent binaries of difference and always represented in terms of lack. We can also appreciate how expertise and professional authority is established on the other, hegemonic authority delegated solely to psychiatry and decision making powers designated solely to legal and government authorities. These positions and hierarchies are secured through time guided by self-validating academic and professional fields and disciplines. These mutually consolidating factors are also required to act interdependently, while also depending on the selective and discretionary application of policy and law, the erasure of an social and political histories relevant to a person, and the reestablishment of the fantasy of the Canadian public, requiring protection above all threats and potential contaminants.

As exemplified in the case of Kevin Sheldon Bennett, Orientalism is evident in the picture painted of Kevin as one that portrays him as incapable of being free, a body in need of civilizing, a servant of our pharmaceutical industrial machine in need of a master (orientalism). He is constructed as a ahistorical biological anomaly, untreatable, genetically different, and an inferior person that is resistant to treatment even though he

takes the medication that he is prescribed and submits to all observation and reporting requirements (appropriation occurring by using all his behavior as evidence for biomedical inferiority; erasure occurring through the elimination of his history). In the end, his deportation order is held as still valid in law and if Kevin were to resist the harmful treatments or refuse the restrictions placed upon him via his community treatment order or make any decision for himself while he is deemed incapable, he would be in violation of his conditions (manipulation of law buy authorities and appropriation), thereby reinforcing a case for his “serious criminality” and his removal from Canada (for the protection of the Canadian public, thereby reinforcing the fantasy of the Canadian public and notions of undesirability carrying onward the eugenic and racial colonial project of national building).

As discussed in the cases, often the histories of people before they have arrived in Canada are erased. As detailed in Chapter 9, the historical, social and political circumstances (i.e. for convention refugees [Nur Mohamed Jama], persecution due to sexual orientation [Guhad Mahamoud Hassan], political oppression [Niranjan Sambasivam]) are completely eradicated from consideration. In doing so, any historical, social or political complicity and therefore responsibility can also be denied through an over emphasis on the individuality of mental illness, criminality and immigration status. Also, through this unique practice of temporal erasure hundreds and sometimes thousands of years of history is rendered obsolete. The accused are also discussed with their voices completely erased. They become (*qua* Spivak & Mani) neither the subject or object of the

discourse but merely the terrain upon which notions of desirability and the “Canadian public” are established on eugenic and racial grounds.

With the drastic directed selection of racialized countries of the global South for deportation, we also see the continuation of the re-enforcement of North-South divisions, remaking rationalization for further civilizing projects based on established notions of supremacy, inferiority desirability, deserving and belonging. These divisions are dependent on the processes and technologies of colonial violence that have been developed and established to advance notions of the fantasy of the Canadian public, in need of protection and the dehumanized other deserving of violence. Racial and eugenic ideas forged during European colonization are infused within the practices of professionals, the disciplines that guide them, the laws that command and support them, and the governments that authorize them.

Without an attention to colonization, through an analysis of confluence and the layered, multi-focal framework of violence provided by Slavoj Žižek, one cannot appreciate the violence within both the historical and the contemporary, within the practices of professionals (to construct dehumanized subjects deserving of violence via Orientalism, the erasure of voice and history, appropriation), the arrangement of hierarchies of people (based on eugenic and racial rationales remaking the fantasy of the “Canadian public” and undesirability) hegemonies of authority (medical, criminal justice and immigration officials), and the process of embedding eugenic and racial ideas within policies and law, then divorcing them from their original colonial nation building project

through the establishment of an image of professional and legal legitimacy and moral authority.

Chapter 10

Conclusion

In this chapter, we examine the implications of deeply hurtful and intergenerational forms of racialized and eugenic violence within professional practice, disciplines, policies, law, and within the operations and technologies of contemporary institutions. The use figurative language to represent a contemporarily accepted forms of biological inferiority, inherent unrehabilitatable criminality, or to identify someone as an undeserving alien are no less violent then literal deployments of these meanings as their (re)produced outcomes are the same: a denial of care, responsibility, and humanity. In this study we have witnessed the use of very particular colonial tropes for the constructing of identities of dehumanized difference and the reliance on racial and eugenic rationale to provide the authority for and legitimization of violence. These deeply historical interdependent processes constituting the confluence of mental health, criminal justice, and immigration systems may have us question our conceptions of progress or advancement, of anti-oppressive or anti-racist proposals for their complicity in the continuation of the production of ordered subjects, a reliance on old colonial machinery, and the (re)positioning of authority and legitimacy through violence and difference.

Figurative language

Whether said or implied, notions of human inferiority are hurtful to all people. This pain is especially exacerbated when it is directed, layered and reinforced over time and place, across systems and institutions, within laws and most painfully within the systems that are supposed to be there to help people, protect them or welcome them. Our

inattention to the colonial products of difference based on eugenic and racial categories that operate through fantasy and contempt allows for certain kinds of colonial violence to persist. Without a way of thinking about the nuances of oppression realizing their potency as a confluence, or a multi-level conceptualization of violence via Žižek's²⁴ that can appreciate its subjective, objective and symbolic forms, we often are left to rely on difference, North-South divisions, and colonial practices and processes (such as Orientalism and dividing practices), in our responses to injustice.

Difference is currently relied upon in responses that aim to know difference by developing competencies or to take positions as “anti” in response to racism or oppression. When confluence and violence are appreciated for their fluidity and complexity, the position of “anti” is impossible as we are all in a position of complicity, the notion of competence is also impossible as we are infinite in our uniqueness and have all been transgressed through our encapsulation in totalized systems of discourse/power/knowledge.

Responses that impose Western models of justice, immigration regulation and mental health internationally often carry with them the North-South and racial divisions

²⁴ The physical, structural, epistemic, day-to-day, cognitive and rhetorical of violence, as products and processes, human creations, relations of power, and modes of domination. physical violence, the structural violence of economic relations, day-to-day violence (marriage and Rape), epistemic, cognitive and rhetorical forms of violence, as products and processes, as human creations, relations of power, and modes of domination, cultural and social factors of violence, and the dangers of violent means to achieve unpredictable ends. We can also recognize the violence resulting from the problem of identity requiring an Other or difference in order to exist. With respect to colonization, Žižek's framework also accommodates a consideration of the violence in the writing of history or historiography, the violence reproduced from the master/slave relationship (in both the colonizer, the colonized, as products, practices and technologies of these relations for humankind, including the ongoing potential threat of violence).

that they have been fashioned upon within their technologies and practices. Western biomedical models of mental illness, the eugenic policing of borders and the profiling and finalizing system of criminal justice denies people the opportunity to be seen as a whole person, capable of being well when given the chance to be supported and to belong. When systems of knowledge and law have historically fabricated and reinforced the idea/fantasy of a savage, uncivilized criminal through targeted colonial processes like Orientalism and dividing practices, the possibility of not being encapsulated as such is foreclosed upon for those who have historically been targeted.

To target people for surveillance, compliance, confinement or deportation within the discursive crosshairs of biomedical psychiatry, with the discourse of legislation and juridical structures of the criminal justice system and within the status regulating procedures of the immigration system is to figuratively speak of them as a biomedical anomaly deserving of segregation and a restricted set of freedoms under the law. It is to figuratively speak of them as a threat to Canadian society and a lesser kind of person that does not belong among those included in historically established notions of desirability. By historically and contemporarily examining the processes and technologies used to achieve these outcomes and with an attention to who is targeted, the obscurity of professional and juridical hierarchies of complex system of knowledge can be interrogated for their basic accountabilities to humanity and the human condition.

***Colonial tropes & Old machinery:
(re)producing (neo)colonial relations of authority and violence***

A system or set of systems that maintains an ability to construct identities of untreatability, unrehabilitatability or undeserving foreignness deserving of violence,

through the practices of hegemonic professional authorities selectively and discretionally utilizing references to legislation or expert testimony to legitimize violence, reenacts colonial relations of violence.

The notion of a person who is an untreatable biological anomaly deserving of deportation and underserving of care in Canada invokes an idea of individual savage, erased from their social and political context that cannot be controlled. When targeting people of colour specifically, the histories of Drapetomania, Dysaesthesia Aethiopsis, and the conceptions of a person as biologically unfit for freedom²⁵ cannot be denied for their implication of these colonial tropes that carry with them a deep historical disrespect and dehumanizing violence.

The notion of an unrehabilitatable criminal person of color or immigrant who is a danger or a threat to the Canadian public invokes the idea of an uncivilized primitive person. As exemplified in Howard Odum's *Social and Mental Traits of the Negro* (1910), this specific, directed characterization is historically bound to the colonial trope of a dehumanized person with tendencies toward criminality, addiction, and mental defects of idiocy and imbecility. The trajectory of this trope offers a painful rendering an image of one who is deserving of subjugation or slavery historically and surveillance or confinement in the present.

²⁵ *Drapetomania* (the “insanity” of black slaves running away from white masters-coined by Samuel A. Cartwright). *Dysaesthesia Aethiopsis*, a form of madness manifest by “rascality” and “disrespect for the master’s property” that was believed to be “cured” by extensive “whipping, hard labour, and, in extreme cases, amputation of the toes” (Metzl, 2009, p.30).

The construction of an identity of a foreign alien who does not belong and who is undeserving of the protections of society or access to its public supports invokes the idea of an invasive intruder, a burdensome cost to society and someone who is not *our* problem. This specific colonial trope in Canada for immigrants and people of colour is bound to the marring history of head taxes, internment, and turned away ships ²⁶ based on racial discrimination through the laws excluding or limiting those of Asian origin.

If the law, entire fields of knowledge, institutions and professions at the confluence of mental health, criminal justice and mental health systems are guided by eugenic and racial rationale, we are all at some level vulnerable to the violence that is possible within it. The mental health act holds a power over anyone identified with a psychiatric diagnosis and these numbers are increasing exponentially. The Criminal code of Canada has evolved to deliver harsher penalties and more permanent records to those who find themselves within its grasp and the Canadian immigration system is also shifting toward greater exclusion. These are seemingly new products made with the old machinery of racialized colonial violence. The mental health, criminal justice and immigration systems participate in the continuation of colonial and imperial projects through these forms of institutional expressions of social disrespect through their reliance on processes and technologies of dehumanization, and racial and eugenic colonial violence.

In order to approach transformation in the direction that aims to reduce violence, improve the mental wellness of people, end racial profiling, imprisonment, and that

²⁶ In 1914, a ship with close to 400 passengers from India who were British subjects were forced to return based on racist immigration laws. Only 20 people from the ship were permitted to stay (Johnston, 1989).

welcomes and supports those who come to Canada, we cannot proceed without a critique that at the very least rivals the complexity that is harnessed in order to achieve the violence within the practice of deportation. Possibilities lie within the individualizing technologies and practices used to isolate individuals targeted at this confluence and organizing with allies who share a belief that freedom and peace does not truly exist for any person when it is cultivated on violence done to other people.

In the case of Niranjana Sambasivam, the *Suresh vs Canada*, 2002 decision is cited. In *Suresh vs Canada*, a collective resistance of international, national, community, ethno-racial and human rights organizations allied with Suresh to resist his deportation and support his appeal. His co-respondents included: The United Nations High Commissioner for Refugees, Amnesty International, the Canadian Arab Federation, the Canadian Council for Refugees, the Federation of Associations of Canadian Tamils, the Centre for Constitutional Rights, the Canadian Bar Association and the Canadian Council of Churches. Although Suresh won his decision, the precedent did not hold for Niranjana, who was constructed to not be considered a convention-refugee (his mother was so he was not directly) thereby ineligible for the considerations provided for Suresh. What the Suresh case does provide is a window into a process that has successfully resisted the colonial systems and technologies that direct responsibilities for wellbeing, health and establishment solely toward an isolated individual. What if the co-respondents represented in the Suresh case were a part of evaluating every case? What if our professionals within mental health care and criminal justice systems were also held accountable when someone found themselves having more severe and significant

difficulties with the law and through their mental and emotional distress? The possibilities for transformation lie within opportunities to resist the technologies and processes that reproduce orientalism, erasure, dehumanization, the remaking or North-South divisions, the selective and discretionary manipulation of law, and the use of moral and ethical arguments to authorize violence.

The implications of this work are somewhat disturbing to say the least. They question what we determine to be “normalcy” and the violence within the practices, processes and technologies established to enforce these notions. Relating back to Aimé Césaire’s analysis, the colonizer’s technologies and practices, although aimed at civilizing and normalizing have rendered themselves uncivilized, savage and brutal (Césaire & Pinkham, 2007, p.35-36). When attempting to formulate or conceptualize any form of social justice, one must consider the project, its tools, its rationale, the laws, policies and knowledge it relies upon, and how they position themselves and their acts in relation to Others in their historical, social and political contexts. If our idea of normal and desirable are dependent upon violence, people will need to consider and question these ideas within our conceptualizations of justice as we are all at some level complicit with the violence that sustains these ideas and sometimes are both beneficiaries and victims of the products of their maintenance.

I feel it appropriate to conclude with an image of resistance and transformation. In August of 2013 approximately 200 immigration detainees were transferred from the Toronto West Detention Centre to the Central East Correctional Centre in Lindsay Ontario, restricting their ability to consult with council, participate in any recreational

programs and significantly impeding their ability to see family. In September of 2013, the detainees commenced a hunger strike, an act of “peaceful protest” resisting their unfair and unjust treatment Keung, N. (2013, September 20). By December of 2013, officials had deported some organizers, moved others yet the strike continued. By December 21, 2013 over 75 organizations and prominent individuals had endorsed the strike and joined the cause.

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Appendix I

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From: AO ASA <reference@ontario.ca>
To: ajjoseph@yorku.ca
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- (4) RG 10-67- Regulations under Mental Hospitals Act 1950
- (5) RG 10-67-3 - Amendments to The Mental Health Act 1978 Correspondence
- (6) RG 10-67-1 - Amendments to The Mental Health Act 1978 Correspondence
- (7) RG 7-12-0-112 - Statement of Immigration 1929
- (8) RG 7-12-0-112 - Immigration & Colonization 1928
- (9) RG 10-6-0-1154 - The Mental Health Act 1954
- (10) RG 10-407 "LO2"- Mental Health Act Amendment = Bill 78 - PPAO Letter RE: Bill 78
- (11) RG 10-407 "LO2" Mental Health Act Amendment = Bill 78- 1998 - An Act to Amend The Mental Health Act - Mr. Patten
- (12) RG 4-32 "W.D. Scott, Department of Immigration, Ottawa: Request for information on the deportation of Hobos from Ontario. (Dates of Creation: 1915)"
- (13) RG 4-32 "W.W. Dunlap, Inspector of Prisons, Toronto: Query re: authority of Department of Immigration to use gaols for detention of undesirable immigrants. Also concerns the specific case of Elsie Saborowiski, who associated with known revolutionaries. (Dates of Creation: 1919)"
- (14) RG 4-32 "H.M. Robbins, Dept. Prov. Sec.: Request for opinion re power of Immigration Dept. to designate

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Regards,
Lindsey Winstone
Archivist, Customer Service
Winstone, Lindsey
Senior Customer Service Representative

Correspondence from Citizenship and Immigration Canada regarding the identification of people by the CBSA for removal/deportation

Subject:	Citizenship and Immigration Canada – re: removals/deportation
From:	CIC – Ministerial Enquiries Division/CIC – Service de renseignements ministériels (Ministerial.Enquiries.Division@cic.gc.ca)
To:	ajesusj@yahoo.ca;
Date:	Monday, November 25, 2013 3:04:28 PM

Dear Ameil Joseph:

The Canada Border Services Agency has kindly forwarded to Mr. Chris Alexander, Minister of Citizenship and Immigration, a copy of your correspondence of October 1, 2013, concerning the removal of foreign criminals. I apologize for the delay in responding.

The Government of Canada has measures in place to prevent the abuse of our immigration system. We combat programme-related fraud by frequently conducting investigations and interviews to verify suspect documents, confirm facts and assess application information.

Citizenship and Immigration Canada (CIC) works in conjunction with many partners, including the Royal Canadian Mounted Police, the Canadian Security and Intelligence Service, provincial and municipal police forces and international law enforcement agencies. To protect the integrity of the immigration program, we work in partnership with the Canada Border Services Agency (CBSA).

As published on CIC's Web site, people who wish to report an immigration violation may call the CBSA's Border Watch Tip Line at 1 888-502-9060. All tips are completely confidential.

Border Watch Line officers will analyze the tip information and determine if there is a need to refer the case for possible investigation. Tips accepted by the CBSA include, but are not limited to, suspicious cross-border activity, marriages of convenience, misrepresentation in a temporary or permanent resident application or the whereabouts of any person wanted on an immigration warrant.

Further information, including how to report allegations of fraud, can be found at:
<http://www.cic.gc.ca/english/information/protection/fraud/report.asp>

Any information received will be carefully considered and action taken in due course. However, informants and other third parties will not be notified of the initiation or outcome of any investigation, as the *Privacy Act* prohibits the Government from releasing information on our clients without written consent.

Thank you for writing. I trust that this information is of assistance.

S. Charbonneau

Ministerial Enquiries Division

This electronic address is not available for reply.