

“The True North, Strong and Queer?”: (Un)Mapping Discourses of Homonationalism,  
Colonialism and Activism within the Canadian Prison Reform Movement

By  
Emily Marie Arsenault

A Thesis Submitted to  
Saint Mary’s University, Halifax, Nova Scotia  
in Partial Fulfillment of the Requirements for  
the Degree of Master of Arts in Criminology.

April 2020, Halifax, Nova Scotia

Copyright Emily Arsenault, 2020

Approved: Dr. Michele Byers,  
Supervisor

Approved: Dr. Karen Pearlston,  
Examiner

Approved: Dr. Ardath Whynacht,  
Secondary Reader

Date: April 17<sup>th</sup>, 2020

## **Abstract**

**“The True North, Strong and Queer?”: (Un)Mapping Discourses of Homonationalism, Colonialism and Activism within the Canadian Prison Reform Movement**

By Emily Marie Arsenault

**Abstract:** In the last 50 years, Canada has embodied a public national and international image of benevolence, which has supported the narrative of Canada as being a “uniquely progressive country” and “LGBTQ safe-haven.” Despite this narrative, many racial and social groups in Canada remain marginalized, criminalized, and invisible. With the theoretical and conceptual guidance of a number of critical scholars in the fields of Prison Studies and Queer Theory, this dissertation explores two trusted institutionally-based prison reform organizations via Critical Discourse Analysis (CDA); identifying, unpacking and disrupting dominant discourses of sexuality, nationalism and reform which perpetuate and nurture the ongoing marginalization and criminalization of LGBTQ2+ people in Canada. The findings of this dissertation sheds light on a number of different institutional discourses which hinder transformative social change in Canada, elucidates and explores the bridge formed by institutional organizations between radical social movements and the status quo, and further stands as an ongoing call-to-action for both our trusted organizations, activists and broader social movements to reflect on whether their fight against oppression challenges neoliberal and homonational ideologies, or whether it supports a narrative of benevolence which renders certain social groups invisible.

April 17<sup>th</sup>, 2020.

*“We have to talk about liberating minds as well as liberating society”.*  
- Angela Davis

## Glossary of Terms

### Canadian Charter of Rights and Freedoms:

The Canadian Charter of Rights and Freedoms, enacted in 1982, is part of Canada's Constitution. The Charter is in place to protect every Canadian's right to be treated equally under the law. More specifically, the Charter guarantees broad equality rights and other fundamental rights such as the freedom of expression, freedom of assembly and freedom of religion. However, the Charter only applies to governments, and not to private individuals, businesses or other organizations. Therefore, this means that for the most part, a person is unable to mount a Charter challenge against a private business, a private organization, or a person who is not acting on behalf of the government, laws, policies and security institutions such as police (CHRC, 2019). Despite this, the Canadian Government argues that according to Statistics Canada, Canadians rank the Charter as our "most important national symbol"- beating out other "national symbols" such as hockey or the beaver (Justice Canada, 2019).

### Cisgender:

The term cisgender can be used to describe individuals who possess "male or female reproductive organs (sex) typical of the social category of man or woman (gender) to which that individual was assigned at birth" (Aultman, 2014, p.61). Accordingly, cisgender emerged from trans activist discourse in the 1990s, which criticized many "common" ways of describing sex and gender. Therefore, the terms man and woman, when left "unmarked," tend to normalize cisness— "reinforcing the unstated 'naturalness' of being cisgender" (Aultman, 2014, p.61).

### Cisnormativity:

Cisnormativity is referred to as a cultural and societal bias (sometimes unconscious) that privileges cisgender identities and gender norms and ignores or underrepresents trans identities and/or gender diversity by "assuming that all people are cisgender and will express their gender in a way that aligns with perceived gender norms" (Egale, 2019, p.12).

### Heteronormative/Heteronormativity:

Culture and societal bias (sometimes unconsciously) that privileges heterosexuality, and "ignores or underrepresents diversity in attraction and behaviour by assuming all people are heterosexual" (Egale, 2019, p.12).

### Heterosexism:

Heterosexism is used to describe prejudice and discrimination in favour of heterosexuality. According to Egale (2019), this includes the "presumption of heterosexuality as the superior and more desirable form of attraction" (Egale, 2019, p.13).

### Intersectionality:

While only scratching the surface of an explanation of "Intersectionality", in its simplest form it is a theoretical and conceptual term coined by scholar Kimberle Crenshaw (1994) employed as a means of engaging with and acknowledging the ways the ways in which power and oppression collide, interlock and intersect (Crenshaw, 1994, p.12). Specifically, Crenshaw used

intersectionality as a way to articulate the interaction of racism and patriarchy generally (Crenshaw, 1994, p.12).

#### LGBTQIA2S+:

LGBTQIA2S+ is an acronym for Lesbian, Gay, Bisexual, Transgender, Queer and/r Questioning, Intersex, Asexual, Two-Spirit, and + to symbolize any additional affirming terms in which people choose to self-identify. As described in the limitations section of this thesis, different acronyms will be used throughout the writing based on which acronym the cited source chose to utilize. (Example: LGBTQIA2S vs LGBTQ)

#### Prison Abolition:

Prison abolitionists reject the current carceral state due to its ineffective, inhumane response to the complexity of social, political, economic, and personal problems, which resulted in incarceration in the first place (Culhane, 1991). Angela Davis (2005) furthers the explanation of prison abolition by arguing that while challenging the current prison state, prison abolition is not “imagining or urging the isolated dismantling of correctional facilities and prisons”; but rather prison abolition strategies reflect an understanding of the complex connections between institutions that are often seen as inherently disconnected (Davis, 2005, p.60).

#### Prisoner Rights:

The term prisoner rights is described by the Legal Dictionary as “the nature and extent of the privileges afforded to individuals kept in custody or confinement against their will because they have been convicted of performing an unlawful act” (Legal Dictionary, 2019). While convicted many offenders are deprived of their rights, both during and after their period of incarceration; therefore activists fighting on behalf of prisoner-rights could fight for rights equality, legal reform, institutional privileges, services, health care, legal services, and any other issue which affects the mental and physical well-being of people who have been convicted and/or goes against citizen rights laid out in the Canadian Charter of Rights and Freedoms.

#### Prison Reform:

The term ‘prison reform’ is used within this thesis as any attempt to improve conditions inside prisons. This includes but is not limited to attempts to implement alternatives to incarceration, transformative deconstructions of traditional penal practices, or improving the effectiveness of the penal system currently in place.

#### Queer:

A term used by some in LGBTQ2+ communities as a symbol of pride and affirmation of diversity. Defined by Egale (2019), the term *queer* makes space for the expression and recognition of a variety of identities outside nonnormative desires and sexual practices (Egale, 2019, p.11).

#### Queering:

The term “queering” or the verb “to queer” is used not only to encourage an LGBTQIA2S+ politic but also to disrupt and dismantle social boundaries of ‘normal’ engrained within everyday social spaces and politics. In providing an example related to imprisonment, Dean Spade (2015),

and Eric Stanley (2015) urge activists to “queer the carceral state” by applying a political trans politic to understanding and dismantling the prison industrial complex (Spade, 2015, p.3).

### Social Justice Activism:

In the SAGE Encyclopedia of Communication Research Methods, Allen (2018) describes activism as engaging in “direct, vigorous action to support or oppose one side of a controversial issue” (Allen, 2018). In this case, *activism* is discussed in relation to *social justice*, in which human rights and freedoms are respected, and people “receive equitable treatment with regard to opportunities and resources, and are not discriminated against because of their class, gender, race, sexual orientation, and similar identity markers” (Allen, 2018).

### Social Justice Movement:

As Allen (2018) argues, social justice is a concept of fair and equitable relations between the individual, society, and their rights and freedoms. In the context of Social Justice Movements, grassroots movements for social justice have traditionally focused on disrupting and breaking barriers for social mobility and can be radical, or reformative by nature. Different social justice movements have been known to focus on issues such as racial injustice, LGBTQIA2+ inequality, crime, and incarceration, economic and environmental (The Canadian Encyclopedia, 2012).

### Transgender:

Transgender is a term used to describe a person who does not identify either fully or partially with the gender associated with their sex assigned to them at birth (Egale, 2019, p.6).

- Trans Man: A person whose sex assigned at birth was female or intersex, and who identifies as a man, may identify as a trans man.
- Trans Woman: A person whose sex assigned at birth was male or intersex, and who identifies as a woman, may identify as a trans woman or nonbinary. I didn't mean for the addition of the work “nonbinary” and particularly the addition of the word to only the definition of “Trans Woman”. Rather, I was suggesting that the author might want to include non-binary people somewhere in her consideration of trans people.

### Two-Spirit (or 2-Spirit)

An English umbrella term which embodies the many words used in different Aboriginal languages to affirm the interrelatedness of multiple facets of identity- including gender, sexuality community, culture, and spirituality. As described by Egale (2017), prior to the imposition of the sex/gender binary by European colonizers, many Aboriginal cultures recognized Two-Spirit as respected members of the community, were given special status based on their abilities to move between masculine and feminine perspectives, as well as “acting as visionaries, healers, and medicine people” (Egale, 2017, p.12). Aboriginal people who identify as Two-Spirit may identify with this term rather than, or in addition to, identifying as lesbian, gay, bisexual, trans, or queer.

### Transphobia:

Transphobia encompasses a range of negative attitudes, feelings, or actions toward transgender people or any transgression of perceived gender norms. This is often exhibited by exclusion (social, political, legal), bullying, prejudice, discrimination or acts of violence, to anyone who is trans and/or gender diverse (or perceived to be) (Egale, 2017, p.12).

## Chapter 1: Introduction

Social justice is not an abstract concept in Canada. In fact, Canada is often considered to be a "uniquely progressive country" when considering social justice around the world (The Canada Guide, 2019). In the State of World Liberty Index, which ranks countries according to their degree of economic and personal freedoms, World Atlas (2019) has listed Canada as the third most liberal country in the world (World Atlas, 2019). Specifically, the issues discussed within different social justice movements in Canada are highlighted as;

- a) Democracy and Corporate Power
- b) Economic Inequality
- c) Racial Inequality
- d) LGBTQ & Gender Inequality
- e) Aboriginal Issues
- f) Incarceration and Justice

(Centre for Social Justice, 2019)

In the last two decades, the rights of members of lesbian, gay, bisexual, transgender/two-spirited, and queer (LGBTQ2S+) communities have emerged as key political and policy issues in Canada and internationally. With Canada's public involvement with the LGBTQ rights movement, a new narrative has been brought forward in recent years, which prestigiously offers Canada the title of 'safe haven' for LGBT citizens, immigrants, and allies (Lenon, & Dryden, 2015, p.2).

With activist groups' and organizations' involvement and action in the LGBTQ legal rights movement, the nation has quickly moved to the forefront of LGBTQ rights globally. However, despite being praised by LGBTQ activists around the world, several questions have

been raised among critical scholars in Canada and the United States surrounding legal rights reform, activist discourse, recognition/exclusion, and the future of transformative change in Canada. More specifically, while Canada has gained its title as a 'progressive' and 'LGBTQ safe' country through legal reform, many social activists and critical scholars are still asking why legal rights and policy reform have not brought about the transformative changes the movement is supposedly seeking (Spade, 2015; Stanley & Smith, 2015; Dryden & Lenon, 2015).

It is here where this dissertation begins, developing within and through the tensions between prevalent global images of Canada as a "progressive and liberal safe-haven," and the remaining exclusion of public discourse surrounding LGBTQ2S+ persons within the criminal justice landscape. Due to the fact that many queer studies and prison scholars such as Elias Vitulli (2012), Dean Spade (2011), Regina Kunzel (2008) and Eric Stanley (2011) argue that "prisons are queer spaces" (Vitulli, 2012, p.121), this dissertation will explore the discursive tensions within two trusted institutionally-based prison reform organizations via conducting a Critical Discourse Analysis (CDA) of both organizations National websites. Specifically, this research navigates how each organization constructs narratives of gender, sexuality, racialization, nationalism, and activism within their public policy documents in order to identify, (un)map, and in the end, disrupt any dominant legal discourses which perpetuate and nurture the ongoing social and legal marginalization and criminalization of LGBTQ2+ people in Canada.

Grounded in theoretical understandings of gender, incarceration, and legal reform, this dissertation sheds light on a number of different institutional discourses which hinder transformative social change in Canada. With there being very little research on LGBTQ2+ incarceration and criminalization in Canada, this research provides a unique and critically informed exploration of the remaining institutionally based exclusion and criminalization of



LGBTQ2+ folk, even amongst social justice organizations, which address human rights within the Canadian carceral system. Furthermore, in mapping the bridge formed by institutional organizations between radical social movements and the status quo, this research contributes to identifying current gaps and limitations within broader social justice organizing in Canada.

Specifically, the research sought to identify the following three questions;

1. How does the organization discursively construct gender and sexuality?
2. How does the organization discursively construct the nation, citizenship, and government/governance?
3. How does the organization discursively construct activism and reform?

Each of these questions is explored individually to develop a well-rounded analysis of the types of discourses presented by two of the key institutionally-based reform organizations offering policy recommendations to government legislature. These findings are thus further theorized to highlight the ways in which these discourses impact broader social movement organizing in Canada.

The following research will be divided amongst seven chapters dedicated to a review of critical literature, theoretical frameworks, methodology, individual findings, a theoretical discussion of findings, and a reflective conclusion which re-visits the goals of the research, provide applicable recommendations for activists within prison reform and broader social movement organizing, and explores limitations and potential for future research.

## **Chapter Two: Conceptual Literature Review**

Canada is often considered to be at the forefront of LGBT rights internationally (Forbes, 2019; Nomadicboys 2019; CBC News, 2019), and as a country with a long-standing history of passing

progressive human rights amendments to include LGBT citizens. In fact, of the 197 countries ranked in the Spartacus Gay Travel Index of 2019, Canada ranks as the #1 most LGBT-friendly travel destination in the world (Spartacus, 2019). The Gay Travel Index is assembled using fourteen criteria in three categories that assess each country based on civil rights, discrimination, travel restrictions, and threats to individuals by persecution, prison sentences, or capital punishment (Spartacus, 2019). In a time where Canada stands as one of the first countries to legalize same-sex marriage, promising federal reforms to legal gender-markers for transgender citizens, and being politically lead by a Liberal Prime Minister who walks in Pride Parades province to province, there is no wonder Canada ranks so highly as a ‘safe-haven’ on the LGBT-friendly index.

The LGBT Human Rights movement in Canada, guided by the push for reform and legal-rights recognition, has no doubt spearheaded the demand for recognition of LGBTQ human rights on an international level— holding other countries accountable for thinking about LGBTQ rights and moving forward with adequate amendments. Nevertheless, despite the numerous reforms and legal pressures that have come out of the LGBT Human Rights movement in Canada, many social justice activists and researchers contend that legal change in the form of rights has not brought about the profound transformation they seek (Morris, 2000; Spade, 2015; Dryden & Lenon, 2015; Stanley & Smith, 2015). This literature review of queer inclusion, the Canadian rights movement, and the politics of legal reform reflects on the limitations of the Canadian Human Rights and Social Justice reform movement and offers guidance for engaging alternative narratives about Canadian activism and transformative change.

Each piece of scholarly work discussed in this chapter articulates and supports the critical argument that activists must engage in a constant process of critical reflection of both the system,

the self, and the types of narratives in which our activities nourish and support. Each book and article offer supporting evidence of potential harms perpetuated within working neoliberal social movement and activist narratives, provide contextual information, and provide an alternative and transformative way of thinking about and addressing human rights and equality in Canada.

#### A History of LGBTQ Legal Rights and Mobilizing in Canada:

While Canada is considered a safe-haven for LGBTQ folk due to the federal rights offered, it is essential to recognize the country's gruesome historical past rooted in homophobic laws. For that reason, I will first draw on Tom Warner's (2002) *Never Going Back: A History of Queer Activism in Canada*, in which Warner provides an in-depth timeline of Canada's early participation in the LGBTQ legal-rights reform movement. In order to fill the existing gaps in Warner's chronology, the works of critical scholars Miriam Smith (2015), Gary Kinsman (2010) and Patricia Gentile (2010) will further explore LGBTQ activism and the so-called "Canadian war on queers" (Kinsman, & Gentile, 2010).

Warner begins his chronological timeline from 1859 to 1892, in which the Consolidated Statutes of Canada had buggery [i.e., anal intercourse] listed as an offense punishable by death, which was later reclassified as an 'Offence[s] Against Morality' in 1892. Even for consenting adults, "buggery" remained a federal offense in Canada until 1969 (Warner, 2002, p.19). While incredibly harmful to gay men, Warner also highlights an oppressive legal reality in Canada where lesbian and queer identities were entirely ignored, reflecting a patriarchal framework and the prevailing male belief that "lesbian sexuality was either non-existent or should not be encouraged by being mentioned" (p.19).

Warner further highlights that the increased policing of same-sex sexuality added dimension to oppression after the nineteenth century, especially after the official naming of homosexuality as a medical condition and psychological disorder in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM), first published in 1952 (p.21). As those who identified as gay, lesbian or bisexual became medicalized with an "identifiable pathology" (p.21), even the more liberal psychiatrists of the time believed homosexuality was deviant. Over time, an increasing number of psychiatrists concluded that homosexuality would be incredibly difficult, if not impossible, to cure, and therefore should be treated with some compassion and tolerance (p.25). Nevertheless, even amongst these liberal psychiatrists, active judgmental elements remained. After the decriminalization of homosexuality in 1967, Warner argues that involvement in the LGB social justice movement grew substantially (p.94).

By 1969, the ground was prepared for the rise of the revolutionary lesbian and gay liberation movement which aided both in partially decriminalizing homosexuality, as well as amending the Criminal Code provisions on gross indecency to permit such acts in private between two consenting adults who were both twenty-one years of age and over (Smith, 2019, p.5). However, Smith argues that the promised reforms did not alter the overall structure of the provision on gross indecency, and merely marked only partial decriminalization of homosexuality that confines same-sex sexual behaviour to the private realm (Smith, 2019, p.5). Meanwhile, identifiable queer communities and the cultures associated with them began to establish themselves despite heterosexism and homophobia remaining pervasive among social status-quo.

The following five years (1969;1970;1971;1972;1973) are ones that Warner describes as the "golden age" of Canadian activism (Warner, 2002, p.95). During these years, activists

established an advocacy agenda, they fought for visibility, began creating safe spaces, assisted in processes of coming out, and developed organizing imperatives that were manifested through phone lines, drop-ins, community events and services, and even published the first academic publication with a liberationist outlook (Warner, 2002, p.95). By the end of 1974, Warner argues, the foundation for political and social activism were firmly laid, which enabled the efforts of the movement within the next several years to concentrate specifically on "discrimination in employment and housing, breaking down loneliness and isolation, and dispelling narratives of sin, sickness, and deviance" (Warner, 2002, p.95). He describes a time in which there was great optimism regarding the social change that would be brought on by the small groups of committed lesbian and gay liberationists nationwide; and communities and allies celebrated the visibility gained by their interventions in federal and provincial elections, raising for what Warner argues as the first time, "public awareness about the need for greater law reform" (Warner, 2002, p.95).

At the time, these homophobic narratives continued to present numerous barriers to legal-rights access, especially in cases involving lesbian mothers and gay fathers seeking custody of their children from heterosexual relationships. Warner describes this particular issue as one that stood out as primary importance within the lesbian and gay liberation movement as LGBT groups such as Toronto Gay Alliance Toward Equality (GATE) and the National Gay Rights Coalition (NGRC) addressed the issue in 1975; demanding "that homosexual parents not be denied custody of their children on the grounds of their sexual orientation, and furthermore that parents not be denied custody of children on the grounds of homosexual unions" (p.100). Despite these challenges to the homophobic judicial system, family court judges consistently ruled that being openly gay or lesbian, and especially being active in the LGBT community or promoting

‘militant’ views about homosexuality, “was sufficient to establish unsuitability for custody of children” (p.101).

Bigotry and hatred remained the narrative used amongst law enforcement, with one notorious incident occurring in Ottawa in 1975, where police announced a "Homosexual Vice Ring" that was described by police as "the most sordid crime we have investigated for some time" (p.102). Media coverage and police reports based on police information used terms such as ‘white slavery ring’ and claimed that over 100 boys, some only eleven years old, were involved. However, Warner states that it was later established that all of the escorts charged were between 16 and 21 years of age. The media reported the names and identities of each individual involved, which caused devastating social consequences leading to the majority of the men included requiring psychiatric care after losing jobs, receiving hate letters and messages, with one man committing suicide after his first court appearance (p.102).

Throughout such police actions and attitudes, Canadian activists and organizations involved in the movement, such as Gays of Ottawa and GATE in Vancouver and Toronto, focused advocacy efforts on ending police harassment and repression. Activists in larger communities across Canada also attempted to establish police liaison mechanisms in hopes that greater awareness and education would lead to better policing practices. However, despite activist efforts, their attempts were, for the most part, unsuccessful. Violent police raids and other actions by the state to repress same-sex sexuality continued until the late '80s, and activists of the time were rightfully convinced that a campaign was underway to recriminalize and demonize gay men while additionally turning public opinion against legislating equality within human rights laws (p.107). Yet, Warner argues that the "empowerment achieved from a

spontaneous, mass uprising in the face of police harassment is the raids' most significant legacy" (p.113).

The community response to the 1981 Toronto bathhouse raids closed off specific options for police, and many sociologists argue that the outrage probably prevented more significant acts of state repression (Kinsman, 1987; Warner, 2002). Due to the activist community response, police were no longer able to conduct mass raids, and while that did shift the balance of power slightly in favour of the gay and lesbian movement, the resistance and community response is what made the raids a critical turning point in the history of queer activism in Canada (Warner, 2002, p.119).

However, throughout the raids and well after, the economic and social conservatives of the time began to come together as a formidable social and political movement exacerbating the ideology that "interventionist governments were ruining the economy, destroying the free enterprise system, and undermining individual rights by catering to minorities" (p.132). The conservative public leaders of the movement in Canada were openly opposing bilingualism, multiculturalism, constitutional human rights, gun control, and liberal immigration laws in Canada. This public opinion aided Canadian and American Christian evangelicals of the time to develop public campaigns to oppose abortion, birth control, sexual education in schools, liberalizing laws dealing with homosexuality, and legislating additional human rights for lesbian and gay citizens (p.133).

Across North America, these social conservative groups, along with law enforcement, were spreading hatred and bigotry, going as far as dramatically "conjuring images of children being molested by demonic, predatory, proselytizing homosexuals who recruited and seduced them into depraved sexuality" (Warner, 2002 p.134). This narrative was joined with warnings

against permitting gay and lesbian people to be employed as teachers or child-care workers, as they were described as “unsuitable role models for impressionable young people” (p.133).

Although the emerging social conservative groups in Canada were popularly dismissed as what Warner refers to as “radical fringe elements,” the message still deeply resonated with political conservative beliefs and values, and according to Warner, conjured a narrative about homosexuality that advanced homophobia, stereotypes, and misinformation about gay, lesbian and bisexual people in Canada (p.134).

These events and moments of violence were just one complex assemblage of experiences from a period of time in Canadian history in which the country was very much participating in what Gentile and Kinsman (2010) refer to as the “war on queers” (Kinsman, & Gentile, 2010). Another element of this war on queers is the vast number of national security campaigns against gay and lesbian people across Canada from the 1950s and into the late 1990s. These campaigns were situated within both social and historical context, and were shaped by a number of social relations, including; gender relations, military policies, the criminalization of same-sex gender practices, political campaigns against the left, and the national security regime in the United States going on at the time (Kinsman, & Gentile, 2010, p.53).

According to Gentile and Kinsman, national security in Canada typically has two aspects. First, it refers to external security, which focuses on issues such as military protection, national documents, and nation-state border security (Kinsman, & Gentile, 2010, p.41). Secondly, national security also focuses on internal security, or the “defense of the nation-state from enemies within” (Kinsman, & Gentile, 2010, p.41)- which are individuals who have been constructed as “other,” and thus threats to Canada’s security. However, Kinsman and Gentile argue that in the Canadian context it is important to remember that these distinctions between



external and internal are arbitrary, and many internal security threats are constructed within the external security sector and often organized “through alliances with other states” (Kinsman, & Gentile, 2010, p.41).

Accordingly, the ideological concept of ‘national security’ was crucial to how these campaigns were operated and constructed, as well as the types of discourses that would surface (Kinsman, & Gentile, 2019, p.41). For example, as previously stated, the national security campaigns were heavily gendered as they were initially largely carried out by men, and their first targets were most often men (Kinsman, & Gentile, 2010, p.53). In expanding on this point, Kinsman and Gentile draw on a quote by Steve Hewitt, which begins to highlight the ways in which the war on queers, while typically male-driven, also significantly impacted public perception of lesbianism: “the intelligence business was gendered male. The maleness of those who participated influenced their perceptions of society and the way they performed their work. For women to be involved in radical activities, or even to be involved in a non-traditional role, there had to be, in the eyes of the police, something not quite right about her” (Kinsman, & Gentile, 2010, p. 53).

Despite the oppressive and harmful narratives about homosexuality circulating publicly throughout the country well into the 1990s, LGBT activists were gaining fuel to push further in the fight for legal-rights reform. In fact, 2000 stood out as a particularly important year for Canadian human rights as parliament passed Bill C-23—which gave same-sex couples the same social and tax benefits as heterosexual couples in common-law relationships. Following the enactment of Bill C-23, the Toronto city council passed a resolution in 2002 calling the common-law definition restricting marriage to opposite-sex couples discriminatory, which led to the government asking the Supreme Court of Canada to determine whether limiting common-law

marriages strictly to opposite-sex couples was truly constitutional (CBC, 2012). This prompted a domino effect in which other Canadian provinces began joining the debate for LGBT relationship equality rights. As a result of the widespread national involvement, the federal government introduced a same-sex marriage bill to the House of Commons in 2005. This stood as a pivotal moment for LGBTQ rights in Canada due to the fact that if the law were to pass, it would give married same-sex partners equal legal recognition as married heterosexual partners. On July 20th, 2005, Bill C-38 received the royal assent, and Canada became the fourth country to officially sanction same-sex marriage, giving Canadian same sex-couples the legal right to marry. While seemingly a won battle for the gay and lesbian movement, the charter litigations and lobbying that were associated with legal equality between homosexual and heterosexual relationships still proved problematic for the minority of liberationists who were still actively participating in the gay and lesbian movement. Warner states that advocating for legal equality meant “largely accommodating same-sex relationships within the existing heterosexist and still essentially patriarchal social and legal status quo” (Warner, 2002, p.220).

Warner further explains that in doing so, equality required a strategy of assimilating same-sex relationships into Canadian tax systems, pension plans, employment benefits, and family support laws, which were all originally intended to privilege marriages in which male spouses provide the economic support and their wives acted as dependants. Warner argues that instead of seeking to liberate sexuality and relationships from the oppression of the family, “activism became focused on asserting that gays, lesbians, and bisexuals *are* family, and obtaining legal recognition of *equal families*” (p.220). Fundamentally, the relationship recognition issue was seized by predominantly affluent, urban, and white gays, lesbians, and bisexuals and then “presented as *the* issue of primary importance to *all* members of the queer

community” (p.221). Virtually no lesbians and gay people of colour, low-income status, queer, transgender, or those with disabilities were involved, and their experiences and perspectives were not considered.

Meanwhile, the issue of rising cases of AIDS and HIV among LGBT populations was also a massive topic of discussion among LGBT communities during the late 1980s and '90s. During a relatively short period of time, Warner argues that HIV/AIDS forced whole sectors of society to take notice and to respond to the issue in ways that gay and lesbian liberation, as an abstract, "would never have been able to do" (Warner, 2002 p.247). At the same time, Warner states that both the ethos and organizing strategies of lesbian and gay liberation did help radicalize the advocacy that became associated with HIV/AIDS (p.247). This is where Warner argues that a new generation of activism had risen. Influenced by AIDS radicalism and "vigorously assailing the assimilationist thrust of equality rights activism," a new generation who referred to themselves as 'queer,' "attempted to forge a new agenda for social change" (p.248).

The queer activist movement had striking similarities to the lesbian and gay liberation militants of two decades earlier – but they furthermore sought to “distance themselves from both the liberationist and assimilation camps” (Warner p.248). Queer activists rejected what they saw as ‘identity politics’ of the ‘old’ movement, in which the concept of ‘identities’ was of most importance to gay, lesbian, and bisexuals. As a result, queer activists advocated specifically for more fluid notions of sexuality and identity that, Warner argues, "rejected both the necessity of labeling and the attempts to achieve a new, respectable identity that too frequently sought to impose stifling conformity" (p.249).

However, while Warner's chronology of the history of LGBTQ mobilizing, activism and legal rights represent many of the resilience's, challenges, and progressive action put forth by

LGBTQ activists and allies in Canada, his work renders invisible the contested histories of many different LGBTQ2+ communities. Expressly, Warner's depiction of LGBTQ mobilizing in Canada excludes analysis of diverse experiences of social and economic class, geographic location, racialization, ethnicity, disability, and the many other voices that make up the different, unique, and often violent experiences of all LGBTQ2+ community members in Canada.

Warner, similar to many other LGBTQ activists such as Dean Spade, Gary Kinsman, Patricia Gentile, and Eric Stanley, and Miriam Smith challenges the conventional academic view of Canadian gay activism which has historically focused on a two-stage activist model that includes gay liberationism and is then superseded by equality rights activism. Warner's particular 'liberationist' perspective, his challenges of conventional equality rights activism, and his experience as a critical queer Canadian activist provides a unique chronological insight into the LGBTQ movement in Canada. However, Warner's research remains limited in its ability to truly address the complexity of queer and trans mobilizing within the country. Specifically, despite *Never Going Back: A History of Queer Activism in Canada* working within a critical, and arguably 'queer' framework, Warner fails to uphold an intersectional framework within his studies, and in itself provides the sort of problematic narrative within the LGBTQ2+ movement this dissertation seeks to address and critique. For that reason, the remainder of the literature review will rely on numerous critical works in both Canada and the United States to aid in maintaining a more intersectional conceptual approach to the history of mobilizing, activism, and law reform in Canada while also intending to fill gaps in Warner's analysis.

### Gender, Law Enforcement, and Queering Canada's Carceral State

Citizenship, identity, and what it means to be a queer person in Canada have been front-running narratives of the LGBTQ+ movement during the last decade. Like we have seen represented in Warner, Smith and Anti-69's historical account of LGBTQ+ activism, and in the progression of LGBTQ+ legal rights in Canada, there remains an apparent connection between struggles for gender, racial and sexual justice, and the crisis of over-policing, criminalization, and cultures of control. For that reason, the connection of LGBTQ2+ activism and criminalization cannot be studied in exclusion to the growing crisis of incarceration in Canada- which are often considered in isolation from one another in social justice activism.

In support of this statement, the works of critical prison study and queer scholars such as Eric Stanley, Dean Spade, and Sarah Lamble is utilized with the intent of elucidating the historical and present contentions between the prisoner, criminal justice and the LGBTQ2S movement in Canada. In *Transforming Carceral Logistics: 10 reasons to dismantle the prison industrial complex using a queer/trans analysis*, S. Lamble (2015) argues that, on the one hand, prisoner justice activists have not always paid sufficient attention to the gender and sexual dimensions of prisons, especially for queer, trans, and gender non-conforming people (p.270). On the other hand, Lamble also argues that LGBTQ organizers have often excluded prisoners from LGBTQ communities and have "not prioritized prisoner justice issues within broader LGBTQ+ movement struggles" (p.270). The tensions between these two social movements reproduce significant limitations to the mobilizing of human rights because both gender normativity and the carceral state are mutually inclusive to one another.

Throughout Canada's history, law enforcement officials (including police, courts, immigration officers, prison guards, and other national agents) have targeted, punished, and

criminalized sexual dissidents and gender-non-conforming people. Lamble argues that while many overtly homophobic and transphobic laws have been recently overturned in Canada, the United States, and Britain, "the criminalization and punishment of queer and trans people extends well beyond formal legislation" (p.273). In offering legitimacy to these claims, Lamble argues that state officials enable or participate in violence against queer, trans, and gender-non-conforming communities by "a) ignoring everyday violence against queer and trans people; b) selectively enforcing laws and policies in transphobic and homophobic ways; c) using discretion to over-police and enact harsher penalties against queer and trans-people; and d) engaging in acts of violence, harassment, sexual assault, and discrimination against queer and trans people" (p.273). Despite some police departments increasingly putting on a "gay-positive" public face, Lamble reminds us that the problem of state violence against queer and trans people nonetheless persists and has been well documented by numerous police- and prison-monitoring groups; such as *Amnesty International* and *INCITE! Women of Colour Against Violence* (p.291). Lamble argues that the ongoing legacy of violence should make queer and trans communities and allies both cautious of the state's power to criminalize our lives, and additionally weary of the state's claim to protect us from harm (p.272). Lamble explains that although some people believe that we can merely train transphobia and homophobia out of law enforcement agents, or eliminate homophobic discrimination by hiring more LGBT prison guards, police, and immigration officials, such perspectives "wrongly assume that discrimination is a 'flaw' in the system, rather than intrinsic to the system itself" (p.273).

Another argument that Lamble puts forward is that too often; we rely on the carceral system within our fights for justice in somewhat problematic ways. To offer an example, Lamble argues that within anti-violence movement politics, some feminist, queer, and trans activists have

been quick to equate justice with imprisonment – "by embracing hate crimes laws, advocating for longer prison sentences for those who commit sexual violence, and calling for increased 'community' policing" (p.270). However, many critical scholars believe that the struggle against abuse, assault, poverty, racism, and social control require clearer connections between the violence of gender/sexual oppression and the violence within the carceral system (Lamble, 2015; Spade, 2015). In fact, Lamble urges activists and organizations to critically think about the concept of "inclusion," highlighting that as more privileged members of lesbian, gay, bisexual, and trans communities are ushered into new forms of neoliberal citizenship—"where buying power, respectability, assimilation, and nationalism are the price of welcome, and as some LGBT groups are developing closer ties with police and military forces through recruitment campaigns, advisory boards, and liaison committees, we need to question who is bearing the costs of so-called 'inclusion'?" (p.271). They finish their argument by stating that if such inclusion means complicity to the violence and racism of the prison industrial complex, then there must be a re-thinking of those strategies; as "it is more important than ever to reject strategies that allow queer, trans, and feminist politics to be used for war, imprisonment, state violence, and racism" (p.271).

Lamble is not the only scholar who urges that anti-violence, anti-racism, and anti-prison struggles must be placed at the center of queer, trans, and feminist organizing efforts (and vice versa). In *Normal Life: Administrative Violence, Critical Trans Politics, & The Limits of Law*, queer theorist and critical prison scholar Dean Spade (2015) discusses the ways in which the Western legal system specifically excludes transgender and non-binary citizens within numerous areas of the law. Spade argues that for trans people in North America, administrative gender classification and the problems it has created for those who are difficult to classify or are

misclassified is a significant vector of violence within the criminal system (p.77). According to Spade, trans people's gender classification problems are concentrated in three general realms: identity documentation, sex-segregated facilities, and access to health care (p.77).

As Spade continues to elucidate the complexities of these population management realms, he begins his critique by discussing the difficulties of identity documents for trans people. Identity documentation problems most often occur when an agency, institution, or organization has incorrect or outdated information or information that conflicts with another agency, institution, or organization. According to Spade, each government agency and program that tracks gender usually has its own rule or practice of what evidence should be shown to warrant an official change in gender status on their records or ID, which is sometimes decided by whomever the clerk is at the time (p.80). This wide range of policies and practices means that depending on where a said person lives, and what kind of medical evidence they are able to produce, they may be unable to have their documents corrected. Spade argues that gender reclassification policies are particularly problematic as they so frequently include surgical requirements despite North American studies showing that the vast majority of trans people do not undergo bottom surgery; “both because of the limited access and expense, but also because they do not want or need it to validate their trans experience” (p.81)

Gender classification systems also have a significant impact on access to health care for trans people. While Canadian research is limited, according to a 2017 The Trans Pulse study, transgender people in Canada face significant barriers in accessing health care, ranging from discrimination to lack of basic medical knowledge of trans health (Trans Pulse Project, 2017). According to the study, an estimated 33.2% of trans Ontarians reported a past un-met healthcare need, 21% avoid accessing emergency medical services because of fear of transphobia, and 52%



percent of survey respondents indicated they had negative experiences at hospitals related to transphobia (Trans Pulse Project, 2017). Spade (2015) argues that for trans people who need this specific care, “the health impact of this denial can have significant mental and physical health consequences” (p.83). Mental illnesses such as depression, anxiety, and suicidality are conditions commonly tied to the unmet need for gender-confirming medical care, as well as deadly infections such as HIV and AIDS. Furthermore, Spade argues the harm caused by unmet needs and services increases the chances of incarceration and criminalization as it has been proven to lead to increased harassment, profiling, unemployment, workplace discrimination, and poverty, which makes them more vulnerable to incarceration (p.84).

Spade (2015) offers an example of the number of injustices transgendered people can face when dealing with official gender classification within the Canadian carceral state, especially when the individual is difficult to classify or is misclassified. Identity documents, for example, are essential when discussing injustice through gender classification because a number of problems that arise when an agency, institution, or organization keeps people's data and/or produces identity documents (e.g., birth certificates, driver's license, immigration documents, etc.), and have incorrect or outdated information that conflict with other legal identity documents (p.83.) According to Spade, these issues appear when a person is unable to change their gender marker on certain vital records (p.84). Accordingly, misclassification becomes an even more significant problem when sex segregation is used to structure services and institutions. In this case, something as simple as accessing public bathrooms can become a considerable challenge. The problem becomes even more harmful when mandatory and essential institutions such as prisons, psychiatric institutions, hospitals, homeless shelters, and group homes, enforce gender segregation rule (p.84). Additionally, gender classification systems have a significant impact on

access to health care for incarcerated trans people (Spade 2015, p. 82). With medical policies and health insurance programs being highly regulated within carceral institutions, most programs exclude gender-conforming health care for trans people; while going as far as offering services such as hormone injections to cis-gendered people for a number of different treatments. Accordingly, it can be incredibly tricky, or even illegal to access those same hormones for trans people looking for gender-confirming procedures (p.84).

This brings into question the ways in which the legal system should, according to critical criminologists, respond to the harms of trans people and all members of the LGBTQ2S community. While legal reform movements for social change within LGBTQ2S communities [read: and all other marginalized persons] are incredibly crucial to the fight for human rights and justice, Spade argues that when legal 'reform' becomes the key end-goal of activist work we run the risk of encouraging a common belief that we have the ability to 'train' transphobia out of law enforcement agents or eliminate homophobic discrimination within the current criminal justice system (Spade, 2015, p.85).

### The Relationship Between Colonialism and Incarceration in Canada

The unavoidable relationship between LGBTQ2+ activism and prison rights activism become thus, further complicated when issues of racialized injustices present themselves. The relationship between historical expressions of racism and the role of the prison system today has long been explored by prison activists and scholars such as Dr. Angela Davis (2003). In Davis' critical text *Are Prisons Obsolete*, she brilliantly deconstructs the racial and sexual underpinnings of the American prison system after she, herself, spent 18 months in a correctional facility. In doing so, Davis' concentrates primarily on the history of anti-black racism in the

United States in order to elucidate the ways in which the prison system reveals “congealed forms of anti-black racism that operates in clandestine ways” - nourishing and upholding the Prison Industrial Complex (Davis, 2003, p.25). While Davis’ analysis is centered around the US legal and penal system, her text urges that the notion of a prison industrial complex relying on the racialization of prison populations is not an “incidental feature” and is not occurring only within the United States (Davis, 2003, p.85). This analysis has inspired many activists and scholars to conduct critical understandings of racialization and incarceration in their own investigations, which can then began navigating through the Canadian Criminal Justice and penal systems.

In the Canadian context, the high rate of Indigenous incarceration is a well-documented problem throughout the country. Therefore, while anti-black racism prevails in Canada, the primary focus on racialization in the Canadian context will explore primarily Indigenous populations. *In Unsettled Times: Indigenous Incarceration and the Links between Colonialism and the Penitentiary in Canada* (2019), scholar Vicki Chartrand argues that within mainstream discourses, the problem of Indigenous incarceration is often framed as the legacy or effects of colonialism, which "has resulted in the systemic racism and cultural and socio-economic deprivation experienced by Indigenous people today" (Chartrand, 2019, p.67). In building on a substantial body of research, Chartrand's work provides a recent and thorough investigation into how Canada's criminal justice system works against Indigenous people at every level (police checks, arrests, bail denial, sentencing, and detention).

According to Chartrand (2019), since the 1970s, there have been significant efforts to explain and address the disparities in the justice system for Indigenous people (p.69). There have also been several significant legal initiatives to address the rate of Indigenous incarceration, such as the 1996 Sentencing Reform Act, which added section 718.2(e) to the Criminal Code to direct

sentencing judges to consider alternative sanctions to imprisonment for Indigenous people (p.69). Accordingly, in 1999, in an interpretation of section 718.2(e), the Supreme Court held that widespread discrimination and adverse socio-economic factors "serve as the source of Indigenous over-representation in the criminal justice system and that alternatives need to be fully considered in sentencing" (p.70). Under these reforms, Chartrand argues that Indigenous-specific planning and programming in federal corrections were introduced, which allowed corrections to enter into an agreement with Indigenous communities for the provision of correctional and parole services (p.70). These and other initiatives have been part of an ongoing justice reform movement in Canada to address Indigenous incarceration at a variety of levels.

However, despite the numerous recommendations and reforms, the Office of the Correctional Investigator points out that in the 10-year period between March 2005 and March 2015, the Indigenous federal prison population increased by more than 50%, compared with a 10% overall population growth during the same period (OCI, 2015, p.36). Today, Indigenous people make up 26.4% of the total federal prison population, with Indigenous women composing 37.6% of the federal women prison population (OCI, 2017). Chartrand adds to these numbers by arguing that in the provincial prisons, Indigenous incarceration rates are as high as 80%-90% in some regions of Canada (Chartrand, 2019, p.70). More so, according to OCI (2017), Indigenous prisoners are additionally over-represented in higher security classifications, segregation placements, use-of-force interventions, maximum security, and forced interventions (OCI, 2017).

(Post-) Colonial and Indigenous studies have long pointed out that colonialism is a recurrent and worldwide feature of human history (Chartrand, 2019, p.71). In drawing from colonial and Indigenous studies, there has become a new body of scholarly literature that similarly locates the penal system with a broader context of colonialism. Chartrand points to Alexander's (2010) and

Childs's (2015) work, which links the incarceration of black people in the United States to the practices of slavery and segregation as legitimated through Jim Crow laws and prison privatization. In Australia, Baldry, Carlton, and Cunneen (2012) consider how the historic colonial practice of racial 'difference' continues to target Aboriginal Australians today in the penal system (p.72). Chartrand also points to Razack's (2015) work, which links Indigenous deaths in custody throughout Canada with the violent historical paternalism that "continues through discourses of institutional benevolence" (p.72).

Furthermore, Chartrand argues that colonial logics are reflective of an "epistemic violence"- which is a repressive ordering that has become such a pervasive part of our modern ontological fabric and psyche that we "fail to recognize its patterns or challenge its structures" (p.73). In referencing scholarly work by Wolfe (1999,2006), Chartrand argues that in modern imperial projects of settler colonies, the language, techniques, and practices change, but "the overriding colonial logics and structures for dispossession remain" (p.73). In the context of the penal system, although emerging discursively, this framework is also said to express itself throughout Canada's colonial history and demonstrates how the penal system remains implicit in a project of colonization that "continues to project Indigenous people as a problem population" (p.74).

In conclusion, Chartrand makes the argument that from its very beginning, the penitentiary has been "central to a project of modern colonialism in Canada in establishing settler dominion" (p.78). While the prison was not a part of the initial plan of colonizing Indigenous people, given that it "born of the same logic," it quickly replaced the overall receding of formal assimilation and segregation policies in the latter part of the twentieth century (p.78). Discourses of progress and modernity within social justice movements for Indigenous peoples give the appearance that Indigenous incarceration is a consequence or effect of a colonial legacy, which exonerates our

current criminal justice system from scrutiny; arguing that despite legal reform, "modernity still has violent consequences for colonized people" (p.78).

The discussion of the relationship between colonialism and incarceration then becomes further complicated when intersected with the conceptual framework of homonormativity. In *Queer Theory and Native Studies: The Heteronormativity of Settler Colonialism*, scholar Andrea Smith, along with additional scholars such as Qwo-Li Driskill, Chris Finley, and Brian Gilley (2011) challenge Native studies scholars to integrate queer theory into their work, and vice versa; and an absence of doing so contributes to a heteronormative framing of Indigenous communities (Smith, 2011, p.45). Additionally, while there are emerging feminist and decolonial analyses within Native studies that point to the gendered nature of colonialism, "it is also necessary to extend this analysis to examine how colonialism also queers Native peoples" (Smith, 2011, p.45). According to Driskill, Finley, and Morgensen, Indigenous GLBTQ2 identities are deeply complex (Driskill et al., 2011, p.3). Indigenous constructions of gender and sexual diversity, both *queer* and *two-spirited* was proposed in Indigenous organizing in Canada and the United States to "be inclusive on Indigenous people who identify as GLBTQ through nationally specific terms from Indigenous languages" (Driskill et al., 2011, p.3). Collectively, Driskill, Finley, Gilley, and Morgensen argue that when linked, *queer* and *Two-Spirit* invites critiquing heteronormativity as a colonial project, and "decolonizing Indigenous knowledge of gender and sexuality as one result of that critique" (p.4). Finley adds in *Decolonizing the Queer Native Body (and recovering the Native Bull-Dyke)* (2011) that histories of biopower have deeply affected Native people's relationship to the body and sexuality (Finley, 2011, p.33). Under the disciplining logics of colonialism, Finley argues that all sexualization of Native peoples constructs them as "incapable of self-governance without a heteropatriarchal influence

that native peoples do not "naturally" possess" (p.35). Under the disciplinary logic of colonialism, Native women are then heterosexualized to "justify the conquest" (p.35).

In turn, colonial narratives queer Native men as sexually unavailable object choices for Native women. While Native women are necessary for the imaginary origin story for the U.S nation, Finley argues that native men's presence in that story is erased- "disappearing to allow white male heteropatriarchy to rule over Native women without competition from native men" (p.37). Native men are read socially as nonheteronormative because Native men are seen as not correctly practicing heteropatriarchy. According to Finley, Native gender norms and family structures, which vary from tribe to tribe, "do not conform to Native men having control of the public space and the nuclear family or to caring for the land correctly" (p.36). Ultimately, through the action of colonial discourses, the lives and bodies of Native women and men are queered and racialized as disordered, unproductive, and therefore nonheteronormative.

While access to informative resources on LGBTQ Indigenous crime and incarceration is incredibly limited, it is apparent through the previously listed scholarly research that Indigenous people undergo incredible systemic, social, and discursive violence in Canada and the United States. Through historical and colonial practices, Indigenous bodies are both rendered invisible, and disruptive to social order; and thus, criminalized and queered through incredibly oppressive means. Therefore, in converging our understanding of the already pervasive racialization and criminalization of Indigenous peoples in Canada, and the violently gendered nature of the prison system which functions as one of primary means of social control, it becomes impossible to think about racialization, the criminal justice, and prison reform movements in exclusion from LGBTQ2S movements, and vice versa.

### Homonationalism, Benevolence, and Canada as a 'Safe Haven'

Pursuing the study of social movements, some of the most critical topics of discussion within Canadian studies of social activism is the conceptual and theoretical tool of a 'new' homonationalism impacting Canadian society and activism. Developing out of queer theory and written in the aftermath of 9/11, Women's and Gender Studies scholar Jasbir Puar expanded on Lisa Duggan's (2002) concept of homonormativity, which sustains dominant heteronormative assumptions of and about social life, to create convergences and collusion between homosexuality and US nationalist projects.

Puar's work on Homonationalism in *Terrorist Assemblages: Homonationalism in Queer Times* (2007) critiques the valorizing, managing and fostering of life and all that sustains it, describing the mechanisms by which queerness as a process of racialization "informs the very distinctions between life and death, wealth and poverty, health and illness, fertility and morbidity, security, insecurity, living and dying" (Puar, 2007, p.13). More so, Puar argues that the politics of recognition and incorporation have entailed that certain- but certainly not all- homosexual, gay, and queer bodies may be the "temporary recipients of the measures of benevolence" which is often afforded by liberal discourses of multicultural tolerance and diversity (Puar, 2007, p.14). While Puar's project centers around the United States and Muslim countries, critical scholars in Canada such as Miriam Smith (2019), OmiSoore Dryden (2015) and Suzanne Lenon (2015), have begun utilizing Puar's work in developing a 'new' homonationalism which represents the Canadian political context. In *Disrupting Queer Inclusion: Canadian Homonationalisms and the Politics of Belonging* (2015), all contributing authors seek to apply, extend, think through, and rework Puar's concept of Homonationalism in a "Canadian" context as it is articulated through four phenomena: "racialization structured by



white supremacy; current and ongoing settler colonialism; neoliberalism, which works with white supremacist settler capitalism to constitute the contemporary Canadian nation-state; and the persistence of imperialist mythologies that continue to position Canada as a peace-keeper, middle power, and a land of freedom” (Lenon, & Drydan, 2015, p.8).

Smith (2019), Dryden (2015), and Lenon (2015) all contend that lesbian and gay activism and organizing over the previous three decades have achieved remarkable success while also profoundly changing queer communities across Canada. Yet, at the same time, homophobia and heterosexism are still said to have remained “pervasive” and “rampant” within the Canadian legal and political system (Warner, 2002, p.353; Smith, 2019). While remaining under a conservative government, 2010 was to be what Canadian scholars Lenon and Dryden (2015) argue as the pivotal start to Canadian “queer times” (Lenon, & Dryden, 2015, p.18).

In *Interventions, Iterations, and Interrogations that Disturb the (Homo) Nation*, Lenon and Dryden introduce the inauguration of Pride House as an event that was incredibly notable in Canada, “for the disparate ways in which it spoke of and to the nation, signaling a contested terrain of contemporary lesbian-gay-queer-trans politics in Canada” (Lenon, & Dryden, 2015, p.4).

Pride House was built as part of the 2010 Winter Olympic Games, which were held in the Coast Salish Indigenous territory now known as Vancouver, British Columbia. During the 2010 Winter Olympics, Vancouver and Whistler Pride Houses served as "safe-space" venues for LGBT athletes, coaches, friends, families, and allies; Canada was the first country to have Pride Houses at the Olympic Games. While both Pride Houses offered information and support services to LGBT athletes and attendees, the Pride House in the Pan Pacific Village Centre in Whistler also emphasized the education of Vancouver's LGBT community and offered

information about immigration, asylum, and refugee support for LGBT in Canada for non-Canadian athletes, including support services and legal resources (Pride House International, 2019).

In the introduction to their edited volume of critical writings, *Disrupting Queer Inclusion: Homonationalism and the Politics of Belonging*, Dryden, and Lenon (2015) express their concern for how bodies and subjectivities are produced by, and taken up in, relational projects of inclusion. Through this concern, Dryden and Lenon argue that the persistent and enduring myths surrounding the founding of Canada, of what Canada is today, and what a Canadian identity means merely "advances seemingly unceasing narratives of Canadian benevolence and exceptionalism," participating in the configuration of the benevolent depiction of Canada as a "gay haven" (p.11). Furthermore, with the success of Pride House at the 2010 games, Canada jumpstarted a Pride House International tradition and became even more so internationally regarded as an exceptional and benevolent leader in the field of LGBTQ human rights.

In imagining itself as a 'safe' space and a place where sexual minorities (both athletes and their allies) from all over the world were welcome, Lenon and Dryden argue that Pride House "showcased Canadian (sexual) exceptionalism on a world stage" (p.4). Within their analysis, the event of Pride House, while remaining a positive step in the LGBTQ movement, rendered invisible the ongoing racializing and settling of the geography of 'Canada,' while simultaneously participating in such nation-making practices (p.4). As an example of Canadian benevolence and nation-making practices with regard to Pride House, Dryden and Lenon point to the example of the international outrage directed towards Russia in 2013 for enacting laws to "prevent homosexual propaganda," which would have prohibited the registration of Sochi Pride House as

part of their 2014 Olympic Games (Associated Press, 2013). According to Dryden and Lenon, one of the responses to Russia was to strip Sochi of the games entirely and to return them to Vancouver for Canada's second hosting (Change.org, 2013). This push to have the winter games returned to Canada invoked what Dryden and Lenon describe as a "patriotic image that loyally repeats the nation as a land of (queer) freedom," seemingly embodying the saying 'True North, strong and free' (p.12); this further perpetuated the public identity of a safe haven. However, as numerous Canadian scholars argue, the idea of Canada as a 'safe haven' is decidedly questionable, relying as it does both on the erasure of violent and benevolent colonial practices (Lenon & Dryden, 2015; Awwad, 2015; Wahab, 2015). In utilizing the example of Pride House and Sochi Olympic Games, Dryden and Lenon argue the need to be critical of problematic narratives that have developed and continue to grow, through viewing Canada as a "safe haven where gays are accepted" (p.11).

With specific references to the colonial narratives of Canadian pride and identity, in *"Pink Games on Stolen Land: Price House and (Un)Queer Reterritorializations,"* Sonny Dhoot (2015) theorizes the creation of Pride House as both a queer and colonial making of homonational space (p.49). Building from Dryden and Lenon's critique of Pride House, Dhoot introduces the two locations of Pride House: one being located in the Coast Salish territory called "Vancouver" and the other in the Squamish and Lil' wat territory known as "Whistler." Dhoot argues that during the time leading up to the games, several Canadian Indigenous communities and allies strongly protested the destruction of Indigenous land to accommodate the Olympics. Making little progress, the outrage among Indigenous communities of Canada pushed Secwepemc communities to go as far as Switzerland to oppose Canada's hosting of the Olympics on the grounds that "Canada did not respect Indigenous rights or communities" (p.53). The

Secwepemc community additionally argued that the reterritorialization put forth by the Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games (VANOC) would continue to cause "severe cultural and ecological destruction of Indigenous communities" (p.53). However, despite the widespread activism and opposition put forth by Indigenous communities and allies, VANOC continued to engage in the harmful colonizing practices against Indigenous people in Canada and continued with construction on both Coast Salish, Squamish and Lil' wat territory.

In constructing narratives of the land as Canadian, such as that narrative articulated by Pride House, Dhoot argues that it creates a sense of entitlement that allows non-Indigenous queers to "think of spaces within Canada as being available for their rightful use" which embodies a "homonational colonial logic (i.e., homocolonialism)" (p.55). Respectfully, Dhoots criticism does not argue that Queer communities in Canada hold white-supremacist beliefs but instead say that many queer rights claims (particularly those that attach themselves to gay and lesbian subjectivities) continue to "rest upon existing liberal rights frames premised on notions of singular identities, which themselves are deeply embedded in the notion of white sovereignties and the denial of Indigenous peoples' claims to collective rights" (p.56). In the particular case of Pride House, it is agreed among Indigenous allies and scholars that in producing an LGBT space within Indigenous territories and then excluding Indigenous queer voices in the conversation provides what collective scholars refer to as a "homocolonial-based logic of elimination, whereby LGBT space is (re)figured as no longer exclusively subversive to state control and heterosexism" (Lenon, & Dryden, 2015, p.6). According to Lennon and Dryden, this creates the further exclusion of Indigenous LGBTQ2+ within the context of the Canadian LGBTQ social

justice movement; thus, solidifying Queer and Native theorist's claims of Canadian homonationalism and exceptionalism that favours specific LGBTQ populations over others.

Moreover, the conversation of LGBTQ and international inclusion further created controversy in 2010 over the inclusion of the activist group Queers Against Israeli Apartheid (QuAIA) in the Toronto Pride Parade. In *National Security and Homonationalism: The QuAIA Wars and the Making of the Neoliberal Queer*, scholars Patrizia Gentile and Gary Kinsman explore the terrain of struggle that dramatizes the social and historical shift within Canadian state formation from "queers as enemy to the state to queers entitled to limited forms of citizenship" (Gentile, & Kinsman, 2015, p.133). The primary focus rests on queer Palestine-solidarity activism as a crucial rebellion against, what Gentile and Kinsman, referred to as a new emerging 'Canadian homonationalism'; a concept built off of Women's Studies scholar Jasbir Puar's concept of a 'homonationalism' in Palestine which favors association between nationalist ideologies and LGBT people or their human rights (2012).

Increasingly, Pride events are aligned with a homonationalist approach that “actively erases settler colonialism in Canada and Israel” (p.144). QuAIA’s participation in Pride events directly contests and undermines the production and performance of orientalist Homonationalism, suggesting what Gentile and Kinsman refer to as a “different articulation of queer struggles” (p.145). This phenomenon brought awareness to the reality that activists need to be continually forming connections between different ruling social practices and "make as visible the social roots these problems in contesting varied forms of pinkwashing" (p.145).

Flaws with Anti-Discrimination Law Reform in Canada

While there have been inarguable disconnects between social movements surrounding LGBTQ2S, racialization, and criminalization, many critical scholars within all respective fields are beginning to critique the use of law reform strategies for transformative social change (Chartrand:2019; Driskill:2011; Spade:2015; Stanley:2015). In *Queering Prison Abolition, Now?* Spade begins by elucidating the conventional narrative within the contemporary gay and lesbian rights politics framework that "uncritically adopts" and "centers" a legal equality strategy (Stanley, Spade, et al., 2012, p.120). In reference to their text *Normal Life: Administrative Violence, Critical Trans Politics, & the Limits of Law*, Spade develops his argument through a theoretical framing that is critical of the sole use of law reform as a strategy to transformative social change. While Spade's work is useful in understanding social organizing and the limits of law reform, it does, however, pose limitations due to its inability to speak directly onto a current Canadian political context. For that reason, a law reform critique from Canadian scholar Miriam Smith (2019) will also be utilized to elucidate further law reform challenges experienced in Canada.

In beginning his critique, Spade offers an analysis that explores how law reform-dominated agendas have come to stem from professionalized, foundation-funded organizational structures that, Spade argues, have come to dominate social justice work (p.94). According to Spade's analysis, the rise of neoliberalism in the last forty years has presented American social movements with two interconnected challenges to the political direction of queer and trans resistance. First, Spade argues that social movements have had to "contend with the impact of neoliberalism on their constituencies" (p.95). For example, the dismantling of economic safety nets like welfare and public housing, coupled with the growth of criminalization, "have devastated poor communities and communities of colour" (p.95). In basing their argument on

Ruth Gilmore's theories of neoliberalism, Spade argues that the rise of neoliberalism from the 1970s to the present has caused the "growth of a shadow state of volunteer-based and/or non-profit organizations that fill the gaps in social services created by government abandonment" (p.95).

At the same time, Spade elucidates a secondary challenging dynamic; in which social welfare has increasingly become dependent on private businesses and foundations (p.96). Ultimately, Corporate funders have become the primary sponsors and benefactors of social services, which, Spade argues, lead to the privatization of the social welfare state. One of the critiques Spade highlights on the effect of the emergence of the non-profit sector as the primary location for social justice work is that it "has separated the provisions of direct, survival-based services from organizing" (p.97).

The emergence of the non-profit sector develops the potential for an activist state that survives through nonprofitization which relies on funding models and governance structures to encourage organizations to identify goals that can be achieved quickly, rather than implementing long-term strategies for more transformative changes. Spade elicits primarily to the growing concept of trans rights activism in North America. In support of his argument, Spade refers to two pursued law reforms within the North American movement; the anti-discrimination act which lists gender identity and/or expression as a category of non-discrimination, as well as hate crime laws that include crimes motivated by the gender identity and/or expression of the victim as illegal (p.38). This would be known in Canadian jurisdiction as *The Canadian Human Rights Act* which protects people against harassment or discrimination when based on one or more grounds of discrimination such as race, age, national or ethnic origin, religion, sexual orientation, gender identity or expression, sex, disability, etc.

In support of many aspects of reform, Spade argues that the logic behind these strategies is not at all 'mysterious,' as passing reform laws contribute to a lot of important things within the social justice and human rights movement. First, Spade argues that the passing of anti-discrimination laws can create a basis for legal claims against discriminating employers, housing providers, restaurants, hotels, stores, and the like (p.39). Ultimately, laws that make gender identity/expression-based exclusion illegal has the potential to influence courts to punish discriminators. In terms of legal equality for trans people, Spade argues that there is also a hope that such laws, and their enforcement by courts, would send preventative messages to potential discriminators, letting them know “that such exclusions will not be tolerated; these laws would ultimately increase access to jobs, housing, and other necessities for trans people” (p.39). Nevertheless, Spade argues that while the logic of visibility and inclusion surrounding anti-discrimination law campaigns is prevalent, there remain many troubling limitations to the idea that these types of reform have the capability of approaching complex problems queer and especially trans people face in both criminal and civil law (p.40). In concern of whether the laws actually improve the “life chances” of those who are protected by them, Spade makes the argument that in an examination of categories of identity that have been included in these types of laws over the last several decades, "these kinds of reform have no eliminated bias, exclusion, or marginalization" (p.40). As many are aware, discrimination and violence against people of colour, for example, have persisted despite law changes that declare them illegal.

Additionally, Spade argues that law reforms that add gender identity/expression to the list of prohibited characteristics at times result in trans litigants running into specific challenges when seeking redress from discrimination under these laws (p.41). In offering an example, Spade argues that even in a jurisdiction where these laws are put in place, "numerous trans litigants



have lost discrimination cases about being denied access to a sex-segregated facility" (p.41). In the employment context, this often means that even when an employee lives in a jurisdiction where discrimination against trans people is illegal, "denying a trans person access to a bathroom that comports with their gender identity at work is not interpreted as a violation of the law" (p.41).

In *Homophobia and Homonationalism: LGBTQ Law Reform in Canada*, Smith (2019) further elucidates Spade's conceptual framework by highlighting some of Canada's failed attempts at law reform. Smith argues that the 2015 election of the liberal government, led by Justin Trudeau, paved the way to a renewed policy agenda for LGBTQ legal reform (Smith, 2019, p.9). One of the first acts of the new government was to respond to the long-standing political mobilization of the trans community around the reform of federal human rights legislation to explicitly include gender identity and expression (Canada, 2017). However, Smith argues that the Liberals' approach demonstrated the "persistence of the stigmatization of LGBT communities" (Smith, 2019, p.9).

In Canada's most recent round of debates on law reform, Canada's mainstream LGBTQ political organization, Egale, partnered with nation-wide legal experts to issue a call for reform of sex laws, along with a series of demands for recognition of the legacy of past discrimination against LGBTQ people. As Smith describes, the report called for reform of section 159 and the bawdy house laws along with an apology, the expungement of the record of past convictions, and compensation for past discrimination (p.10). The federal government seemed to listen to these calls for action, and in 2016 they introduced a bill to reform the criminal code, in 2017 the Canadian government apologized to the LGBTQ Canadians, and in 2018 the government passed a bill that in part expunged the past criminal records of those convicted for same-sex relations

(Smith, 2019, p.10). However, in 2016 when the government introduced Bill C-32, which would have removed section 159 of the Code, the legislation advanced to further and was then reintroduced as Bill c-39 in early 2017, which, with similar provisions, passed a second reading before it was stalled in the House of Commons. Accordingly, Smith argues that Bill C-75, an omnibus bill with the same provisions, reached the committee stage as of June 2018 but then failed to pass before the session ended (p.11). In October 2018, the bill was reconsidered in the House of Commons; and received royal assent on June 21, 2019. Smith also highlights that since the government has not reformed the law, a small number of men in Canada continue to be charged under section 159, even in provinces where an appeal court has ruled (Smith, 2019, p.11).

While the government has made slow progress on reforming the Criminal Code, it moved ahead quickly with its 2016 commitment on an apology, expungement, and compensation for past discrimination; however, in late 2016 the debate over compensation came to a head when a class action lawsuit was filed against the federal government by former members of the armed forces and federal public servants who had been fired or discriminated against based on their sexual orientation and/or gender identity (Smith, 2019, p.11). In 2018 the federal government passed expungement legislation through which an individual could apply to the Parole Board of Canada for expungement of a criminal conviction for consensual same-sex activity under the Criminal Code provisions of gross indecency, buggery, and anal intercourse.

However, Smith argues that while the federal government put a "celebratory face on the bill," passing it during Pride 2018, there remained extensive criticism from scholar-activists as the bill was pushed through without any meaningful debate (p.12). One of the key points of critique was that the expungement encodes continuing discrimination against LGBTQ youth by applying an

unequal age of consent to past acts. Arguably, Canada's age of consent ranged from 18 to 21 in different periods, leading to even more confusion surrounding eligibility for expungement. Smith further highlights a general scholarly concern which criticized today's age of homosexual consent (18) is lower than the age of consent established in 1969, and it remains higher than the age of heterosexual consent of 14 prior to 2009 and 16 after 2008 (Smith, 2019, p.12). The controversy around the expungement legislation also challenged the reality that despite the bill, other charges such as being found in a bawdy house would not qualify for expungement, rendering those arrested during historic LGBTQ raids unqualifiable (Smith, 2019, p.14). In fact, Smith argues that the apologies and expungement "had the air of homonationalist celebration of the government's commitment to LGBTQ rights and homonormative celebration of privatized queer life" (Smith, 2019, p.15).

In further defense of these arguments, scholars (and members of the Anti-69 committee) Tom Hooper, Gary Kinsman, and Karen Pearlston (2019) argue in opposition to the 1969 reforms, arguing that decriminalization did not occur due to reformatory changes in 1969, and the expungements in which Canada celebrates now wrongfully assumes recent decriminalization has occurred. In support of these arguments, Hooper, Kinsman and Pearlston argue that police forces across Canada began mobilizing to charge queer people for their consensual sexual activities after the originally 'decriminalization's' in 1969. This, they argued, was in part because the reform directed the authority's attention to 'public' displays of queer sex, which was defined as anything which takes place outside of a private bedroom (Anti-69, 2019). Furthermore, the group argues that even currently, several provisions that were historically used to criminalize LGBTQ2 people continue to exist in the current Criminal Code. These include (Anti-69, 2019):

- Gross Indecency – *Repealed 1988* Buggery – *Renamed Anal Intercourse in 1988*
- Indecent Assault on a Male – *Repealed 1983*
- Anal Intercourse – *Repealed 2019*
- Bawdy House Law – *Repealed 2019*
- Vagrancy – *Repealed 2019*
- Indecent Acts – *Still in the Code: S. 173*
- Obscenity – *Still in the Code: S. 163*
- Nudity – *Still in the Code: S. 174*
- Immoral Theatrical Performance – *Still in the Code: S. 167*

In addition to highlighting both historical and present problematic provisions, Anti-69 states that such provisions are specifically harmful to transgender and two-spirited individuals. According to the group, trans and two-spirited people continued to be arrested on charges of vagrancy, gross indecency, and buggery well after the 1969 legal reforms (Anti-69, 2019). Under the legal and social provisions, the Anti-69, activist group Anti-69 has mobilized a movement that disrupts mythologies surrounding the 1969 Criminal Code reform. While the group argues that many momentous events occurred during 1969, including the Stonewall riots against police repression and the origins of the gay liberation movements, the group does argue that no such decriminalization actually took place and that National efforts of commemorating the 1969 reforms only serve to “perpetuate a myth” which “is being used to legitimize Liberal governments, both past, and present, as pro-Lesbian, Gay, Bisexual, Trans, Queer, or Two-Spirit (LGBTQ2+)” (Anti-69, 2019).

Along with Spade, Smith, and Anti-69 scholars, additional scholarly activists have developed analyses about the further limitations of Canadian and American anti-discrimination laws that are useful in understanding the ways these law reforms have and will continue to deliver change to trans people and corresponding members of the LGBTQ community. Correctly, Spade points to race theorist Alan Freeman's critique of what he terms the "perpetrator perspective" in discrimination law which conceptualizes the harm of racism through the perpetrator/victim dyad, "imagining that the fundamental scene is that of a perpetrator who irrationally hates people on the basis of their race and fires or denies service to or beats and kills the victim based on hatred" (Spade, 2015, p.42). Under the analysis of Freeman and Spade, this perpetrator perspective is both ineffective at irradiating racism, while also causes several other social issues. First, Spade and Freeman argue that it 'individualizes racism,' explaining that basing legal rights based on reform symbolizes that "racism is about bad individuals who make discriminatory choices and have to be punished" (p.42). Through this function, the law only has the capability of attending to disparities that come from the behaviour of a perpetrator who intentionally discriminated against a specific social category in the process of their choice (e.g., hiring, firing, admission, expulsion).

The perpetrator's perspective is also argued to obscure the historical context of racism. According to Spade, discrimination is understood as "the act of taking into account the identity that discrimination law forbids us to take into account (e.g., race, sex, disability) when making a decision, and it does not regard whether the decision-maker is favouring or harming a traditionally excluded group" (p.43). In this way, the discrimination principle has been used to deprive affirmative action and desegregation programs, which, according to Spade, creates a 'colorblindness' that undermines the possibility of resisting the severe racial disparities in North

America which are rooted in “slavery, genocide, land theft, internment, and immigration exclusion” which assumes a level playing field (p.43).

Lastly, Spade's conceptual framing of discrimination law's reliance on the perpetrator perspective also creates the false impression that the "previously excluded or marginalized group is now equal, that fairness has been imposed, and the legitimacy of the distribution of life chances restored" (p.43). This, according to Spade, undermines the inequalities and disparities faced by marginalized populations and assumes that efforts for inclusion in the discrimination regime rely solely on rhetoric that "affirms the legitimacy and fairness of the status quo" (p.45). These concerns are particularly relevant for transgender and two-spirited individuals in North America who face ongoing discrimination via police profiling, harassment, violence, and high rates of youth and adult imprisonment (p.46). Trans populations experience poverty at disproportionate levels because of things like employment discrimination, family rejection, difficulty accessing services such as school, medical care, and other social services. According to Spade, these factors all increase trans participation rates in criminalized work to survive, which, combined with additional police profiling, "produces high levels of criminalization" (p.47). Once incarcerated, trans people in prison face severe harassment, medical neglect, and violence in both men's and women's institutions. In fact, Spade argues that violence against trans women, in particular, is consistently reported by prisoners as well as with researchers, in court cases, testimony from advocates and formerly imprisoned people—with addition to previously incarcerated people revealing trends of forced prostitution, sexual slavery, sexual assault, and other violence's (p.47).

In building off of Spade's critique of Freeman's perpetrator perspective, we are able to develop an understanding of how discrimination-focused law reform strategies that aim to

prohibit discrimination based on specific identity categories still "misconceives how the violence's of racism, ableism, xenophobia, transphobia, sexism, and homophobia operate" (p.49). Specifically, it becomes useful in highlighting and reconceptualizing how discrimination law, despite its many benefits, still fails to address the harms it claims to heal, and according to Spade, actually can "empower systems that continue to maldistribute life chances" (p.49). From this, it is within both the literary works of numerous critical scholars and this research, that we can begin to strategize how to use legal reform tools as part of a larger and much broader strategy to dismantling capitalist and homonationalist structures while also building alternative and transformative methods of meeting human needs and organizing political participation (p.49).

### Moving Towards a Transformative Justice Model and Prison Abolition

While all scholars explored within this literary review provide a unique perspective on the connections between the criminal justice system and LGBTQ2+ activism; each concluded that in order to enact effective social change, activists, scholars, and professionals would have to encompass a transformative justice model which seeks the eventual abolition of the prison industrial complex. Transformative justice was first introduced by Canadian author and legal reformer Ruth Morris.

Morris became deeply enthralled with advocates promoting restorative justice practices but quickly began questioning whether the practice of restorative justice went far enough. In *Stories of Transformative Justice*, Morris questions the assumption within restorative justice, which presumes there is a pre-existing state of justice which could be 'restored' and, further, argues that restorative justice ignores society's responsibility for accountability within structural

injustices (Morris, 2000, p.3). This is where Morris develops the concept of transformative justice, which was influenced and inspired by both the practices of Native Canadian Healing Circles, and New Zealand's Community Group Conferences; which both bring communities together to recognize harm done to victims, the accountability of the offender, and the social roots of the problem which brought them together (Quakers, 2019). Morris argues that transformative justice must include victims, offenders, their families, and their communities, "and invites them to use the past to dream and create a better future" (Morris, 2000, p.3). With Morris's mission being to help transform negative forces into resources for change, she states that transformative justice is an "open door to the community, to the past, and to a happier future for all concerned by a problem" (Morris, 2000, p.3).

In Canada, several penal abolitionists contend what the only way to do "good work" is to be actively involved in dismantling the carceral system (Culhane, 1991; Morris, 1989). With Claire Culhane and Ruth Morris jump-starting the penal abolitionist movement, not only in Canada but internationally, penal abolitionists reject incarceration as we know it today due to it is ineffective, inhumane response to the complexity of social, political, economic and personal problems which resulted in incarceration in the first place (Culhane, 1991).

Many scholars, such as American political activist Angela Davis, build upon Morris' and Culhane's conceptual models of transformative justice. In similarly challenging the effectiveness of correctional institutions, Davis adds to the studies of transformative justice by co-founding alongside Ruth Wilson Gilmore, the organization Critical Resistance, which seeks to "build an international movement to end the Prison Industrial Complex by challenging the belief that caging and controlling people makes us safe" (Critical Resistance, 2019). It is within the initial fight from Canadian activist Claire Culhane, the works of Canadian and American organizations



such as Canadian Quakers (with active member Ruth Morris), Critical Resistance, and it is co-founders Angela Davis and Ruth Gilmore the Prison Abolition Movement in North America was recognized.

According to Davis (2005), prison abolition is not “imagining or urging the isolated dismantling of correctional facilities and prisons,”; but rather prison abolition strategies reflect an understanding of the complex connections between institutions that are often seen as inherently disconnected (Davis, 2005, p.60). Davis explains that the concept of prison-industrial-complex was developed to reflect the extent to which the prison system is “deeply structured by economic, social and political conditions that themselves will also have to be dismantled” (p.68). Davis goes on to explain that capitalism, especially in its contemporary global form, continues to produce immense problems that neither it nor its prisons are currently capable of or prepared to solve. Therefore, prison abolition requires a critical reflection of how our present social order will need to be radically transformed.

Transformative justice and abolition ask, among many other things, whether a world that moves away from and resists, the concept of caging or exiling deviance and criminality is possible. Prison researchers such as Davis, Spade, Stanley, and Namaste agree that despite widespread assumption, carceral systems do not keep society safe. Instead, carceral systems increase and promote violence, consume enormous resources, and enhance the exploitation of marginalized populations (Stanley et al., 2012, p.122). Accordingly, Spade and Davis argue that if prison reform is done without applying a broader abolitionist framework, it will merely maintain the problematic “common sense” notion that prisons are both necessary social institutions and “fixable” social institutions (Davis, 2003, 105). While it is a common belief among abolition theorists that reform is simply not enough, abolition also encourages and

restages conversation about the current reliance on the Prison Industrial Complex as a system for social justice.

Abolitionists use a transformative justice model as a tool to engage with the deconstruction of the PIC, and transformative justice sees crime as an “opportunity to build a more caring, more inclusive, more just community” (Morris, 2000, p.21). Together, both conceptual frameworks argue that safety does not lie in bigger fences, harsher prisons, more police, or “locking ourselves in till we ourselves are prisoners” (Morris, 2000, p.21). Therefore, in moving forward with developing an analysis of two key prison reform organizations in Canada, it is imperative to be not only wary of both organization’s discursive frameworks of LGBTQ+ people, nationalism, and reform, but also be aware of how both organizations imagine the futurity of the criminal justice system in Canada.

### **Chapter Three: Theoretical Framework**

This thesis is situated within a critical politic, which relies on conceptual tools from the fields of critical criminology and queer theory to develop an intersectional understanding of prison reform activism in Canada. Specifically, numerous analytical, conceptual tools have been explored with the intent to support the analysis of organizational and discursive structures that are presented within some of Canada's prison reform organizations; which thus impacts more significant transformative justice movements. While the overall theoretical framework applied in this analysis derives from a critical assessment of American social justice organizing, when altered to fit the Canadian political landscape these tools provide critical scholars, activists, allies and justice officials with an effective way of understanding and challenging the Canadian carceral state, punishment, social activism, and discursive practices.

### The Field of Critical Criminology

Critical criminology is a field of study which encourages and provides alternative ways of thinking about traditional practices and knowledge of punishment, crime, and criminality. Critical criminology encompasses a variety of criminological theories and perspectives which challenge traditional frameworks of crime and justice, while simultaneously encouraging alternative approaches to traditional criminology. In upholding the critical opinion that the traditional (i.e., mainstream) field of criminology often supports positivistic, administrative and correctional methods through dominant means of social control- such as policing practices and penal policies- this dissertation instead challenges activists and scholars working within the social justice field to pursue a more critical and intersectional analytical position.

Critical criminological theory and research shed light on how inequality and power relations shape what is labeled as crime, who is labeled as a criminal, and how the criminal justice system responds to crime. According to Walter DeKeseredy (2006), a critical criminologist must be skeptical, curious, and actively prepared to challenge problematic ideologies within the criminal justice system and ask the difficult questions that could only be answered through radical thought and analysis (p.2). DeKeseredy states that ultimately, the official discourse about crime (much like other areas of social life) is viewed by critical criminologists as constructed through incredibly complex systems of racism, sexism, classism, and heterosexism (p.2). With its characteristically broad intersectional approach, DeKeseredy argues that there is no universal form of critical criminology (2006, p.6). The way critical criminology is defined and taken-up can vary drastically, yet as a collective group, critical criminologists tend to reject correctional approaches to crime and instead argue that significant

structural, systemic, and cultural changes are essential steps in reducing crime and promoting social justice (p.7).

With there being a number of principle strains of critical criminology such as postmodernist Criminology, Feminist Criminology, and Left Realism [an expansion of radical criminology], a number of emerging strains have grown from those practices. A sub-discipline of critical criminology, *critical prison studies* is an ideal theoretical avenue for scholars who "oppose the continued centrality of prisons and policing, and who share a commitment to challenging criminalization and punishment on local, national and global scales" (The ASA, 2018). Critical prison studies gained its popularity as a social science and critical criminological field through the American Studies Association (ASA) in which researchers, teachers, students, writers, activists, curators, and community organizers devote time to the interdisciplinary study of U.S. culture. ASA values original research, teaching, critical thinking, public discussion, and dissent aim to create an "open, diverse, and dynamic intellectual space that supports us in our scholarly work and professional lives" (ASA.org, 2019). While also publishing the academic journal *American Quarterly*, ASA developed a Critical Prison Studies Caucus in 2009 which consists of American Studies scholars and activists who oppose the "continued centrality of prisons and policing", and who share a commitment to challenging criminalization and punishment on a local, national, and global scale (ASA, 2019).

### Exploring Queer Theory

Similar to the complexity of Critical Criminology, the origins of Queer theory are challenging to define. Queer theory developed from multiple critical and cultural contexts, including; feminism, post-structuralist theory, radical movements of people of colour, the gay and lesbian movements,

AIDS activism, and postcolonialism (Callis, 2009, p.213). Therefore, while queer theory had its beginnings in the activist sphere, the cultural and social events surrounding its origin undoubtedly had a substantial social impact. The result of "queering" emerging within intersectional activist movements prompted the exploration of queer theory as an academic tool-focusing on the constructions of gendered and sexual identities and categorizations (Callis, 2009, p.215).

Through its 1990s establishment, Queer Theory is considered a much newer theory. Some of the core theorists in the development of queer theory include French Philosopher Michel Foucault, and American philosopher and gender theorist Judith Butler. For Foucault, the human body is not "sexed" in any significant way before its determination within discourse, through which it encompasses ideas of "natural" or "essential sex." In Foucault's book *The History of Sexuality*, Foucault refuses to accept that sexuality can be clearly defined and instead focuses on the expansive production of sexuality within governments of power and knowledge that construct meaning through discursive practices (Foucault, 1990, p.92). Accordingly, the discursive meaning of sexuality and gender is created through power, which is "produced from one moment to the next, at every point, or rather in every relation from one point to another" (Foucault, 1990, p.94). In other words, power and knowledge are everywhere, self-producing, re-producing, intentional, and unintentional through and within social, political, and personal discursive practices (Foucault, 1990, p.94).

A Critical Convergence: When critical Criminological and Queer Theoretical Conceptual Frameworks Collide

Actively engaging in the field of prison studies, American and Canadian academics such as Ruth Morris, Eric Stanley, Dean Spade, and Elias Walker Vitulli have quickly become vital scholars in the newly emerging field of critical prison studies. As Elias Vitulli (2012) states, critical prison studies scholars have not only theorized the U.S. prison system as a critical social and state institution for control but have also elucidated that "the prison system is particularly enmeshed in white supremacy, helping produce and ground it" (Vitulli, 2012, p.112). Vitulli argues that because the field tends to privilege race and white supremacy as the center of the prison system, it has also, in doing so, decentered other social categories and oppressions such as gender, sexuality, and heteropatriarchy. Furthermore, Vitulli argues that critical prison studies as a field often assumes that all incarcerated people fall neatly into the categories of male and female, and that "all men are in men's prisons, and all women are in women's prisons"- ultimately excluding the study of incarceration and criminalization of queer, gender-nonconforming, and trans people (p.112). As a response to this exclusion, critical scholars like Spade and Stanley further argue that critical prison studies must engage questions of gender and sexuality and do so intersectionally, with its analyses of race and white supremacy (Vitulli, 2012, p.113; Spade, 2015; Stanley, 2015).

With the attempt to further elucidate the possibilities in queering critical prison studies, scholars Dean Spade (2015), and Eric Stanley (2015) urge activists to "queer the carceral state" by applying a political trans politic to understanding and dismantling the prison industrial complex; "seeking instead to transform current logics of state, civil society security, and social equality" (Spade, 2015,p.3; Stanley, 2015). Specifically, Stanley suggests in *Captive Genders* that anti-trans/queer violence and the reproduction of gender normativity are essential ways in which prison industrial complex logics proliferate, arguing that gender normativity is

both a product of and producer of the PIC (Stanley, 2015, p.13). Additional conceptual tools by Dean Spade also serve particularly useful to this research as his book *Normal Life* provides an excellent example of queer/trans scholarship that includes an analysis of the prison industrial complex- while also highlighting the importance of including the prison industrial complex in Queer and Trans studies.

The theoretical framing of critical prison studies, queer theory, and subsequently the instructive nature of Stanley, Spade, and Vitulli on the collective queering of critical prison studies provides a conceptual framework for analyzing the current social justice movement in Canada; and more specifically, the tensions between LGBTQ activism, the prison reform organizations, and the state. Partnered with literary reviews of Canadian scholar and activist work, the theoretical and conceptual tools put forth by both critical criminologists and queer theorists provide this research and future research and activist projects alternative ways of thinking about social justice and human rights in Canada.

#### **Chapter Four: Research Method/Methodology**

The purpose of this chapter is to introduce the research methodology chosen for this qualitative study, which seeks to reveal, analyze, and disrupt dominant discourses of oppression and normalization, which, in the case of this research, are represented within Canada's key institutional prison reform organizations. Furthermore, this chapter provides an in-depth overview of the overall research plan, including the methodology, study participants, data collection procedures, and methods of analysis.

### Research Questions:

With the intent to elucidate the relationship between Canada's LGBTQ and criminal justice reform movements, this research analyzes the John Howard Society of Canada, and the Canadian Association of Elizabeth Fry Societies via critical discourse analysis (CDA) to develop a critical and theoretically grounded understanding of each of the organizations' discursive practices; and how that relates to broader social movement organizing and status-quo.

Specifically, the CDA provided by this dissertation resolved the following three analytical questions:

1. How does the organization discursively construct gender and sexuality?
2. How does the organization discursively construct the nation, citizenship, and government/governance?
3. How does the organization discursively construct activism and reform?

### Critical Discourse Analysis (CDA):

This qualitative study relies heavily on Critical Discourse Analysis as a means of data analysis. Discourse Analysis stems from theories that view language as a form of social practice. Typically, the term 'discourse' is used as a linguistic concept; French philosopher Michel Foucault adopted the name 'discourse' to describe a historically contingent social system that actively produces social meaning and knowledge. Discourse is a group of statements which provides a language for representing knowledge about a particular topic. That is, following Foucault, it is incredibly important to keep in mind that the use of discourse is never purely linguistic, but rather a process of language and practice working interchangeably, with Foucault arguing that discourse is "practices that systemically form the objects of which they speak"



(Foucault, 1989, p.49). Represented in numerous texts by Foucault, such as *The Archaeology of Knowledge* (1972), *The History of Sexuality* (1978), and *Discipline & Punish* (1977), Foucault elucidates how discourse influences the implementation of ideas; shaping our thoughts, ideas, beliefs, identities, interactions, and behavior. Mainly, discourse produces most of what occurs within society, and "it is in discourse that power and knowledge are joined together" (Foucault, 2009, p.318)

Specifically, this dissertation relies on identifying hegemonic discourses that describe "how the relations of power operate" (Lewis, 2002, p.31). Hegemonic discourse establishes and maintains particular ideological assumptions as "common sense," which maintains its dominant position over other discourses. For Foucault specifically, the concepts of discourse, power, and knowledge are intimately connected. This perspective becomes useful when researching activism and social movements due to the fact that the dismantling of social institutions of power and oppression requires an in-depth understanding of the types of discourses working for or against particular ideologies and institutions. Furthermore, just as CDA considers the ways in which power is embedded and circulated within and amongst discourse, theorization, which develops to explain findings, is just as critical. Therefore, in building from the traditional Foucauldian analysis, Critical Discourse Analysis (CDA) pushes boundaries and acts as an analytical research method which allows me to study the theoretical ways in which social-power inequality and abuse become enacted, reproduced, legitimated, and resisted by talk and text in the Canadian social and political context.

More so, CDA proves to be the best methodological approach to understanding broader reform movements in Canada, given its inherent theoretical ties to queer theory and critical prison studies. As argued in chapter three, the social meaning is produced through and within

discursive practices and power (Foucault, 1990, 90); therefore, in both the critical nature of prison studies and queer theories one is unable to develop an anti-oppressive framework of social action without first analyzing both past and present contextual discursive configurations of sexuality, crime, and privilege.

#### Study Participants & Data Collection:

In selecting both John Howard Society of Canada and the Canadian Association of Elizabeth Fry Societies for analysis, I make no claim that these organizations are representative of all prison reform organizations in Canada. Instead, they were chosen based on their public involvement in government legislative prison policy reform. Thus, while the organizations remain inherently different from one another, analyses of both organizations provide a good representation of the leading discourses and ideologies at the governmental level, which hinder more radical transformative social movement organizing in Canada.

Given the nature of critical discourse analysis, it was then up to my own discretion what would be collected as data. After deliberation and choosing to remain within a more macro analysis, I chose to rely on policy documents and website articles made publicly available by each national organization website. In addition to the policy documents, a services document from each organization highlighting their programs and services countrywide also underwent critical analysis. Specifically, the documents analyzed are:

#### John Howard Society of Canada:

- John Howard Society of Canada (2019). John Howard Society's 5-Point Plan to Improve Corrections. Accessed at <http://johnhoward.ca/resources/changing-laws-policies/john-howard-societys-5-point-plan-improve-corrections/>

- John Howard Society of Canada (2017). Senate Committee on Human Rights Issues Relating to the Human Rights of Prisoners in the Correctional System. Accessed at <http://johnhoward.ca/wp-content/uploads/2014/08/Human-Rights-of-prisoners-in-the-correctional-system.pdf>
- The John Howard Society of Canada (1985). Perspectives on Corrections: Towards a Philosophy of Corrections accessed at <http://johnhoward.ca/wp-content/uploads/2014/08/philosophy.pdf>
- The John Howard Society of Canada (2019). Services across Canada. Accessed at <http://johnhoward.ca/services-across-canada/>

#### The Canadian Association of Elizabeth Fry Societies:

- Pate, K (2015). The Canadian Association of Elizabeth Fry Societies 2014-2015 Annual Report accessed at <http://www.caefs.ca/wp-content/uploads/2013/03/CAEFS-Annual-Report-2015.pdf>
- Horii, G (2011). Guidelines for Advocacy. Accessed at <http://www.caefs.ca/wp-content/uploads/2013/05/Guidelines-for-Advocacy-Updated-December-2011.pdf>
- Pate, K (2017). Statement in Senate. Accessed at <http://www.caefs.ca/senatestatement2017conference/>
- Canadian Association of Elizabeth Fry Societies (2019). Canadian Association of Elizabeth Fry Societies Programs and Services Directory. Accessed at <http://www.caefs.ca/wp-content/uploads/2013/05/CAEFS-PROGRAMS-AND-SERVICES-DIRECTORY.pdf>

#### Data Analysis:

In adhering to the nature of critical discourse analysis, all collected data underwent a vigorous coding process. Coding of documents and website links were completed individually

for each organization, which allowed time for reflection and edit of the discourse emerging from the data. Specifically, three primary codes of sexuality, nationality, and reform were developed during the research process, based on the conceptual and theoretical points of critique amongst critical scholars reviewed in the Literature and Theoretical Frameworks chapters.

The data collected for this research was analyzed thematically via comparative coding using a computer-assisted qualitative data analysis software, NVivo 12. Coding the narratives within the collected data required identifying reoccurring narratives and themes, navigating collected discourses to develop a manageable few, building and understanding hierarchical themes among the discourse, and finally linking the discourse into theoretical models of understanding (Ryan & Bernard, 2008, p.85).

Essential to this dissertation, a constant comparison was utilized throughout each stage of the coding process, allowing for the continuous re-evaluation of data while also building more concise connections amongst constructed discourses. (Birks & Mills, 2011; Urquhart, 2013). As each new phase of coding began, it remained necessary to continue reviewing the data in previous stages so that I was able to consistently build connections among the data. In the first phase of coding, I relied on an open coding plan, which allowed for a line-by-line exploration of the documents and obtain an in-depth understanding of each text. In the second phase of coding, I chose to selectively code in relation to narratives constructing sexuality, nationalism, and reform. In my third phase of coding, I began theoretically coding (organized via memos and mapping), comparing and developing relationships between all coding steps, data, organizations, concepts, and theories.

Specifically, the critical discourse analysis, and thus the coding process, sought to address the following questions:

1. How does the organization discursively construct gender and sexuality?
  - a) In which ways are gender represented within their narrative?
  - b) In which ways are LGBTQ rights represented within their narrative?
  - c) In which ways are transgender and non-binary folk represented within their narrative?
2. How does the organization discursively construct the nation, citizenship, and government/governance?
  - a) In which ways does the organization publicly work with the Government of Canada?
  - b) In which ways are racialized minorities included within their narrative?
  - c) In which ways are Indigenous communities represented within their narrative?
3. How does the organization discursively construct activism and reform?
  - a) To what extent does the organization work within a reformative framework?
  - b) To what extent does the organization encourage transformative justice the goes beyond reform?
  - c) to what extent does the organization support a business-model approach to advocacy?

#### Chapter Summary:

The goal of this chapter was to outline the research methods used to answer the prescribed research questions. A discussion of the procedures, organizations, data collection and analysis outlined the specifics of how the study was conducted. While methodological grounded in theory, critical discourse analysis (CDA) was relied on as the method of data analysis. The goal of chapter four is to provide the study results. Before proceeding to the Findings and Discussion chapters, it is first necessary to emphasize that this analysis and critique are not issued to erase the hard work and revolutionary progress in which these organizations have fought and will

continue to fight to achieve. Instead, it is an opportunity to critically analyze possible limitations within these organizations' activism's [and thus, similarly structured organizations] as a means of supporting constant reflection and encouraging radical resilience among social justice activist work.

### **Chapter Five: Analysis of the John Howard Society**

To add additional contextual understanding, this section will first provide an individual overview of the John Howard Society of Canada, highlighting the organizations' core mission and values. Following the organization overviews, the results of the Critical Discourse Analysis will be shared according to the organizations' discourses on sexuality and gender, nationalism and governmentality, and activism and reform. It is in Chapter Seven, where I will draw more explicit conceptual connections between the relationship of the findings, and broader social movement organizing in Canada.

#### Overview of The John Howard Society of Canada

The John Howard Society of Canada is a federation of provincial/territorial and community-specific societies whose mission is to understand and respond to problems related to crime, to work with people who have come into conflict with the law, and to "review, evaluate and advocate for changes in the criminal justice process and to engage in public education on matters involving criminal law and its application" (John Howard Society, 2019). The John Howard Society has societies in each of the ten Canadian provinces and in the Northwest Territories, with local branches and affiliates associated within each province and territory. The Provincial and Territorial Societies have, as their primary responsibility, reform and community education, and

provide administrative support to branches and affiliates within their province or territory. Larger projects, such as communications and research on federal matters, are done through the National Society (John Howard Society, 2019).

The stated mission and core values of the John Howard Society include: working with people who have come into conflict with the law, reviewing, evaluating, and advocating for changes in the criminal justice process, engaging in public education on matters relating to criminal law, and promoting crime prevention through community and social development activities (John Howard Society, 2019). The National Society highlights, in their *2016 Declaration of Core Statements, Values and Principles*, that they engage in the following:

- Advocacy, which includes active, planned and frequent contact with the media, key government policy analysis, advisors, politicians, and committees with respect to the promotion of the objectives of the John Howard Society of Canada;
- Research related to the development and dissemination of briefs and positions on matters of national importance which incorporates positions of member societies in the furtherance of the objectives of the John Howard Society of Canada;
- Communication with members societies to promote a coordinated consultative process which allows the national society to monitor and respond to the needs of members and facilitate joint projects between the John Howard Society of Canada and its members;
- Community Education which focusses on the sharing of information among members and the promotion of the objectives of the John Howard Society of Canada to the members through board development activities and broad-based community education initiatives which enhances the role of the John Howard Society throughout Canada;

- Coalition building through a coordinated process of information sharing and the dissemination of materials with other like-minded national organizations;
  - Resource development initiatives to strengthen the ability of the national office to further the objectives of the John Howard Society of Canada
- (John Howard Society of Canada, 2016, pp. 1).

The John Howard Society is additionally known for creating spaces for discussions about imprisonment and the harms done by the Canadian prison system. In 2014, The John Howard Society released its most recent updated document on the philosophy of the organization, *Perspectives on Corrections*, which highlighted the realities of imprisonment as a crime prevention tool. Specifically, they argue that imprisonment has not been shown to be a useful way of bringing about crime prevention and reduction. JHSC highlighting one of the paradoxes of imprisonment, stating:

“Putting someone in prison is like voting no confidence in his ability to use in a responsible way the kind of freedom our society makes available. We [read: society] expect that when someone is released from prison, he will have "learned his lesson." But, how can an individual learn to act responsibly in an environment which strips him of the freedom to make significant decisions about the course of his own life?” (John Howard Society, 2014, p. 7).

Through its public engagement in the discussion of incarceration, systemic harm, and Canadian legal reform, JHSC has become one of the most highly visible organizations participating in the production and maintenance of institutional discourse and ideologies that circulate within the legal reform and social justice activist movement in Canada. From research



on human rights, social determinants of health, medical rights, and Canadian prisons, the JHSC engages in a wide range of discussion about institutional harm, punishment, and human rights. It is for that reason that I chose to engage in a critical analysis of a number of policy documents and services put forth by the John Howard Society of Canada. Specifically, I subjected the following texts to critical discourse analysis:

- John Howard Society of Canada (2019). John Howard Society's 5-Point Plan to Improve Corrections. Accessed at <http://johnhoward.ca/resources/changing-laws-policies/john-howard-societys-5-point-plan-improve-corrections/>

- John Howard Society of Canada (2017). Senate Committee on Human Rights Issues Relating to the Human Rights of Prisoners in the Correctional System. Accessed at <http://johnhoward.ca/wp-content/uploads/2014/08/Human-Rights-of-prisoners-in-the-correctional-system.pdf>

- The John Howard Society of Canada (1985). Perspectives on Corrections: Towards a Philosophy of Corrections accessed at <http://johnhoward.ca/wp-content/uploads/2014/08/philosophy.pdf>

- The John Howard Society of Canada (2019). Services across Canada. Accessed at <http://johnhoward.ca/services-across-canada/>

### How does John Howard Society of Canada discursively construct gender and sexuality?

To attempt to address the relationship between gender inequality and discursive practices in prison reform organizations in Canada, I conducted critical discourse analysis to determine the ways in which The John Howard Society of Canada discursively frames sexuality, the gender

binary, extends their services to LGBTQ communities, and/or considers LGBTQ2+ inequality as a primary contributor to crime.

In entering this research project, my knowledge of the John Howard Society of Canada was relatively limited. As a young prison rights activist, I, of course, knew of the organization, had sourced the organization in a number of academic papers, and was actually initially drawn to JHSC years ago because of its active involvement with male offenders and men negatively involved in the criminal justice system. As a gender studies enthusiast, I was excited to embark on a more critical analytical journey with The John Howard Society and to highlight areas in which they could improve their resistance to systems of inequality and discrimination. However, my analysis of JHSC's discourses explicitly concerning gender and sexuality resulted in a call for action which extends far beyond improving resistance to gendered social systems of oppression, such as prisons. In fact, I was incredibly disappointed in JHSC's discursive framing of gendered and sexual inequality in relation to criminal justice and human rights. Despite the organization's seemingly progressive nature, based on their listed values and principles, at no point throughout numerous searches of the organizations' website, documents, policy recommendations, and public speaking events, did their discourses step outside of a cis-normative conception of gender or indicate that the organization even offers services for individuals who do not fall within their prescribed biological male/female category.

As all JHSC's housing, camps, and programs were targeted for men up until the end of 2017, I found it particularly concerning that there was no mention of their often specific focus on men in their publicly available documents, such as their *Core Statements, Values and Principles* and their *Perspectives on Corrections* document (which has not been revised since 1985). While it is possible that the organization simply 'generalized' their information to have a

more 'inclusive' narrative of both women and men in their projects and analyses,' the apparent absence of any discussion of the complexities around gender and sexual dimensions of criminal justice and incarceration stand as a point of concern. Despite expanding some of their housing to women, as well as dispensing programs tailored specifically to men and/or women, JHS seemingly avoids discussing gender identity, womanhood, manhood, sexuality, and non-heterosexual relationships within their public persona. Through this discursive and political avoidance, John Howard Societies of Canada seemingly supports and centers hetero and cis-normativity and renders any person outside of these narrow categories completely invisible. Despite the organization's lack of discussion of gender on their public sites and documents, I wanted to investigate further the provincial and territorial programs and services offered. In addition to avoiding critical narratives of gender in their public documents, not one analyzed program put forth by the societies discussed the complexities of gender identity, sexuality, and non-heteronormative experiences in the context of criminal justice. I do, however, offer some credit to the province of Nova Scotia, as the society did have 'gender issues' mentioned as a potential topic of discussion within their programs and services. However, upon further investigation, out of the twenty-seven programs advertised in Nova Scotia, there were no additional mention of or links to resources of gender issues outside of cis and heteronormative perceptions of crime and violence. Thus, once again, the discussion of gender is limited to binary, cis- and heteronormative discursive frame, within which there is no space for consideration of queer, trans, or other gender non-conforming incarcerated persons. Further saying nothing of imaging their unique experiences and potential needs.

Admittedly shocked by the lack of services for LGBTQ inmates, or even mention of diverse gender, sexuality, non-heteronormative relationships, medical services for transgender inmates, I

chose to run a basic media search of John Howard's involvement with public LGBTQ activism. Through this scan, I was able to determine that John Howards Society advertises very little involvement with LGBTQ politics at all— and especially not trans politics. In a quick media scan, I was able to find two news articles retweeted by the organization on their Twitter account with some information on injustices experienced by transgender inmates in BC prisons and one small news article discussing the possibility of opening an LGBTQ2 housing complex in BC. However, upon further investigation into any action or response taken by the organization in representing the complex issues of criminalized LGBTQ2+ individuals within their reform proposals and philosophy, the absolute lack of services and representation would indicate that no such actions were ever made to incorporate LGBTQ2+ experiences into the organizations practices.

The exclusion of non-cisgendered inmates thus becomes further highlighted by JHSC in their *5-Point Plan to Improve Corrections* (2019) document in which the organization provides reform recommendations and information regarding access to health care while incarcerated. The organization includes a long list of access to health care issues of concern ranging from mental health care needs, HIV/Hepatitis, to segregation. In concerns to Hepatitis and HIV, JHSC states that in 2012, "18.5% of inmates were infected with Hepatitis C and 1.2% with HIV" (p.18). As a response to this crisis, JHSC recommends that "efforts to ensure identification, ongoing monitoring and treatment of HIV infection in CSC facilities be a priority and that relevant systems to ensure timely and effective diagnosis and treatment are put in place"- yet altogether avoiding any narrative surrounding the HIV/AIDS crisis within the LGBTQ2+ prison community. Furthermore, despite the many issues of concern pertaining to access to health care discussed by the organization there was no narrative in the Issues of Concern or

Recommendations sections that pertained to health care access for transgendered inmates. As highlighted by Dean Spade in *Normal Life: Administrative Violence, Critical Trans Politics, & Limits of Law*, rates of HIV are incredibly high among transgender people, with one study finding seroprevalence of HIV among 63 percent of African American trans women (Spade, 2015, p.82). Because we know that 70% of trans youth in Canada have seriously considered suicide, 70% of trans youth have reported sexual harassment, and 20% of homeless youth identify as LGBTQ2+, it clearly becomes implausible to discuss access to health care without considering LGBTQ2+ populations (Canadian Human Rights Commission, 2019). Therefore, it is problematic and concerning that among the many issues covered by John Howard Society in need of reform- including an extensive list of concerns pertaining to access to health care- does not include any discussion pertaining to LGBTQ2+ healthcare in prison.

In all, I examined the organization's website, three policy documents put forth by the organization, as well as all of the 250 listed programs and services advertised by both the national and provincial societies. None of the dialogue mentioned LGBTQ criminal justice and human rights. The organization's offered no discursive space for the construction of non-heteronormative relationships and non cis-gendered identities, and no efforts were made to provide services for inmates whose identities exceed these narrow frames.

How Does the John Howard Society of Canada discursively construct the nation, citizenship, and government/governance?

Rather than being critical of Canada's benevolence, based on the analysis of documents provided by JHS, it would seem that the organization provides services under the general assumption that, for the most part, the Canadian legal system is working within an overall framework of honesty,

fairness, and intersectionality and the majority of human rights violations within the carceral state take place within the prison. This observation derives precisely from the discourses of benevolence within the organization's 2014 document *Perspectives on Corrections: Towards a Philosophy of Corrections* in which the organization begins by claiming to "always stand for a correctional system which seeks to protect members of the community from the effects of criminal activity while undertaking to treat offenders in such a way that having serviced their sentence, they are able to return to the life of a normal citizen better able to participate constructively in society" (p.2). Within the organization's call for action, they state that the community should attempt *in principle* to make available to prison inmates "the range and types of opportunities available elsewhere" (p.6). In addition to their argument, the organization claims that the 'chief handicap' of inmates derives from the fact that they are in custody and hence, cannot, for the most part, go to where "services and programs are normally offered" (p.7). Not only does this narrative wrongfully assume that Canada provides a full range of services and programs for all citizens who have not been criminalized, but it also does not provide any critique of the failures of the social system, which contributes to criminal behaviour in the first place.

More so, JHS furthers this benevolent discourse by utilizing both the universal medical insurance system as well as the education system as examples of social systems that should be replicated within correctional facilities. In providing an example, JHS argues:

If our medical system was based on desert, many of the people who show up in the emergency rooms of hospitals would be denied treatment. But, our system is not based on desert. It is based on need (JHS, 2014, p.8)

While Canada does provide a universal Medicare system, as described in the previous literature review chapter, it is evident that the Medicare system in Canada does not extend all of its services to nonheteronormative patients. In fact, we know that many transgendered patients are denied hormonal treatments, gender-assigning surgeries, and insurance for these services- both inside correctional institutions and within every day Medicare practices. Therefore, not only does the discourse put forward by JHS frame Canada's social welfare system as a benevolent practice with little to no flaws, but it also again excludes the populations and social groups that have argued inequalities within these services for decades.

This discourse of Canadian benevolence is thus further perpetuated by the organizations discussion of why the country puts people in prison (JHS, 2014, p.8):

1. "We imprison people because they have demonstrated to us that they are a threat to our sense of security. It is the best way we know of for protecting individuals in the community from those who are dangerous."
2. "Persons who commit serious crimes are put in prison as punishment. When we imprison, for this reason, punishment consists of depriving offenders of their individual liberty, their freedom as individuals to come and go as they wish."
3. A third reason for imprisoning people is so that "while they are imprisoned, they can be punished. At various times in the past, this has been a very popular idea."

JHS critiques the third reason, stating that "to deliberately inflict serious physical suffering in the name of punishment is humiliating, quite possibly brutalizing for all concerned"—they then follow this critique by stating "we suspect that it is likely to cause such deep resentment in the

person who is punished that there is little chance that he will rejoin society on a release better able to or even as able to participate in a law-abiding and socially constructive way" (p.10).

While I was pleased to see the organization take a stance on eliminating humiliating punishment within prisons, the first and second reasons offered by the organization for imprisonment require critique as well.

The primary statements, and the types of linguistic discourse used within these statements, highly support a stigmatizing narrative around whom and what is considered "dangerous" to society. Expressly, by referring to anyone incarcerated as a "threat to our sense of security," and stating the need to "protect individuals in the community from those who are dangerous" assumes that everyone incarcerated are not only "dangerous threats to society," but that those convicted of crimes have been rightfully and justly found guilty. In extension to the discursive construction of "criminal" or "incarcerated persons," these discourses also construct benevolent narratives of justice in Canada.

This observation of the discourse governing criminality is later confirmed in the organization's synopsis of their *Perspective on Corrections*, in which they state that the organization's philosophy is built on the following three assumptions (JHS, 2014, p.12):

- a) We assume that criminal acts are denounced in two ways; generally, through the definition of the act as criminal in the process of creating legislation, and explicitly, *through the finding of guilt.*
- b) We assume, with the Canadian Law Reform Commission, that the purpose of sentencing is *punishment and collective or social self-defense.*



c) We assume that *the only morally acceptable form of punishment in our modern society is the deprivation of freedom*. Thus, in sentencing an offender, the court places some form of constraint on the freedom of the offender to direct his own life.

These assumptions are of particular importance, because the philosophy of the Canadian penal system, and thus the philosophy in which the organization theoretically encompasses and puts forth within the reform movement, submissively shies away from any critique of the Criminal Justice System as a whole. In stating that their philosophy is built on "assumption" rather than "fact," the organization not only supports the overall criminal justice system in Canada but also passes these assumptions as universal "truth" which erases the failures, violence, and inequalities perpetuated by the criminal justice system and thus the penal system in Canada. This encompasses a dominant discourse of criminality and justice which privileges white, heteronormative citizens, renders invisible nonheteronormative beings, and in doing so diverts attention away from the oppressive, violent, colonial, hetero-normative nature of the criminal justice system- in which without, prisons [as we know them], would not exist. Additionally, while the John Howard Society's 2017 *Annual Report* makes claims to be a "diverse, tri-cultural" nation-wide organization, the dominant discourses in which the organization engages would, unfortunately, indicate less-than. According to the Correctional Service of Canada, in parallel to a decrease in overall crime over the last decade, "an increase in charges against ethnic minorities is reflected (Indigenous people, recent or previously settled migrants, residents, and citizens)" (Government of Canada, 2019). Furthermore, from 2004 to 2010 the percentage of white inmates fell from 70% to 65%, whereas that figure for Black inmates rose from 6.2% to 7.9%, this is a considerable increase considering that the demographic

weight of Black Canadians is said to be only 2% (Government of Canada, 2019). Furthermore, the Criminal Code of Canada mandates that all sanctions other than imprisonment be considered with particular attention for Aboriginal offenders due to a 2017 statistic stating that Aboriginal adults accounted for 28% of admissions for provincial/territorial correctional services and 27% for all federal (Government of Canada, 2019).

Despite how clearly racialized the Canadian prison population is, John Howard Society showed recognition of the specificity of Indigenous inmates only when they are cis-gendered and heterosexual. Aboriginal incarceration is also raised in a number of resources put forth by JHS to raise awareness of the injustice of mass incarceration of Aboriginal peoples in Canada. For example, in *JOHS 5-point Plan to Improve Corrections*, the organization highlights the importance of bringing more awareness to aboriginal incarceration and calls for "an investigation of the treatment and management of chronic self-injury among federally sentenced Indigenous women" (JHS, 2013). However, it should be noted that in comparison to the 230 programs JHS advertised both provincially and federally, I was only able to find three programs designed for Indigenous populations in Canada, and all of which presumed a heterosexual, cis-gendered identity status. More frustrating, two of the three programs tailored to Indigenous populations had, unlike other programs, no resources or links to inquire further about the service. Again, the dominant discourses of crime in Canada put forth by the John Howard Society excludes the traumatic experiences of non-heterosexual, non-cis gendered, and racialized minorities and immigrants, which renders their identities and experiences as non-existent and thus issues of non-importance.

How does the John Howard Society of Canada discursively construct social activism, transformative justice, and reform?

The apparent lack of minority representation is even more troubling when remembering that John Howard Society is known as a 'key voice' driving the legal rights reform in Canada (Annual Report, 2018, p.20). This reality elucidates that the operations of power activists' critique in the broader world also need examination within social movement organizations themselves.

According to Dean Spade, building institutions of any kind includes confronting the dangers of stagnation of leadership ideas, ways of knowing, and mechanisms of distribution" (Spade, 2014, p.113).

Many resistance and self-declared "revolutionary" social movements have demonstrated, according to Spade, the capacity to create an imagined population in need of protection, and to "establishe[s] modes of distribution that make some people more secure at the expense of others" (p.112). For example, in *Perspectives on Corrections*, JHS states that Canada imprisons people because they have "demonstrated to us that they are a threat to our sense of security. It is the best way we know of for protecting individuals in the community from those who are dangerous" (Perspectives on Corrections, p.9). This, as Spade argues, creates a deserving and non-deserving dichotomy, which always includes "identifying 'threats' and 'drains' who must be killed through abandonment, massacre, or other means in order to protect the population" (p.113). By participating in a discourse that reinscribes the 'othering' of LGBTQ2+, organizations, in turn, establish disciplinary and population-management norms that "marginalize and/or vilify" (p.114). This could not be further away from a JHS social justice model which apparently seeks "to treat offenders in such a way that having serviced their sentence, they are able to return to the life of a normal citizen better able to participate constructively in society" (Perspectives on

Corrections, p.2). In fact, through enacting an oppressive labeling narrative that situates the social "other" as dangerous, the organization discursively supports and helps maintain the very institutions it claims it seeks to dismantle.

According to Spade (2014), many scholars and activists have asserted that we need to examine whether an organization is working toward transformative change or working to keep their organization open (p.115). Spade provides insight on why resistance movements must be careful "not to replicate business model approaches to organizational growth that encourages us to chase any and all opportunities for funding in order to sustain and grow the organization by any means, even if sometimes we lose sight of our mission" (p.115). All of these are in place to remind social activists that the aim of social service organizations in particular is and should remain to be to put themselves out of business; with Spade arguing that "ideally, their work needs to aspire to reach and resolve the root causes of the need for services" (p.114).

While the John Howard Societies of Canada identify themselves as NGOs (Non-Governmental Organization), Spade's arguments prompted me to do further research into the organization's business models and governmental partnerships. In John Howard's 2018 *Annual Report*, JHS claims that the organization would not exist without federal support and relationships (Annual Report, 2018, p.30). In fact, in the annual report, JHS claims that "significant progress has been made on benefitting from the national reach of the organization as a possible national provider for services through federal contracts" (Annual Report, p.5). Canada Border Service Agency, as an example, has named itself as a potential partner of JHS and national provider of community-based alternatives to custody for refugees (p.5). JHS also receives funding for its arts programs from the Public Safety of Canada which was developed in 2003 to ensure coordination across all federal departments and agencies responsible for national

security and the safety of Canadians (p.5). The annual report further states that the organization had recently met with the senior management of provincial correctional services to "jointly assess gaps in programs/services and determine the role that JHS might play in addressing these" (p.11). These partnerships, according to Spade, can be incredibly problematic. Funding from wealthy government institutions and philanthropists means that they contain stakes in the organizations; which allows for some of the services and programs to remain under the control of these governments and wealthy donors (Spade, 2014, p.101). Furthermore, the governance structures of these non-profits, which are characterized by boards consisting of donors and government stakeholders, perpetuate and uphold dynamics of "white supremacy, privilege, capitalism, patriarchy, ableism and xenophobia, and, again, leads to concentrated decision-making powers which do not accurately represent marginalized populations (p.101).

The John Howard Society states, in their 2017 Annual Report document, that in moving forward the organization believes it is increasingly important to develop new funding streams and strategically expand while remaining aligned with their vision, mission and values and "through timely strategic development and sound governance and decision-making" (Annual Report, 2017, p.26). It is therefore important to remain critical of these organizational connections. While transformative justice work seeks alternative processes that do not use policing and criminal courts to address harm, positive connections with government and systems of power are still at times crucial; especially given the challenges in funding. However, as Spade argues, part of the reason that decision-making power in non-profits becomes concentrated in the hands of elites is because of the way organizations secure funding (Spade, 2015, p.99).

According to Spade, the foundation funding of non-profits takes the direction out of the work of

the hands of the people affected by it and then concentrates it on the agendas and timelines of funders, discouraging long-term, self-sustaining movements from emerging.

Using political strategist Suzanne Pharr's work as reference, Spade argues that the use of short-term funding cycles (often 1-5 years) and the focus on "producing deliverables that demonstrated quantifiable impact in measures that funders believe to be significant" has meant that non-profit organizations are consistently encouraged to operate on short-term goals rather than being supported in building long-term sustainable structures to achieve transformative demands (Spade, 2015, p.99). In using Spade's theory as the guiding framework for my analysis of The John Howard Societies, the organization's discursive practices strongly point to a business model approach in which JHS operates on short-term funding cycles and thus is unable to effectively cultivate the long-term strategies necessary for more transformative changes to politics, society, and culture.

### **Chapter Six: Analysis of The Canadian Association of Elizabeth Fry Societies**

Similar to The John Howard Society of Canada, the Canadian Association of Elizabeth Fry Societies (CAEFS) is an association of self-governing, community-based societies throughout Canada that work with and for women and girls within the justice system. Their particular focus is on women and girls who are, or may be criminalized, as the "association exists to ensure substantive equality in the delivery and development of services and programs through public education, research, legislative and administrative reform, regionally, nationally, and internationally" (Canadian Association of Elizabeth Fry Societies, 2018). However, despite both the organizations' particular interest in the gendered dynamics of the criminal justice system, as well as discursive outputs from both national websites drawing similarities between both organizations, it remains important to draw attention to the clear distinctions between the two.

The Canadian Association of Elizabeth Fry Societies, founded in 1939, has grown to 24 member-societies across Canada. While sharing some organizational similarities to The John Howard Society, what has made CAEFS truly stand out is their active involvement in the modern Women's Movement. The organizations involved were mostly grass-roots organizations that were often overlooked in the political and social realm, such as lesbian activist organizations, political parties, and women's committees (Fulford, 1991, p.192). Among this list, CAEFS was listed as one of the dominant organizations within the Canadian women's movement between the years of 1960-1990 (Fulford, 1991, p.192). In order to qualify as a leading organization within the movement, the organization must have as one of its principal goals the "improvement of women's social, economic, or political condition" (Fulford, 1991, p.192). Known for its involvement in the women's rights movement, which involved issues of lesbian/gay rights movement, employment, fertility, and representation; Elizabeth Fry Society works to continuously maintain and strengthen its organizational ties with other national justice, women's and voluntary organizations around the country and internationally. These organizations include the John Howard Society, Critical Resistance, American Correctional Association, Canadian Criminal Justice Association, and many more (CAEFS, 2017). With the help of their provincial, regional, national, and international affiliate organizations, CAEFS has developed and advocates the following philosophy, principles, and positions that guide all CAEFS branches; cited as:

- CAEFS develops policies, positions, and acts on common interests affecting women.
- Women's rights are human rights, and women are entitled to substantive equality; that is, the right of access to equal opportunities and programs in the justice system; as well as

the right to justice without fear, prejudice, or discrimination on the basis of such factors as sex, race, disability, sexual orientation, age, religion and freedom of conscience, social or economic condition.

- Women who are criminalized should not be imprisoned; all efforts will be made to prevent women from being incarcerated and to facilitate the earliest community integration of those who are sentenced to a term of imprisonment.

(Canadian Association of Elizabeth Fry Societies, 2017)

These goals reflect the overall organizational philosophy, which includes initiatives to increase public awareness and promote the decarceration of women. CAEFS seeks to:

- Reduce the overall numbers of women who are criminalized, or who are at risk of being criminalized and imprisoned in Canada
- Increase the availability of community-based, publicly funded, social service health and educational resources available for marginalized, victimized, criminalized, and imprisoned women
- Increase collaborative work among Elizabeth Fry Societies and other women's groups working to address poverty, racism, and other forms of oppression

(Canadian Association of Elizabeth Fry Societies, 2017)

As shown in the close reading of the JHS, CAEFS's research and literature on women's imprisonment, systemic harm, and Canadian legal reform have allowed CAEFS to become one of the most representative organizations for women within the legal reform and social justice



movement in Canada. From research on women's rights, social determinants of health, mental health, and restorative justice, the CAEFS engages in a seemingly progressive discussion surrounding institutional harm, punishment, and human rights in Canada.

It is for that reason that I chose to engage in a critical analysis of a number of policy documents and services put forth by the Canadian Association of Elizabeth Fry Societies; my goal was to elucidate the representation of trans and non-binary rights within the current their current activist movement. Specifically, I subjected the following texts to critical discourse analysis:

- CAEFS (2014). Annual Report.
- CAEFS (2000). "Guidelines for Advocacy"
- CAEFS (2013). Issues Associated with Increased Criminalization of Women
- CAEFS Position Paper (2017). "Statement in Senate about 2017 Efry Conference" by Senator Kim Pate
- CAEFS (2003) Services Directory

How does Canadian Associations of Elizabeth Fry Societies discursively construct sexuality and gender?

In an attempt to address the extent of the relationship between inequality and language practices of the social justice and prison reform movement in Canada, I conducted an analysis of discourses related to gender, sexuality, the gender binary, LGBTQ communities, and/or gender inequality as a primary contributor to crime.

In the CAEFS's last submitted annual report, from the fiscal year 2014-2015, CAEFS end by proudly stating that, as an organization, they "continue to encourage the Canadian public to

ensure that our Government works to regain that reputation of a rights-respecting country, starting with a renewed commitment to respecting and upholding human and Charter protected rights for all Canadians, regardless of their sex, race, and ability, sexual or political orientation" (Annual Report, 2015, p. 8). While this statement suggests a narrative based on inclusivity and progressive ideals, further investigation revealed that the most represented discourses among the documents and practices of the organization are heteronormative.

The first example of heteronormative discourse is located in a primary hyperlink on their national website which links to fourteen fact sheets regarding issues of gendered incarceration in Canada. These fact sheets cover many social issues faced by women entrapped within the legal and penal system, however of the fourteen provided documents ranging from *Community Options*, *Criminalized and Imprisoned women*, *Mothers in Prison*, and *Issues Associated with Increased Criminalization of Women*, not a single document made reference to the experiences, criminalization and incarceration of people with nonheteronormative gender identities and sexualities. This blatant omission from an organization which prides itself on promoting the rights and entitlements of all women with "lived experience of marginalization, victimization, criminalization and/or institutionalization" is both disillusioning and incredibly concerning for the mobilizing of rights, recognition and equity of members of the LGBTQ2+ community, and folk who have been ostracized by the dominant heteronormative discourse (Annual Report, 2015, p. 5).

In an attempt to further elucidate the organization's philosophy, CAEFS provides a link to a document titled *Issues Associated with Increased Criminalization of Women* (2013). In this document, the organization provides a number of sourced statistics to highlight gendered social inequalities which contribute to causing the criminalization of women. Among these causes, the

organization points to the fact that women account for 70% of all part-time employees and 55% of multiple-job holders (CAEFS, 2013, p.3). The organization discusses the shocking reality that women and girls account for 70% of people who live in absolute poverty (Canadian Centre for Policy Alternatives, 2007). The document also states that the United Nations has said that the cuts made to Canada's social programs are inconsistent with the International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), to which Canada is a signatory (Canadian Research Institute for the Advancement of Women, 2007).

The UN CEDAW document further defines discrimination against women as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field" (CEDAW, 2019). In defining discrimination against women, the UN document also insists that there must be an elimination of all acts of discrimination against women by persons, organizations, or enterprises. A critical reflection of organizational structures and practices, however, reveals the problematic ways in which CAEFS ignores their own participation in discrimination against women. Furthermore, it becomes substantively more worrisome to witness an organization whose philosophy is based entirely on a critique of gender inequality which, again, overtly lacks any form of discussion around issues concerning sexuality, gender identity, LGBTQ intimate partner violence, or the injustice faced by incarcerated non binary people, transmen, transwomen, and queer folk.

Not only is there an overt lack of inclusion of non-hetero/cis-normative genders and sexualities, another injustice made visible in the organization's discursive practices, one that truly

contributes to heteronormative discourse, is the organization's use of the category '*all*' women (Guidelines for Advocacy, 2000, p.20). Specifically, in the organization's document *Guidelines for Advocacy* (2000), CAEFS provides the statement that one who advocates for *all* women in the area of Canadian criminal justice may seek:

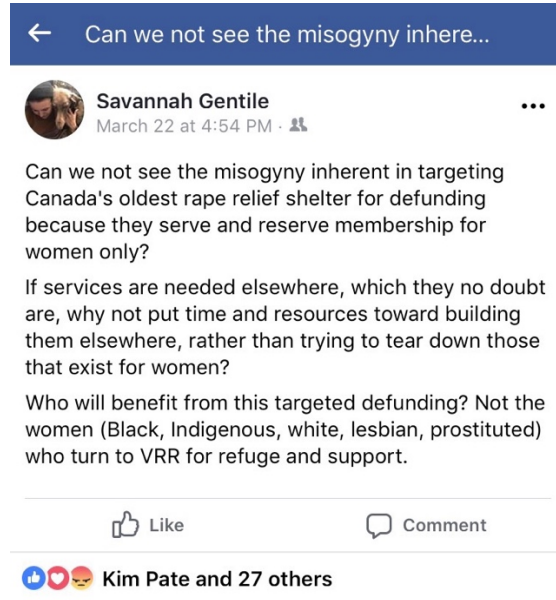
- a) To raise the standards of provincially sentenced women to those governing federally sentenced women in the federal system wherever and whenever this results in better conditions for women in prison
- b) To further the understanding that it is the organization of the prison which is the main factor explaining behavior which accounts for the majority of violence in prisons and not the violent nature of imprisoned women
- c) To accept and honor the well documented fact that since the majority of women in prison are not violent, women do not require the stringent security measures now imposed upon them, security measures which contribute to violence and unsafe conditions; therefore to immediately remove this form of unwarranted intrusion into the living conditions of incarcerated women in all penitentiaries.
- d) To promote the ideal of peaceful meditation, to desist immediately from the practice of using force to confront situations where the 'peace and order of the institutions' may on-call advocacy groups

(Guidelines for Advocacy, 2000, p.20)

There are numerous points of critique here. First, in inscribing that *all* women are included in their advocacy work, CAEFS suggests that there are thus *no* women who are excluded from this

reference or who will experience exclusion from their proposed policies, recommendation, and services. Upon further textual investigation of the organization's programs and services directory, there was not a single program among the 258 listed and described, which referenced transgender incarceration, nonheteronormative sexual relations, or LGBTQ2S+ issues (Services Directory, 2018, p.65). It is only through a deeper reading of the services- and reform recommendations that it becomes apparent that CAEFS only designates their services to cis-gendered women. It can then be observed that there is a textual and contextual tension which would identify that CAEFS does not view transgender women as included in the category of *all* women.

This trans-exclusionary feminist discourse in which I argue CAEFS engages was confirmed earlier this year when The Vancouver Rape Relief and Women's shelter faced off with Vancouver city councilors and transgender activists over the organization's policy of not accepting trans women into the shelter (Global News, 2019). The shelter has always remained firm that their services would be offered only to "born females," however, due to trans-activist push the shelter's city grant is likely to be revoked effective 2020 if it does not change its policy and open its doors to transgender women (Global News, 2019). While these circumstances were unfolding, I paid particular attention to the public and political reactions of partnered organizations, such as the Canadian Association of Elizabeth Fry Societies. While the John Howard Society avoided the topic entirely, staff from CAEFS began taking their beliefs to public social media platforms. In one example, the director of advocacy and legal issues for the Canadian Association of Elizabeth Fry Societies criticized Vancouver councilors and trans-activists; standing in solidarity with the belief that transgendered women are not "women":



In this social media statement, the director of advocacy and legal issues actively engages in trans-exclusionary radical feminism (TERF), which upholds the transphobic ideology that transgender women are not, in fact, 'real' women, and therefore not deserving of services that exist for women. In fact, at three separate points throughout the director's statement, Gentile reinforces her transphobic ideology by re-iterating that transgender women are not women, and that such activism merely takes away from services for "black, Indigenous, white, lesbian, prostituted" women who seek refuge and support. Even more so troubling than this support of the TERF narrative, which by CAEFS officials, Canadian Senator Kim Pate, who was executive director of the Canadian Association of Elizabeth Fry Societies until 2015, supported Gentile's TERF statements by publicly 'liking' her social media post. The post was then followed by a number of comments which reminded the CAEFS staff that the de-funding was simply an ultimatum in which the Vancouver Rape Relief and Women's shelter was given the choice to open their services to trans women in order to maintain funding. Since the shelter has remained trans-exclusionary, VRR has thus made the choice to forgo city funding. Despite these

arguments, there was no public or political change of opinion from Savannah Gentile or Kim Pate, thus indicating their continuing support for transphobic narratives of gender and equality.

According to CAEFS, the process of gaining access to prisoners has for many Canadian regions raised difficulties for many different social justice organizations. However, in 2015, the Commissioner clarified that CAEFS Regional Advocates hereinafter have access to all imprisoned federally sentenced women (Annual Report, 2015, p.3). Regional Advocates are able to visit all areas of the prisons for women in their respective regions, and to meet with organized prisoner groups, as well as the warden and her designates. It is clear that CAEFS has extensive access to federal and provincial women's correctional facilities, and to the women within those facilities. It is therefore difficult to understand why CAEFS has not already included a narrative that is of sexuality and womanhood in both their public webpage and programming and does not exclude based on race or LGBTQ2S+ status. It appears, then, that the apparent discursive exclusion of nonheteronormative beings amongst their online services and programs, as well as comments made by CAEFS staff on public social media platforms, marks the potential limits of the ways in which the organization imagines and understands "women" and womanhood.

How does Canadian Associations of Elizabeth Fry Societies discursively construct the nation, citizenship, and government/governance?

Canadian Association of Elizabeth Fry Societies has frequently voiced their clear and cogent denunciation of the policies and procedures in the federal and youth prison systems which have continuously resulted in the over-classification, segregation and disciplining of women and girls, as well as the discriminatory treatment of racialized and disabled women (Annual Report, 2015, p.8). Furthermore, CAEFS discursively presents themselves as an organization which works to

ensure that the Canadian government is continuously working towards regaining a seemingly lost reputation of a "rights-respecting" country, which, they argue, begins with a "renewed commitment to respecting and upholding human and Charter protected human rights for all Canadians, regardless of their sex, race and ability, sexual or political orientation (Annual Report, 2015, p.8).

Given the organizations inclusive mission and goals, it is worth pointing out there does seem to be some contradiction between the types of Indigenous rights activism CAEF's expresses to partake in discursively, and in the actual services, the organization provides to Indigenous women. Specifically, Aboriginal incarceration and affairs stand as one of the most discussed issues within CAEFS activist work. As an example, CAEFS dedicates multiple sections of their *Guidelines to Advocacy* to the incarceration and criminalization of Indigenous women in Canada. In providing guidelines for the sorts of advocacy in which you should engage, CAEFS argues that one who seeks justice for Indigenous women in prison, may specifically advocate for:

- a) A protected and separate Spiritual area within the prison grounds of every regional prison (federal and provincial) across Canada to be available so that women may have daily access to First Nations elders and a private meeting place for the Sisterhood Groups (Aboriginal women account for up to 80% of some provincial prison populations)
- b) Sweat lodge participation and pow-wows to be honored as the spiritual observances that they are
- c) Guarantee under section 15 of the Charter of Rights and Freedoms -freedom of association and freedom of religion be designated a right to people in prison, and that under no circumstance will attendance for spiritual guidance from an elder and/or sweat



lodge participation be construed to be a 'program' which can be denied by prison authorities for any reason

d) Guarantees that funding for First Nations Spirituality and programming will be protected from administrative misappropriation or decrease, by ensuring that Trust Funds will be provided by a Ministry outside of Justice and/or Solicitor General and further that all accounting for the use of these funds be completed by the attending First Nations Elder or the First Nations' community liaisons

e) A life contract with the Native Women's Association of Canada to be mandated to monitor and report on the adherence to and/or discrepancies in the treatment and needs of all incarcerated First Nations' women

f) Federal transfers to the Healing Lodge be based on the order of application and family/community proximity

g) The right to be housed in the Healing Lodge and the order of acceptance into the Healing Lodge not be determined based on performance outside of the Healing Lodge; that all women are first given the opportunity to abide by the standards as set out by the Aboriginal administrators of the Healing Lodge facility, before labeling any woman as too 'dangerous' or of too high a security level to be considered for transfer

h) An unbiased response by staff and an equal opportunity for positive self-realization for federally sentenced women transferred to the Healing Lodge by ensuring that any internal prison records from other prisons concerning discipline should be made available on a confidential basis only to the warden of the Healing Lodge

i) Funding provisions to construct transition houses in every region of Canada to be designed, staffed, and administered by First Nations' elders and counselors for First

Nations women who eligible for release from any prison in Canada, including the Healing Lodge.

(Guidelines for Advocacy, 2000, p.18)

While every point highlighted by CAEFS holds significant importance, value, and urgency in the fight to reform Indigenous incarceration, there remains a significant contradiction in the importance CAEF's discursively places on Indigenous prisoner rights and the actual implementation of National and Provincial services for Indigenous Canadians. Specifically, in seeking to develop an understanding of the discourses embedded within the organization's programming, I again will refer to the CAEFS services directory. Of the 258 programs and services CAEFS claims to offer nationally and provincially, only three of the 258 described services were oriented towards Indigenous women (Services Directory, 2018, p.65).

Concerningly, despite CAEFS public advocacy for addressing the over-incarceration of Indigenous women, it would appear based on the resources provided by CAEFS, that only 1.16% of their programs and services are targeted specifically towards Indigenous populations with 0% of the programs and services targeted towards the injustices and traumas of racialization in Canada.

The evidence of pervasive referencing of and relative trust in the Canadian Charter of Rights and Freedoms, as well as the lack of services and programming dedicated to Indigenous women and girls, supports the claim that the Canadian Association of Elizabeth Fry Societies discursively constructs the Canadian state and Charter as, for the most part, worthy of trust and little criticism. While discursively different from the John Howard Society, there is supporting evidence of discourse constructing Canada as benevolent. Overall, it can be concluded that

CAEFS discursive construction of the Canadian nation-state significantly lacks a critical lens; and thus, hinders the possibility of transformative changes to the Canadian prison system.

How does Canadian Associations of Elizabeth Fry Societies discursively construct social activism, transformative justice, and reform?

The Canadian Associations of Elizabeth Fry Societies provides website viewers with their *Guidelines for Advocacy* (2000), a twenty-two-page document which describes what activism means, who can be considered activists, and what prison advocacy looks like. At the beginning of the document, the organization provides a list of governing principles for a prisoners' advocacy; one of which states that advocates should use a vocabulary which "reflects at all times the reality of imprisonment" as advocates should strive to "strengthen bonds of human solidarity" (*Guidelines for Advocacy*, 2000, p.1).

In support of this statement, CAEFS offers a list of acronyms, abbreviations, and definitions to guide the reader through other documents that were provided by the organization. It is clear that CAEFS understands the implications discourse has on understandings of crime and incarceration, and to recognize this within their philosophy is impressive. Upon further investigation of the organization, it is, however, apparent that while CAEFS provides readers with briefs of discourse and narrative regarding prisons and female prisoners, there seems to be a lack of inclusive language with regard to transgender, LGBTQ, non-binary people, and racialized people.

For example, CAEFS provides a detailed list of legal and equality issues that activists for women may want to advocate for. Specifically, section IV of *Guidelines for Advocacy* provides information on numerous areas of social justice advocacy and advocacy for women, while

offering several important recommendations; including the importance of increased advocacy for educational and vocational needs, the full payment of prisoners for their labor, as well as a university-level Women's Studies program to be implemented on an ongoing basis (Guidelines for Advocacy, 2000, p.15). Furthermore, CAEFS presents an additional recommendation which states that activists who seek justice for women in the area of discrimination against minorities should also specifically advocate for:

- a) The woman's cultural, language, spiritual, health-related specialty needs assessed promptly so that the applicable community organizations may be contacted.
- b) Language and content specific media and entertainment be available on a weekly basis
- c) The appointment of the National Organization of Immigrant and Visible Minority Women of Canada (or other applicable organizations) as ongoing consultants in each region
- d) Lesbian and gay support and community groups are utilized for specialized counseling and meetings on a weekly basis

(Guidelines for Advocacy, 2000, p.18)

The following argument will be developed specifically from the final point presented by CAEFS regarding lesbian and gay community support. Despite a seemingly inclusive list of advocacy points, one limitation resides in the exclusionary language, which fails to include all members of the LGBTQ2S+ community as deserving of attention from activists and activist agendas.

Intersecting with the ways in which CAEFS discursively constructs sexuality, this exclusion

presents a heteronormative and cis-normative discourse that supports the ongoing "othering" of sexual/gender preferences outside of lesbian and gay identities.

Furthermore, according to Kathryn Trevenen and Alexa Degagne, in *Homonationalism at the Border and in the Streets: Organizing against Exclusion and Incorporation* (2015), in 2011 the Canadian Government stated that:

"Canada's diversity includes gay and lesbian Canadians who enjoy the full protection of and equal treatment under the law, including access to civil marriage. Together, these diverse groups sharing a common Canadian identity make up today's multicultural society" (Government of Canada, 2011, p.13).

CAEFS furthers this discourse of Canadian identity as it continues referring to Canada as a "rights-respecting country" in which all Canadian citizens are protected under the Charter of Rights, and Freedom—which Canadian scholars such as Dryden and Lenon argue is not the case. In engaging in a discourse that expresses Canada in the context of diversity, rights-respecting, and accommodating, CAEFS reaffirms the superiority of the dominant culture, which blindly envisions Canada as a benevolent, safe, rights-respecting country which supports Gay and Lesbian identities, while failing to recognize other sexual and gender identities.

Lastly, the organization also urges critical reflection from non-profit organizations as well. In *Guidelines to Advocacy*, CAEFS reports that an advocate often can become caught between "a rock and a hard place," not knowing if one's actions are helping or actually hindering the process of seeking justice (Annual Report, 2015, p.5). CAEFS reports that while it is true that at times one may believe they are performing an act of advocacy, it is, in fact, only "maintaining the status quo" (p.5). In order to avoid maintaining problematic structures, CAEFS argues that it is through experience and reflection that activists can figure out what is what. As final words of

advice, CAEFS also urges activists to "ask your peers for advice without divulging the person involved if confidence was a precondition of your advocacy" (p.5). This call for action perpetuates the public discourse that the type of advocacy CAEFS performs is free from limitations, discrimination, or the upholding of a 'status-quo.' This causes additional problems when you factor in that CAEFS works alongside 168 other organizations in Canada, and in one year, was able to speak at 267 events, contribute to 355 media stories, 11 reports, articles, and 211 letters (Annual Report, 2015, p.4). That would imply that they create some of the leading discourse about what advocacy in Canada should look like. It is therefore even more concerning that despite CAEFS historical involvement as a leading organization in the Women's Movement from the 1960s-1990s, their early involvement in lesbian advocacy, and their large national presence, that data and records publicly available show little evidence of nonheteronormative discourses or any LGBTQ2+ oriented activism.

### **Chapter 7: Discussion of Findings**

Prisons are, by their very nature, sites of inequality, control, and oppression. They are a key means by which society regulates its criminal, its poor, its unwanted, its deviant, and its sometimes-violent members. For that reason, it is not at all surprising that organizations and individuals who are passionate about human rights have considered the gendered dynamics of correctional institutions. In fact, sociologists, criminologists and psychologists have long since argued that members of society are rewarded and punished depending on how they perform and negotiate their gender identities (Spade, 2014). While this observation strongly applies to the social world outside of the prison and legal system, within the confines of a prison, not conforming with the status quo can have additional negative repercussions. Thus, how inmates

negotiate their gendered identities becomes a primary component of their experience while incarcerated (Stanley, Spade, et al., 2015, p.117).

Both the John Howard Society of Canada and the Canadian Association of Elizabeth Fry Societies have paid significant attention to how gender can impact one's experience with incarceration. For men, the prison as a social institution reinforces toxic and hegemonic masculinity through dehumanization, punishment, and violence, which prohibits male occupants from effectively dealing with trauma and vulnerability. Similar to their male counterparts, women also quickly learn to adopt particular inmate identities and lifestyles as ways of adjusting to life in prison. As CAEFS highlights in *Issues Associated with Increased Criminalization of Women*, many women who are faced with years locked away must adapt quickly to the institution as life becomes a strategy of survival (CAEFS, 2013, p.4).

As both the John Howard Society and CAEFS argue, women in prison endure many challenges in common with men (e.g., drug dependence, lack of marketable job skills, health problems), but they do have additional specific needs. For example, an issue that is often addressed in women's correctional programming is the separation from one's family. Not infrequently, women enter prison pregnant and give birth while serving their sentences. Very rarely are the new mothers allowed to keep their baby with them for any limited period; and in most situations, the infant would be removed soon after birth. This can cause an exaggerated trauma in which men are unable to relate. Besides, it is not uncommon for female inmates to be the victim of sexual misconduct by correctional officers, according to several reports in Amnesty International (2018). Further complicating the problem, of course, is that there are many women in prison who experienced similar violence outside of the institution as a considerable proportion

of women serving time have already been victims of sexual violence and assault, domestic violence and sexual or physical abuse as either children or adults (Amnesty International, 2018). In recognizing these experiences, it is not surprising that JHS and CAEFS target many of their services to the unique needs of men and women. However, despite both the organizations' particular interest in the gendered dynamics of the criminal justice system, both organizations resolutely disregard nonheteronormative sexuality and gender identity- other than the small mention of lesbianism within CAEFS activist works.

In addition to recognizing the role of the prison as a gendering institution, criminal justice organizations must also, according to Dean Spade, "name prisons as queer spaces more broadly" (Spade, 2015, p.119). Based on common knowledge of incarceration, prisons are sex-segregated institutions where options for 'normal,' 'heterosexual,' sexual activity are unavailable. Given this, all sexual activity then becomes banned within the institution, whether it is consensual sex among inmates or even masturbation, "for fear that queer sexuality—and resistance to the dehumanization that denial of sexuality represents—will flourish" (p.119). This also stands as a reminder that this denial of sexual intimacy and agency is, in fact, a "quintessential queer experience" (Spade, 2015, p.120). In avoiding any discourse around sexuality—especially when it is such a pervasive issue within the confines of the prison—both the John Howard Society and the Canadian Association of Elizabeth Fry Societies further perpetuate the notion of nonheteronormative sexuality as a point of deviance, and disregards the complexity of the queer experience while incarcerated. Additionally, the avoidance of homosexuality within these organizations' narratives should stand as a point of concern for the respective organizations as it not only substantially ignores traumatic experiences of violence faced by LGBTQ2+ identities



but it also limits the type of discourse in which people can come to understand and navigate healthy and safe sexual practices, encounters and relationships in and outside of prisons.

More than just lacking a discourse around nonheteronormative sexuality, the concept of gender becomes 'generalized' by both JHS and CAEFS. While both organizations refer to the experiences of cis-gendered male and female citizens, there is an apparent lack of discussion surrounding the social concepts of intersectional womanhood, manhood, non-cis-gendered identities and non-heterosexual experiences; especially racialized or disabled trans and queer identities. Specifically, while JHS problematically avoids the experiences of transgender and queer criminalized citizens, CAEFS seems to engage in a transphobic and trans-exclusionary philosophy of advocacy work.

As Eric Stanley argues in *Captive Genders: Trans Embodiment and the Prison Industrial Complex*, law enforcement officials have a long-standing history of targeting, punishing, and criminalizing sexual dissidents and gender-non-conforming people (Stanley, 2015, p.273). While many overtly homophobic and transphobic laws have been recently overturned in Canada and the United States, Stanley argues that the criminalization and punishment of queer and trans people extend well beyond formal legislation (p.274). Legal officials such as courts, correctional officers, and police departments often enable or participate in violence against queer, trans, and gender-non-conforming communities by ignoring everyday violence against queer and trans people, selectively enforcing laws and policies in transphobic and homophobic ways, or engaging in acts of violence, harassment and sexual assault of trans and queer individuals (p.274).

This violence then becomes exacerbated in the confines of a prison. As transgender people trespass both an institutional order via the crime they committed, and a symbolic order in

which they've disrupted gender, they can experience what would feel like 'double the punishment.' Given the already violent nature of the prison, we know that trans people can face additional abuse, social exclusion, limited health care access, intensified surveillance, and discrimination within the facility. However, despite the heightened violence and injustice transgender and gender-non-conforming people face in Canadian prisons, the human rights of said individuals remain invisible within a criminal justice framework.

### Discourses of nationalism, Homonationalism, and Belonging

In further aiming to erase the historical and contemporary realities of queer and trans people, an additional discourse within the Canadian justice system has emerged. As numerous Canadian scholars would argue, homonationalism and homophobia are the primary concepts in the socio-legal understandings of LGBTQ rights in Canada (Walcott, 2015; Lenon & Dryden, 2015; Awwad, 2015). As these scholars have all pointed to within their scholarships, resistance to LGBTQ rights recognition remains widespread, even in a jurisdiction where LGBTQ communities have 'seemingly' won.

In *Canadian Homonationalism and the Politics of Belonging* (Dryden, & Lenon, 2015), Canadian queer scholars joined together to connect Jasbir Puar's theory of 'Homonationalism' to the Canadian political and social context. These analyses could not come at a more dire time, as it offers a framework to identify and challenge connections between incarceration, white settler colonialism, and homonormativity. Specifically, as the Canadian government's tough on crime agenda has pushed prison expansion and thus, social justice reform, homonationalism permits a new way of critically thinking about incarceration and criminalization and how it exemplifies nationalist narratives of assimilation, social governance, and civilization. Furthermore, because

identities are often lumped together under the umbrella term "LGBTQ," homonationalism allows us to examine further how and why specific individuals and communities are underrepresented or excluded from 'LGBTQ rights.'

In Canada, studies have shown that prisons effectively function to disperse and contain gendered, racialized, Indigenous, and non-Indigenous subjects (Dryden, 2015, p.9). Because prisoners are often regarded as disposable social outcasts to the nation, prisons, by their very nature, function as a social dumping grounds in which the country can identify, classify, and contain, the 'socially deviant.' For that reason, prison rights advocacy offers a brilliant space within which to investigate overlapping imaginings of a rights-respecting country and national and queer identity.

With the purpose of discussing activism, I see it incredibly important to identify and highlight the fact that both the John Howard Society of Canada and Canadian Associations of Elizabeth Fry Societies evidently recognize the prison as a violent, racialized, and gendered space in which copious human rights violations are occurring. Given both organizations' passion for incarcerated cis-gendered [Indigenous] women, men and youth, there is no doubt that all associated organizations have spent a profound amount of dedication and time to learn about the issues in which those individuals and social groups face while incarcerated. However, in both the process of critical reflection and discursive analysis, it must be identified that JHS and CAEFS displayed through various discursive practices, a general framework which assumes, for the most part, that the Canadian legal system is working within an overall framework of inclusion, honesty and dedication to human rights.

In further exploring this finding, both JHS and CAEFS identify a discursive practice presented by the Canadian government, which identifies itself as a 'rights-respecting country'

(Annual Report, 2015, p.8). While JHS and CAEFS challenge this discourse by highlighting the general inequalities faced by incarcerated folk, both organizations support this discourse through their "renewed commitment to respecting and upholding human and Charter protected rights for *all* Canadians" (Annual Report, 2015, p.9). Given the LGBTQ2S+ exclusionary discourse amongst both organizations, it can be assumed that problematically so, the organizations fight for justice ends once the Charter provides rights to the prisons cis-gendered, homonormative, often white, occupants. While *all* human rights matter, and are all equally as deserving of protection, JHS and CAEFS both define who they consider worthy of protection through their homonormative and racialized, trans-exclusive discourse. Such projects and discourses remain not merely within the outcomes of incarceration but also within fundamental indicators of the Canadian state which continue to restrict certain bodies from national participation, restrict access to state resources, including employment, citizenship status, and medical services (Dryden, 2015).

The national trust, in addition to the persistent and enduring myths surrounding the founding of Canada, what Canada is today, and who Canadians are, "advances seemingly unceasing narratives of Canadian benevolence and exceptionalism" (Dryden, 2015, p.100). When public activist figures and organizations join in the imagining of Canada as benevolence, it both helps the nation forget its violent past and present; and in the continuing history of Canadian nation-making, which reinforces the exclusion of marginalized, racialized, and queer social outcasts.

Reform, Activism, and Discursive practices within Organization infrastructure

An additional avenue through which the social justice movement navigates nationalist discourse is through its often-active goal for legal reform. In applying Dean Spade's theoretical understanding of reform, regardless of whether law reform is used in the LGBTQ movement or the prison rights movement, if the *end goal* is to "make the Canadian criminal justice system better," or "obtain legal visibility," then it does not embody transformative change which seeks to identify, address and dismantle oppressive and violent systems and institutions. Therefore, while legal equality and legal reform profess to remedy injustice, it fails to take into account historical and present power differentials or how long-term structural violence and institutionalized discrimination over decades have impacted the overarching narratives which keep marginalized groups oppressed.

In further challenging organizations to critically reflect on their organizational goals, Spade also urges activists to examine whether the organizations in which they work and support are working toward transformative change or working to keep their organization open; as "ideally, their work needs to aspire to reach and resolve the root causes of the need for services" (Spade, 2015, p.114). In providing an example, the data gathered through discourse analysis of both organizations provided evidence in which both JHS and CAEFS operate on short-term funding cycles that produce deliverables in which the funders believe to be significant. According to Spade, this business model has meant that non-profit organizations are consistently encouraged to meet quick timelines and short-term goals rather than in building long-term sustainable structures (p.99). Additionally, this keeps decision-making power concentrated in the hands of the elite and socially privileged.

Lastly, whenever we propose new systems of distribution, and imagine a 'better world,' we also often unknowingly establish disciplinary and population management norms that

marginalize and or vilify individuals, which creates a framework of 'deserving' and 'undeserving' Canadian citizens (Spade, 2012, p.120). Even though organizations reject certain problematic state forms or remain process-oriented within their activism, Spade would argue that it must still go further than that. Accordingly, organizations and activists alike must continue relentlessly and critically self-reflective to "truly resist the dangers of new norms that we invariably produce" (Spade, 2015, p.113)—both within our discursive and structural practices.

Given this observation, paired with particular narrative and discourse put forth by the leading voices in the social justice movement on the basis of sexuality, nationality, and activism, data exemplifies the further perpetuation of a narrative which upholds and nourishes homonational human rights frameworks that continue to classify, control, and interpolate a normatively raced, gendered, sexed and classed Canadian (homo)sexual subjective; upholding the modernity of the white settler nation-state.

### **Chapter 7: Conclusion**

As we face the reality that many aspects of the current Canadian social justice movement perpetuates and upholds a homonationalist, oppressive, white settler social state- we are challenged. One minute, Canada is known as a queer 'safe haven' and 'rights-respecting-country,' only to find out moments later that even the most liberal human-rights and activist components of the nation-state are *currently* creating, feeding and upholding systems of oppression which seek to exclude and marginalize societies most vulnerable. For many Canadians, this discovery can and should encompass an immense sense of discomfort, disillusion, and frustration. Despite global discourse which places Canada at both the forefront of LGBTQ human-rights and as an exceptionally advanced and benevolent rights-respecting nation,

a critical discourse analysis of policy documents, philosophies of imprisonment, programs and services, and organizational structures have extrapolated enough data to determine the following;

1. Nation-building is complexly intertwined with social justice, and reform movements in Canada and the particular models of organizing and funding within the current reform movement keeps power in the hands of government and/or elites.
2. The theory of homonationalism permits a new way of critically thinking about incarceration and criminalization and how it exemplifies nationalist narratives of assimilation, social governance, and civilization in Canada and globally.
3. Canada is only recently, a legal 'safe-haven' for homonormative-presenting lesbian and gay citizens but continues to intentionally engage in an exclusionary discourse which continues to criminalize, marginalize and vilify people who present as queer or transgender.
4. There is pervasive transphobic rhetoric within current prison reform activist work in Canada.
5. LGBTQ criminal justice and human rights are explicitly left out of the prison rights movement in Canada, despite being a 'gay safe haven'; resulting in heteronormative discourse that excludes the experiences of people who do not fall into the categories of normative sexual and gender practices. Often linked to the umbrella term 'LGBTQ' yet consistently and intentionally excluded from social justice discussion, the human rights of queer and transgender people are entirely excluded from the Canadian prison reform movement despite statistically experiencing immense and unimaginable violence within the criminal justice system. More so, prison research in Canada is extremely outdated and limited; even more so when concerning LGBTQ [and specifically trans] incarceration

6. Canadian prison reform organizations currently seek to ‘protect members of the community’ from ‘dangerous threats to society’ rather than working toward deep-rooted transformative social, political, legal, and personal change that will support the eventual dismantling of the prison industrial complex. In working within this framework, the current social justice reform movement in Canada is effectively unable to cultivate long-term strategies necessary for more transformative changes to politics, society, and culture.

7. If human rights activists want to see sustainable long-term social justice for *all*, there needs to be a critical reflection and reconstruction of social justice organizations, discourse, and practice. Many critical scholars, such as Ruth Morris, Dean Spade, Eric Stanley, Suzanne Lenon, and OmiSoore Dryden, all uniquely prompt us to examine whether we are actively working to keep an organization going, or whether we are working towards transformative changes that would eventually put the organization out of business. Ultimately, this question seeks to challenge activism by encouraging a constant critical assessment of whether our allies or personal activists and discursive practices uphold systems of privilege and oppression. This leaves activists and change-seekers to wonder, “how can we address these issues, and ensure that the work we are doing is both meaningful and transformative?”

#### Recommendations:

In combining theoretical and data-based findings from the critical works of Dean Spade, Eric Stanley, OmiSoore Dryden, Suzanne Lenon, Ruth Morris, Kinsman and Gentile, as well as the critical discourse analysis of key stakeholders in the social justice movement, the following list encompasses the vast ways in which individual activists and organizations can ensure that their



work is anti-oppressive and transformative (Spade, 2015; Stanley, 2015; Dryden & Lenon, 2015, Kinsman, & Gentile, 2010);

- Activists must refuse to create ‘deserving’ and ‘undeserving’ victims
- Activists must support strategies that weaken oppressive institutions, not strengthen them
- Activists must transform exploitative dynamics in their work—explicitly ensuring that work is led by those most directly impacted.
- Activists must remain process-oriented rather than end-oriented, practicing ongoing critical reflection rather than assuming there is a moment of ‘finishing or arriving.’
- Activists must root their work in the understanding that meaningful change is not top-down, or something granted by elites
- Activists must acknowledge relationships and the community as the underlying support system of the work. Furthermore, the change we seek requires us to focus resources on strengthening and building all different types of healthy relationships
- Activists must work at continually developing new leaders, expanding participation and focusing on building the leadership skills of those who face the greatest barriers to participation and leadership
- Activists must under-go continuous discourse analysis to develop an all-encompassing understanding of the types of narratives put forth within the movement
- Activists must use intersectional frameworks for understanding the multiple vectors of vulnerability and harm in xenophobia, transphobia, racism, sexism, homophobia, and ableism; this could also be referred to as ‘queering the carceral.’
- Activists must continuously strive to model the transformative change that an

organization imagines for society in their day-to-day operations, also known as ‘practicing what you preach.’

- Activists and organizers should experiment with ways to make the social movement organization workplace more fair to all workers. This includes flattening pay scales, ensuring that all positions come with benefits such as health insurance, and working to guarantee that the workplace benefits are accessible to people who frequently face barriers in social justice-related employment.

- Activists should consider grassroots fundraising as a highly valuable alternative and/or supplement to foundation funding

- Activists must encourage non-hierarchical governance models and consensus decision-making.

- Activists and organizations must strive for accountability and transparency within and between organizations. In doing so, organizations know how decisions are made and where the money is allocated so that allied organizations and movements understand what to expect from each other. Additionally, accountability and transparency can *challenge* each other to work according to shared principles of social justice and collaboration.

In providing an example of the types of programs and services that can be developed through critical reflection, I look again at Dean Spades *Normal Life*, in which Spade describes a ‘relationship skills’ program modeled from the Northwest Network organization in Seattle, Washington. The encouraged ‘relationship skills’ classes could ideally be implemented primarily by queer people of color, which works at building a shared language among family, friends, community, and subcultures about how and why violence is so pervasive in romantic and sexual relationships. Modeled from The Northwest Network organization in Seattle, the relationship

skills classes could provide concrete skills for negotiating between partners, supporting friends and family who may be becoming isolated or harmed inside a relationship, and also identifying community and cultural norms and discourse which can contribute to intimate and sexual partner violence. The NW Network is a network of Bi, Trans, Lesbian and Gay organization that works to end violence and abuse by "building loving and equitable relationships in our community and across the country" (nwnetwork.org). Like the NW Network, the programs ideally would have specialized classes as well, such as polyamory or LGBTQ partner violence. For the NW Network, programs like this have provided immediate tools for those who enroll, and they also build a long-term partnership with Seattle's queer and trans subcultures and social groups to continue towards preventing, identifying, and addressing intimate partner violence (nwnetwork.org).

Additionally, transformative programs of this nature help to identify and address the issue of partner violence before it has reached a crisis point. In doing so, this would prevent a higher number of cases involving police and courts, as data has shown that "people received far better support at domestic violence agencies than from family and friends, but rarely reached out to these agencies until crisis events had taken place in their lives, often involving police and courts" (Spade, 2015, p.123). In developing a critical and inclusive transformative justice model similar to NW Network, activist organizations can work at de-professionalizing social movement advocacy in Canada, while also building participatory and self-reflective structures that operate at dismantling rather than upholding problematic systems of inequality.

Contributions to Knowledge:

The contributions to knowledge within this dissertation exist both within the formation of the literature review, which guides the conceptual frameworks of the thesis, as well as the empirical discourse analysis conducted. While much of the conceptual and theoretical work has been explored by critical scholars in the fields of prison studies and queer studies, this research applies broader American systems of knowledge and incarceration to Canada's unique and seemingly "progressive" justice system and the nation-state. Furthermore, grounded in theoretical understandings of gender, imprisonment, and legal reform, this dissertation sheds light on several different institutional discourses which hinder transformative social change in Canada. With there being very little research on LGBTQ2+ incarceration and criminalization in Canada, this research provides a unique and critically informed exploration of the remaining institutionally based exclusion and criminalization of LGBTQ2+ folk, even amongst prison reform organizations which address human rights within the Canadian carceral system. Furthermore, in mapping the bridge formed by institutional organizations between radical social movements and the social status quo, this research contributes to identifying current gaps and limitations within broader social justice organizing in Canada.

#### Self-Reflection, Limitations, Validity, and Possibilities for Future Research:

While this analysis has concentrated on two key institutional stakeholders in prison reform in Canada, there remains a number of limitations in which the scope of this research was unable to account for. First, the arguments presented in my analysis are quite new and have developed from newly emerging critical studies on incarceration, justice, and criminalization of LGBTQ2+ folk. Therefore, it must be noted that information is still relatively limited in comparison to more established social science fields. For example, there remains minimal research on LGBTQ2+

identities in Canada, especially in relation to criminalization and incarceration of transgendered Canadians.

Furthermore, the scope of this research relied specifically on an analysis of the John Howard Society of Canada and the Canadian Association of Elizabeth Fry Societies. Although these organizations represent two of the key organizational institutions working with government and policymakers to enact legal prison reform, I make no claims that these organizations are representative of *all* social justice and reform organizations in Canada. Rather, I utilize these organizations as working frameworks for both assessing possible limitations and points for improvement within the sorts of activist work conducted by non-profit organizing, legal reform, and “do good” social activist organizing. Additionally, due to the national status and numerous provincial and community-based branches and services, JHS and CAEFS provide the largest number of crimes related to social services in Canada. For that reason, I should make clear that I have deliberately chosen to limit this study to these two organizations rather than exploring the few organizations such as Quaker Services, which already employ a transformative justice model to their activist organizing.

An additional limitation to the scope of the critical discourse analysis is that I was only able to utilize the documents put forth by each organization. While the organizations provided extensive documents on philosophies, opportunities for reform and the types of services and programs offered, some of the documents have not been updated in a few years. Therefore, my research cannot possibly take into account any changes in which the organizations have perhaps recently implemented. However, this limitation is not only a limitation in my own research, but rather a limitation within the organizations themselves – as critical reflection is a constant

process, and continuous and updated research on social justice and inequality should be conducted and provided by key organizations working within social movement organizing.

Lastly, I should make clear that I have intentionally shifted between using terms such as “LGB” “LGBT,” “LGBTQ,” “LGBTQ2+”, and “queer” to refer to different organizations and communities. Therefore, wherever the context, group, or organization describes themselves, I will respect the identification that they use. When there is no designation, I have chosen a description that I feel best describes the particular circumstance, group, or situation.

However, it must be noted that these limitations do not impact the level of validity in which this dissertation holds. No research or experiment can be perfectly controlled, and there has been much contention around validity in qualitative research practices. The traditional criteria of methodological adequacy and validity were originally formulated and “owned” by positivism, the philosophical, theoretical, and methodological perspective that has justified the use of quantitative methods in the social sciences for most of the twentieth century (Altheide, 1994, p.485). However, qualitative researchers have often taken a different and unique approach to address validity within their research practices. For many qualitative researchers in the social sciences, all knowledge and claims to knowledge must be reflexive of the process, assumptions, location, history, and context of knowing. For that reason, validity will be quite different for different audiences and different research projects (Altheide, 1994, p.488).

This research specifically took into account the contextual aspects of the analysis, such as the history of LGBTQ and reform activism in Canada, key individuals, divisions of labor and hierarchies within the studied organizations, specific perspectives and meanings, significant events and their origins of consequences, and the social rules and basic patterns of social order; which provided a template for investigation as well as a framework in which the readers can

report and understand what contributes to the “definition of the situation” (Altheide, 1994, p.491). Therefore, while this research may not be able to be exactly replicated due to the constantly changing contextual factors of social science work, validity is found within the theory, methods of analysis, and the overall findings of the research which can be applied to future social science research; especially in relation to discourse and future activist organizing in Canada.

Therefore, an opportunity for future research would be to expand and examine the conceptual frameworks presented within this dissertation to new locations, cultures, and contexts. In other words, while the scope of this dissertation was limited to two key institutional reform organizations in Canada, the conceptual frameworks developed through both the literary and empirical evidence can be used to analyze not only other organizations (whether in the same field, or different fields), but can also be replicated to analyze larger social movement organizing. For example, social researchers have the opportunity to test the expanded theoretical models on more radical social movement organizations, cultural practices, national organizing, and practices of criminalization. However, it must be noted that when proposing a new context, location, or culture within future research studies, the researcher must re-develop the background contextual and demographic information, which provides social meaning to that area of work. Additionally, there is an opportunity for future research to draw or expand on particular individual variables of the conceptual frameworks or theoretical models, which were not the primary focus of this research. In providing an example, this dissertation touched upon marginalization’s experienced by racialized social groups with concern to incarceration and criminalization- however in maintaining the overall scope of the research, this information was not fully expanded on in the Canadian context; which leaves gaps to be filled with concerns to

the criminalization of racial minorities in Canada. In addition to these limitations, there is also always the opportunity to add new constructs or variables to the conceptual frameworks, as social systems of ideology, oppression, criminalization, and marginalization are in a constant process of changing. In providing an example, there remains an opportunity for future research on the relationship to disability and incarceration, which can then be expanded on to develop an intersectional analysis of such.

Lastly, one of the largest challenges in conducting research of this nature was the apparent lack of access to information on LGBTQ2+ incarceration in Canada. This stands as a call to action for future researchers to explore the statistics and experiences of LGBTQ2+ people in Canada in relation to violence, crime, incarceration, and continued marginalization. This inherent lack of available information represents, again, Canada's heteronormative discourses of activism which continue to construct a "deserving" and "non-deserving" framework of social change which positions white, cis-gendered and heterosexual bodies as "deserving"; rendering the "deviant other" as either less-deserving or non-deserving of service and recognition.

#### Concluding Remarks:

In conclusion, this critical analysis illuminates the numerous limitations within institutionally based prison reform in Canada, which reinforces normative practices of racism, sexism, ableism, xenophobia, and transphobia. Furthermore, this dissertation has proposed a critical politic which questions how these social norms are perpetuated within activist discourse and how they specifically relate to the exclusion of transgender people. Additionally, this research highlights the ways in which Nation-building is complexly intertwined with the social justice, and reform



movement through discursive practices which create a “deserving” and “underserving” dichotomy which privileges white-homonormative identities.

Therefore, if human rights activists want to see sustainable long-term social justice for *all*, there needs to be a critical reflection and reconstruction of social justice organizations, discourse, and practice. If and when activists actively practice all of the previously listed tenets which ensure anti-oppressive, inclusive, and transformative social change, the absurd notion of a world without prisons becomes much less utopian. The possibility for the abolition of policing, prisons, and jails, and the possibility of a society that can collectively and anti-oppressively support and heal the planet and its inhabitants is not so unimaginable. If we, as activists, and educators can together agree to both make room for vulnerability and accountability in our practice we can begin and continue challenging narratives, actions, governance and organizations which uphold systems of poverty, violence, racism, transphobia, xenophobia, homonormativity, ableism, and every other social injustice and disconnect in which so many people face every day. In moving forward with the implementation of reflective and transformative change within our activisms, I leave you with a quote from *Captive Genders: Trans Embodiment and the Prison Industrial Complex* which I hope stands as a reminder of the possibilities of our growing and changing social world:

Abolition is not just about closing the doors to violent institutions, but also about building up and recovering institutions and practices and relationships that nurture wholeness, self-determination, and transformation. Abolition is not some distant future but something we create in every moment when we say no to the traps of empire and yes to the nourishing possibilities dreamed of and practiced by our ancestors and friends. Every time we insist on accessible affirming healthcare, safe and quality education, meaningful

and secure employment, loving and healing relationships, and being our full and whole selves, we are doing abolition. Abolition is about breaking down things that oppress and building up to something that nourishes. Abolition is the practice of transformation in the here, and now, and the ever after (Stanley, 2014, p.43).

## References

- Alexander, M. (2010) *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: New Press.
- Aultman, B. (2014). Cisgender. In *Transgender Studies Quarterly*. 1(1-2). P.61-62.
- Baldry, E, Carlton, & Cunneen (2012). Abolitionism and the Paradox of Penal Reform in Australia: Indigenous women, colonial patriarchy and co-option. *Social Justice* 41 (3): 168–89. <https://doi.org/10.2139/ssrn.2200781>
- Brown, M & J. Schept (2016). New Abolition, Criminology and a Critical Carceral Studies in *Punishment & Society*. Sage Journals.
- CAEFS (2014). Annual Report. Accessed at <http://www.caefs.ca/wp-content/uploads/2013/03/CAEFS-Annual-Report-2015.pdf>
- CAEFS (2000). "Guidelines for Advocacy" accessed at <http://www.caefs.ca/wp-content/uploads/2013/05/Guidelines-for-Advocacy-Updated-December-2011.pdf>
- CAEFS (2013). Issues Associated with Increased Criminalization of Women. Accessed at <http://www.caefs.ca/wp-content/uploads/2013/04/Issues-Associated-with-Increased-Criminalization-of-Women.pdf>
- CAEFS (2003) Services Directory. Accessed at <http://www.caefs.ca/wp-content/uploads/2013/05/CAEFS-PROGRAMS-AND-SERVICES-DIRECTORY.pdf>
- CAEFS (2017). "Statement in Senate about 2017 Efrey Conference" accessed at <http://www.caefs.ca/senatestatement2017conference/>
- CBC (2012). "Timeline: Same-sex Rights in Canada". Accessed at <https://www.cbc.ca/news/canada/timeline-same-sex-rights-in-canada-1.1147516>

- Chartrand, V. (2019). Unsettled Times: Indigenous Incarceration and the Links Between Colonialism and the Penitentiary in Canada in *Canadian Journal of Criminology and Criminal Justice*. 61(3). Pp.67-89.
- Childs, D (2015) *Slaves of the State: Black Incarceration from the Chain Gang to the Penitentiary*. Minneapolis: University of Minnesota Press
- Crenshaw, K. (1990). Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color. Accessed at <https://www.racialequitytools.org/resourcefiles/mapping-margins.pdf>
- Cunneen, C, & Rowe. (2014). Changing narratives: Colonised people, criminology and social work. *International Journal for Crime, Justice and Social Democracy* 3 (1): 49–67
- Currah, P. & Stryker. (2014). Postposttranssexual: Key Concepts for a Twenty-First Century Transgender Studies. In *Transgender Studies Quarterly*. 1(1-2).
- Davis, A. (2005). *Abolition Democracy: Beyond Empire, Prisons, and Torture*. Seven Stories Press: New York
- Davis, A. (2003) *Are Prisons Obsolete?* Seven Stories Press: New York
- Driskill, Q. et al., (2011) *Queer Indigenous Studies: Critical Interventions in Theory, Politics, and Literature*. The University of Arizona Press: Tucson
- Dryden, O & S. Lenon (2015) *Disrupting Queer Inclusion: Canadian Homonationalism and the Politics of Belonging*. UBC Press: Vancouver & Toronto
- Egale (2017). Glossary of Terms. Accessed at <https://egale.ca/wp-content/uploads/2017/03/Egales-Glossary-of-Terms.pdf>
- Finley, C. (2011). Decolonizing the Queer Native Body (and recovering the Native Bull-Dyke) in

Queer Indigenous Studies: Critical Intervention in *Theory, Politics, and Literature*.  
University of Arizona Press.

Foucault, M. (1977) *Discipline & Punish: The Birth of the Prison*. Vintage Books: New York

Foucault, M. (1978). *The History of Sexuality: An Introduction*. Vintage Books: New York

Forbes (2019) "Friendliest Countries for LGBT Travelers" accessed at

<https://www.forbes.com/sites/garystoller/2019/02/26/friendliest-countries-for-lgbt-travelers-canada-no-1-u-s-no-47/#bb0cff35cd0a>

Fulford, M. (1991). *The Canadian Women's Movement, 1960-1990: A Guide to Archival Records/* in *The Canadian Women's Movement Archives* and *ECW Press*. 380.

Government of Canada (2019). "Department of Justice" Accessed at:

<https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccd1/resources-ressources.html>

JHSC (2017). Annual Report. Accessed at <http://johnhoward.ca/wp-content/uploads/2018/05/Annual-Report-2017.pdf>

JHSC (2014). "Perspectives on Corrections: Towards a Philosophy of Corrections" accessed at <http://johnhoward.ca/wp-content/uploads/2014/08/philosophy.pdf>

JHSC (2016). "John Howard Societies 5-point Plan to Improve Corrections." Accessed at <http://johnhoward.ca/resources/changing-laws-policies/john-howard-societys-5-point-plan-improve-corrections/>

JHSC (2017). "Issues relating to the human rights of prisoners in the correctional system: Opening Comments of the John Howard Society of Canada." Accessed at <http://johnhoward.ca/wp-content/uploads/2014/08/Human-Rights-of-prisoners-in-the-correctional-system.pdf>

- Kinsman, G. & Gentile (2010). *The Canadian War on Queers: National Security as Sexual Regulation*. UBC Press.
- Kunzel, R. (2008). *Critical Intimacy: Prison and the Uneven History of Modern American Sexuality*. Print: University of Chicago Press.
- Lamble, S. (2015). Transforming Carceral Logics: 10 Reasons to Dismantle the Prison Industrial Complex Through Queer/Trans Analysis and Action in *Captive Genders: Trans Embodiment and The Prison Industrial Complex*. Pp.235-255.
- Morris, Ruth. (2000). *Stories of Transformative Justice*. Canadian Scholars Press Inc.
- Munro, L. (2017). (Dis)integrated Care: Barriers to Health Care Utilization for Trans Women Living with HIV. In *Journal of the Association of Nurses in Aids Care*. 28(5). 709-722.
- Namaste, V. (2011) *Sex Change, Social Change: Reflections on Identity, Institutions, and Imperialism*. 2<sup>nd</sup> edition. Women's Press: Toronto
- NBC News (2018). "15 Best Countries for LGBTQ" accessed at <https://www.nbcnews.com/feature/nbc-out/15-best-countries-lgbtq-expats-n683201>
- Northwest Network (2019). The NW Network. Accessed at <https://www.nwnetwork.org/>
- Nomadic Boys (2019) "Most Gay Friendly Countries in the World" accessed at <https://nomadicboys.com/most-gay-friendly-countries-in-the-world/>
- Razack, S. (2015). *Dying from Improvement: Inquests and Inquiries into Indigenous Deaths in Custody*. Press: University of Toronto.
- Smith, A. (2010). *Queer Theory and Native Studies: The Heteronormativity of Settler*

- Colonialism in *A Journal of Lesbian and Gay Studies*. 16(2). Pp. 42-68.
- Smith, M. (2005) "Social Movements and Judicial Empowerment: Courts, Public Policy, and Lesbian and Gay Organizing in Canada" in *Politics & Society*. 33(2). Pp.327-353
- Smith, M. (2019). "Homophobia and Homonationalism: LGBTQ Law Reform in Canada" in *Social & Legal Studies*. <https://doi.org/10.1177/0964663918822150>
- Spade, D. (2015) *Normal Life: Administrative Violence, Critical Trans Politics, & the Limits of Law*. Duke University Press: Durham & London
- Spartacus (2019) "Gay Travel Guide" accessed at <https://spartacus.gayguide.travel/blog/gay-travel-index-2019/>
- Stanley, E & N. Smith, (2015) *Captive Genders: Trans Embodiment and the Prison Industrial Complex*. 2<sup>nd</sup> edition. AK Press: Baltimore
- Stryker, S. (2014). Postposttranssexual: Key Concepts for a Twenty-First-Century Transgender Studies. *Transgender Studies Quarterly*. Duke University Press
- Stanley, Spade, et. Al., (2012). Queering Prison Abolition, now? In *American Quarterly*. The American Studies Association, pp.115-126
- UN (2008). Convention on the Elimination of All Forms of Discrimination Against Women. Accessed at <https://www.un.org/womenwatch/daw/cedaw/>
- Vitulli, E. (2012). Queering the Carceral: Intersecting Queer/Trans Studies and Critical Prison Studies Review Essay. In *GLQ* 19(1). Duke University Press. DOI: 10.1215/10642684-1729563
- Warner, T (2002). *Never Going Back: A History of Queer Activism in Canada*. University of Toronto Press: Toronto.
- Wolfe, P. (2006). Settler Colonialism and the Elimination of the Native in *Journal of Genocide*

Research. 8(4). 387-409.