PATHWAYS TO RUIN? HIGH-RISK OFFENDING OVER THE LIFE COURSE, ERIN GIBBS VAN BRUNSCHOT & TAMARA HUMPHREY (TORONTO: UNIVERSITY OF TORONTO PRESS, 2022)

I. INTRODUCTION

Book titles with question marks in them call us to a certain kind of comportment as readers. For one, we are not afforded the privilege of speaking about the author's work with any degree of certitude. Instead, we are obliged to inflect our voices with a skeptical tone from the get-go. Perhaps this is by design with the sociological duo Erin Gibbs Van Brunschot and Tamara Humphrey's *Pathways to Ruin?* as every page of their criminological book challenges us to question our commonly held assumptions about individuals the Canadian criminal justice system deems to be high-risk offenders.[1]

Working with a sample of 411 case files on high-risk offenders stored with a police unit in a western Canadian municipality circa 1997–2014, the authors reconstruct the life stories of 23 men ranging in age from 19 to 89.[2] Unlike the popular media reports that tend to exclusively focus on their past crimes, the counter-narratives offered by Gibbs Van Brunschot and Humphrey detail the cumulative traumas and hardships the vast majority of these individuals endured in their childhood, teen, and adult years prior to their respective pathways to crime, imprisonment, and conditional release in the community as high-risk offenders under sections 810.1 and 810.2 of the Canadian *Criminal Code*.[3] These heartbreaking stories, coupled with the authors' balanced commentary and analysis of their data, expose just how detrimental filtered media and government reporting on crime are to public safety. The authors show not only how standard crime reports typically fail to take into account the historical contexts and specific contributing issues to the offences committed — issues that are necessary to address in order to reduce reoffending in the future — they further reveal how these narratives tend to elicit condemnation and fear in the public, and thereby undermine the compassionate understanding and reasoned accountability required to remedy the societal preconditions of crime *as* public health issues.[4] As such, *Pathways to Ruin?* is essential reading for law students, professors, lawyers, and civil servants who wish to learn, teach, and practice criminal and correctional state law with a trauma-based, developmentally-informed perspective and humanistic sensibility.

In what follows, I first offer a chapter-by-chapter course through *Pathways to Ruin?* by highlighting the key concepts, issues, and findings that stand out from each chapter. Given the book's mainly micro-level analysis of high-risk offending coupled with its monojuridical focus on state law, I conclude by considering the macro-level implications of their work for better understanding Canada as a multi-juridical order comprised of common, civil, and

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1 Erin Gibbs Van Brunschot & Tamara Humphrey, *Pathways to Ruin?: High-Risk Offending Over the Life Course* (Toronto: University of Toronto Press, 2022) at 176.
2 *Ibid* at 18–19, 189.
3 RSC 1985, c C-46, ss 810.1–810.2.
4 Gibbs Van Brunschot & Humphrey, *supra* note 1 at 176.

Indigenous legal systems.[5] Specifically, and drawing on a couple of the sociological concepts and a case study featured in the book, I theorize the work of rebuilding non-state Indigenous legal orders as multi-juridical transition points out of a societal trajectory and dependence on carceral state apparatuses — namely, police units, courts, jails, and prisons — to the exclusion of other community-based legal alternatives for ensuring protection from and accountability for all people impacted by interpersonal harm and violence.

II. A BRIEF COURSE THROUGH *PATHWAYS TO RUIN?*

Pathways to Ruin? is a seven-chapter, 230-page book that draws on life course criminology as a framework for understanding how life experiences and behaviours over the entire lifespan may contribute to an individual's criminal activity. Between the introduction and conclusion (chapters 1 and 7), the book is organized into two main parts. The first part (chapters 2–4) explores childhood, adolescence or early adulthood, and adulthood periods with reference to the authors' case studies and the leading social science and health research.[6] The second part (chapters 5–6) explores the experience and administrative processing of high-risk offenders within the criminal justice system, evidence-based approaches to the desistance of crime, and the identification of both re-entry barriers and resources to leading a law-abiding life after incarceration.[7]

A. PART I: THE LIFE COURSE PERIODS

Chapter 2, "The Early Years," builds on David Finkelhor and colleagues' work on the distress associated with the pain of childhood victimization, and the ensuing types of hardship that these individuals may face as they age.[8] Finkelhor and others conceptualize four pathways to childhood victimization: (1) violence within the family; (2) temperament and behavioural patterns of the children themselves that may contribute to negative outcomes (that is, kids who are easily agitated or aggressive); (3) the structure of the family itself (namely, instability in parenting and supervision); and (4) dangerous communities characterized by violence, lack of supervision, and weak social ties.[9] The authors apply these pathways to understand how each played a key role in the upbringings of those labelled high-risk offenders.[10] For example, we learn that Paul, who is identified as an untreated sex offender in formal psychological risk assessments, experienced severe and multiple forms of victimization as a child:

> The specifics of Paul's life are overwhelming and it is hard for many of us to imagine a childhood plagued by so many difficulties along with victimization that is both circumstantial and specific: born with fetal alcohol spectrum (FAS) into an impoverished home characterized by alcoholism and abuse with few social supports; contracting spinal meningitis as an infant and sustaining a permanent brain injury by the age of six; suffering sexual and physical abuse; involved in early substance abuse; and ultimately attaining very poor educational outcomes. Paul's life serves as an unfortunate example of both individual and social factors

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5 John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010).
6 Gibbs Van Brunschot & Humphrey, *supra* note 1 at 28–105.
7 *Ibid* at 106–60.
8 *Ibid* at 29. For more on Finkelhor's work: David Finkelhor et al, "Pathways to Poly-Victimization" (2009) 14:4 Child Maltreatment 316.
9 Finkelhor, *ibid* at 316–18.
10 Gibbs Van Brunschot & Humphrey, *supra* note 1 at 29.

> intersecting to produce a lifetime of hardship not only for Paul but also for those he has victimized over the years.[11]

Given his formative life experiences, Paul would be considered a poly-victim — a child who has experienced various kinds of abuse and trauma.[12] Poly-victimization is consistent with an area of research examining the effects of adverse childhood experiences, known as ACEs, that are calculated by mental health professionals on a survey with a zero to ten scoring scale. "What is noteworthy about ACEs and the experience of poly-victimization,"[13] the authors maintain, "is that adverse experiences that occur across several domains have a cumulative effect over time and negatively impact those who [are] exposed to these circumstances,"[14] such that "[h]igher ACE scores have been linked with behaviours such as alcoholism, risky sexual behaviour, suicidal behaviour, and offending."[15] Paul, for example, scored a five on the authors' ACE assessment.[16]

That said, in terms of their larger sample of 411 high-risk case files, the authors found a high ACE score does not fully account for high-risk offending. It should be noted here that due to missing data from their file sample, the authors reduced the ACE scoring range to zero to eight from zero to ten.[17] Scoring on eight items, they found that one-third of their sample had an ACE score of at least three or more, and over one-half had at least one ACE.[18] The authors thus asserted that "multiple ACEs are not necessarily the foundation to all high-risk offending (given there were those who scored 0 and 1)."[19] It is possible, however, that those who scored zero or one were not afforded the opportunity or did not feel safe disclosing their childhood traumas to authorities under state incarceration. Be that as it may, the authors underline that the significant evidence of multi-victimization in their sample at the very least suggests that people who are labelled high-risk "cannot be easily defined by the crimes they have committed and their lives are more complicated than an exclusive focus on their crimes alone could illuminate."[20] As such, the authors depart from other life course criminologists who tend to maintain that negative life paths "that appear set in childhood cannot be changed."[21]

In chapter 3, "The Teen Years/Early Adulthood," the authors employ three categories of criminal patterns to broadly think about offending over the lifespan: (1) adolescence-limited — those who, largely for age-related reasons like peer pressure, tend to commit minor crimes in the teen years but who desist in order to successfully adjust to adulthood; (2) life-course persistent — those who escalate in criminal activity well into their adult years often as a result of behavioural patterns formed from adverse childhood experiences; and (3) low-rate

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11 *Ibid* at 31 (the authors use pseudonyms for each case study).
12 *Ibid* at 42.
13 *Ibid*.
14 *Ibid*.
15 *Ibid* at 43.
16 *Ibid* at 52.
17 *Ibid* at 44.
18 *Ibid* at 188. The authors' revised eight-point ACE index included: (1) Emotional abuse; (2) Physical abuse; (3) Sexual abuse; (4) Family violence; (5) Household substance abuse; (6) Parental separation; (7) Foster care; and (8) Criminal behaviour (*ibid* at 186–87). For more on the authors' methodological design and ethics, see generally *ibid* at 181–92.
19 *Ibid* at 44.
20 *Ibid* at 53.
21 *Ibid*.

chronic offending — those with the lowest rate of offending over the teen years, but whose criminal activity remains constant up to age 30.[22] The authors categorize their sample of 411 high-risk offenders within the life-course persistent group. However, they qualify their assessment with the following:

> [T]he specific life stories of individuals do not readily conform to an overarching categorization of simply adolescence-limited or life-course persistent. There are stops and starts to offending … Further, we know that very difficult childhood circumstances do not lead all who experience them to a life of crime…. Even for those who have experienced neuropsychological deficits and abusive families, and who began offending early, life-course theorists maintain that they are not necessarily destined to a lifetime of offending. Rather, situations and events along the entire life course may influence activities and behaviour throughout one's life.[23]

Two key concepts for understanding the open-ended directions of the life course are trajectories and transitions. Building on Robert Sampson and John Laub's research, the authors define trajectories as developmental paths established by several factors ranging from individual idiosyncrasies (namely, personality and temperament), family dynamics, and educational levels to social location factors like race and gender.[24] Typical trajectories of success include academic achievement, parenthood, and professional occupations while deviant pathways may entail substance abuse and criminal behaviour. By contrast, transitions or turning points refer to specific events that occur across the lifespan and have the power to alter trajectories.[25] Whether events actually translate into transitions is largely based on a person's resources for responding to changes. Age, perceived identity, openness to change, and self-efficacy (the belief in one's ability to change the future) are all internal factors that can affect how events are handled.[26] For instance, losing a job may or may not negatively alter a person's otherwise positive life trajectory. It depends on their ability to cope and the external resources they are afforded.[27] Transitions and turning points are critical concepts for contesting the implicit determinism associated with the commonplace idea in criminology that early childhood antisocial behaviour leads to adolescent and adult antisocial behaviour.[28] Informed by Sampson and Laub's empirical findings, the authors note that life events characterized by strong bonds and attachments to family, work, and education (informal institutions of social control), rather than to more formal institutions like the criminal justice system function best as protective factors against criminal behaviour, since positive investments in relationships are premised on and sustain shared expectations on how to act and relate to each other.[29] In light of this, the authors highlight how many individuals in their sample identified their family caregivers as abusers rather than nurturers and that few of the 411 men "attained even the most basic education," with grade eight being the average grade

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22 *Ibid* at 58–59.
23 *Ibid* at 59–60.
24 *Ibid* at 60. For more on Sampson and Laub's work: Robert J Sampson & John H Laub, "A Life-Course View of the Development of Crime" (2005) 602 Annals American Academy Political & Soc Science 12.
25 Gibbs Van Brunschot & Humphrey, *ibid*.
26 *Ibid* at 103.
27 *Ibid* at 61.
28 *Ibid*.
29 *Ibid*.

completed at age 14.[30] One of their case studies, Anthony, illustrates this level of accumulated disadvantage:

> Anthony was adopted soon after birth to a white family (he is Indigenous). His adoptive mother reports that Anthony's behavioural problems started as a toddler with his setting fires and continued through to adolescence. His father eventually convinced social services to remove Anthony from the home and, while a preteen, he became a ward of the court and was in and out of foster care and group homes. He reports a history of emotional, physical, and sexual abuse. Anthony was expelled from high school for trafficking drugs at school.[31]

As an adult, Anthony would later be convicted of more serious offences, from several robberies to two counts of manslaughter. He breached his last peace bond and was found using alcohol and cocaine prior to his last offence.[32] One of the many poignant moments in *Pathways of Ruin?* comes when the authors describe how an apprehended Anthony pleaded with the police: "'I didn't want you guys to go away … I need you guys. I'm too scared.'"[33] These and other cases in their sample "illustrate that [crime] trajectories are often based on foundational experiences within the family, among peers, or in school. Immediate circumstances also play a role in actions as they unfold, such as the impact of alcohol, drugs, intense emotions, and peers."[34]

In chapter 4, "Adulthood: Continuity or Change?" the authors turn their attention to those who begin and those who continue to offend into adulthood. The authors note that the subset of individuals who begin their criminal activity in their adult years has received less attention in the field, and that they pose some challenges to the adolescence-limited and life-course persistent offending categories. To account for this, the authors state that "while official criminal records for some may begin after the age of eighteen, involvement in various criminal activities may have started much earlier."[35]A key concept in their overall discussion of adult offending is self-control. The authors contest early theories of self-control that presumed it to be a stable trait set early in life.[36] Instead, building on more recent work like Situation Action Theory (SAT) and life course criminological theories more generally, the authors maintain a dynamic view of self-control as varying "*within* individuals at all points in their lives"[37] and they acknowledge that "individuals are differentially susceptible to depletion (as well as bolstering) of self-control at different points in time and in different situations."[38]

The authors then consider the role of relationships, employment, and family on adult offending. Of the 411 individuals in their sample, over one-half (58 percent) had at least one common-law or marital partner.[39] Importantly, they make clear that it is not necessarily the presence of a romantic relationship but rather the strength of the bond and the prosocial

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30 *Ibid* at 73.
31 *Ibid* at 63.
32 *Ibid* at 64.
33 *Ibid*.
34 *Ibid* at 75.
35 *Ibid* at 105.
36 *Ibid* at 89.
37 *Ibid* [emphasis in original].
38 *Ibid*.
39 *Ibid* at 97.

qualities of the partner that matter in hindering crime. What is more, the breakdown of a relationship could function as a transition point into offending.[40] In terms of employment, the work histories of their sample "are spotty for most and non-existent for many."[41] Many were incarcerated during their formative years when work experience was more likely to be acquired.[42] Finally, in terms of assessing the role of family networks on offending, the authors identify almost half of the sample to be fathers.[43] However, they note "it appears that fatherhood did not have a huge impact on offending trajectories: 42.5 percent of the men in our sample were fathers but only 37 percent of these men had contact with their children."[44] The authors suggest the minimal influence of fatherhood on the men's behaviour may be due to their low social capital and low self-control as many were exposed to multiple forms of victimization and disadvantage before committing crime and entering the criminal justice system.[45]

B. PART II: THE PRISON AND COMMUNITY RE-ENTRY PERIODS

Chapter 5, "The Criminal Justice Experience and Specialization," focuses on criminal records and criminal justice processing of those assessed to be high-risk and the impact that administrative labels have on their lives. At this point, the authors reiterate the limitations in their own study, namely, they did not speak directly with any of the men in their sample, having relied completely on police and criminal justice records for their life course data featured in the first part of the book (chapters 2–4).[46]

The authors begin chapter 5 by explaining the legalities that their sample underwent after being convicted of a crime. After receiving a determinate sentence of imprisonment, they were granted a statutory release date (SRD), actioned at the two-thirds completion mark of the sentence.[47] Under the authority of Canada's *Corrections and Conditional Release Act* (*CCRA*), statutory release is mandated by law.[48] Most individuals who have not already been granted parole are automatically released on their SRD. The function of the SRD is to improve successful community reintegration by serving the last one-third of the sentence in a community residential facility (CRF), also known as a halfway house. The decision to release an individual on parole prior to their SRD falls under the jurisdiction of the Parole Board of Canada and is based on criminal history, good institutional behaviour, successful completion of programming, and a viable release plan.[49] Although the SRD is mandated under the *CCRA*, the authors clarify it is not an absolute right. The Correctional Service Canada (CSC) holds the authority to detain an inmate until the warrant expiry if it assesses the risk to the public to be undue at the time of the SRD.[50] Thus, six months prior to the SRD, a pre-screening review is conducted by CSC to determine the risk manageability of each

40 *Ibid*.
41 *Ibid* at 101.
42 *Ibid*.
43 *Ibid* at 103.
44 *Ibid*.
45 *Ibid* at 104.
46 *Ibid* at 107.
47 *Ibid* at 109.
48 SC 1992, c 20, s 127.
49 Gibbs Van Brunschot & Humphrey, *supra* note 1 at 109.
50 *Ibid* at 110.

case.[51] The SRD may be denied or special conditions imposed if it is found on reasonable grounds that the individual may commit: (1) an offence causing death or serious harm to another person; (2) a sexual offence involving a child; or (3) a serious drug offence.[52] Another period of risk assessment occurs prior to the warrant expiry date (WED), which is the time when the full prison sentence imposed by the court is complete.[53] Ninety days before the WED, CSC prepares information and shares it with the police in the expected geographic area of release. The police then determine whether they will pursue a peace bond under either section 810.1 or 810.2 of the *Criminal Code*.[54] The peace bond is a method used to manage an individual in the community by imposing a range of special conditions that could result in another conviction if those conditions are breached. If granted by a provincial court judge, the peace bonds can be imposed for a period of one to two years and are renewable.[55]

As the implicit assumption in the peace bond process is that "different 'types' of offenders exist,"[56] the authors test this belief against the actual empirical evidence for such designations.[57] Despite the tendency to cast offenders into a certain mould, the authors assert that "the vast majority show far greater versatility than these categorizations suggest."[58] They further note that "the research literature on specialization is more nuanced than the labels of 'sex offender' or 'violent offender' suggest."[59] To illustrate this point, the authors assessed whether there was a profile difference between those who were formally labelled via section 810.1 (threat to commit a sexual offence against a minor) and section 810.2 (threat to commit death or serious harm to another person). They found that individuals determined to be a high-risk against children were older, demonstrated greater specialization as per their criminal records, and had less offences recorded overall.[60] Despite the apparent clarity in this offending pattern, the authors ultimately conclude that specialization remains fraught and modulated by different metrics of labelling, researcher bias toward typecasting, time periods of offending, relationship dynamics, and offender age, among other factors.[61]

The authors then consider post-release barriers faced by ex-inmates. Here they consider the public safety utility of sections' 810.1 and 810.2 peace bond supervisions, noting how the sanctions appear to offer "some individuals with the structure that is often needed to successfully reintegrate back into the community."[62] On closer inspection, this overreliance on the criminal justice system is regarded as a sign of institutionalization and it is used against high-risk offenders in their file information. In addition, ex-inmates face barriers created by the stigma of their crimes and imprisonment. Outside of official labels, they often face "extreme disapproval and are discredited and labelled because of the experience. Notifications about the release of offenders into the community are an especially public way of marking these individuals."[63] A criminal record has thus been regarded by sociologists as

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51 *Ibid*.
52 *Ibid*.
53 *Ibid* at 111.
54 *Ibid*.
55 *Ibid* at 111–12.
56 *Ibid* at 114.
57 *Ibid* at 111.
58 *Ibid* at 117.
59 *Ibid* at 118.
60 *Ibid* at 118–19.
61 *Ibid* at 124.
62 *Ibid* at 132.
63 *Ibid* at 132–33.

a "negative credential" of sorts, functioning as a state-certified form of discrimination and social exclusion.[64] Securing a place in the housing market is yet another barrier as landlords may be discriminatory toward potential tenants with criminal records.[65]

In chapter 6, "Approaching Desistance," the authors balance their analysis of barriers with the resources that contribute to law-abiding outcomes for former prisoners. The authors theorize desistance as a dynamic process characterized by a significant lull in an individual's life rather than an abrupt and permanent end to crime. Research indicates "that even the most chronic and persistent offenders take breaks from offending," with crime-free gaps serving as integral steps in the whole desistance process.[66] Protective factors in this process include: changing one's self image as a criminal to a non-criminal, employment, relationships with law-abiding others, the onset of aging with its attendant maturation and accumulation of adult roles (namely, husband, father, and employee), and routines that limit opportunities for crime.[67] A key focus of "re-entry research," a growing and critical area committed to studying the experience of individuals re-entering society after incarceration, is predicting the likelihood of success — typically measured by not incurring another conviction or not returning to prison.[68] Relevant to their sample, the authors draw on Karl Hanson and colleagues' research on psychological risk assessments completed for sex offenders and their correlation with actual success rates post-incarceration.[69] Their findings indicate that static factors like past offence history are valid but time dependent markers of risk, meaning that risk assessments can and do change over time.[70] This finding, the authors point out, contests the erroneous assumption that individuals labelled sex offenders are "incurable" and always pose a high risk to reoffend.[71]

Finally, the authors discuss how the formation of a law-abiding identity can be compromised by structural features of the supervised re-entry process such as the requirement to initially reside in a halfway house. Research indicates these locales can function as "spatial stigma" whereby the "'vilified and degraded'" housing space works to "vilify and degrade those who [are mandated to reside] there."[72] This makes it hard to shed the social stigma of incarceration and could compound the challenge of finding independent housing and employment moving forward. Hence, securing respectable independent housing is regarded as an especially strong affirmation of a non-criminal identity and a significant feat in the desistence process.[73] Other milestones and markers of desistence that further help cast off criminal stigma include securing a meaningful job and a loving relationship with a prosocial partner, together known as the "'respectability package.'"[74] External factors aside, the authors highlight the importance of the formerly incarcerated cultivating a sense of trust

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64 *Ibid* at 134. For more on this concept: Devah Pager, "The Mark of a Criminal Record" (2003) 108:5 American J Soc 937.
65 Gibbs Van Brunschot & Humphrey, *ibid* at 135.
66 *Ibid* at 141.
67 *Ibid* at 139.
68 *Ibid* at 147.
69 R Karl Hanson et al, "High-Risk Sex Offenders May Not Be High Risk Forever" (2014) 29:15 J Interpersonal Violence 2792.
70 *Ibid* at 2807.
71 Gibbs Van Brunschot & Humphrey, *supra* note 1 at 147.
72 *Ibid* at 151.
73 *Ibid*.
74 *Ibid* at 152.

in their own capacity to transform and to sustain hope in a future that offers them space to make good on their changes in the community.[75]

After all their incisive analyses, Gibbs Van Brunschot and Humphrey return in their conclusion chapter to a 2017 media report detailing the release of a person convicted of sexual assault after serving 20 years in prison.[76] In the report, the correctional authorities are cited as expressing the view that this person was unfit to live in the community despite being placed on a section 810 peace bond. What is most troubling to the authors is firstly, that this statement appears to admit the person is no different after having served his sentence than he was prior to imprisonment, and secondly, that he is perceived as such a high-risk threat that there is seemingly no other remedy besides indefinite imprisonment.[77] In light of such headlines, the authors leave us with the fundamental question: "So, what are we to do about high-risk offending?"[78]

III. THE ANTHONY SYNDROME AT THE MACRO SCALE

By way of conclusion, I offer here some parting reflections to balance out the authors' micro-level analysis of high-risk offending within the monojuridical parameters of state law. I do so with reference to two key concepts and a case study central to the book. Recall that Anthony is the Indigenous high-risk offender who confided in the police upon being apprehended during his last peace bond breach that he was afraid to live his life without their surveillance and control. As Gibbs Van Brunschot and Humphrey comment later on, speaking about the spectre of institutionalization:

> In Anthony's case, for example, he stated that he would not know what to do without the police: the presence of the "system," however negative it has been for him, is one of the few constants he has experienced. At the same time that the police attempt to control his behaviour, for Anthony this control has been a source of stability in an otherwise chaotic life.[79]

These findings invite us to scale up to the macro-level and put into question our own societal reliance on carceral state apparatuses.

Living in a disciplinary society of state surveillance, we all find ourselves in a dire spot like Anthony wherein we do not know what to do without the current system, however ineffective it is in achieving its public safety aims, and however implicated it is in the socioeconomic inequalities that make for high rates of crime and victimization, especially among Indigenous, Black, and People of Colour communities.[80] Calls for reforming the carceral state's criminal justice system tend to take for granted its continuation.[81] Moreover, such calls often overlook how "the continent was once governed by a multitude of

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75 *Ibid* at 153–54.

76 Stephane Giroux, "Convicted Toronto Rapist Released, Now Living in Montreal," *CTV News* (5 May 2017), online: [perma.cc/HL3N-JNLA].

77 Gibbs Van Brunschot & Humphrey, *supra* note 1 at 173.

78 *Ibid*.

79 *Ibid* at 136.

80 *Ibid* at 49–50.

81 See e.g. *Canada's Residential Schools: Reconciliation, The Final Report of the Truth and Reconciliation Commission of Canada*, vol 6 (Montreal: McGill-Queen's University Press for Truth and Reconciliation Commission, 2015) at 228 (Call to Action #30).

Indigenous legal systems."[82] As Kelty McKerracher, a gold-medal graduate of the JD/JID Joint Degree Program in Canadian Common Law and Indigenous Legal Orders at the University of Victoria, has learned:

> The persistent denial of Indigenous peoples' legal worlds and jurisdictions has led to conflicts across the country as Indigenous peoples assert and uphold their legal obligations to their territories. These are manifestations of contested legality and governance *in a context of land dispossession and genocide by the state*, and the absence of reciprocal legal relations between Canadian and Indigenous polities.[83]

We might refer to this settler colonial train of thought and its corresponding practices of governance as the carceral state trajectory. To my mind, if we are to enhance collective health and responsibility without the fear-based and ineffectual criminal justice approaches identified by Gibbs Van Brunschot and Humphrey, we need to create multi-juridical transitions and turning points out of the carceral state trajectory. This is part of what the Gitxsan human rights and child activist Dr. Cindy Blackstock flags as part of a communal re-dreaming process in the wake of genocide:

> We feel that one of the things taken from many Indigenous Peoples through colonization, perhaps even, I would argue, the most important thing was our ability to dream for ourselves. What does a healthy Gitxsan family and child look like? Some of us have pieces of that vision, but that communal vision, that was broken apart; in some cases, more than in others. And so, one of the first things is to re-dream what that looks like, and then work with community to re-establish that dream.[84]

It is imperative to mention here that communal envisioning does not entail idealizing or romanticizing Indigenous laws and legal traditions as a mere critique against state law.[85] Human vulnerability and violence are human realities that predate settler colonization. The outstanding question is how we choose to address these realities today.

Centuries of systematic state violence against Indigenous peoples has created a breakdown in the intellectual and relational basis of Indigenous legal orders such that if these systems of governance are to be a part of reducing harm and enhancing well-being for present and future generations they require immediate capacity-building efforts and quality resources. To this end, the Indigenous law scholar David Milward has, in the same publishing year as *Pathways to Ruin?*, put forth a vision for rebuilding Indigenous legal orders that begins with partnering with government agencies overseeing criminal justice matters in order to build the capacity to fully sustain kin-based Indigenous modes of public safety and accountability independent of the state.[86] Milward's call for action is especially urgent in light of the overrepresentation of Indigenous peoples in jails and prisons that he links to intergenerational

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82 Toronto Abolitionist Convergence, "An Indigenous Abolitionist Study Guide," (10 August 2020) at 6, online (pdf): *Yellowhead Institute* [perma.cc/NW76-SCZJ].

83 Kelty McKerracher, "Relational Legal Pluralism and Indigenous Legal Orders in Canada" (2023) 12:1 Global Constitutionalism 133 at 135 [emphasis added].

84 Canada, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, vol 1a (Ottawa: Privy Council Office, 2019) at 353.

85 Val Napoleon & Hadley Friedland, "Indigenous Legal Traditions: Roots to Renaissance" in Markus D Dubber & Tatjana Hörnle, eds, *The Oxford Handbook of Criminal Law* (Oxford: Oxford University Press, 2014) 225 at 237.

86 David Milward, *Reconciliation & Indigenous Justice: A Search for Ways Forward* (Halifax: Fernwood, 2022) at 4–8.

traumas associated with the residential school system, among other forms of settler colonial dispossession.[87]

To ensure this transitional phase of Indigenous-state partnerships as envisioned by Milward does not simply replicate bureaucratic structures and so further entrench us in the carceral state trajectory, but instead facilitates our desistence from it, it is critical that scholars and activists within Indigenous communities and their allies equally form working partnerships with abolitionist movements that are taking shape across the settler borders of Canada and the United States. The Toronto Abolitionist Convergence, for example, is a collaboration of artists, activists, academics, people who have been incarcerated, and people who have worked and struggled against incarceration, detention, deportation, and settler colonialism in various ways.[88] For Prisoner's Justice Day on 10 August 2020, they published a resource guide with the Yellowhead Institute that calls for an "Indigenous, anti-colonial abolitionist analysis of the penal system" and a turn toward "Indigenous Knowledges as a guide to how to create and sustain good relations with each other."[89] In the United States, Colin Kaepernick's edited volume, *Abolition for the People: The Movement for a Future Without Policing & Prisons* brings together more than thirty essays representing political prisoners, grassroots organizers, scholars, and relatives of those killed by anti-Black state violence.[90] Most recently, the philosophical duo Barrett Emerick and Audrey Yap make a feminist case for prison abolition in the United States and Canada that specifically takes into account sexual violence concerns.[91] In short, there is a growing literature and political coalition of scholars, activists, incarcerated, and formerly incarcerated people working toward a society that addresses interpersonal harm and violence through non-carceral, community-based means.[92]

As life course criminologists and sociologists, scholars and practitioners of Indigenous law, feminists, and prison abolitionists all share overlapping commitments and areas of concern, there is ample opportunity for mutual aid and learning to unfold. For example, the University of Alberta Law Professor Hadley Friedland identifies responses to violence and victimization as practiced within Cree and Anishinabek societies.[93] Based on her community-based and archival research, she offers a working definition of the *wetiko* as a legal categorization that "describes people who are harmful or destructive to themselves and/or others in socially taboo ways," and shows how the identification of *wetikos* trigger "identifiable and *felt* obligations by others around him or her."[94] In this account, the *wetiko* is not an incurable or irredeemable monster but rather a person whose past harmful behaviour and present predicament calls on others to enact their relational liberties and obligations. In

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87 *Ibid*. For more on settler colonial forms of dispossession: Lisa Guenther, "Property, Dispossession, and State Violence: The Criminalization of Indigenous Resistance in Canada" (2023) 67:1 Philosophy Today 81 at 93.

88 Toronto Abolitionist Convergence, *supra* note 82 at 3.

89 *Ibid* at 4.

90 Colin Kaepernick, ed, *Abolition for the People: The Movement for a Future Without Policing & Prisons* (Kaepernick, 2021).

91 Barrett Emerick & Audrey Yap, *Not Giving Up on People: A Feminist Case for Prison Abolition* (Lanham: Rowman & Littlefield, 2024).

92 See e.g. Mariame Kaba & Shira Hassan, *Fumbling Towards Repair: A Workbook for Community Accountability Facilitators* (Canada: Project NIA & Just Practice, 2019).

93 Hadley Louise Friedland, *The* Wetiko *Legal Principles: Cree and Anishinabek Responses to Violence and Victimization* (Toronto: University of Toronto Press, 2018).

94 *Ibid* at 35–36 [emphasis in original].

light of this, we might return to the case of Anthony. In the middle of *Pathways to Ruin?*, the authors cite a letter Anthony penned expressing concerns over an upcoming media release about his criminal history and re-entry into the community:

> To have a media release is to put me in jeopardy which may result in some headhunter being injured. Also it announces to the criminal subculture that I am there. I may be considered a threat … Like showcasing a toothless, clawless, over-the-hill lion in a state-of-the-art cage for all the public to have something to concentrate on and fear…. I have a feeling you couldn't give a shit 'cause I'm just some shit bird con with no use to anything or anybody. I'm still going to succeed no matter what. So bite me.[95]

Rather than further pathologize and interpret Anthony in risk-saturated terms, we might see him in a more critical, productive light. Not just as a poly-victim and far from a golden boy of reintegration, but instead, as a confined and stigmatized human being exercising his self-efficacy and agency in the only way he can. An uncensored Indigenous voice calling out for help from someone other than the police and the prison, and at the same time, and in the words of Yellowknives Dene political theorist Glen Coulthard, an intergenerational survivor of genocide articulating a *righteous resentment* that just might help mobilize the social capital needed to dismantle the very carceral structures and narratives that keep us all locked up in state-of-the-art colonial cages of thought, sentiment, and practice.[96]

So, how will we respond to the Anthonys within and amongst us?

Vernon Wilson[*]
Post-Doctoral Fellow
University of Victoria,
Faculty of Law

[95] Gibbs Van Brunschot & Humphrey, *supra* note 1 at 126–27.

[96] Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014).

[*] Dr. Wilson recently completed a post-doctoral fellowship with the Faculty of Law at the University of Victoria. He is now leading family and community-based research aimed at rebuilding Indigenous legal orders in Canada.