

Mundane Marginalization: A Criminological Analysis of the Immigration Detention of Children in Canada

Sidra Hashmi

University of Ottawa

Interdisciplinary Research Laboratory on the Rights of the Child

Undergraduate Essay Competition Winner 2018-2019

The increase in immigration is an adverse effect of an increasingly globalized world. Access to mobility has become an indicator of status because the movement of certain populations is restricted through methods like immigration detention. In Canada, immigration is becoming criminalized to the extent that children are being detained in immigration holding centres (IHC) and other facilities. In this paper, I conceptualize the immigration detention of children in Canada as a crime of the powerful because it is a symptom of a corrupt system. In this system, pro-social behaviour caters to the interests of those in power at the expense of vulnerable populations. David Friedrichs (2015) highlights ‘mundane’ crimes of the powerful which occur on a regular basis but are often overlooked since they maintain the social order (p. 113). Specifically, I argue that the detention of children in IHCs and other facilities in Canada is a ‘mundane’ crime of the state because the 1989 United Nations’ Convention of the Rights of the Child (UNCRC) is strategically applied to maintain the interests of those in power.

First, I present a literature review that provides a description of the issue and draws on criminological theory to create an analytical framework. Next, I present an analysis organized around the following concepts: human rights, power, prevention, equality, and justice. In the analysis, I use legal definitions, where available, and commonly accepted definitions, where

necessary, to critique dominant narratives that permit the violation of children's rights, through acts like immigration detention. Finally, I evaluate existing solutions and alternatives as well as propose new ones to work towards ending the immigration detention of children in Canada. Ultimately, I will demonstrate that the detention of children in IHCs and other facilities is a 'mundane' crime that is used to maintain systems of power.

Literature Review

Immigration Detention of Children in Canada: A 'Mundane' Crime of the Powerful

'State crime' has always been difficult to define within the context of criminology. Rick Matthews and David Kauzlarich (2007) argue that conceptualizations of state crime are constrained by the legal approach. For the purposes of this paper, state crime includes all harms resulting from acts and/or omissions perpetrated by governmental agencies and/or organizations that may serve their own self-interests (p. 46-47). These acts or omissions may or may not be criminalized and may even be facilitated through legislation. Thus, the immigration detention of children should be understood as a criminological issue as it is perpetrated by the state through the act of detention and failure to guarantee the rights of these children.

To further understand the state's interests in detaining children in IHCs and other facilities, criminology must broaden its object of study. 'Crimmigration' is defined as the "convergence" of criminal law and immigration law (Stumpf, 2006, p. 378). João Velloso (2013) argues that 'crimmigration' is too simplistic because it assumes that both bodies of law are being combined, when in fact immigration is being criminalized (p. 56). Despite Velloso's (2013) critique, it is important to analyze the immigration detention of children from the standpoint of 'crimmigration' to highlight the growing similarities between prison and detention. Ultimately, Angela Davis' (2003) call to reconsider imprisonment is relevant, because imprisonment threatens the freedom of everyone, including children (p. 14). In this case, the state's interests in detaining children involves monopolizing power and expanding on its capacity to control society.

Furthermore, Stanley Cohen (1993) argues that the notion of human rights is a "dominant narrative" because the concept cannot be separated from its political context (p. 99). Despite the rise of critical criminology, Cohen (1993) highlights the lack of understanding of the relationship between human rights and criminalization as a gap within the discipline (p. 99). Yoav Mehozay

(2018) and Morten Koch Andersen (2018) echo this notion by presenting the violation of human rights as a criminological concern. In this view, human rights discourse has not completely changed the material or social circumstances of minorities due to its intertwinement with corruption (Mehozay, 2018, p. 157; Andersen, 2018, p. 180). Therefore, the immigration detention of children in Canada is a state crime because it is yet another example of the state prioritizing its political agenda over the protection of its people.

Crimes of the powerful are often overlooked because of the state's involvement. Friedrichs (2015) argues that criminologists often lose sight of the bigger picture by focusing on "crimes of the powerless" (p. 107). Likewise, when investigating "crimes of the powerful" they also fail to address 'mundane' crimes (p. 112). Don C. Gibbons (1983) defines 'mundane' crimes as "innocuous instances of law breaking" that occur outside of the public eye (p. 214). Friedrichs (2015) provides various examples, including traffic infractions and corporate crime, to demonstrate that criminology as a discipline has reinforced power dynamics in which those in power can cause harm covertly and face few consequences (p. 112). Moreover, 'mundane' state crimes are performed by "low-level agents of the state" such as those of the public service, who hold power when enforcing the law to enforce larger societal power dynamics (p. 113). Therefore, states will not identify themselves as criminal, let alone problematize everyday activities that are deemed "legitimate" under the social order (p. 113). Ultimately, Friedrichs' 'mundane' crimes of the powerful provide the basis to assess the immigration detention of children in Canada due to the lack of visibility and social position of the perpetrators.

Immigration Detention of Children in Canada At a Glance

The immigration detention of children in Canada demonstrates that the citizenship status of children and/or their parents can justifiably limit their quality of life. Hanna Gros and Yolanda Song (2016) state that "between 2010 and 2014, an average of 242 children were detained each year" in Canada (p. 9). However, they argue that these statistics are not entirely accurate because they may not include children that are "*defacto* detainees" (p. 9). Gros (2017) explains that under the Immigration and Refugee Protection Act (IRPA) only non-citizens can be held in immigration detention. However, children are permitted to *accompany* their parents in detention instead of living with relatives or child protective services (p. 14). In this view, there are two types of child detainees in Canada: those who are citizens by birth or through permanent resident (PR) status, and those who are immigrants.

The Canadian Border Services Agency (CBSA) addresses detained children in its reports regarding “arrests, detentions and removals” (2018a; 2018b; 2018c). From 2017-2018, the CBSA reports that 167 minors were held in facilities in Canada (CBSA, 2018b). Over the years, this number has decreased, as a total of 232 minors were held in a facility during the 2014-2015 fiscal year. However, it was not until the 2017-2018 fiscal year that the CBSA began documenting the status of citizenship, as well as reason for and length of detention, along with the type of facility (CBSA, 2018a). Overall, despite the discrepancy, both ‘official’ and ‘unofficial’ statistics affirm that the immigration detention of children does occur in Canada.

Over the last two years, the following findings have been consistent, though the number of children in detention has decreased steadily every quarter (CBSA, 2018b; CBSA, 2018c). First, most children in immigration detention are foreign nationals accompanied by their parents (CBSA, 2018b; CBSA, 2018c). Second, those who are accompanied by their parents are held for longer than those who are unaccompanied (CBSA, 2018b; CBSA, 2018c). Finally, minors are typically detained on the basis that they are “unlikely to appear” at follow-up proceedings (CBSA, 2018b; CBSA, 2018c). These trends provide insight into the rationale for detaining children in IHCs and other facilities because it does not position minors as threats. Instead, children and youth are detained for logistical reasons. Gros and Song (2016) argue that the UNCRC is the most ratified convention; however, Article 9 – the right to live with one’s parents – is used to justify the detention of children, regardless of their citizenship (p. 1). Thus, the detention of children in IHCs and other facilities is considered a last resort to keep families together.

Furthermore, the State’s rhetoric deceives by misrepresenting the quality of the facilities and detention of children as the only option. Carrie Dawson (2014) argues that politicians selectively toggle between the sentiments of “hospitality” and “hostility” towards immigrants (p. 827). Specifically, politicians draw on ‘hospitality’ to justify the conditions in which children are being detained by comparing them to hotels and claiming they are not prisons (Dawson, 2014, p. 829, 837). Politicians also argue that citizenship is earned and when policies are ‘hostile’ to immigrants, it is to protect Canadians from security threats and exploitation of systems, like healthcare (Dawson, 2014, p. 839). Meanwhile, Kronik et al. (2015) argue that IHCs do resemble “medium security prisons” (p. 287). Additionally, Zohra Faize (2018) highlights that in regions where there are no IHCs, children are actually held in provincial prisons (p. 19). Neither of these

concerns is presented in reports generated by the CBSA, which serves to reinforce political discourse on the matter. Consequently, the detention of children has been overlooked, with it occurring in the periphery of the public eye to maintain the status quo.

Canada ratified the UNCRC in 1991, accepting its guiding principles that define children as individuals below the age of 18 and ultimately protecting children from any kind of discrimination and from any decisions that do not protect their best interests. The treaty does not explicitly define children's rights; rather it defines treatment children should not face (Government of Canada, 2017). While the immigration detention of children in Canada violates countless rights outlined in the UNCRC, in this paper I address the following rights: proper care, education, play, and health care. These rights are trumped by the need to satisfy Article 9, so long as the detention of a child proves to be within his or her "best interests" (Faize, 2018, p. 9; Gros, 2017, p. 9). Gros and Song (2016) further argue that the principle of "best interests" involves "substantive right," "legal principle," and the "rule of procedure," which renders it incredibly complicated as all decisions are on a case by case basis (p. 37). In brief, the detention of children is another system in which age, race, class and citizenship are used to justify the deprivation of the rights of a vulnerable population.

Limitations

The intention of this literature review was to provide an overview of relevant sources and to create an analytical framework to critique the foundation that children's rights are grounded in. While there is significant and substantive literature on 'crimes of the powerful,' research on immigration detention is often treated as an administrative issue, so there is a limited basis on which to understand it as a crime. Further, it should be noted that there is limited literature available on the immigration detention of children in Canada. Specifically, literature often centers around adult immigrants and parents usually speak on behalf of children. The reports presented by the CBSA do not provide enough insight on immigration detention from the perspective of children. The reports do not specify the national origins of the detainees and have not been confirmed to include children who are Canadian citizens. In the reports compiled by Gros and Song (2016), all the testimonies are written by parents. Meanwhile, Dawson's (2014) article discusses politics around immigration detention but is not specific to children. Faize's (2018) thesis is the only one with testimony from former child detainees; however, the

interviewees in that study were adults who shared their childhood experiences retrospectively. Ultimately, the analysis in this paper is limited because of the lack of research available and given that the subjects are vulnerable individuals due to age, migration, and/or citizenship status.

Analysis

The immigration detention of children presents an opportunity to expand the focus of study within criminology, as it involves larger societal issues of detainment and citizenship. Walter Bryce Gallie (1956) puts forward the notion of an “essentially contested concept” to broaden one’s perspective by thinking critically (p. 168). Specifically, he argues that concepts are taken for granted due to the pervasiveness of dominant discourses. In this section, I demonstrate how the definition of rights under both the UNCRC and Canadian legislation relies on state-sanctioned definitions of human rights, power, prevention, equality, and justice. I challenge the dominant narrative in which all of these are presented on the state’s agenda and demonstrate how the government of Canada ultimately fails to actualize the UNCRC by using the aforementioned concepts to maintain its power.

The (Dis)Empowerment of Children Through Human Rights and Power

As previously mentioned, human rights do not exist within a vacuum, rendering the concept very difficult to define. Since the context of this analysis is the immigration detention of children in Canada, human rights are defined in accordance with Canadian law and principles. The Canadian Human Rights Commission (CHRC) is responsible for hearing complaints and aiding individuals in the complaint process, as well as providing information about rights and violations. The CHRC defines human rights as the manner in which individuals are “instinctively ... to be treated as persons.” Further to this, everyone is entitled to the same rights upon birth and, although no one can “give them to you,” they can be revoked (CHRC, n.d.).

In Canada, human rights are protected at the federal level under the Canadian Human Rights Act (CHRA). This piece of legislation does not explicitly define human rights, rather it defines prohibited grounds of discrimination, among which citizenship is not named (Canadian Human Rights Act, 1985). It should be noted that the analysis of this paper is limited by the lack of definition in Canadian legislation. In this view, the choice to define human rights by exclusion should be considered as a tool of the state, as even the CHRC argues that human rights may be taken away.

The creation of the UNCRC demonstrates efforts to aid in strengthening the agency and

decision-making power of children. Understanding power can vary within contexts, but for the purposes of this paper, the definition of power remains neutral to ensure the analysis is not limited by negative connotations. Therefore, it is considered as the “ability to act or produce an effect,” (Power, n.d.). In the same vein, Jewel Amoah (2007) urges the broadening of the intersectional lens, because “girl-children” are born into a state of “powerlessness and vulnerability” due to identity factors, such as age and gender being assigned to them (p. 6-7).

Though immigration detention affects both boys and girls in Canada, it is key to use Amoah's (2007) framework to build on how human rights are applied to minorities, such as children, as a secondary thought. For example, the Canadian government uses its duty to protect citizenship to justify the need to detain immigrants (Dawson, 2018, p. 826). Meanwhile, Article 3 of the UNCRC requires the state to provide proper care for children in its facilities and act using the best interest principle (United Nations, 1989). In this case, the violation of Article 3 is two-fold, given that immigration detention is never in the best interests of the child, and the Canadian government is unable to ensure proper care through child protective agencies (Gros, 2017, p. 2). Children are detained no matter their citizenship, because their freedom is contingent on that of their parents as well as the state, who both prioritize Article 9 over Article 3.

Furthermore, there are three ways to assert power: over, with, and within (Gervais, 2019). In addition, Neil Stammers (2009) presents “power to” as another form with which the oppressed can regain power (p. 215). Children are often victims of ‘power over’ tactics by both their parents and the state. For example, Hasan and Mohammed were detained to avoid separation (Gros & Song, 2016, p. 16) and Abigail refused “to part with her infant son” despite constant pressure from CBSA officers during her detainment (Gros, 2017, p. 22). These case studies demonstrate Stammers' (2009) critique that “‘power to’ can be constrained by morphing into ‘power over’” (p. 215), as parents and agents of the state make choices on behalf of children. Though the UNCRC is an initiative to empower children, there is a lack of operationalization of ‘power within’ and ‘power with’ because many children are unaware of their rights or lack the appropriate agency to act (Gervais, 2019). Moreover, ‘power within’ and ‘power with’ can be used negatively, as demonstrated by state actors. CBSA workers and politicians justify detaining children to protect deserving Canadians, while parents view it as safer than separation. Thus, the immigration detention of children in Canada is a ‘mundane’ state crime, because it falls within

the status quo of maintaining the vulnerability of children due to age, as well as systems of citizenship that ostracize them by association.

In brief, the negative use of human rights discourse and the nuance in the use of power limit the capacity of the UNCRC. The UNCRC is born out of human rights so in the same way that the parent concept is limited by legislation that opts against clear definitions of positive treatment, the standards of children's rights are pliable so that the state is never in violation of legislation. The lack of specificity in legislation demonstrates the state's priority to protect its interest over its people. In this view, the capacity to protect children under the UNCRC is manipulated to satisfy the state's agenda, as are the forms of power to advocate on behalf of children for fair treatment. All in all, wide-encompassing definitions of human rights and power must be entrenched in legislation to mobilize children's rights instead of contributing to mundane marginalization.

Prevention of Harm and the Acquisition of Agency

For the purposes of this analysis, I highlight prevention as a negative form of power to maintain structures of mundane marginalization. In his book *Discipline and Punish*, Michel Foucault (1975) discusses the Panopticon and argues that it renders prisoners in a "permanent state of visibility" in which state-sanctioned behaviour is exhibited out of fear of being punished (p. 201). The pervasiveness of detention in current Canadian society, as seen through the immigration detention of children, demonstrates Foucault's perspective of how prevention often involves surveillance. For the purposes of this paper, prevention is understood as methods typically used by the state to prevent harm, in an effort to protect society, including social and material circumstances. By depriving immigrant children and/or first-generation Canadians of their right to education in IHCs and other facilities, they are subject to further marginalization. Analyzing the immigration detention of children, this section demonstrates that prevention is relevant beyond the field of criminology.

In modern times, 'crimmigration' demonstrates how criminology can be used to ostracize entire populations on the basis of state-solicited definitions of 'crime.' First, Steve Tombs and David Whyte (2003) argue that criminology is part and parcel of crimes of the powerful because neoliberalism has rendered research a commodity sponsored by the state and other powerful agencies (p. 229). In this view, criminologists fail to research 'mundane' crimes of the state, such as the detention of children in IHCs and other facilities, as they align with the state's interests to

gain funding. Second, Biko Agozino (2004) implores that criminology be decolonised, since it has been previously used to further the imperialist agenda, and now it is furthering the capitalist agenda (p. 349). Likewise, Michael Lynch (2000) argues that criminology must be contextualized because it has been used to “legitimize methods of oppression” (p. 149). All three of these authors demonstrate the need to address the immigration detention of children within criminology, as it is another way in which prevention is used to deflect attention from and perpetuate ‘mundane’ crimes of the powerful. Specifically, the lack of research on the immigration detention of children maintains global power dynamics because it prevents immigrant and first-generation children from problematizing the practice of detention or the state itself.

Detention is both preventative and reactive in nature. It appeals to a protectionist discourse in which migrant people may take advantage of Canada’s ‘hospitality’ (Dawson, 2014, p. 827). Gros and Song (2016) present Kimona’s testimony, during which she highlights that her son Delano was provided “inadequate education” during detention (p. 11). She further specifies that the schooling occurred “three times a week” and included children ranging from 4 years old to 19 years old (Gros & Song, 2016, p. 11). I find that withholding education in IHCs and other facilities is deliberate as it maintains education as a right only for ‘legitimate’ citizens. The violation of the right to education for children during detention, no matter their status of citizenship, demonstrates ‘hostility’ on the part of the Canadian government because it characterizes all of them as undeserving.

In the same order of ideas, the Canadian government has previously used education as a tool of prevention to control so-called ‘at-risk’ populations. In Canada, residential schools were implemented as a tool of assimilation and colonization of Indigenous peoples in Canada. Russ Moses (1965) argues that the issue with residential schools was not education as an institution but that the children were exploited and denied a proper curriculum (p. 14). The importance of education is further demonstrated in the novel *Book of Negroes*, in which the protagonist, eleven-year old Aminata, actualizes her ‘power within’ to survive and advocates for herself on a slave ship (Hill, 2007, p. 56). Likewise, in his call to action to young activists, Tim Wise (1999) states that the “threat of a good example” is a force to be reckoned with (p. 184). Specifically, the “prevention” of education of children in immigration detention demonstrates that their agency is a threat to the state and its power.

The UNCRC was initially implemented to prevent harm to children, given that they are a vulnerable population. However, the immigration detention of children demonstrates that the prevention of harm to the state's interests takes precedence. The current use of prevention tactics is exploited, because it marginalizes immigrant children and first-generation Canadians by extending the gaze of detention long after they are freed. The prevention of education contributes to justifying the violation of the rights of children by ensuring that they are not provided with the agency to advocate for themselves at present or in the future. Ultimately, "prevention" must be repurposed so that it is accessible to children in detention; instead of using it to prevent immigrant and first-generation children from acquiring agency through education, it should be channelled toward preventing marginalization through practices like detention.

Equality in a Globalized World: The 'Luxury' of Movement

Evidently, the immigration detention of children in Canada perpetuates inequalities, as demonstrated through the selective use of human rights and the negative assertions of power, such as prevention. Equality is an ideal like human rights that is further complexified in a globalized world. In the Canadian Charter of Rights and Freedoms, the definition of equality is less limited, because it does demonstrate what it should look like: "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination," with the exception of affirmative action programs (Constitution Act, 1982). This definition is still limited, as it does not account for the ever-evolving world, as articulated by Katja Franko Aas' (2007) "criminology of mobilities" (p. 285). In the *Journal of Prisoners on Prisons* (2010), many of the former political prisoners argued that they faced further inequalities throughout the process of immigration. For example, Minoo Homily was denied asylum in Turkey and Eduardo López was denied entry into Canada because he could not 'prove' his death threats (Gervais & Felices-Luna, 2010, p. 49, 73). Meanwhile, Adrian López discussed the racial profiling he faced as an immigrant in Canada, along with struggling with navigating a new country (Gervais & Felices-Luna, 2010, p. 27). In the same way, Abigail critiqued the Canadian government for causing further inequalities in the process of gaining citizenship, including, as previously mentioned, the detention of her infant son (Gros, 2017, p. 23). All in all, immigrants from the global South are subject to a lesser quality of equality because they are 'lucky' to migrate, and children become collateral damage to systemic oppression.

Children are inherently marginalized due to their age, but the dimension of citizenship is another element to identity that is beyond one's control. Amoah's (2007) GRACE model – "Gender, Race, Age, Culture and Experience" – can be used once again to better understand how different factors of identity intersect (p. 2). For example, 'defacto detainees' face the same inequalities as non-citizens, including constant surveillance, searches, "restricted mobility," and the deprivation of the right to play (Gros & Song, 2016, p. 5; Faize, 2018, p. 28). In this view, gaps in the system of citizenship perpetuate colonialism because harms continue to be individualized so it becomes difficult to address inequalities (Comack, 2018, p. 460). Ultimately, there are similarities in the marginalization of Indigenous peoples through their overrepresentation in Canadian prisons and the immigration detention of children, with both being controlled through colonial concepts, like imprisonment and immigration.

Though IHCs are presented as 'family friendly' with appropriate recreational facilities for children (Dawson, 2014, p. 834), Faize (2018) argues that boredom is pervasive (p. 30). Furthermore, Kimona argued detention is "no life for a child," as her son cannot enjoy his childhood (Gros & Song, 2016, p. 11). The denial of Article 31 – the right to play – (United Nations, 1989) is a serious issue, because lack of recreational activity, along with other traumatic experiences, have long-lasting effects (Gros & Song, 2016, p. 5). The right to play is especially important for children affected by conflict, as demonstrated in *War Dance*, a film documenting three Ugandan children as they prepare for a music and dance competition. In one scene, the children are seen playing in a pond, while candidly discussing the imminent threats of violence in their area and the need to return urgently to the relative safety of their refugee camps. In this case, the right to play was so important that these children put themselves at risk, if only for a few moments, because it provided a renewed sense of hope (Fine, S. & Fine, A. 2007).

The deceptive presentation of IHCs as 'hospitable' mirrors the image of group homes that fostered Indigenous children during the Sixties scoop. Sheila Grantham (2016) argues that "problematic children" were put into group homes to circumvent foster care regulations (p. 130). The maltreatment of Indigenous children led to an internalization of inferiority, due to persistent abuse that was grounded in racism, because the "Indigenous body" was "inherently guilty" (p. 133). Likewise, adults who were in detention as children in Canada justify the state's policies, as they are "grateful" for being granted citizenship (Faize, 2018, p. 115). In the same manner as the state-imposed inferiority on Indigenous children, the state has also limited the agency of

immigrant and first-generation children by rendering detention necessary in the acquisition of citizenship. Overall, when children internalize inequalities, they grow up with a weakened sense of agency that prevents advocacy.

With the state's monopoly over power, it is important that equality goes beyond 'fair treatment' because this is often applied strategically to ensure that certain populations are restricted. For example, Amir testified that although he was not a criminal, during detention he was treated like a prisoner because "in prison, everyone is equal" (Faize, 2018, p. 118). The UNCRC cannot be fully realized in Canada due to the state's ability to define citizenship, because even though all Canadian citizens are awarded equality rights, they may not be guaranteed to those whose parents migrated. In addition, the notion of guaranteeing equality rights on the basis of citizenship demonstrates how immigration detention is one of many 'mundane' crimes that justifies the violation of human rights to protect systems of power. In this case, children are marginalized to maintain colonial power, as the state dictates when citizenship counts. Hence, equality must consider the perspective of minorities, such as children and immigrants/first-generation Canadians.

Seeking Justice in an Unjust System

In the film *Cry for Justice*, Osiris López, the daughter of a human rights activist, struggles with retributive justice (Goodfellow et al., 2004), demonstrating the need for alternate forms of justice. Justice is difficult to ascertain because it can be very subjective. In this analysis, justice is understood as "the maintenance or administration of what is just especially by the impartial adjustment of conflicting claims or the assignment of merited rewards or punishments" (Justice, n.d.). This definition does not consider circumstances or varying perspectives; rather it relies on objectivity. In the following section, I demonstrate how the dominating view of justice is inherently unjust because it works against those who seek justice.

In the *Journal of Prisoners on Prisons* (2010) many former prisoners were in favour of restorative justice (p. 28, 53, 67, 99). Specifically, Saideh shares many commonalities with parents of children in detention in Canada, such as her child being denied healthcare and appropriate conditions to maintain a good standard of health (Gervais & Felices-Luna, 2010, p. 38). In addition, her son, like children detained in Canada, also faced mental health issues, and neither were provided with the appropriate resources to heal. For example, Hasan's mother also claimed: "Hasan is not the same" (Gros & Song, 2016, p. 16). Furthermore, Mohammed's "fear

of institutional buildings” is triggered when the family seeks “psychological support” (Gros & Song, 2016, p. 17). In this circumstance and that of Saideh, both parents seek justice through healing. Thus, justice becomes about more than retribution because parents are focused on the wellbeing of their child, especially in the dire circumstances of detention.

In the same order of ideas, attaining justice in an unjust system involves a negotiation. At times, the right thing may no longer align with one's morals. For example, youth female war victims in Sierra Leone negotiated for their safety by marrying powerful commanders. They sought justice against sexual assault by gaining some protection from spontaneous sexual assault through marriage (Denov & Gervais, 2007, p. 887). When seeking justice against immediate harm, ‘power to’ becomes less about overthrowing the system. Another example is parents like Abigail, who ensured that she appeared fit to care for her child throughout her time in an IHC in Canada, so as not to be separated from her child (Gros & Song, 2016, p. 23). Therefore, children are affected by their parents' struggles, who have little ‘power over’ the forms of justice that they are seeking.

In this view, it is crucial to seek out the voice of survivors and assess justice from their perspective. It is difficult to do so within this context, since in most testimonies parents or adults who were previously detained are speaking on behalf of their children (Gros & Song, 2016; Faize 2018). Seeking justice may involve appealing to the law. Slave women in the French Antilles demonstrated resilience by taking their masters to court repeatedly, despite being further punished for advocating for themselves (Moitt, 2001, p. 110-113). As these women were further penalized for seeking justice and equality, their resilience should be celebrated, but holding society responsible, as opposed to marginalized individuals, is also key. Permitting children to seek justice through formal and informal avenues provides the basis for them to challenge power dynamics. Specifically, the limitations in seeking to justice as detained child or formerly detained child is limited because it speaks to larger societal norms that use migration and age as a basis for unjust treatment.

The accounts of those seeking justice demonstrate that practices should revolve around healing. In looking at the harms associated with the violation of the right to play, justice becomes about more than correcting a mistake. Unfortunately, given that there is not a lot of information available as to how to seek justice on behalf of or as a child detainee in Canada, the examples noted above provide the basis on which to explore possible means to do so. There are

long lasting impacts of unjust acts, which further perpetuate injustice because marginalized populations are targeted. The immigration detention of children in Canada is an unjust act, as it violates rights and it serves marginalization, despite being presented as the 'better' alternative. Furthering the notion that justice is blind only reinforces one perspective because it renders dominant narratives as the standard and misrepresents them as the objective lens. Thus, the definition of justice must go beyond state-based definitions to include the views of those who are most vulnerable, particularly children and youth. Ultimately, children must be provided with the necessary tools and platforms to advocate for themselves.

Alternatives and Solutions

Existing Solutions and Alternatives

The simple solution is to stop detaining children in IHCs and other facilities, but the situation at hand involves reflection on systems within society. The following recommendations are presented by Gros & Song in their 2016 report. First, they argue for community alternatives, such as less expensive "non-custodial programs" where individuals may still be monitored to ensure they are following conditions for immigration (p. 34). Gros & Song also recommend revising the IRPA to "Prohibit ... solitary confinement or isolation of children in immigrant detention," which may, in turn, prohibit the detention of unaccompanied children (p. 38). They further seek reform of the Immigration and Refugee Protection Regulations to ensure the 'best interests' of children are being considered and the "least restrictive conditions of release" are used (p. 38). In addition, the report recommends training for CBSA officers to increase knowledge of "human rights, diversity and viable alternatives to detention," and policy that involves consultation with agencies, such as the Office of the Children's Lawyer, along with connecting IHCs with resources, such as mental health specialists (p. 39). Finally, Gros & Song urge for more research and dissemination of information on children in detention (p. 38). All in all, these recommendations are not solutions because they do not rule out the practice of detention as a whole.

Moreover, Gros & Song argue that community-based alternatives still constrict children, since separating children from their families is detrimental. They suggest further community alternatives, in which children can live with their families through "reporting obligations, financial deposits, guarantors, electronic monitoring, third-party risk management programs and, in extraordinary circumstances, open accommodation centres" (p. 6). Also, Minister of Public

Safety Ralph Goodale has promised \$138 million to reform immigration detention, of which \$5 million will be used to develop alternatives to detention (Gros, 2017, p. 50). Finally, Child Protection Agencies are not presented as alternatives, not only because of the issue of separation, but also due to the abysmal quality of the child welfare system in Canada (p. 41). I have chosen to rely on these two reports as the foundation for alternatives and solutions, because they were the only data that was credible, and the research was based in Canada. It is imperative that more research is done in Canada to attain a more enriched perspective on alternatives and solutions.

Similarly, the Canadian Paediatric Society (2016) created the website “Caring for Kids New to Canada,” to provide resources for health professionals. In their statement against the detention of children in IHCs, they were supported by organizations including The Canadian Centre for Victims of Torture and Amnesty International. In addition, The Canadian Council for Refugees’ (CCR) Youth Network also advocates for the Canadian government to stop holding children in immigration detention (CCR, n.d.). Ultimately, all the alternatives and solutions presented involve appealing to the state. However, although each source characterizes the immigration detention of children as wrong and harmful, they do not provide a basis on which to deconstruct the state’s power or counter dominant narratives that marginalize children.

Advocating Through Amplification: Learning Not To Speak For Children

Throughout this paper, the information used to discuss the immigration detention of children in Canada does not involve first-hand accounts of children. Though Faize’s (2018) thesis involved interviewing adults who were formerly detained as children, this paper’s analysis is limited, because the state, parents, and adult activists speak on behalf of children. The solutions and alternatives discussed are a start, as they condemn the state for detaining children. Nonetheless, they are insufficient because they do not come from the children themselves. Hence, the first step in the creation of appropriate solutions and the prevention of immigration detention of children in Canada involves providing children with a voice. As demonstrated through King et al. (2016), children must be provided with a platform to advocate for themselves, first as a right to their agency and also because they have the ‘power to’ bring together communities (p. 39). In this fashion, ‘power to’ can be facilitated by ‘power over,’ as adults foster a just society that provides equal treatment and prevents harms, rather than perpetuating further marginalization.

The alternatives suggest that research is key to removing children from detention and

exposure to the harms of crimes of the powerful, but immigrant populations are still marginalized. The penal gaze remains fixed on immigrant populations and it is increasingly important to advocate with them. Myriam Laplante and Kimberly Theidon (2007) explore “transitional justice,” in which “truth without consequences is not enough” (p. 231). Furthermore Cohen (2001) highlights several forms of acknowledgment of the truth when addressing large-scale crimes. In the case of immigration detention of children, true reconciliation is most relevant because it provides a pathway to “confront the past” and create a better world (p. 239). The alternatives presented do not advocate for fundamental social change, since they reinforce the current social order and simply create ‘humane’ forms of mundane marginalization.

The immigration detention of children in Canada demonstrates flaws in a system and in a society that do not have the tools to protect those who are most vulnerable. There are few organizations that go beyond appealing to the state. Though the solutions provided in both reports articulate means to respect rights to proper care, education, play, and healthcare, they do not consider ‘cimmigration’ as an issue. Harald Bauder (2013) discusses the possibilities of open borders and no borders. He finds that both options risk legitimizing capitalism and neoliberalism by fostering a free-flowing market (p. 79, 86). Still, condemning borders, whether it be opening access or obliterating them, is important to mitigate inequalities (p. 88). To avoid further stratification, there must be a change in the meaning of mobility, so that the violation of the UNCRC cannot be justified. Martin Donohoe (2008) echoes the need for definition in his suggestions on finding alternative symbols of love (p. 182). In each of these proposed solutions, there is an active movement against ‘mundane’ crimes of the powerful to reorganize power dynamics.

All in all, the solutions I propose involve an increase in research to learn and address the needs of immigrant populations, specifically children. This increase should advance Harsh Mander’s (2010) call for inclusive research, as it must be an “uncompromising search for truth” (p. 253). Meanwhile, Pittaway et al. (2010) discuss the power dynamics involved in research of at-risk populations, such as refugees. They have created a method entitled “reciprocal research” to ensure participants in research do not feel exploited (p. 238). In order to amplify the voice of children, we must all strive for co-management to ensure positive assertions of power and truly respect human rights (Symes & Litster, 03/07/2019). As per Koen De Feyter (2005), human rights can be woven into multiple levels of governance, although it is a challenge because

international law is not binding (p. 171). Tangible solutions include ending the practice of detention but still acknowledging survivors and providing the necessary resources for children, such as mental health care or restorative justice. Ultimately, alternatives and solutions must go beyond rectifying harms and use prevention to seek justice.

Conclusion

In brief, I have demonstrated that the immigration detention of children in Canada is a 'mundane' crime of the powerful that brings into question human rights, power, prevention, equality, and justice. These concepts indicate that the UNCRC is used against immigrant and first-generation Canadian children by withholding their decision-making power and further engrains their minoritization through systems of age, class, race, and citizenship in Canadian society. Ultimately, the immigration detention of children in Canada is a criminological issue, because the mobility of minorities has become an indicator of potential criminality in a globalized world (Franko Aas, 2007, p. 215).

Criminologists have played a role in reproducing marginalizing structures in the past, especially in overlooking 'mundane' crimes of the powerful. In this view, crimes of the powerful, such as the detention of children in IHCs and other facilities, must be brought forward to challenge deterministic policies. By expanding analyses beyond traditional criminology, we will be able to create a new infrastructure for society in which human rights are a universal standard. We must all strive for equality in a society in which prevention protects everyone and power is strengthened by numbers rather than fear. As it stands, the immigration detention of children in Canada should be identified as a real threat to Canadians because the rhetoric of hostility leaves us all vulnerable to mundane marginalization.

Future research should focus on expanding legal and common definitions of key concepts to ensure that there is no room to manipulate them. The strategic adaptation of the UNCRC is a testament to the state's failure to protect its most vulnerable populations. Criminologists should challenge the state's definitions, as well as society's willingness to uphold them, because immigration detention is founded upon mundane marginalization. The ability to justify the immigration detention of children in Canada renders the dominant narrative inherently oppressive, despite the state presenting it as a necessary aspect of protecting Canadians from harm. The mundane marginalization of immigrant and first-generation Canadian children must be further explored so that it is no longer accepted as the status quo. It is imperative that more

research is conducted on this topic, from a diverse array of subjects, to challenge the state's monopoly over the use of the UNCRC to protect society's most vulnerable children.

References

- Agozino, B. (2004). Imperialism, Crime and Criminology: Towards the Decolonisation of Criminology. *Crime, Law and Social Change*, 41(4), 343-358.
- Amoah, J. (2007). The World On Her Shoulders: The Rights of the Girl-Child in the Context of Culture & Identity. *Essex Human Rights Review*, 4(2), 23.
- Bauder, H. (2013). The Possibilities of Open or No Borders. *Social Justice*, 39(4), 76-96.
- Canadian Paediatric Society. (2016). A statement against the immigration detention of children. Retrieved from <https://www.kidsnewtocanada.ca/beyond/immigration-detention-of-children#supporting%20orgs>
- Canadian Border Services Agency. (2018a). Annual Detention Statistics – 2012-2018. Retrieved from Canadian Border Services Agency website: <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2012-2018-eng.html>
- Canadian Border Services Agency. (2018b). Quarterly Detention Statistics – 2017-2018. Retrieved from Canadian Border Services Agency website: <https://www.cbsa-asfc.gc.ca/security-securite/detent/qstat-2017-2018-eng.html>
- Canadian Border Services Agency (2018c). Quarterly Detention Statistics – 2018-2019. Retrieved from Canadian Border Services Agency website: <https://www.cbsa-asfc.gc.ca/security-securite/detent/qstat-2018-2019-eng.html>
- Canadian Council for Refugees (n.d.). Canada Keeps Children in Detention. Retrieved from <https://ccrweb.ca/en/youthrights/children-in-detention>
- Canadian Human Rights Act, RSC 1985, c. C – 3. Retrieved from <https://laws-lois.justice.gc.ca/eng/acts/h-6/page-1.html#h-256800>
- Canadian Human Rights Commission (n.d.), What are human rights? Retrieved from <https://www.chrc-ccdp.gc.ca/eng/content/what-are-human-rights-0>
- Cohen, S. (1993). Human Rights and Crimes of the State: The Culture of Denial. *Australian and New Zealand Journal of Criminology*, 26(2), 97-115.
- Cohen, S. (2001). Digging Up Graves, Opening Up Wounds: Acknowledging the Past. *States of Denial: Knowing About Atrocities and Suffering* (pp. 222-248). Cambridge: Polity Press (Blackwell).
- Comack, E. (2018). Corporate Colonialism and the “Crimes of the Powerful” Committed Against the Indigenous Peoples of Canada. *Critical Criminology*, 26(4), 455-471.
- Constitution Act, RSC 1982, c. C – 15. Retrieved from <https://laws-lois.justice.gc.ca/eng/const/page-15.html>
- CTV News [CTV News]. (2017, Feb 24). A hard look at children in immigration detention centres [Video file]. Retrieved from <https://www.youtube.com/watch?v=3eC8U67kDfI>
- Davis, A. (2003). *Are prisons obsolete?* New York: Seven Stories Press.

- Dawson, C. (2014). Refugee Hotels: The Discourse of Hospitality and the Rise of Immigration Detention in Canada. *University of Toronto Quarterly: A Canadian Journal of the Humanities*, 83(4), 826-846.
- De Feyter, K. (2005). Avenues of Hope. In *Human Rights: Social Justice in the Age of the Market* (pp. 135-173). Black Point, Nova Scotia: Fernwood Publishing.
- Denov, M. & Gervais, C. (2007). Negotiating (In)Security: Agency, Resistance, and Resourcefulness among Girls Formerly Associated with Sierra Leone's Revolutionary United Front. *Signs: Journal of Women in Culture and Society*, 32(4), 885-910.
- Donohoe, M. (2008). Flowers, Diamonds and Gold: The Destructive Public Health, Human Rights and Environmental Consequences of Symbols of Love. *Human Rights Quarterly*, 30(1), 164-182.
- Faize, Z., Gervais, C. L.M., degree supervisor, & University of Ottawa. Department of Criminology. (2018). Child [Un]Friendly Border Control: A Criminological Analysis of Young Asylum Seekers' Migration and Immigration Detention Experiences.
- Fine, S & Fine A. N. (2007). *War Dance*. New York: Thinkfilm Company and Shine Global.
- Franco Aas, K. (2007). Analysing a World in Motion. Global Flows Meet "Criminology of the Other." *Theoretical Criminology* 11(2): 283-303.
- Foucault, Michel. (1979). *Discipline and Punish: The Birth of the Prison*. New York: Vintage Books.
- Friedrichs, D. (2015). Rethinking the Criminology of Crimes of States: Monumental, Mundane, Mislabeled and Miscalculated Crimes. *International Journal for Crime, Justice and Social Democracy*, 4(4), 106-119.
- Gallie, W. (1956). Essentially Contested Concepts. *Proceedings of the Aristotelian Society*, 56, 167-198.
- Gervais, C. (01/10/2019). CRM 4313 A: Crime & Powerful – Criminology & Contested Concepts. University of Ottawa. Winter.
- Gervais, C. (01/31/2019). CRM 4313 A: Crimes/Harms Against Children. University of Ottawa. Winter.
- Gervais, C., & Felices-Luna, M. (2010). *Journal of Prisoners on Prisons (Vol. 19)*. Toronto: University of Toronto Press.
- Gibbons, D. (1983). Mundane Crime. *Crime & Delinquency*, 29(2), 213-227.
- Goodfellow, B., Neve, A. & Oliver, R. (2004). *Cry for Justice*. Toronto: Eaglecom Productions
- Grantham, S. (2016). (in)visible bodies and (de) contextualization: A critique of the Independent Review of Cathedral Valley Group Home. *Canadian Journal of Children's Rights* 3(1), 124-141.
- Government of Canada. (2017). Rights of Children. Retrieved from <https://www.canada.ca/en/canadian-heritage/services/rights-children.html>
- Gros, H. (2017). Invisible Citizens Canadian Children in Immigration Detention. Toronto: International Human Rights Program, University of Toronto Faculty of Law.

- Gros, H. & Song, Y. (2016). "No Life for a Child" A Roadmap to End Immigration Detention of Children and Family Separation. Toronto: International Human Rights Program, University of Toronto Faculty of Law.
- Hill, L. (2007). We Glide over the Unburied. In *The Book of Negroes* (pp. 55–95). Toronto: Harper Collins.
- Justice [Def. 1.a]. (n.d.). In Merriam Webster Online, Retrieved July 30, 2019, from <https://www.merriam-webster.com/dictionary/justice>
- King, J., Wattam, J. & Blackstock, C. (2016). Reconciliation: The kids are here! Child participation and the Canadian Human Rights Tribunal on First Nations child welfare. *Canadian Journal of Children's Rights*, 3(1), 33-45.
- Koch Andersen, M. (2018). Why Corruption Matters in Human Rights. *Journal of Human Rights Practice*, 10(1), 179-190.
- Kronick, R., Rousseau, C., Cleveland, J., Mcleigh, J. D., & Spaulding, W. (2015). Asylum-Seeking Children's Experiences of Detention in Canada: A Qualitative Study. *American Journal of Orthopsychiatry*, 85(3), 287-294.
- Laplante, L. J. & Theidon, K. (2007). Truth with Consequences: Justice and Reparations in Post-Truth Commission Peru. *Human Rights Quarterly*, 29(1), 228-250.
- Lynch, M. (2000). The Power of Oppression: Understanding the History of Criminology as a Science of Oppression. *Critical Criminology*, 9(1-2), 144-152.
- Mander, H. (2010). 'Words from the Heart': Researching People's Stories. *Journal of Human Rights Practice*, 2(2), 252-270.
- Matthews, R., & Kauzlarich, A. (2007). State crimes and state harms: A tale of two definitional frameworks. *Crime, Law and Social Change*, 48(1), 43-55.
- Mehozay, Y. (2018). Critical Criminology as a Guardian of Human Rights: An Action-Based Model. *Critical Criminology*, 26(2), 149-168.
- Moitt, B. (2001). Discipline and Physical Abuse: Slave Women and the Law. In *Women and Slavery in the French Antilles: 1635-1848* (pp. 101-124). Indianapolis: Indiana University Press.
- Moses, R. (1965) (Reprinted 2016). Memoir 'Mohawk Institute 1942-1947.' *Canadian Journal of Children's Rights*, 3(1), 9-15.
- Pittaway, E., Bartolomei, L. & Hugman, R. (2010). 'Stop Stealing Our Stories': The Ethics of Research with Vulnerable Groups. *Journal of Human Rights Practice*, 2(2), 229-251.
- Power [Def. 1.a (1)]. (n.d.). In Merriam Webster Online, Retrieved July 30, 2019, from <https://www.merriam-webster.com/dictionary/power>
- Stammers, N. (2009). Renewing the Challenge to Power. In *Human Rights and Social Movements* (pp. 214- 249). London: Pluto Press.
- Stumpf, J. (2006). The Crimmigration Crisis: Immigrants, Crime, And Sovereign Power. *American University Law Review*, 56(2), 367-419.
- Symes, J. and Litster J.H. (03/07/2019). CRM 4313 A: Addressing Crimes of the Powerful: Complexities & Reconsideration. [Inter Pares]. University of Ottawa. Winter.

- Tomb, S. & Whyte, D. (2003). Unmasking the Crimes of the Powerful. *Critical Criminology*, 11(3), 217-236.
- United Nations. (1989). Convention on the Rights of the Child. United Nations Treaty Series, 1577, 3. General Assembly Resolution 44/25
- Velloso, J. (2013). Au-delà de la criminalisation: L'immigration et les enjeux pour la criminologie. *Criminologie*, 46(1), 55-82.
- Wise, T. (1999.). The Threat of a Good Example, *Social Justice* 26(2), 182-184.