DEVALUED PEOPLE: THE STATUS OF THE METIS IN THE JUSTICE SYSTEM

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ABSTRACT/RESUME

The authors present a concept of devaluation and review the position of the Métis in Canada as a devalued people. They examine the position of Métis and other Aboriginal people in the correctional systems of Manitoba and other provinces, noting both systematic and systemic discrimination. They conclude with recommendations for Aboriginal control of Aboriginal justice and correctional systems.

Les auteurs présentent un concept de dévaluation et réexaminent la situation des Métis au Canada en tant que race dévaluée. Ils étudient la situation dans laquelle se trouvent les Métis et les autres autochtones qui sont dans les institutions correctionnelles au Manitoba et dans d'autres provinces, et constatent une discrimination systématique et systémique. En concluant ils recommandent un contrôle autochtone de la justice et des institutions correctionnelles autochtones.

In July of 1988, the Government of Manitoba set up a Public Inquiry into the Administration of Justice and Aboriginal People.[1] This Inquiry was established to examine the impact of the legal system on the Indian, Inuit and Métis population of Manitoba and to produce a final report for the Legislature with a conclusion, opinions and recommendations.[2]

The Inquiry was given broad scope to examine issues including all components of the justice system. A mandate to determine the extent to which Native and non-Native persons are treated differently by the justice system, and to consider whether or not there are specific adverse effects against Aboriginal people in the criminal justice system including possible systemic discrimination.

The objects of this paper are to review the general effects subtending to Aboriginal people as a devalued group, and to then examine the status of Métis people within the provincial correctional system. This paper presents research evidence that Métis and other Aboriginal peoples are differentially impacted by the operation of the justice system as it now exists, that the effects are adverse, and that systemic discrimination is prevalent.

The lack of recognition of the social viability of Native communities - and a corresponding failure to permit Native people to address their own needs and to manage their own affairs- is rooted in the history of Manitoba. The basis of this colonization is, of course, economic exploitation. The devaluation of a people, and their culture renders it more acceptable to the colonizing group in its rationalization of the exploitation, for when people are seen as less than human, interference with their life is seen as more palatable. We contend that the effects of the dehumanization are translated to the present day situation where Native people are overrepresented as victims, witnesses and of course the accused of the justice system. This then becomes a self-perpetuating cycle because the dehumanizing treatment received from the justice system further erodes self-esteem.

Aboriginal youth get into conflict with the law at a younger age than do non-Aboriginal youth, and for them, life is confusing and dislocating. There is less success in school and there are fewer work and recreation activities available. In Manitoba, Métis youths are admitted to probation at a (mean) age of 15.6, compared to 16.1 years for non-Natives. Over one-third (34.4%) of Mètis youths admitted to probation are not living with their parents, compared to 25% for non-Natives. The average age of first conviction for Métis children is 14.2, compared to 15 for non-Natives, and 56.8% of

Métis youth have less than Grade IX, compared to 34.4% for non-Natives. If one combines these factors with the observation that many Métis youths come from communities with less than adequate social services, it is not surprising that their success rate on probation supervision is only 34.9%, compared to a 52.1% success rate for non-Natives and 42.8% success rate for Treaty Indians living on reserves.

During the course of the public hearings throughout Manitoba in 1988 and 1989, a number of people appeared before the Aboriginal Justice Inquiry and blamed Aboriginal individuals or communities for justice system problems, in effect, asserting that Aboriginal people are the sole authors of their own misfortune. These arguments are flawed both from a lack of understanding of complex societal interactions and because they are founded upon that historical inaccuracy and distortion which is often used to buttress such arguments. This has generated a number of different reactions within the Aboriginal community and within the wider community.

This paper will deal with complex societal interactions and leave historical distortions to be dealt with at another time. The paper will present a paradigm which goes some way to explain what occurs in the lives of devalued people and outline the evidence that these factors are in play within the justice system.

In a presentation to the Aboriginal Justice Inquiry (Barkwell, 1988), the senior author dealt at length with factors which tend to dehumanize both those who are processed by the justice system and those who have responsibility for administration of the various branches of the system (the employees). Those arguments need not be presented here, but do serve as useful background to this presentation.[3]

Devalued People

Historically, devalued people are those who are racially different, physically different, or behaviorally different from the majority. The basis for the "differentness " resides in accidental or chance factors which are not the making of the individual. For people who are in any way different from the norm, there is a risk that they will experience low status within the larger group. They will remain low status within the community unless a number of other significant factors are present in their lives.

If the individual draws strength and support from traditions,

spiritual resources, a strong family network, or a strong community network (within the context of a shared language), the chances are very good that they will not experience the detrimental effects that usually subtend to persons of low status.

The only other counters to low status are tremendous inner reserves of coping skills or alternately to have very powerful or high status people on their side (a process of inclusion).

If there is no counterbalance as noted above, there are a number of outcomes from being low status and devalued. There are four things these individuals will experience: rejection, low personal autonomy, negative imaging and involuntary poverty.

Rejection: Rejection leads to the creation of distance by the process of either congregation or segregation. Within the earliest communities, banishment was a practice. However, this occurred only as a last resort and was an ultimate disposition as the individual was so dependent upon the community as a whole for survival. In the criminal justice system, those who refuse to adhere to social norms are segregated from the community, often for relatively minor offenses. Unfortunately, they are also congregated in large deviant subcultures.

In any event, rejection leads inevitably to the experience of discontinuity, both physical discontinuity (being moved from place to place), and relational dicontinuity (being moved or separated from family, friends and social network). This in turn, results in personal insecurity and the consequent loss of the ability to trust others.

Negative imaging: Often the person who is identifiably different is described in a pejorative way, and at the same time is suspected of multiple deviance. From personal experience, everyone can recall instances where they have almost reflexively ascribed additional negative attributes to those they perceive as being different. Although we are not discussing stereotyping, the process clearly does lead to stereotypical views.

Low personal autonomy: Low personal autonomy leads to being controlled by others. Low status devalued people are most often viewed as being incapable of managing their own affairs. Most people find this demeaning and find it difficult to maintain their own self-esteem in the face of this pressure. Higher status persons often patronize devalued people, or think they have an inherent right to order them around.

Involuntary poverty: If one is viewed as incapable, the larger community is unlikely to entrust one with communal resources. This involuntary poverty leads to the impoverishment of experience.

This, in turn, leads to anger and/or depression, low energy, low self-esteem, feelings of not deserving success and, ultimately, self-rejection.

The four factors listed above lead to social interactions where the devalued person is prone to being on the receiving end of psychological or physical brutality. Quite understandably then, these people come to see themselves as a source of anguish. When an individual has been cycled through this process a number of times, the result is most often dissipation. At a minimum, the devalued person comes to distrust those in positions of authority.

A major additional problem arising out of poverty, hopelessness, and the sense youths have that to be Indian or Métis is to be a failure, is that according to a self-esteem model of deviance, juveniles may become involved in delinquency as a response to negative self-attitudes, and high self-esteem needs.

Recent research by Wells (1989) tested that self-derogation theory which predicts that low self-esteem motivates youths to try out delinquent activities aimed at restoring self-esteem. He found significant evidence that this is indeed the case:

> The effects are pronounced for more substantial forms of delinquency (theft, vandalism, and fighting)...The enhancing effect of delinquency is showing up significantly and most consistently in persons whose level of self-derogation are extreme...such persons have less to lose by getting involved in socially disapproved deviance and a lot to gain psychologically, since their self-esteem cannot get much lower. (Wells, 1989:248-249)

The effects were found to be persistent, enduring undiminished for one and one-half to three and one-half years. Thus, there is extremely good research evidence that the more a group is devalued or denigrated for their own conditions or status, the higher the likelihood of deviant behavior from youths of that group.

Even a cursory examination of the front page of the newspaper will reveal reports of this process:

> Manitoba and Saskatchewan residents blame Natives for their own problems and are less likely than other Canadians to support Aboriginal rights, an Angus Reid Group poll has found...Pollster Angus Reid said yesterday the most troubling of all the findings in the national poll is the tendency of Manitoba and Saskatchewan residents to blame Canada's Native people for the problems that confront them. (McKinley, 1989)

The public responses to a recent article in *Canadian Social Trends* (Statistics Canada, 1989) are most instructive in this reguard:

> Spokesmen for Native run social agencies who were interviewed yesterday blamed poverty and hopelessness, as well as conditions that go beyond economics; a sense that Native people must assimilate to survive, and that to be Indian or Métis is to be a failure. Alcoholism, child abuse and family murder are all "symptoms of a basic deprivation of a place in the world", said Martin Dunn, senior advisor with the Native Council of Canada, in Ottawa. (Fine, 1989)

The *Globe and Mail* was also able to document poignant self reports of Native leaders expressing the view that they had feelings of self-rejection and a sense of themselves as a source of anguish.

> Virtually we grew up to hate what we were. We used to watch cowboy and Indian movies and we'd be rooting for the cowboys as they killed off the Indians. (Fine, 1989)

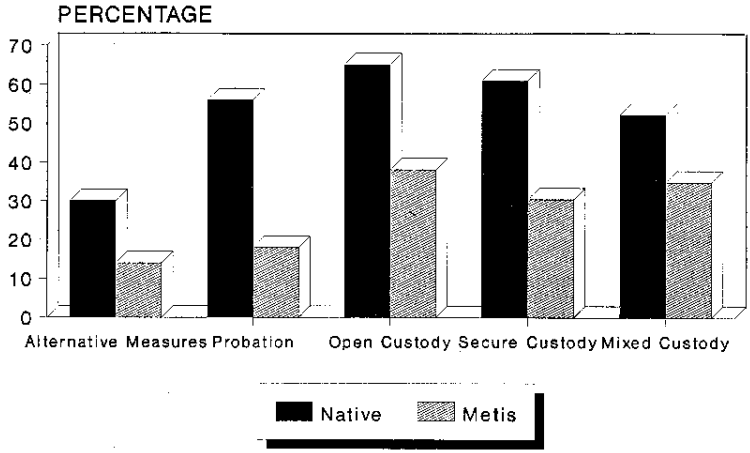
The end result of the interaction of these factors is that custody rates for youths in Manitoba are 57.4% higher than the national average, custody rates for adults in Manitoba exceed the national average by 26.5%, and adult sentences are twice as long as the Canadian median sentence (61 days vs. 30 days).

	Canada	**Manitoba**
Youth custody rate per 10,000 youth population	18.3/10,000	28.8/10,000
Adult custody rate per 10,000 adult population	8.85/10,000	11.2/10,000

Figure 1:Canada/Manitoba Incarceration Rates

This devaluation is present across Canada. However, because the proportion of Aboriginal people in the population is largest in Manitoba, Saskatchewan and the Northwest Territories, the results are more immediately obvious in these jurisdictions. This effect amplifies the rates of incarceration for the population as a whole. This is documented by the fact that the overrepresentation of Aboriginal people in the justice system creates a larger general rate of incarceration in Manitoba than the national average. Statistics Canada (1989) reports the following comparative figures for 1988-89:

TABLE 1: YOUTH CORRECTIONS REFERRALS
Manitoba: 1987 Admissions
Métis and Aboriginal Admission Rates



Source: Manitoba Métis Federation Justice Committee (1989)

A review of the Statistics Canada Key Indicator Reports reveals that the same trend exists in all provinces and territories with significant Aboriginal populations. Most provinces report that Aboriginal people are overrepresented in custody. It is noteworthy that Alberta recently set up a commission of inquiry to determine why almost one-third of that provinces' prisoners are Indian or Métis.

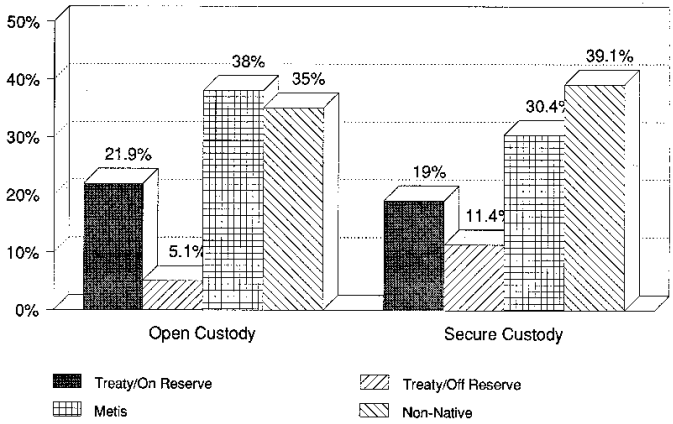
Status Of Métis People In Provincial Corrections In Manitoba

As illustrated in Table 1, Métis youth constitute:

- 14.0% of those receiving diversion from court;
- 17.9% of those receiving probation;
- 30.4% of those receiving secure custody;
- 34.8 of those with mixed custody dispositions; and
- 38.0% of those receiving open custody.

Métis admissions to open custody since the implementation of the Young Offenders Act (1984-1987) exceed all non-Native admissions and Treaty Indian admissions when compared individually. Métis youth are also severely affected by mixed custody admissions (34.8% vs 17.4% for Treaty Indians, and 47.8% for non-Native). The percentage of Métis admissions to secure

TABLE 2: YOUTH ADMISSIONS TO CUSTODY
Manitoba 1984 - 1987



custody is only 8.7% less than the percentage of all non-Native admissions.

As one moves from diversion from court to more secure custodial sentences, Métis youths are more severely impacted. Métis children are committed to youth institutions at twice the rate they are diverted from court. This is true for Native youth in general but nowhere are they more unfairly treated than in the pre-court process. In 1989, a survey by the Native Caucus of Probation Officers revealed that the remand cottages of the Manitoba Youth Centre were basically full of Native youths:

- 92.8% of the girls held on remand were Native; and
- 47.0% of the boys held on remand were Native.

A large number of secure and open custody beds are at the Manitoba Youth Centre. The survey revealed:

- 87.5% of the girls and 55.5% of the boys held in the open case custody units of the Manitoba Youth Centre were Native; and
- 100% of the girls held in secure custody at the Manitoba Youth Centre were Native.

There is good evidence that it is considered acceptable by correctional authorities to treat devalued people in a substandard fashion. Recently in Manitoba there were as many as 26 youths held in cottages designed to hold 15. This exceeds the Canadian Criminal Justice Association standards for minimum cell size by so

much as to make a mockery of the standards. We believe that it is only because Native youths are without strong advocacy that this situation has not been brought to public attention and has been allowed to continue over the years. We believe that the effect of this overcrowding is a reinforcement of the devaluation. These youths can be clearly identified as a group that is primarily Native, and this situation has, we reiterate, the effect of devaluing these people as individuals. There is also a widespread belief - in both the Aboriginal and non-Aboriginal communities - that if the majority of those locked up were from a white, middle class family background the overcrowding would not be allowed to continue.

In Manitoba, and indeed across the country, there is great variation in designating open custody facilities. Of the 14 open custody homes throughout Manitoba, five are operated by Aboriginal families, two in Thompson, one in Gods Lake Narrows, and two in Winnipeg (normally licensed for two beds each). At the other extreme, four cottages within the grounds of the Manitoba Youth Centre and one cottage within the grounds of Agassiz Centre for Youth are designated as places of open custody.

There also appears to be considerable variation in the use of custody facilities. Recent Statistics Canada figures show that while Saskatchewan has only three juvenile girls serving custody sentences, Manitoba has 16 (almost all Aboriginal) in custody institutions, yet the two provinces have similar population bases and demographics.

In the case of the Manitoba Youth Centre, an appeal of an open custody disposition resulted in that designation being overturned in *Re F v the Queen et al* (1984).[4] Subsequently, after some juggling of placements by the province, the Court of Appeal[5] suggested that the Lieutenant-Governor in Council has authority to define what constitutes open custody, as long as the definition falls within one of the generic descriptions of the Young Offenders Act. As a result, the characteristics of a custodial sentence received by a youth may vary more according to where the youth lives than on the basis of the offence for which he or she has been convicted (Caputo & Bracken, 1988). Open custody placement is mostly dependent upon availability of governmental and non-governmental resources in a particular community and, further, a youth is more likely to receive culturally appropriate services if he or she is fortunate enough to be placed in an open custody home in the community.

The Native Caucus of Probation Officers (1989) assessed institutional programming for Aboriginal youth as inadequate and

piecemeal, inadequately linked to the community, and providing education which is below community standards, all within a context in which there are few, if any, Native persons as staff.

The concerns of the Native Probation Caucus are borne out by a report of the Ombudsman of Manitoba to the Manitoba Legislature. He documented the following criticisms of youth custody programming (1989:37-40):

1. The "Positive Peer Culture" program at Agassiz Youth Centre is geared to adolescents, yet approximately 30% of the population at the Centre is over of 18 years of age.
2. Given the diverse cultural backgrounds of the residents (high Métis and Indian), he questioned whether the program could meet the variable needs of the residents.
3. The Ombudsman questioned the use of quiet rooms and containment at Agassiz.
4. The report noted that the optimum Positive Peer Culture group size is 9 residents and one staff, whereas at Agassiz the ratio ranged from 13:1 to 15:1.
5. The report called for program review to determine the effectiveness and quality of the program being delivered.
6. The Ombudsman commented that the Agassiz school program was not affiliated with the local school division and appeared to be operating with a much lower budget than a public school. The available resource materials and teaching aids were not comparable to those of a public school.
7. The Ombudsman expressed the opinion that the living units at Agassiz required maintenance and upgrading, and recommended that the Fire Commissioner's Office inspect the facility to ensure compliance with safety standards.

Métis parents have told researchers (University of Manitoba Research, Ltd, 1989) that they feel pressured to provide clothing for their children after the youths are committed to custody sentences, even though the parents' welfare issue is reduced after the youth is placed away from home. Youths report to MMF that they are required to purchase clothing and some toiletry articles out of allowances or earnings while serving their sentence. The alternative is to wear used institutional clothes (including used underwear). Youths also complain that when their clothes are stolen or disappear, the institutions claim they can't guarantee security of personal possessions and the youths must replace these items themselves.

Youths also note that the institutions do not pay for phone calls to family or social workers, and they must either phone collect or pay for the calls at pay phones. It is clear that Aboriginal youth would be better served if large secure institutions had never been designated as places of open custody, and if there had been more dispersal of open custody beds by way of designation of open custody homes throughout the province.

The argument that these conditions apply to all youth, and thus race is not a factor, simply does not reflect the reality of the situation. First, as we have documented, there is a large overrepresentation of Aboriginal offenders in the justice system. Second, the economic station of those affected makes the measures more drastic to most of the Aboriginal youth. This leads to the logical conclusion that the function, if not the purpose, of these rules and policies, is to further the devaluation process.

We note as well that a high proportion of the youths so jailed are entirely removed from their communities, which are in some instances 600 or more miles away. They are then placed in a restrictive and culturally foreign environment. They are placed in "open custody", which in fact is a very secure jail. All of these factors lead to greater, not to lesser, devaluation, and thus not be considered rehabilitative in any sense.

Métis youth and the system in general would have been much better served if the Department of the Attorney General of Manitoba (now the Department of Justice) had acted on the advice given by its own Research, Planning & Evaluation Branch (Latimer, 1986); that is:

a) Too many young people become too involved in the criminal justice system for relatively minor offences.
b) The criminal justice process in Youth Court is markedly slower and more intrusive than in Adult Court.
c) Provisions in the Young Offenders Act intended to protect the rights of young accused are not being applied (eg. Section 30, Review Board provisions).
d) Custodial rates under the new legislative regime have increased; the consistency of the application and intent of the provisions must be ensured.

Research done for the Manitoba Métis Federation (Manitoba Métis Federation Justice Committee, 1989) reveals that alternative

measures are less frequently used for Métis youth than for others. There is also provision in the Young Offenders Act, under Section 3(d), for no measures to be taken against youth for minor infractions and this Section is not being used at all.

The Manitoba Métis Federation submission to the Aboriginal Justice Inquiry (1989) documented the high custody rates for Métis youth and the lack of implementation of the legislative intent of open custody. The submission noted that provisions for intermittent sentences under the Young Offenders Act have never been implemented for youths in Manitoba. However, given current practice, they were of the opinion that intermittent sentencing would only widen the net for catching Métis youths.

Adults

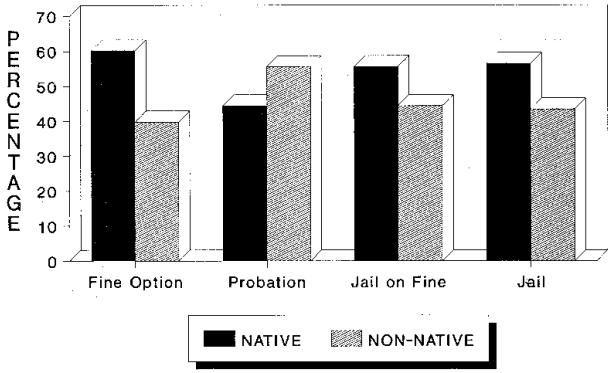
For adults in the provincial correctional system, the picture is similar, as can be seen in Table 3:

Métis adults constitute:

- 13.19% of those on probation;
- 12.60% of adult jail admissions; and
- Although no remand figures are available, we believe that they parallel the youth experience

Brandon Correctional Institution, Dauphin Correctional

TABLE 3: ADULT CORRECTIONS REFERRALS 1987
% Native vs. % Non-Native



Source: Manitoba Métis Federation Justice Committee (1989)

Institution and the Winnipeg Remand Centre do not fund, nor directly provide programs or services, exclusively for Native inmates. The mechanisms in place for the resolution of inmate complaints are infrequently used by Native inmates throughout the adult correctional systems. On the other hand, there appears to be a higher representation of Natives involved in disciplinary hearings compared to non-Native inmates. Correctional officials also report that Native inmates at the pre-trial stage are less likely to receive bail or to apply for bail under the current system (Attorney-General of Manitoba, Report to the Aboriginal Justice Inquiry, April, 1989).

These trends for the incarceration of Métis people are cause for grave concern. There is evidence that these problems will get much worse before they get better. The non-Native population of Manitoba, unlike the Native population, has experienced a declining birth rate and if the incarceration rates for Aboriginal adults (Métis and other Natives) follow what we are now seeing in youth corrections "the demographic changes alone would cause Native admissions to rise to about 80% of all admissions, while the absolute number of non-Native admissions could actually decline" (Hylton, 1981). Of particular concern is that 80% of the provincial corrections budget is spent on locking up people, a practice that seems to be disproportionately reserved for Aboriginal people.

Research indicates that each year the corrections allocation budget differs from actual expenditures by some $2 million. Expenditures always come in higher, because the department obtains spending warrants during the fiscal year to cover cost over-runs in institutions. This fact is only revealed if one closely examines the Public Accounts of the Province of Manitoba. The government agreement with Manitoba Government Employees Association requires them to put more staff on the floor at institutions as the inmate population rises. The same is not true for community caseload increases or for increased needs for open custody homes in the community.

The community based workers we interviewed deplored this policy as it skews the system to favour institutional dispositions while holding community expenditures down, in the face of rising demand. It is known that recidivism will increase as probation caseloads rise and less differential programming and supervision is available.

It is apparent that other major interest groups, such as government employees, are given a seat at the decision table, while at the same time the group most drastically affected are not even consulted. Indeed, many in the system believe their views to be

inconsequential! In the words of the famous Métis rights activist Malcolm Norris, "To be ignored is more vicious perhaps than to be oppressed" (Dobbin, 1981:231). While the trends of increasing incarceration for Métis youth and adults are clearly documented within the correctional system, the Manitoba Métis Federation has never been provided with the data, nor consulted about the causes of the trends or possible methods of reversal.

It is instructive to note the degree to which this lack of community consultation and lack of resource development effects adult admission to custody for bail and probation violations. The Solicitor General (1985:17) reported that in 1980 to 1982:

In:	
British Columbia	26% of all bail/probation violators jailed are Aboriginal.
Alberta	35.3% of all bail/probation violators jailed are Aboriginal.
Saskatchewan	73.7% of all bail/probation violators jailed are Aboriginal.
Manitoba	73.9% of all bail/probation violators jailed are Aboriginal.
Ontario	8% of all bail/probation violators jailed are Aboriginal.

Thus, the broader picture is that, during those years, while Aboriginal people made up about 40% of the adult probation caseload in Manitoba, they constituted 73.9% of the program failures resulting in custody. The figures given above reflect the state of things at that time, which was before the institution of fine option programs in several of these jurisdictions. The failure rates have been considerably ameliorated since the advent of fine option programming.

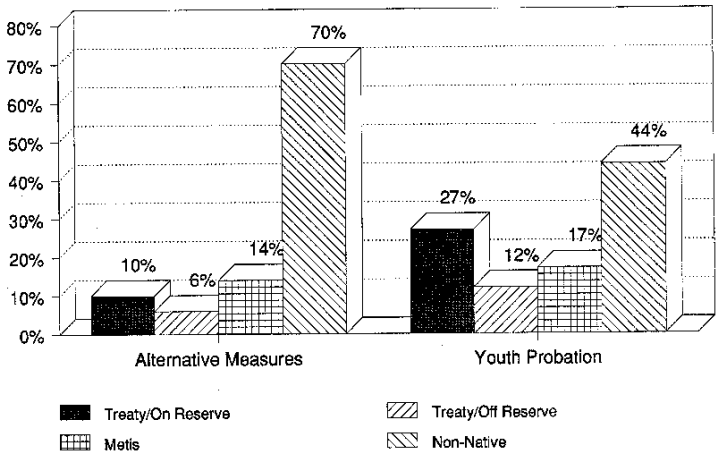
Compare the 1980-82 figures with the results after implementation of a Manitoba fine option program, a program which is widely available and which is regionalized with Aboriginal carrier groups. Currently, although 60.2% of all Manitoba fine option registrants are Aboriginal, only 11% default. It is clear that the decline in breach rates is rooted in the nature of the program, its availability, and its cultural appropriateness. The effect of Aboriginal people enforcing the punishment, as well as enabling the participant, can not be minimized. When the major instruments (and reinforcers) of devaluation are removed (that is, social control

imposed by others, labelling as failure by the system, and meaningless dispositions), not only are Aboriginal people less devalued, but the success rate is in fact higher than the norm! It is noteworthy that Nova Scotia does not have such programming and Recommendation 17 of the Royal Commission on the Donald Marshall Jr. Prosecution was: "We recommend that the Government immediately proclaim the Alternative Penalty Act, S.N.S. 1989, c.2..." (1989).

Alternative Measures

Our research reveals that only 14% of alternative measures participants are Métis, whereas Métis youths constitute 17% of the youth probation caseloads, and from 30.4 to 38% of the youth custody population (Tables 1 and 2). Only 25% of the Métis communities which are served by local fine option and community service order programs are also served by local youth justice committees.

TABLE 4: YOUTH REFERRALS 1987
Alternative Measures vs. Probation



Source: Manitoba Métis Federation Justice Committee (1989)

This lack of diversion for Métis youth is due to a number of factors. Research recently completed by Ryant and Heinrich (1988) found that differences in community characteristics are a significant variable:

> Highly disorganized and disintegrated communities tend to experience a greater number of offences by young people, but outside Winnipeg, they are also less likely to have formed youth justice committees. In these communities, the challenge of providing social services through community based intervention is greatest; these communities are often geographically isolated and constrained by having to negotiate separately with federal and provincial bureaucracies regarding Native self-government.

On the other hand, communities in relatively prosperous rural areas which have the resources, time and tradition of community participation, have formed committees whose main challenge is to maintain the motivation of their membership in that referrals are so infrequent. Ryant and Heinrich (1988) also point to inconsistency in community dispositions, the claims of some committees that cases are being withheld from them, and the lack of data base to guide selection of the most effective dispositions, as areas of administration in the youth justice committee system in Manitoba that require improvement. Ryant and Heinrich (1988) note that on reserves the support of the Band Council is integral to the operation of youth justice committees. They note that no committee could operate without at least *pro forma* approval of a Band Council, but their study revealed that Band Council support was minimal, as was overt interest in the communities. Their study makes no comment on Métis communities. This appears to be a serious omission in this federally funded study.

In November of 1989, the Manitoba Métis Federation held three justice workshops at their 21st Annual Assembly. Delegates (195) attended from every region of the province and 72 delegates completed justice questionnaires, which specifically asked about knowledge and involvement in alternative measures, justice committees and community service dispositions (Barkwell, 1989). The delegates indicated that few Métis communities had been approachedto participate in youth diversion programs. The specific question asked was:

> Have you or your M.M.F. local been approached by provincial or federal corrections to participate in community corrections services?

	Affirmative answers
Fine Option	43.0%
Community Service Work	19.4%
Youth Justice Committees	5.5%
Alternative measures	1.4%

At the same time, 88.9% of the respondents indicated they would like more information about the justice system, and 59.7% felt there was enough interest in their community or local to warrant a justice issues workshop. One can only conclude that part of the reason for lack of diversion from court for Métis youth is due to a lack of outreach and education to these Métis communities as to the diversion provisions of the Young Offenders Act.

Fine Option/Community Service Order Program

Manitoba Corrections has contracts for Fine Option and Community Service work centre operations with 24 Métis communities (Community Councils and Local Government Districts), four Manitoba Métis Federation Locals, and four Indian/ Métis friendship centres, as well as 54 contracts with Band Councils.

In all, 85 of 135 Métis communities (63%) in Manitoba are served by Fine Option Program/Community Service Order community resource centres, operating directly in their area, and 54 of 62 Indian Bands (87%) are served by Band Council operations.

The participating M.M.F. locals are:

- M.M.F. Northwest Métis Council
- The Pas, Manitoba Métis Federation
- Vogar, Manitoba Métis Federation
- Leaf Rapids, Manitoba Métis Federation

The participating Indian Métis Friendship Centres are:

- Swan River Friendship Centre
- Dauphin Friendship Centre
- Lynn Lake Friendship Centre
- Ma-Mow-We-Tak Friendship Centre

Most of the remaining friendship centres participate in the program by serving as work locations.

Aboriginal adults and youths made up 4,450 (60.2%) of the 7,393 registrants for fine option in 1987. The successful completion rate remains high (around 70%).

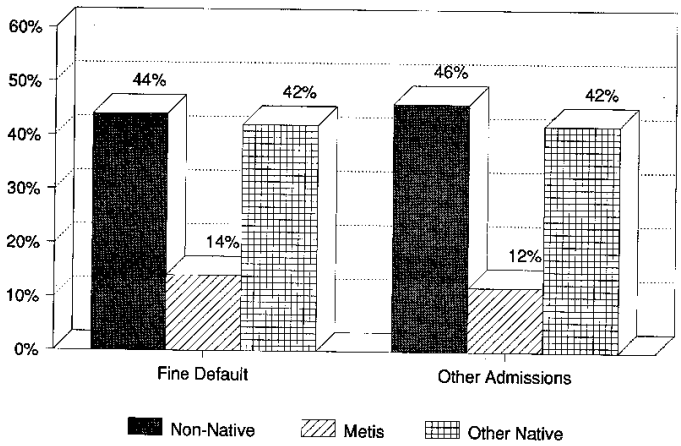
Of fine defaulters admitted to jail in 1988:

- 23.6% of Métis admissions were for fine default;
- 21.5% of other Aboriginal admissions were for fine default; and
- 20.9% of non-Native admissions were for fine default.

Comparing registrations with defaults, we find that 11% of the Aboriginal people who register default, whereas 13.6% of the non-Aboriginal registrants default.

Overall, the Fine Option/Community Service Order Program seems to serve the Treaty Indian/Métis/Non-Status Indian community quite well. High use is made of the program by Aboriginal people, their completion rate is better than average, and the jail admissions for default are not out of line with default admissions from the non-Aboriginal community. The slightly high rate of Métis admissions may be explained by the fact that community resource centres are directly serving only 85 of 135 Métis communities, whereas 54 of 62 Bands are served by Band

TABLE 5: ADULT JAIL ADMISSIONS 1987
Fine Default vs. Other Admissions



Source: Manitoba Métis Federation Justice Committee (1989)

local resource centres, operated by Band Councils.

We also note, as one example, the case of one Native young offender who was given a Community Service Order and was charged three times with a breach of probation for failing to complete the order. In an interview with a Native probation officer, the accused offered no reason for this failure. The probation officer set new terms and asked the young offender if he understood. He said, "yes". Because of suspicions aroused by certain contextual references, the probation officer asked the youth to name the months of the year in English. The youth could not! The probation officer then explained the obligations in Saulteaux and the youth

completed his obligation in one week. This graphically demonstrates that if a program is to be effective and efficient, cultural awareness is essential.

Nonetheless, this program stands as an example of extensive effort on the part of Correctional Officials to involve local Indian and Métis governing bodies in the delivery of service, and to provide extensive regionalization. The program is diverting people from jail and it produces default admission rates where Aboriginal people are not disproportionately represented. Manitoba Métis Federation research has indicated that Métis women are less likely to complete Fine Option/Community Service Order work. There has been no study or research of this, but we are told that the obvious problems of lack of child care, low incomes and lesser accessibility are primary causes.

The Status Of Métis Women In Corrections Manitoba

The Portage Correctional Institution (PCI) is a provincial jail for women in Manitoba with a capacity of 43 inmates. Sentences up to two years are served there, and women sentenced to serve federal terms at Kingston, Ontario are held at PCI during their appeal period. Alternatively, they can serve federal sentences there under a federal/provincial transfer agreement.

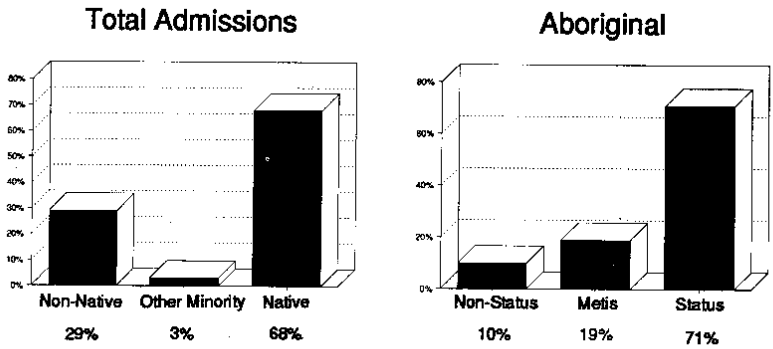
The majority of admissions are Aboriginal women, 68.4% in 1987 (Table 6). Of federal prisoners transferred to Kingston during 1987, 100% were Aboriginal women (four). This incarceration rate for Aboriginal women mirrors their arrest rate. Over the last decade, Winnipeg City Police have indicated that about 70% of the women arrested in Winnipeg are of Aboriginal descent.

In the latest figures available to us (Robertson, 1988), Métis and non-Status Indian women made up 30.3% of the Aboriginal admissions to PCI. The majority of these women are sole support parents from male dominated environments. The majority of Indian Bands in Manitoba are headed by male Chiefs and male mayors head most Métis and non-status communities. The superintendent of PCI is a man. The Native liaison worker at Kingston Prison for Women is a man.

Portage Correctional Institution operates a program whereby newborns are not separated from their mothers. However, because of the location of PCI, most inmates lose regular contact with their older children (Robertson, 1988).

While the research on infant-parent bonding would support the practice of not separating mothers from infants, running the

TABLE 6: PORTAGE WOMEN'S JAIL
1987 Admissions



Source: Eleanor Robinson (1988)

program in a jail as austere as Portage Correctional Institition, rather than in a halfway house, is questionable.

In federal corrections nationally, Aboriginal females made up 14.2% of the women in federal prisons. Indians were 11.4% and Métis 2.8% of this female inmate population. All but two were held at Kingston (Solicitor General of Canada, 1989).

The Aboriginal Womens' Justice Committee (1988) reports that the personal histories of Native women in conflict with the law are set in a socio-political system where they have no status except through a husband, and where they feel compelled to keep silent on the violence within their lives.

Liaison workers who visit Aboriginal women at the Portage Correctional Institution for Women report that every woman they have visited has, at one time or another, been a victim of sexual or physical violence.

They surveyed offenders as to the stress factors that led to the commission of crimes and came up with the following list in order of frequency mentioned:

Reason for Crimes	% mentioning this reason
Alcohol and drugs	70.0%
Physical abuse	53.0%
Sexual abuse	42.8%
Poverty	29.8%
Lack of education	28.5%
Single parenthood	25.9%
Boredom	19.5%
Because they are Native	6.5%
Retaliation	3.9%
Lack of self-esteem	2.6%
Culturally appropriate	1.3%
Desperation	1.3%
Rebellion	1.3%
Loneliness	1.3%
Mad at life	1.3%

The committee noted, with interest, that the Aboriginal women surveyed were least familiar with programs that should have been the most relevant, such as the Awasis Agency, a northern Indian Social Service Agency, the Department of Indian Affairs, Medical Services and Court Communicators services.

It was their assessment that Aboriginal women are not only challenged by social and economic inequities, but must also cope with the devaluation of their culture, religion, traditions, and life-style. These concerns are only exacerbated when Aboriginal women leave rural areas to escape all of the negative factors in their lives. Furthermore, Aboriginal women caught up in the criminal justice system have a documented victimization rate far in excess of the general population.

The feelings of worthlessness which so many incarcerated Aboriginal women indicate, are only reinforced by the jail system. They are separated from their children, and when children visit them they are often subjected to the indignity of "strip" searches for contraband, as are the women themselves upon returning from temporary absences in the community.

A Métis woman who used to work in liaison at the Portage Correctional Institution noted that even when she was able to take older children out to visit their mothers, this had unsatisfactory results, because the visiting area is crowded and inadequate, and the jail has no provision for private visiting with families.

The women also report that they must wear used institutional

underclothing if they do not have money to buy their own. This has also been confirmed by the executive director of the Elizabeth Fry Society when she questioned, in an interview, the amount of time and money this private agency had to expend in trying to provide the basic necessities for jailed women. The Elizabeth Fry Society also confirmed that most Aboriginal women in jail are a significant distance from family, friends and support networks. Because they are poor, visiting or even making long distance phone calls on the pay phone is prohibitive.

In their 1989 submission to the Aboriginal Justice Inquiry, Manitoba Métis Federation recommended that because of the geographical distribution of women incarcerated in the Portage Correctional Institution and the Kingston, Ontario Prison for Women, accommodation must be made for them to meet regularly with their families and adequate bed space must be contracted within Aboriginal receiving groups for the release of Aboriginal female offenders on temporary absence and day parole.

The Manitoba Métis Federation inquiry report agreed with the Native Probation Caucus (1989) assessment that, " the criminal justice system is not sensitive to Native women", and institutions for these women make little effort to aid transition to the community.

Conclusion

It is our assessment that there are clearly a number of factors which interact to produce the overrepresentation of Métis people as offenders (with high re-involvement rates). These same factors interact to make Métis people more susceptible to victimization.

1. There has been an historical repression of Métis custom and tradition, social structures and support systems.
2. The Métis have little discretionary time or money available to respond as a community to the problems of crime.
3. Official responses to the problems documented above are usually framed in terms of social control rather than social development.
4. Aboriginal people as a visible minority have been denigrated and their history has been conveyed in a distorted way. In youths this leads to self-derogation, feelings of helplessness and alienation.
5. The intended child welfare remedies have not worked for Métis children.
6. Official justice system interventions have been culturally alien or irrelevant and poorly understood by the Métis community.

7. The Métis have been effectively denied participation in the creation and administration of law.
8. The official justice system has acted in ways which engender disrespect and cynicism within the Métis community.
9. In many instances correctional and other related services have been denied or not made available to the Métis.

When a people are weakened by these factors, which we view as additive as well as interactive, the symptoms of devoluation of which crime is but one, are inevitably found to be in ascendancy.

We have, we think, been able to demonstrate the collective effect on Aboriginal people of the phenomenon of devaluing a group. We would also like to demonstrate some individual and specific effects of this behavior. In particular we want to note certain specific behaviors of devaluation that have resulted in negative consequences either to Aboriginal individuals or to groups of Aboriginal people.

One instructive case can be found in the Aboriginal community of Shammatawa, Manitoba. In that community there had been an outstanding agreement between the Band Council and Justice Officials to hold Provincial Court in the Band Hall. This agreement continued for a period of time until a new school was built in the community.

It is interesting to note that for a number of reasons, the Justice Officials then insisted upon holding Provincial Court in the new school gym. They did this without discussing the issue with the Chief and Council who clearly had jurisdictional control over the reserve. The primary reasons given by the court officials appear to have been a lack of space for interviewing in the Band Hall and access to better bathroom facilities in the school. The argument contrary to this, advanced by the community leaders, was the inappropriateness of students seeing the perpetual run of persons in the court. They felt this exposed them to the negative and unsettling effects of the legal process. This would tend to lead these students into thinking less of themselves as Aboriginal people. This was particularly true in those cases where persons would be incarcerated, as incarceration cases would be served a substantial distance away from the community. The effect would be, it was thought, a reduction in respect for social control.

The court party, however, was unmoved. Rather than taking up a concern with the appropriate leaders, that the facilities for the court party were inferior and should be improved, the officials simply wanted to move to the newer school facility. They did this

presumably on the basis that while the Band Hall and its deficiencies were adequate for the Indian people living in the community, they did not meet the superior hygienic and other standards of the mostly non-Aboriginal persons who travelled with the Provincial Court to dispense justice in Shammatawa. In the end, the Court quit sitting in the community of Shammatawa until they were allowed to hold sessions in the new school. The result was that persons charged with offences from Shammatawa had to travel by air to Thompson for appearances on relatively routine matters. In a community where, as in many northern reserves, nine out of ten family incomes included social assistance, this caused extreme hardship. The individuals were then, if they could not afford to travel, subject to further criminal sanctions and a vicious cycle was started.

We have not escaped the effects of this devaluation as a society either. Examples of this abound. We find that in recent studies, most notably an Angus Reid Poll conducted in September 1989, the Manitoba and Saskatchewan response demonstrated the highest rate of negative opinion to Native self-determination. In addition, there was various evidence in similar polls that elements of racism, as evidenced by devaluing other people, are hardening, particularly in Manitoba. Evidence of this within the system is more difficult to ascertain. This is perhaps because the system has long tolerated the devaluation of people. A noted example (Native Probation Caucus Report to the Inquiry, 1989) is that one official, well known within the Manitoba Department of Justice, continued to deride Aboriginal people with negative stereotypical terms. He continued to do this throughout the Aboriginal Justice Inquiry, despite the fact that it was widely known in the Department. This was allowed to continue despite its effects, known to be traumatic to the individuals to whom he dispensed his from-the-lip justice.

Another example of this type of behavioral devaluation was exhibited by Sheriff's officers during the course of the Aboriginal Justice Inquiry. It was observed that several youths were manacled together and taken through a public place. A guard, in a voice loud enough that others could hear, said to the youths, most of whom were Aboriginal, "[alright you guys get going, lets do] the Sheriff's shuffle". The effect of this upon the youths involved can only be subject to speculation, but it does not take much imagination to recognize that it can only decrease the self esteem of those individuals.

We also draw upon the case Regina vs. Ross (Provincial Judges Court, Norway House, Manitoba, 1989). This court case was cited in the Manitoba Métis Federation Justice Committee

(1989) presentation at the Manitoba Aboriginal Justice Inquiry. The facts in short are that an accused was charged with a sexual assault after being encouraged by another man to have sex with his wife while she was sleeping and under the effects of alcohol. When she became aware of this she objected and asked that the individuals be charged. They subsequently were.

In appearing in court, counsel for the defence advanced as mitigation the suggestion that it was common amongst Aboriginal people of the north to so share their women. Far from jumping up and objecting, the Crown Attorney sat silently by and allowed this ludicrous statement to go unchallenged. The judge similarly, rather than challenge the statement, made the comment that:

> I accept what your lawyer tells me, that you honestly believe that if the husband said it was okay, it was alright to have sex with her.

He then reinforced this incredible perception with the following statement:

> ...It's because of this honest belief (sic), because there may be some belief in the community, that the man can control the situation . . .

Again one can only speculate that the effects of devaluation upon the individuals experiencing this would be heightened rather than lessened. We believe that such speculation is valid.

This paper would, we think, be incomplete without recommendations as to change. We therefore recommend the following (the substantive body of these recommendations is contained in the Manitoba Métis Federation presentation to the Aboriginal Justice Committee (1989). We suggest that the implementation of these recommendations would have the effect of reducing the devaluation of people that has occurred, and which continues to occur, and would enhance the role of Aboriginal people in the justice system.

It is apparent that these solutions require a committed effort on behalf of the people who make up the system and on behalf of Aboriginal people. It is further apparent that failure to introduce changes will result in further damage to the Aboriginal people of Canada.

We propose that a separate but parallel, alternative, Aboriginal justice system would be a major step in alleviating the dispossession that people feel as a result of the current infliction of the system. We suggest that such a system based upon, as it would be, traditional values and norms would devalue people less and

would allow them to "buy into" the system more readily. This would have the end result of enhancing the respect which people have for the law and would achieve the social control that is clearly the function of all law. This, of course, was supported by, amongst others, the Canadian Bar Association in a report issued in September, 1989. In particular we feel that the following changes are important:

1. That Aboriginal communities hve the opportunity to divert cases out of the conventional justice system; and
2. That Aboriginal communities and organizations be encouraged and supported in the establishment of separate correctional and after care facilities with specific focus on appropriate treatment, bearing in mind cultural and social norms of the Aboriginal offender; and
3. That the provision for appropriate spiritual, religious and traditional activities be made for Aboriginal offenders and that planning for this take place both in the separate system and in the traditional system.

Additionally we suggest, especially for remote and other predominantly or exclusively Aboriginal communities, that police functions be turned over to Aboriginal agencies which can be more responsive to the needs of the citizens. It is felt, based upon the current situation in the limited operation of the Dakota Ojibway Tribal Police and the Navaho Police, that this is a crucial next step. The comments of Police specialists before the Aboriginal Justice Inquiry in 1989 that racism among City of Winnipeg Police officers is in fact increasing are a startling revelation and suggest that separate police forces, where practical, would be an appropriate measure.

Similarly we recommend that for others within the system (such as police officers in traditional forces, judges, lawyers, clerks, jail guards, probation officers, and all others) a substantial course be provided in the area of Aboriginal cultural awareness. It is crucial that all players in the system at least begin to understand the Aboriginal societies and values in order to comprehend the characteristics of Aboriginal offenders, victims, and witnesses. In addition, Aboriginal witnesses and victims will be, we suggest, better treated. A greater understanding of Aboriginal peoples will, we suggest, decrease the inclination of justice personnel to devalue these "faceless people".

As well, we recommend that advocates for Aboriginal people be available at the earliest opportunity, and in particular that the

functions of court communicators and other like agents be committed to ensuring that Aboriginal people involved with the justice system receive appropriate and fair treatment. In particular, we suggest that there is a need for persons involved in the system to be held accountable. A knowledgeable and paid advocacy service for ensuring that Aboriginal people are treated appropriately should thus be established. It is noteworthy, as well, that the Manitoba Law Enforcement Review Agency has not had a substantial overhaul since its inception some four years ago. We suggest that it has proven to be a dismal failure and that substantial changes be made to the system to allow for the better resolution of complaints against police officers with respect to treatment that is not of a suitable standard.

Additionally we suggest that substantial law be amended to provide for a criminal, or a quasi-criminal, offence for persons either advancing or acquiescing in the advancement of racially motivated statements or actions within the justice system. In particular we suggest that comments such as those noted above in the Ross case should be the subject of disciplinary action through either criminal or quasi-criminal action.

Perhaps most importantly we suggest that the number of Aboriginal people employed in this system must begin to approximate the numbers of persons who are Aboriginal within the general population. To this end we suggest that Aboriginal people be hired on a priority basis at all levels of the justice system to increase sensitivity in the criminal justice system. We suggest, as well, that in hiring Aboriginal persons there be substantial supports provided for those Aboriginal persons. It has been a some time practice that Aboriginal persons, once hired, tend to become a part of the current system. This would, we suggest, not alleviate the problems identified in this paper but would in fact increase them. If this is the case, then we suggest that support systems which would allow Aboriginal workers to maintain their role within the system, but not sublimate their own culture, would be an appropriate adjunct to increased hirings.

We suggest that the whole issue of removal of persons from communities needs to be reviewed. A study of the location and existence of programs should be made a priority. We suggest that no new incarceration facilities be constructed but that instead we begin the process of spending dollars on community based alternative programs. These programs would begin to attack the cycle of devalued people and would begin to alleviate some of those concerns.

Tied to this, but not reasonable to study because of the length of the subject matter, would be increased economic opportunities for Aboriginal peoples, particularly in their home communities. This has long been a problem and was advocated as long ago as 1972 by the Manitoba Métis Federation Inc. and the Manitoba Indian Brotherhood. We submit that tying intervention in the current pattern of devaluation to increased economic opportunity is the only reasonable approach to beginning to break the cycle of problems that have been identified within this paper.

We suggest further that if the preceding recommendations, or some reasonable facsimile of same, are not implemented in due course the chronic problem of devaluation within our system will become in fact terminal. We suggest further that modern society can still learn from traditional systems and we note that in the 19th Century the Métis, particularly, maintained social control by the mildest of means. In fact, some commentators have remarked that the current system was far less enlightened than that system and certainly the present results, as the statistics set out herein demonstrate, are far more tragic to Aboriginal people in general.

The system can be changed only through a genuine committment to change which addresses the need for the Aboriginal control and operation of Aboriginal social control and correctional systems. An existing correctional service with the three strikes of massive discrimination and racism, almost wilful ignorance of Aboriginal people, cultures and communities, and a refusal to address systemic problems - such as cross-cultural recognition and major shortcomings in the staffing arena - clearly cannot cope with the present situation. What, then, will happen in the future, if the present trend of increasing overrepresentation of Aboriginal people

NOTES

1. The opinions expressed herein are those of the authors, and do not necessarily represent those of their employers.

2. Portions of this paper were first researched and presented as the Manitoba Métis Federation Justice Committee submission to the Aboriginal Justice Inquiry. The original M.M.F. research and report was supported in part by funding from the Government of Manitoba. Copies of those reports can be obtained by writing to W. Yvon Dumont, President, Manitoba Métis Federation, 408 McGregor Street, Winnipeg, Manitoba, R2W 4X5.

3. The senior author acknowledges personal communications with David Wetherow (Association for Community Living: Winnipeg) and Dr. John O'Brien (Responsive Systems Associates: Atlanta, Georgia), as well as the workshops and written work of Dr. Wolf Wolfenberger, for the concepts which form the basis for the discussion of devalued people.

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